

## **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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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:

**Part 1 — Preliminary**

**Division 1 — Introduction**

**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.

**Division 2 — Object**

**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



1 (g) providing a framework for continuous improvement and  
2 progressively higher standards of work health and  
3 safety.

4 (h)

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

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

## 11 Division 3 — Interpretation

### 12 Subdivision 1 — Definitions

#### 13 4. Definitions

14 In this Act:

15 *approved code of practice* means a code of practice approved  
16 under Part 14.

17 *authorised*, in Part 4 — see section 40.

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

19 *Category 1 offence* — see section 31.

20 *Category 2 offence* — see section 32.

21 *Category 3 offence* — see section 33.

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

24 *condition* includes limitation and restriction.

25 *construct* includes assemble, erect, reconstruct, reassemble and  
26 re-erect.

27 *corresponding regulator*:

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

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

35 (c) in relation to any other law of this State that is  
36 prescribed as a corresponding WHS law, means the

1 person prescribed as the corresponding regulator for the  
2 purposes of that law; and

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

7 ***corresponding WHS law:***

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

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

13 (ii) the *Mines Safety and Inspection Act 1994*;

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

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

19 (v) the *Dangerous Goods Safety Act 2004*;

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

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

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

26 (ii) the *Mines Safety and Inspection Act 1994*;

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

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

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

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

37 ***dangerous incident***, in Part 3 — see section 37.

38 ***demolition*** includes deconstruction.

1 **design**, in relation to plant, a substance or a structure includes:

2 (a) design of part of the plant, substance or structure; and

3 (b) redesign or modify a design.

4 **disclose**, in relation to information, includes divulge or  
5 communicate to any person or publish.

6 **discriminatory conduct**, in Part 6 — see section 105.

7 **document** includes record.

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

9 **employer organisation** means an organisation of employers.

10 **engage in conduct** means doing an act or omitting to do an act.

11 **Fair Work Act** means the *Fair Work Act 2009* of the  
12 Commonwealth.

13 **handling** includes transport.

14 **health** means physical and psychological health.

15 **health and safety duty** — see section 30.

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

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

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

23 **inspector** means an inspector appointed under Part 9.

24 **internal reviewer** means:

25 (a) the regulator; or

26 (b) a person appointed by the regulator under section 225.

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

30 **local authority** means a local government or a regional local  
31 government.

32 **medical treatment** means treatment by a medical practitioner  
33 registered under the *Health Practitioner Regulation National*  
34 *Law (WA) Act 2010*.

35 **notifiable incident** — see section 35.

- 1           **officer** means:
- 2           (a) an officer within the meaning of section 9 of the
- 3                 *Corporations Act 2001* of the Commonwealth other than
- 4                 a partner in a partnership; or
- 5           (b) an officer of the Crown within the meaning of
- 6                 section 247; or
- 7           (c) an officer of a public authority within the meaning of
- 8                 section 252,
- 9           other than an elected member of a local authority acting in that
- 10           capacity.
- 11           Note: A definition of **official of a union** is not required in WA.
- 12           **person conducting a business or undertaking** — see section 5.
- 13           Note: A definition of **personal information** is not required in WA.
- 14           **plant** includes:
- 15           (a) any machinery, equipment, appliance, container,
- 16                 implement and tool; and
- 17           (b) any component of any of those things; and
- 18           (c) anything fitted or connected to any of those things.
- 19           **prohibited reason**, in Part 6 — see section 106.
- 20           **public authority**:
- 21           (a) in section 156(b) means:
- 22                 (i) a body, whether incorporated or not, or the
- 23                         holder of an office, that is established or
- 24                         continued for a public purpose under a written
- 25                         law and that, under the authority of a written law,
- 26                         performs a statutory function on behalf of the
- 27                         State; or
- 28                 (ii) a local government;
- 29           (b) in Part 13 Division 6 means a body corporate:
- 30                 (i) listed in the *Financial Management Act 2006*
- 31                         Schedule 1; or
- 32                 (ii) listed in the *Public Sector Management Act 1994*
- 33                         Schedule 1 column 2 or Schedule 2 column 2; or
- 34                 (iii) established or continued for a public purpose
- 35                         under a written law; or
- 36                 (iv) established by the Governor or a Minister; or
- 37                 (v) over which control can be exercised by a
- 38                         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;

- 1 (iii) a legal practitioner who is authorised by the  
2 worker, or at least 1 of the workers, to represent  
3 him or her;
- 4 (iv) another worker at the workplace who is  
5 authorised by the worker, or at least 1 of the  
6 workers, to represent him or her;
- 7 (c) in relation to persons in section 152(e) means any of the  
8 following:
- 9 (i) the health and safety representative for at least  
10 1 of the persons;
- 11 (ii) a union representing at least 1 of the persons;
- 12 (iii) any other person who is authorised by at least  
13 1 of the persons to represent him or her;
- 14 (d) in relation to a person in section 171(4) means any of  
15 the following:
- 16 (i) an authorised representative, as defined in the  
17 *Industrial Relations Act 1979* section 49G, of an  
18 organisation of which the person is a member;
- 19 (ii) an official of an organisation to whom a current  
20 entry permit has been issued under the Fair Work  
21 Act if the person is a member of that  
22 organisation;
- 23 (iii) a legal practitioner who is authorised by the  
24 person to represent him or her;
- 25 (iv) the health and safety representative for the  
26 person;
- 27 (v) a worker at the workplace who is authorised by  
28 the person to represent him or her.

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

30 ***State*** includes Territory.

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

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

- 35 (a) buildings, masts, towers, framework, pipelines, transport  
36 infrastructure and underground works (shafts or  
37 tunnels); and
- 38 (b) any component of a structure; and
- 39 (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.

Note: A definition of **WHS undertaking** 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

1 person conducting the business or undertaking is to be read as a  
2 reference to each partner in the partnership.

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

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

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

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

14 (8) In this section:

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

20 **6. Meaning of *supply***

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

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

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

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

29 (b) a prescribed supply.

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

32 (a) the financier has, in the course of the financier's  
33 business as a financier, acquired ownership of, or  
34 another right in, the plant, substance or structure on  
35 behalf of a customer of the financier; and



(b) the action by the financier, that would be a supply but for this subsection, is taken by the financier for, or on behalf of, that customer.

(5) If subsection (4) applies, the person (other than the financier) who had possession of the plant, substance or structure immediately before the financier's customer obtained possession of the plant, substance or structure is taken for the purposes of this Act to have supplied the plant, substance or structure to the financier's customer.

## 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)

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

- (i) a person of a prescribed class.

(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*.

- 1 (3) The person conducting the business or undertaking is also a  
2 **worker** if the person is an individual who carries out work in  
3 that business or undertaking.
- 4 (4) A person is not a **worker** if the person:
- 5 (a) is a volunteer; or
- 6 (b) is a prisoner as defined in the *Prisons Act 1981*  
7 section 3(1); or
- 8 (c) is a detainee as defined in the *Young Offenders Act 1994*  
9 section 3; or
- 10 (d) is an offender as defined in the *Sentence Administration*  
11 *Act 2003* section 76(1) who, under the pre-sentence  
12 order or community corrections order, carries out  
13 community work or community corrections activities of  
14 a kind mentioned in section 85(2)(a) of that Act; or
- 15 (e) is a young person to whom the *Young Offenders*  
16 *Act 1994* section 50 or 50A applies and who carries out  
17 community work under a youth community based order  
18 or an intensive youth supervision order as defined in  
19 section 3 of that Act; or
- 20 (f) is a young person to whom the *Young Offenders*  
21 *Act 1994* section 65 applies and who carries out  
22 community work under a community work order as  
23 defined in section 63 of that Act.

24 **8. Meaning of workplace**

- 25 (1) A **workplace** is a place where work is carried out for a business  
26 or undertaking and includes any place where a worker goes, or  
27 is likely to be, while at work.
- 28 (2) In this section:
- 29 **place** includes:
- 30 (a) a vehicle, vessel, aircraft or other mobile structure; and
- 31 (b) any waters and any installation on land, on the bed of  
32 any waters or floating on any waters.

33 **9. Examples and notes**

- 34 (1) An example at the foot of a provision forms part of this Act.
- 35 (2) Despite the *Interpretation Act 1984* section 32(2), a note at the  
36 foot of a provision forms part of this Act.

- (3) 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.

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- 1       (3) This Act has effect subject to any instrument for the time being  
2       in force under the *Mines Safety and Inspection Act 1994*  
3       section 6A.
- 4       (4) The Minister and the Minister for the time being administering  
5       an Act referred to in subsection (2)(a), (b), (c) or (d) (the *other*  
6       *Act*) may, by instrument in writing, jointly declare that for a  
7       specified period this Act or a specified provision of this Act  
8       applies to or in relation to:
- 9           (a) a specified workplace or a specified part of a workplace  
10          at which an operation under the other Act is carried on,  
11          as if it were a workplace or a part of a workplace to  
12          which this Act applies; and
- 13          (b) a specified operation under the other Act as if it were an  
14          activity in carrying out work to which this Act applies;  
15          and
- 16          (c) a specified act, matter or thing as if it were an act, matter  
17          or thing to which this Act applies.
- 18       (5) An instrument may be revoked or amended by instrument in  
19       writing made by the Minister and the Minister for the time being  
20       administering the other Act that is the subject of the instrument  
21       to be revoked or amended.
- 22       (6) An instrument may contain provisions of a savings or  
23       transitional nature in relation to the application of this Act or the  
24       other Act to any person, activity, matter or thing.
- 25       (7) An instrument is subsidiary legislation for the purposes of the  
26       *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

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

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

8 **Subdivision 2 — What is reasonably practicable**

9 **18. What is *reasonably practicable* in ensuring health and safety**

10 In this Act:

11 ***reasonably practicable***, in relation to a duty to ensure health  
12 and safety, means that which is, or was at a particular time,  
13 reasonably able to be done in relation to ensuring health and  
14 safety, taking into account and weighing up all relevant matters  
15 including:

- 16 (a) the likelihood of the hazard or the risk concerned  
17 occurring; and  
18 (b) the degree of harm that might result from the hazard or  
19 the risk; and  
20 (c) what the person concerned knows, or ought reasonably  
21 to know, about:  
22 (i) the hazard or the risk; and  
23 (ii) ways of eliminating or minimising the risk; and  
24 (d) the availability and suitability of ways to eliminate or  
25 minimise the risk; and  
26 (e) after assessing the extent of the risk and the available  
27 ways of eliminating or minimising the risk, the cost  
28 associated with available ways of eliminating or  
29 minimising the risk, including whether the cost is  
30 grossly disproportionate to the risk.

31 **Division 2 — Primary duty of care**

32 **19. Primary duty of care**

- 33 (1) A person conducting a business or undertaking must ensure, so  
34 far as is reasonably practicable, the health and safety of:  
35 (a) workers engaged, or caused to be engaged by the  
36 person; and

- 1           (b) workers whose activities in carrying out work are  
2           influenced or directed by the person,  
3           while the workers are at work in the business or undertaking.
- 4       (2) A person conducting a business or undertaking must ensure, so  
5       far as is reasonably practicable, that the health and safety of  
6       other persons is not put at risk from work carried out as part of  
7       the conduct of the business or undertaking.
- 8       (3) Without limiting subsections (1) and (2), a person conducting a  
9       business or undertaking must ensure, so far as is reasonably  
10      practicable:
- 11          (a) the provision and maintenance of a work environment  
12          without risks to health and safety; and
- 13          (b) the provision and maintenance of safe plant and  
14          structures; and
- 15          (c) the provision and maintenance of safe systems of work;  
16          and
- 17          (d) the safe use, handling and storage of plant, structures  
18          and substances; and
- 19          (e) the provision of adequate facilities for the welfare at  
20          work of workers in carrying out work for the business or  
21          undertaking, including ensuring access to those  
22          facilities; and
- 23          (f) the provision of any information, training, instruction or  
24          supervision that is necessary to protect all persons from  
25          risks to their health and safety arising from work carried  
26          out as part of the conduct of the business or undertaking;  
27          and
- 28          (g) that the health of workers and the conditions at the  
29          workplace are monitored for the purpose of preventing  
30          illness or injury of workers arising from the conduct of  
31          the business or undertaking.
- 32      (4) If:
- 33          (a) a worker occupies accommodation that is owned by or  
34          under the management or control of the person  
35          conducting the business or undertaking; and

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- 1 (b) the occupancy is necessary for the purposes of the  
2 worker's engagement because other accommodation is  
3 not reasonably available,  
4 the person conducting the business or undertaking must, so far  
5 as is reasonably practicable, maintain the premises so that the  
6 worker occupying the premises is not exposed to risks to health  
7 and safety.
- 8 (5A) Subsection (4) does not apply:  
9 (a) if the occupancy is under a written agreement containing  
10 terms that might reasonably be expected to apply to a  
11 letting of the premises to a tenant; or  
12 (b) to the occupation of accommodation by a person who  
13 works at a workplace referred to in section 12(2).
- 14 (5) A self-employed person must ensure, so far as is reasonably  
15 practicable, his or her own health and safety while at work.
- 16 Note: A self-employed person is also a person conducting a business or  
17 undertaking for the purposes of this section.

18 **Division 3 — Further duties of persons conducting businesses**  
19 **or undertakings**

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

- 22 (1) In this section:  
23 *person with management or control of a workplace* means a  
24 person conducting a business or undertaking to the extent that  
25 the business or undertaking involves the management or control,  
26 in whole or in part, of the workplace but does not include:  
27 (a) the occupier of a residence, unless the residence is  
28 occupied for the purposes of, or as part of, the conduct  
29 of a business or undertaking; or  
30 (b) a prescribed person.
- 31 (2) The person with management or control of a workplace must  
32 ensure, so far as is reasonably practicable, that the workplace,  
33 the means of entering and exiting the workplace and anything  
34 arising from the workplace are without risks to the health and  
35 safety of any person.



- 1   **21.   Duty of persons conducting businesses or undertakings**  
2       **involving management or control of fixtures, fittings or**  
3       **plant at workplaces**
- 4       (1)   In this section:
- 5           *person with management or control of fixtures, fittings or*  
6           *plant at a workplace* means a person conducting a business or  
7           undertaking to the extent that the business or undertaking  
8           involves the management or control of fixtures, fittings or plant,  
9           in whole or in part, at a workplace, but does not include:
- 10           (a)   the occupier of a residence, unless the residence is  
11                 occupied for the purposes of, or as part of, the conduct  
12                 of a business or undertaking; or
- 13           (b)   a prescribed person.
- 14       (2)   The person with management or control of fixtures, fittings or  
15         plant at a workplace must ensure, so far as is reasonably  
16         practicable, that the fixtures, fittings and plant are without risks  
17         to the health and safety of any person.
- 18   **22.   Duties of persons conducting businesses or undertakings**  
19       **that design plant, substances or structures**
- 20       (1)   This section applies to a person (the *designer*) who conducts a  
21         business or undertaking that designs:
- 22           (a)   plant that is to be used, or could reasonably be expected  
23                 to be used, as, or at, a workplace; or
- 24           (b)   a substance that is to be used, or could reasonably be  
25                 expected to be used, at a workplace; or
- 26           (c)   a structure that is to be used, or could reasonably be  
27                 expected to be used, as, or at, a workplace.
- 28       (2)   The designer must ensure, so far as is reasonably practicable,  
29         that the plant, substance or structure is designed to be without  
30         risks to the health and safety of persons:
- 31           (a)   who, at a workplace, use the plant, substance or  
32                 structure for a purpose for which it was designed; or
- 33           (b)   who handle the substance at a workplace; or
- 34           (c)   who store the plant or substance at a workplace; or
- 35           (d)   who construct the structure at a workplace; or

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- 1 (e) who carry out any reasonably foreseeable activity at a  
2 workplace in relation to:
- 3 (i) the manufacture, assembly or use of the plant for  
4 a purpose for which it was designed, or the  
5 proper storage, decommissioning, dismantling or  
6 disposal of the plant; or
- 7 (ii) the manufacture or use of the substance for a  
8 purpose for which it was designed or the proper  
9 handling, storage or disposal of the substance; or
- 10 (iii) the manufacture, assembly or use of the structure  
11 for a purpose for which it was designed or the  
12 proper demolition or disposal of the structure; or
- 13 **Example**  
14 Inspection, operation, cleaning, maintenance or repair of plant.
- 15 (f) who are at or in the vicinity of a workplace and who are  
16 exposed to the plant, substance or structure at the  
17 workplace or whose health or safety may be affected by  
18 a use or activity referred to in paragraph (a), (b), (c), (d)  
19 or (e).
- 20 (3) The designer must carry out, or arrange the carrying out of, any  
21 calculations, analysis, testing or examination that may be  
22 necessary for the performance of the duty imposed by  
23 subsection (2).
- 24 (4) The designer must give adequate information to each person  
25 who is provided with the design for the purpose of giving effect  
26 to it concerning:
- 27 (a) each purpose for which the plant, substance or structure  
28 was designed; and
- 29 (b) the results of any calculations, analysis, testing or  
30 examination referred to in subsection (3), including, in  
31 relation to a substance, any hazardous properties of the  
32 substance identified by testing; and
- 33 (c) any conditions necessary to ensure that the plant,  
34 substance or structure is without risks to health and  
35 safety when used for a purpose for which it was  
36 designed or when carrying out any activity referred to in  
37 subsection (2)(a) to (e).
- 38 (5) The designer, on request, must, so far as is reasonably  
39 practicable, give current relevant information on the matters  
40 referred to in subsection (4) to a person who carries out, or is to

1 carry out, any of the activities referred to in subsection (2)(a)  
2 to (e).

3 **23. Duties of persons conducting businesses or undertakings**  
4 **that manufacture plant, substances or structures**

- 5 (1) This section applies to a person (the *manufacturer*) who  
6 conducts a business or undertaking that manufactures:
- 7 (a) plant that is to be used, or could reasonably be expected  
8 to be used, as, or at, a workplace; or
  - 9 (b) a substance that is to be used, or could reasonably be  
10 expected to be used, at a workplace; or
  - 11 (c) a structure that is to be used, or could reasonably be  
12 expected to be used, as, or at, a workplace.

- 13 (2) The manufacturer must ensure, so far as is reasonably  
14 practicable, that the plant, substance or structure is  
15 manufactured to be without risks to the health and safety of  
16 persons:
- 17 (a) who, at a workplace, use the plant, substance or  
18 structure for a purpose for which it was designed or  
19 manufactured; or
  - 20 (b) who handle the substance at a workplace; or
  - 21 (c) who store the plant or substance at a workplace; or
  - 22 (d) who construct the structure at a workplace; or
  - 23 (e) who carry out any reasonably foreseeable activity at a  
24 workplace in relation to:
    - 25 (i) the assembly or use of the plant for a purpose for  
26 which it was designed or manufactured or the  
27 proper storage, decommissioning, dismantling or  
28 disposal of the plant; or
    - 29 (ii) the use of the substance for a purpose for which  
30 it was designed or manufactured or the proper  
31 handling, storage or disposal of the substance; or
    - 32 (iii) the assembly or use of the structure for a purpose  
33 for which it was designed or manufactured or the  
34 proper demolition or disposal of the structure; or

35 **Example**

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

- 37 (f) who are at or in the vicinity of a workplace and who are  
38 exposed to the plant, substance or structure at the

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1 workplace or whose health or safety may be affected by  
2 a use or activity referred to in paragraph (a), (b), (c), (d)  
3 or (e).

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

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

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

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

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

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

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

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

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

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

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

- 1       (2)   The importer must ensure, so far as is reasonably practicable,  
2       that the plant, substance or structure is without risks to the  
3       health and safety of persons:
- 4           (a)   who, at a workplace, use the plant, substance or  
5                structure for a purpose for which it was designed or  
6                manufactured; or
- 7           (b)   who handle the substance at a workplace; or
- 8           (c)   who store the plant or substance at a workplace; or
- 9           (d)   who construct the structure at a workplace; or
- 10          (e)   who carry out any reasonably foreseeable activity at a  
11                workplace in relation to:
- 12                (i)   the assembly or use of the plant for a purpose for  
13                      which it was designed or manufactured or the  
14                      proper storage, decommissioning, dismantling or  
15                      disposal of the plant; or
- 16                (ii)   the use of the substance for a purpose for which  
17                      it was designed or manufactured or the proper  
18                      handling, storage or disposal of the substance; or
- 19                (iii)   the assembly or use of the structure for a purpose  
20                      for which it was designed or manufactured or the  
21                      proper demolition or disposal of the structure; or
- 22                **Example**
- 23                Inspection, operation, cleaning, maintenance or repair of plant.
- 24          (f)   who are at or in the vicinity of a workplace and who are  
25                exposed to the plant, substance or structure at the  
26                workplace or whose health or safety may be affected by  
27                a use or activity referred to in paragraph (a), (b), (c), (d)  
28                or (e).
- 29       (3)   The importer must:
- 30           (a)   carry out, or arrange the carrying out of, any  
31                calculations, analysis, testing or examination that may  
32                be necessary for the performance of the duty imposed by  
33                subsection (2); or
- 34           (b)   ensure that the calculations, analysis, testing or  
35                examination have been carried out.

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- 1       (4) The importer must give adequate information to each person to  
2       whom the importer provides the plant, substance or structure  
3       concerning:
- 4           (a) each purpose for which the plant, substance or structure  
5           was designed or manufactured; and
- 6           (b) the results of any calculations, analysis, testing or  
7           examination referred to in subsection (3), including, in  
8           relation to a substance, any hazardous properties of the  
9           substance identified by testing; and
- 10          (c) any conditions necessary to ensure that the plant,  
11          substance or structure is without risks to health and  
12          safety when used for a purpose for which it was  
13          designed or manufactured or when carrying out any  
14          activity referred to in subsection (2)(a) to (e).
- 15       (5) The importer, on request, must, so far as is reasonably  
16       practicable, give current relevant information on the matters  
17       referred to in subsection (4) to a person who carries out, or is to  
18       carry out, any of the activities referred to in subsection (2)(a)  
19       to (e).

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

- 22       (1) This section applies to a person (the *supplier*) who conducts a  
23       business or undertaking that supplies:
- 24           (a) plant that is to be used, or could reasonably be expected  
25           to be used, as, or at, a workplace; or
- 26           (b) a substance that is to be used, or could reasonably be  
27           expected to be used, at a workplace; or
- 28           (c) a structure that is to be used, or could reasonably be  
29           expected to be used, as, or at, a workplace.
- 30       (2) The supplier must ensure, so far as is reasonably practicable,  
31       that the plant, substance or structure is without risks to the  
32       health and safety of persons:
- 33           (a) who, at a workplace, use the plant or substance or  
34           structure for a purpose for which it was designed or  
35           manufactured; or
- 36           (b) who handle the substance at a workplace; or
- 37           (c) who store the plant or substance at a workplace; or
- 38           (d) who construct the structure at a workplace; or

- 1 (e) who carry out any reasonably foreseeable activity at a  
2 workplace in relation to:
- 3 (i) the assembly or use of the plant for a purpose for  
4 which it was designed or manufactured or the  
5 proper storage, decommissioning, dismantling or  
6 disposal of the plant; or
- 7 (ii) the use of the substance for a purpose for which  
8 it was designed or manufactured or the proper  
9 handling, storage or disposal of the substance; or
- 10 (iii) the assembly or use of the structure for a purpose  
11 for which it was designed or manufactured or the  
12 proper demolition or disposal of the structure; or
- 13 **Example**
- 14 Inspection, storage, operation, cleaning, maintenance or repair of  
15 plant.
- 16 (f) who are at or in the vicinity of a workplace and who are  
17 exposed to the plant, substance or structure at the  
18 workplace or whose health or safety may be affected by  
19 a use or activity referred to in paragraph (a), (b), (c), (d)  
20 or (e).
- 21 (3) The supplier must:
- 22 (a) carry out, or arrange the carrying out of, any  
23 calculations, analysis, testing or examination that may  
24 be necessary for the performance of the duty imposed by  
25 subsection (2); or
- 26 (b) ensure that the calculations, analysis, testing or  
27 examination have been carried out.
- 28 (4) The supplier must give adequate information to each person to  
29 whom the supplier supplies the plant, substance or structure  
30 concerning:
- 31 (a) each purpose for which the plant, substance or structure  
32 was designed or manufactured; and
- 33 (b) the results of any calculations, analysis, testing or  
34 examination referred to in subsection (3), including, in  
35 relation to a substance, any hazardous properties of the  
36 substance identified by testing; and
- 37 (c) any conditions necessary to ensure that the plant,  
38 substance or structure is without risks to health and  
39 safety when used for a purpose for which it was

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1 designed or manufactured or when carrying out any  
2 activity referred to in subsection (2)(a) to (e).

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

8 **26. Duty of persons conducting businesses or undertakings that**  
9 **install, construct or commission plant or structures**

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

14 (2) The person must ensure, so far as is reasonably practicable, that  
15 the way in which the plant or structure is installed, constructed  
16 or commissioned ensures that the plant or structure is without  
17 risks to the health and safety of persons:

18 (a) who install or construct the plant or structure at a  
19 workplace; or

20 (b) who use the plant or structure at a workplace for a  
21 purpose for which it was installed, constructed or  
22 commissioned; or

23 (c) who carry out any reasonably foreseeable activity at a  
24 workplace in relation to the proper use,  
25 decommissioning or dismantling of the plant or  
26 demolition or disposal of the structure; or

27 (d) who are at or in the vicinity of a workplace and whose  
28 health or safety may be affected by a use or activity  
29 referred to in paragraph (a), (b) or (c).

30 **Division 4 — Duty of officers, workers and other persons**

31 **27. Duty of officers**

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

37 (2) Subject to subsection (3), the penalty applicable under  
38 Division 5 of this Part for an offence relating to the duty of an



- 1 officer under this section is the penalty fixed for an officer of a  
2 person conducting a business or undertaking for that offence.
- 3 (3) Despite anything to the contrary in section 33, if the duty or  
4 obligation of a person conducting a business or undertaking was  
5 imposed under a provision other than a provision of Division 2  
6 or 3 of this Part or this Division, the penalty under section 33  
7 for an offence by an officer under section 33 in relation to the  
8 duty or obligation is the penalty fixed under the provision  
9 creating the duty or obligation for an individual who fails to  
10 comply with the duty or obligation.
- 11 (4) An officer of a person conducting a business or undertaking  
12 may be convicted or found guilty of an offence under this Act  
13 relating to a duty under this section whether or not the person  
14 conducting the business or undertaking has been convicted or  
15 found guilty of an offence under this Act relating to the duty or  
16 obligation.
- 17 (5) In this section:  
18 **due diligence** includes taking reasonable steps:
- 19 (a) to acquire and keep up-to-date knowledge of work  
20 health and safety matters; and
- 21 (b) to gain an understanding of the nature of the operations  
22 of the business or undertaking of the person conducting  
23 the business or undertaking and generally of the hazards  
24 and risks associated with those operations; and
- 25 (c) to ensure that the person conducting the business or  
26 undertaking has available for use, and uses, appropriate  
27 resources and processes to eliminate or minimise risks to  
28 health and safety from work carried out as part of the  
29 conduct of the business or undertaking; and
- 30 (d) to ensure that the person conducting the business or  
31 undertaking has appropriate processes for receiving and  
32 considering information regarding incidents, hazards  
33 and risks and responding in a timely way to that  
34 information; and
- 35 (e) to ensure that the person conducting the business or  
36 undertaking has, and implements, processes for  
37 complying with any duty or obligation of the person  
38 conducting the business or undertaking under this Act;  
39 and

1 **Examples**

2 For the purposes of paragraph (e), the duties or obligations under  
3 this Act of a person conducting a business or undertaking may  
4 include:

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

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

14 **28. Duties of workers**

15 While at work, a worker must:

- 16 (a) take reasonable care for his or her own health and  
17 safety; and
- 18 (b) take reasonable care that his or her acts or omissions do  
19 not adversely affect the health and safety of other  
20 persons; and
- 21 (c) comply, so far as the worker is reasonably able, with any  
22 reasonable instruction that is given by the person  
23 conducting the business or undertaking to allow the  
24 person to comply with this Act; and
- 25 (d) co-operate with any reasonable policy or procedure of  
26 the person conducting the business or undertaking  
27 relating to health or safety at the workplace that has  
28 been notified to workers.

29 **29. Duties of other persons at the workplace**

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

- 32 (a) take reasonable care for his or her own health and  
33 safety; and
- 34 (b) take reasonable care that his or her acts or omissions do  
35 not adversely affect the health and safety of other  
36 persons; and
- 37 (c) comply, so far as the person is reasonably able, with any  
38 reasonable instruction that is given by the person  
39 conducting the business or undertaking to allow the

1 person conducting the business or undertaking to  
2 comply with this Act.

3 **Division 5 — Offences and penalties**

4 **30. Health and safety duty**

5 In this Division:

6 ***health and safety duty*** means a duty imposed under Division 2,  
7 3 or 4 of this Part.

8 **31. Reckless conduct — *Category 1***

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

- 10 (a) the person has a health and safety duty; and  
11 (b) the person, without reasonable excuse, engages in  
12 conduct that exposes an individual to whom that duty is  
13 owed to a risk of death or serious injury or illness; and  
14 (c) the person is reckless as to the risk to an individual of  
15 death or serious injury or illness.

16 Penalty:

- 17 (a) in the case of an offence committed by an individual  
18 (other than as a person conducting a business or  
19 undertaking or as an officer of a person conducting a  
20 business or undertaking), a fine of \$300 000 or  
21 5 years imprisonment or both;  
22 (b) in the case of an offence committed by an individual  
23 as a person conducting a business or undertaking or  
24 as an officer of a person conducting a business or  
25 undertaking, a fine of \$600 000 or 5 years  
26 imprisonment or both;  
27 (c) in the case of an offence committed by a body  
28 corporate, a fine of \$3 000 000.

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

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

32 A person commits a ***Category 2*** offence if:

- 33 (a) the person has a health and safety duty; and  
34 (b) the person fails to comply with that duty; and  
35 (c) the failure exposes an individual to a risk of death or  
36 serious injury or illness.

- 1           Penalty:
- 2           (a) in the case of an offence committed by an individual
- 3                 (other than as a person conducting a business or
- 4                 undertaking or as an officer of a person conducting a
- 5                 business or undertaking), a fine of \$150 000;
- 6           (b) in the case of an offence committed by an individual
- 7                 as a person conducting a business or undertaking or
- 8                 as an officer of a person conducting a business or
- 9                 undertaking, a fine of \$300 000;
- 10          (c) in the case of an offence committed by a body
- 11                 corporate, a fine of \$1 500 000.

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

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

- 14           (a) the person has a health and safety duty; and
- 15           (b) the person fails to comply with that duty.

16           Penalty:

- 17           (a) in the case of an offence committed by an individual
- 18                 (other than as a person conducting a business or
- 19                 undertaking or as an officer of a person conducting a
- 20                 business or undertaking), a fine of \$50 000;
- 21           (b) in the case of an offence committed by an individual
- 22                 as a person conducting a business or undertaking or
- 23                 as an officer of a person conducting a business or
- 24                 undertaking, a fine of \$100 000;
- 25           (c) in the case of an offence committed by a body
- 26                 corporate, a fine of \$500 000.

27   **34. Exceptions**

- 28           (1) A volunteer does not commit an offence under this Division for
- 29                 a failure to comply with a health and safety duty, except a duty
- 30                 under section 29.
- 31           (2) An unincorporated association does not commit an offence
- 32                 under this Act for a failure to comply with a duty or obligation
- 33                 imposed on the unincorporated association under this Act.
- 34           (3) However:
- 35                 (a) an officer of an unincorporated association (other than a
- 36                         volunteer) may be liable for a failure to comply with a
- 37                         duty under section 27; and



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**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

- 
- 1           (b) an uncontrolled implosion, explosion or fire; or  
2           (c) an uncontrolled escape of gas or steam; or  
3           (d) an uncontrolled escape of a pressurised substance; or  
4           (e) electric shock; or  
5           (f) the fall or release from a height of any plant, substance  
6           or thing; or  
7           (g) the collapse, overturning, failure or malfunction of, or  
8           damage to, any plant that is required to be authorised for  
9           use in accordance with the regulations; or  
10          (h) the collapse or partial collapse of a structure; or  
11          (i) the collapse or failure of an excavation or of any shoring  
12          supporting an excavation; or  
13          (j) the inrush of water, mud or gas in workings, in an  
14          underground excavation or tunnel; or  
15          (k) the interruption of the main system of ventilation in an  
16          underground excavation or tunnel; or  
17          (l) any other event prescribed by the regulations,  
18          but does not include an incident of a prescribed kind.

19   **38.     Duty to notify of notifiable incidents**

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

24          Penalty:

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

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

- 29          (3) The notice must be given:

- 30                  (a) by telephone; or  
31                  (b) in writing.

32          **Example**

33          The written notice can be given by facsimile, email or other electronic  
34          means.

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- 1       (4) A person giving notice by telephone must:
- 2           (a) give the details of the incident requested by the
- 3           regulator; and
- 4           (b) if required by the regulator, give a written notice of the
- 5           incident within 48 hours of that requirement being
- 6           made.
- 7       (5) A written notice must be in a form, or contain the details,
- 8       approved by the regulator.
- 9       (6) If the regulator receives a notice by telephone and a written
- 10       notice is not required, the regulator must give the person
- 11       conducting the business or undertaking:
- 12           (a) details of the information received; or
- 13           (b) an acknowledgement of receiving the notice.
- 14       (7)

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

16       **39. Duty to preserve incident sites**

- 17       (1) The person with management or control of a workplace at
- 18       which a notifiable incident has occurred must ensure so far as is
- 19       reasonably practicable, that the site where the incident occurred
- 20       is not disturbed until an inspector arrives at the site or any
- 21       earlier time that an inspector directs.
- 22       Penalty:
- 23           (a) in the case of an individual, a fine of \$10 000;
- 24           (b) in the case of a body corporate, a fine of \$50 000.
- 25       (2) In subsection (1) a reference to a site includes any plant,
- 26       substance, structure or thing associated with the notifiable
- 27       incident.
- 28       (3) Subsection (1) does not prevent any action:
- 29           (a) to assist an injured person; or
- 30           (b) to remove a deceased person; or
- 31           (c) that is essential to make the site safe or to minimise the
- 32           risk of a further notifiable incident; or
- 33           (d) that is associated with a police investigation; or
- 34           (e) for which an inspector or the regulator has given
- 35       permission.



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

2 **43. Requirements for authorisation of work**

- 3 (1) A person must not carry out work at a workplace if:
- 4 (a) the regulations require the work, or class of work, to be
- 5 carried out by, or on behalf of, a person who is
- 6 authorised; and
- 7 (b) the person, or the person on whose behalf the work is
- 8 carried out, is not authorised in accordance with the
- 9 regulations.

10 Penalty:

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

- 13 (2) A person who conducts a business or undertaking must not
- 14 direct or allow a worker to carry out work at a workplace if:
- 15 (a) the regulations require the work, or class of work, to be
- 16 carried out by, or on behalf of, a person who is
- 17 authorised; and
- 18 (b) the person, or the person on whose behalf the work is to
- 19 be carried out, is not authorised in accordance with the
- 20 regulations.

21 Penalty:

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

24 **44. Requirements for prescribed qualifications or experience**

- 25 (1) A person must not carry out work at a workplace if:
- 26 (a) the regulations require the work, or class of work, to be
- 27 carried out by, or under the supervision of, a person who
- 28 has prescribed qualifications or experience; and
- 29 (b) the person does not have the prescribed qualifications or
- 30 experience or the work is not carried out under the
- 31 supervision of a person who has the prescribed
- 32 qualifications or experience.

33 Penalty:

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

- 1       (2) A person who conducts a business or undertaking must not  
2       direct or allow a worker to carry out work at a workplace if:
- 3           (a) the regulations require the work, or class of work, to be  
4           carried out by, or under the supervision of, a person who  
5           has prescribed qualifications or experience; and
- 6           (b) the worker does not have the prescribed qualifications or  
7           experience or the work is not carried out under the  
8           supervision of a person who has the prescribed  
9           qualifications or experience.
- 10       Penalty:
- 11           (a) in the case of an individual, a fine of \$20 000;
- 12           (b) in the case of a body corporate, a fine of \$100 000.

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

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

16       Penalty:

- 17           (a) in the case of an individual, a fine of \$20 000;
- 18           (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 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

- 1                   (ii) to contribute to the decision-making process  
2                   relating to the matter; and  
3           (c) that the views of workers are taken into account by the  
4           person conducting the business or undertaking; and  
5           (d) that the workers consulted are advised of the outcome of  
6           the consultation in a timely manner.

- 7       (2) If the workers are represented by a health and safety  
8       representative, the consultation must involve that representative.

9       **49. When consultation is required**

10       Consultation under this Division is required in relation to the  
11       following health and safety matters:

- 12           (a) when identifying hazards and assessing risks to health  
13           and safety arising from the work carried out or to be  
14           carried out by the business or undertaking;  
15           (b) when making decisions about ways to eliminate or  
16           minimise those risks;  
17           (c) when making decisions about the adequacy of facilities  
18           for the welfare of workers;  
19           (d) when proposing changes that may affect the health or  
20           safety of workers;  
21           (e) when making decisions about the procedures for:  
22               (i) consulting with workers; or  
23               (ii) resolving work health or safety issues at the  
24               workplace; or  
25               (iii) monitoring the health of workers; or  
26               (iv) monitoring the conditions at any workplace  
27               under the management or control of the person  
28               conducting the business or undertaking; or  
29               (v) providing information and training for workers;  
30               or  
31           (f) when carrying out any other activity prescribed by the  
32           regulations for the purposes of this section.

1 **Division 3 — Health and safety representatives**

2 **Subdivision 1 — Request for election of health and safety**  
3 **representatives**

4 **50. Request for election of health and safety representative**

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

10 **Subdivision 2 — Determination of work groups**

11 **51. Determination of work groups**

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

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

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

20 **52. Negotiations for agreement for work group**

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

- 23 (a) the person conducting the business or undertaking; and  
24 (b) the workers who will form the work group or their  
25 representatives.

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

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

- 30 (a) the number and composition of work groups to be  
31 represented by health and safety representatives; and  
32 (b) the number of health and safety representatives to be  
33 elected; and  
34 (c) the workplace or workplaces to which the work groups  
35 will apply.

- 1       (4)   The parties to an agreement concerning the determination of a  
2       work group or groups may, at any time, negotiate a variation of  
3       the agreement.
- 4       (5)   The person conducting the business or undertaking must, if  
5       asked by a worker, negotiate with the worker's representative in  
6       negotiations under this section (including negotiations for a  
7       variation of an agreement) and must not exclude the  
8       representative from those negotiations.
- 9       Penalty:
- 10       (a)   in the case of an individual, a fine of \$10 000;  
11       (b)   in the case of a body corporate, a fine of \$50 000.
- 12       (6)   The regulations may prescribe the matters that must be taken  
13       into account in negotiations for and determination of work  
14       groups and variations of agreements concerning work groups.

15   **53.    Notice to workers**

- 16       (1)   The person conducting a business or undertaking involved in  
17       negotiations to determine a work group must, as soon as  
18       practicable after the negotiations are completed, notify the  
19       workers of the outcome of the negotiations and of any work  
20       groups determined by agreement.
- 21       Penalty:
- 22       (a)   in the case of an individual, a fine of \$2 000;  
23       (b)   in the case of a body corporate, a fine of \$10 000.
- 24       (2)   The person conducting a business or undertaking involved in  
25       negotiations for the variation of an agreement concerning the  
26       determination of a work group or groups must, as soon as  
27       practicable after the negotiations are completed, notify the  
28       workers of the outcome of the negotiations and of the variation  
29       (if any) to the agreement.
- 30       Penalty:
- 31       (a)   in the case of an individual, a fine of \$2 000;  
32       (b)   in the case of a body corporate, a fine of \$10 000.

33   **54.    Failure of negotiations**

- 34       (1)   If there is a failure of negotiations (including negotiations  
35       concerning the variation of an agreement), any person who is or  
36       would be a party to the negotiations may ask the regulator to  
37       appoint an inspector for the purposes of this section.

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- 1 (2) An inspector appointed under subsection (1) may decide:
- 2 (a) the matters referred to in section 52(3), or any of those
- 3 matters which is the subject of the proposed variation
- 4 (as the case requires); or
- 5 (b) that work groups should not be determined or that the
- 6 agreement should not be varied (as the case requires).
- 7 (3) For the purposes of this section, there is a failure of negotiations
- 8 if:
- 9 (a) the person conducting the business or undertaking has
- 10 not taken all reasonable steps to commence negotiations
- 11 with the workers and negotiations have not commenced
- 12 within 14 days after —
- 13 (i) a request is made under section 50; or
- 14 (ii) a party to the agreement requests the variation of
- 15 the agreement; or
- 16 (b) agreement cannot be reached on a matter relating to the
- 17 determination of a work group (or the variation of an
- 18 agreement concerning a work group) within a
- 19 reasonable time after negotiations commence.
- 20 (4) A decision under this section is taken to be an agreement under
- 21 section 52.

22 **Subdivision 3 — Multiple-business work groups**

23 **55. Determination of work groups of multiple businesses**

- 24 (1) Work groups may be determined for workers carrying out work
- 25 for 2 or more persons conducting businesses or undertakings at
- 26 1 or more workplaces.
- 27 (2) The particulars of the work groups are to be determined by
- 28 negotiation and agreement, in accordance with section 56,
- 29 between each of the persons conducting the businesses or
- 30 undertakings and the workers.
- 31 (3) The parties to an agreement concerning the determination of a
- 32 work group or groups may, at any time, negotiate a variation of
- 33 the agreement.
- 34 (4) The determination of 1 or more work groups under this
- 35 Subdivision does not:
- 36 (a) prevent the determination under this Subdivision or
- 37 Subdivision 2 of any other work group of the workers
- 38 concerned; or



- 1                   (b)   affect any work groups of those workers that have  
2                               already been determined under this Subdivision or  
3                               Subdivision 2.

4   **56.   Negotiation of agreement for work groups of multiple**  
5           **businesses**

- 6           (1)   Negotiations concerning work groups under this Subdivision  
7                   must be directed only at the following:
- 8                   (a)   the number and composition of work groups to be  
9                               represented by health and safety representatives;
- 10                  (b)   the number of health and safety representatives for each  
11                               work group;
- 12                  (c)   the workplace or workplaces to which the work groups  
13                               will apply;
- 14                  (d)   the businesses or undertakings to which the work groups  
15                               will apply.
- 16           (2)   A person conducting a business or undertaking must, if asked by  
17                   a worker, negotiate with the worker's representative in  
18                   negotiations under this section (including negotiations for a  
19                   variation of an agreement) and must not exclude the  
20                   representative from those negotiations.
- 21           Penalty:
- 22                   (a)   in the case of an individual, a fine of \$10 000;
- 23                   (b)   in the case of a body corporate, a fine of \$50 000.
- 24           (3)   If agreement cannot be reached on a matter relating to the  
25                   determination of a work group (or a variation of an agreement)  
26                   within a reasonable time after negotiations commence under this  
27                   Subdivision, any party to the negotiations may ask the regulator  
28                   to appoint an inspector to assist the negotiations in relation to  
29                   that matter.
- 30           (4)   The regulations may prescribe the matters that must be taken  
31                   into account in negotiations for and determination of work  
32                   groups and variations of agreements.

33   **57.   Notice to workers**

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

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1 Penalty:

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

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

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

10 Penalty:

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

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

13 **58. Withdrawal from negotiations or agreement involving**  
14 **multiple businesses**

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

19 (2) If a party withdraws from an agreement concerning a work  
20 group under this Subdivision:

21 (a) the other parties must negotiate a variation to the  
22 agreement in accordance with section 56; and

23 (b) the withdrawal does not affect the validity of the  
24 agreement between the other parties in the meantime.

25 **59. Effect of Subdivision on other arrangements**

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

31 **Subdivision 4 — Election of health and safety representatives**

32 **60. Eligibility to be elected**

33 A worker is:

34 (a) eligible to be elected as a health and safety  
35 representative for a work group only if he or she is a  
36 member of that work group; and

- 1           (b) not eligible to be elected as a health and safety  
2           representative if he or she is disqualified under  
3           section 65 from being a health and safety representative.

4   **61. Procedure for election of health and safety representatives**

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

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

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

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

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

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

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

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

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

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

34      Penalty:

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

- 36          (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

1                   than in connection with the role of health and safety  
2                   representative.

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

5           (a)   any person adversely affected by:

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

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

10          (b)   the regulator.

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

14       **66.       Immunity of health and safety representatives**

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

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

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

22       **67.       Deputy health and safety representatives**

23       Note: Section 67 is not required in WA.

24       **Subdivision 5 — Powers and functions of health and**  
25       **safety representatives**

26       **68.       Powers and functions of health and safety representatives**

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

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

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

35           (c)   to investigate complaints from members of the work  
36           group relating to work health and safety; and

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- 1 (d) to inquire into anything that appears to be a risk to the  
2 health or safety of workers in the work group, arising  
3 from the conduct of the business or undertaking.
- 4 (2) In exercising a power or performing a function, the health and  
5 safety representative may:
- 6 (a) inspect the workplace or any part of the workplace at  
7 which a worker in the work group works:
- 8 (i) at any time after giving reasonable notice to the  
9 person conducting the business or undertaking at  
10 that workplace; and
- 11 (ii) at any time, without notice, in the event of an  
12 incident, or any situation involving a serious risk  
13 to the health or safety of a person emanating  
14 from an immediate or imminent exposure to a  
15 hazard; and
- 16 (b) accompany an inspector during an inspection of the  
17 workplace or part of the workplace at which a worker in  
18 the work group works; and
- 19 (c) with the consent of a worker that the health and safety  
20 representative represents, be present at an interview  
21 concerning work health and safety between the worker  
22 and:
- 23 (i) an inspector; or
- 24 (ii) the person conducting the business or  
25 undertaking at that workplace or the person's  
26 representative; and
- 27 (d)
- 28 Note: Paragraph (d) is not required in WA.
- 29 (e) request the establishment of a health and safety  
30 committee; and
- 31 (f) receive information concerning the work health and  
32 safety of workers in the work group; and
- 33 (g) whenever necessary, request the assistance of any  
34 person, but if entry to a workplace is required for the  
35 assistance to be given, from the following persons only:
- 36 (i) a person who is ordinarily entitled to be at the  
37 workplace;
- 38 (ii) an authorised representative, as defined in the  
39 *Industrial Relations Act 1979* section 49G, of an

- 1 organisation of which at least 1 of the workers in  
2 the work group is a member;
- 3 (iii) an official of an organisation to whom a current  
4 entry permit has been issued under the Fair Work  
5 Act if the organisation is entitled to represent the  
6 industrial interests under that Act of at least 1 of  
7 the workers in the work group.

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

- 10 (3) Despite subsection (2)(f), a health and safety representative is  
11 not entitled to have access to any personal or medical  
12 information concerning a worker without the worker's consent  
13 unless the information is in a form that:
- 14 (a) does not identify the worker; and  
15 (b) could not reasonably be expected to lead to the  
16 identification of the worker.
- 17 (4) Nothing in this Act imposes or is taken to impose a duty on a  
18 health and safety representative in that capacity.

1 **69. Powers and functions generally limited to the particular**  
2 **work group**

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

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

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

12 (b) a member of another work group asks for the  
13 representative's assistance,

14 and the health and safety representative for that other work  
15 group is found, after reasonable inquiry, to be unavailable.

16 (3) In this section:

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

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

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

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

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

30 (b) confer with a health and safety representative for a work  
31 group, whenever reasonably requested by the  
32 representative, for the purpose of ensuring the health  
33 and safety of the workers in the work group; and



- 1 (c) allow any health and safety representative for the work  
2 group to have access to information that the person has  
3 relating to:
- 4 (i) hazards (including associated risks) at the  
5 workplace affecting workers in the work group;  
6 and
- 7 (ii) the health and safety of the workers in the work  
8 group; and
- 9 (d) with the consent of a worker that the health and safety  
10 representative represents, allow the health and safety  
11 representative to be present at an interview concerning  
12 work health and safety between the worker and:
- 13 (i) an inspector; or
- 14 (ii) the person conducting the business or  
15 undertaking at that workplace or the person's  
16 representative; and
- 17 (e)
- 18 Note: Paragraph (e) is not required in WA.
- 19 (f) provide any resources, facilities and assistance to a  
20 health and safety representative for the work group that  
21 are reasonably necessary or prescribed by the  
22 regulations to enable the representative to exercise his or  
23 her powers or perform his or her functions under this  
24 Act; and
- 25 (g) allow a person assisting a health and safety  
26 representative for the work group to have access to the  
27 workplace if that is necessary to enable the assistance to  
28 be provided, but only if the person:
- 29 (i) is ordinarily entitled to be at the workplace; or
- 30 (ii) is an authorised representative, as defined in the  
31 *Industrial Relations Act 1979* section 49G, of an  
32 organisation of which at least 1 of the workers in  
33 the work group is a member; or
- 34 (iii) is an official of an organisation to whom a  
35 current entry permit has been issued under the  
36 Fair Work Act if the organisation is entitled to  
37 represent the industrial interests under that Act of  
38 at least 1 of the workers in the work group; and
- 39 (h) permit a health and safety representative for the work  
40 group to accompany an inspector during an inspection of

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- 1 any part of the workplace where a worker in the work  
2 group works; and
- 3 (i) provide any other assistance to the health and safety  
4 representative for the work group that may be required  
5 by the regulations.
- 6 Penalty:
- 7 (a) in the case of an individual, a fine of \$10 000;  
8 (b) in the case of a body corporate, a fine of \$50 000.
- 9 (2) The person conducting a business or undertaking must allow a  
10 health and safety representative to spend such time as is  
11 reasonably necessary to exercise his or her powers and perform  
12 his or her functions under this Act.
- 13 Penalty:
- 14 (a) in the case of an individual, a fine of \$10 000;  
15 (b) in the case of a body corporate, a fine of \$50 000.
- 16 (3) Any time that a health and safety representative spends for the  
17 purposes of exercising his or her powers or performing his or  
18 her functions under this Act must be with the pay that he or she  
19 would otherwise be entitled to receive for performing his or her  
20 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.

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- 1       (2) The person conducting the business or undertaking must:
- 2           (a) as soon as practicable within the period of 3 months
- 3               after the request is made, allow the health and safety
- 4               representative time off work to attend the course of
- 5               training; and
- 6           (b) pay the course fees and any other reasonable costs
- 7               associated with the health and safety representative's
- 8               attendance at the course of training.
- 9       (3) If:
- 10           (a) a health and safety representative represents a work
- 11               group of the workers of more than 1 business or
- 12               undertaking; and
- 13           (b) the person conducting any of those businesses or
- 14               undertakings has complied with this section in relation
- 15               to the representative,
- 16       each of the persons conducting those businesses or undertakings
- 17       is to be taken to have complied with this section in relation to
- 18       the representative.
- 19       (4) Any time that a health and safety representative is given off
- 20       work to attend the course of training must be with the pay that
- 21       he or she would otherwise be entitled to receive for performing
- 22       his or her normal duties during that period.
- 23       (5) If agreement cannot be reached between the person conducting
- 24       the business or undertaking and the health and safety
- 25       representative within the time required by subsection (2) as to
- 26       the matters set out in subsections (1)(c) and (2), either party
- 27       may ask the regulator to appoint an inspector to decide the
- 28       matter.
- 29       (6) The inspector may decide the matter in accordance with this
- 30       section.
- 31       (7) A person conducting a business or undertaking must allow a
- 32       health and safety representative to attend a course decided by
- 33       the inspector and pay the costs decided by the inspector under
- 34       subsection (6).
- 35       Penalty:
- 36           (a) in the case of an individual, a fine of \$10 000;
- 37           (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.

1       (6)   An inspector appointed on a request under subsection (5) may  
2       decide the constitution of the health and safety committee or  
3       that the committee should not be established.

4       (7)   A decision of an inspector under this section is taken to be an  
5       agreement under this section between the parties.

6       **77.       Functions of committee**

7       The functions of a health and safety committee are:

- 8           (a)   to facilitate co-operation between the person conducting  
9           a business or undertaking and workers in instigating,  
10          developing and carrying out measures designed to  
11          ensure the workers' health and safety at work; and  
12          (b)   to assist in developing standards, rules and procedures  
13          relating to health and safety that are to be followed or  
14          complied with at the workplace; and  
15          (c)   any other functions prescribed by the regulations or  
16          agreed between the person conducting the business or  
17          undertaking and the committee.

18       **78.       Meetings of committee**

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

21       **79.       Duties of person conducting business or undertaking**

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

27       Penalty:

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

30       (2)   Any time that a member of a health and safety committee  
31       spends for the purposes set out in subsection (1) must be with  
32       the pay that he or she would otherwise be entitled to receive for  
33       performing his or her normal duties during that period.

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- 1       (3) The person conducting a business or undertaking must allow the  
2       health and safety committee for a workplace to have access to  
3       information that the person has relating to:
- 4           (a) hazards (including associated risks) at the workplace;  
5           and  
6           (b) the health and safety of the workers at the workplace.
- 7       Penalty:
- 8           (a) in the case of an individual, a fine of \$10 000;  
9           (b) in the case of a body corporate, a fine of \$50 000.
- 10       (4) Despite subsection (3), the person conducting a business or  
11       undertaking must not allow the health and safety committee to  
12       have access to any personal or medical information concerning  
13       a worker without the worker's consent unless the information is  
14       in a form that:
- 15           (a) does not identify the worker; and  
16           (b) could not reasonably be expected to lead to the  
17           identification of the worker.
- 18       Penalty:
- 19           (a) in the case of an individual, a fine of \$10 000;  
20           (b) in the case of a body corporate, a fine of \$50 000.

21                           **Division 5 — Issue resolution**

22       **80. Parties to an issue**

- 23       (1) In this Division:
- 24       *parties*, in relation to an issue, means the following:
- 25           (a) the person conducting the business or undertaking or the  
26           person's representative;
- 27           (b) if the issue involves more than 1 business or  
28           undertaking, the person conducting each business or  
29           undertaking or the person's representative;
- 30           (c) if the worker or workers affected by the issue are in a  
31           work group, the health and safety representative for that  
32           work group or his or her representative;
- 33           (d) if the worker or workers affected by the issue are not in  
34           a work group, the worker or workers or their  
35           representative.



1       (2) A person conducting a business or undertaking must ensure that  
2       the person's representative (if any) for the purposes of this  
3       Division:

- 4           (a) is not a health and safety representative; and  
5           (b) has an appropriate level of seniority, and is sufficiently  
6           competent, to act as the person's representative.

7       **81. Resolution of health and safety issues**

- 8       (1) This section applies if a matter about work health and safety  
9       arises at a workplace or from the conduct of a business or  
10      undertaking and the matter is not resolved after discussion  
11      between the parties to the issue.
- 12      (2) The parties must make reasonable efforts to achieve a timely,  
13      final and effective resolution of the issue in accordance with the  
14      relevant agreed procedure, or if there is no agreed procedure,  
15      the default procedure prescribed in the regulations.
- 16      (3) A party to an issue may enter the workplace for the purpose of  
17      attending discussions with a view to resolving the issue.

18      **82. Referral of issue to regulator for resolution by inspector**

- 19      (1) This section applies if an issue has not been resolved after  
20      reasonable efforts have been made to achieve an effective  
21      resolution of the issue.
- 22      (2) A party to the issue may ask the regulator to appoint an  
23      inspector to attend the workplace to assist in resolving the issue.
- 24      (3) A request to the regulator under this section does not prevent:  
25          (a) a worker from exercising the right under Division 6 of  
26          this Part to cease work; or  
27          (b) a health and safety representative from issuing a  
28          provisional improvement notice.
- 29      (4) On attending a workplace under this section, an inspector may  
30      exercise any of the inspector's compliance powers under this  
31      Act in relation to the workplace.

1 **Division 6 — Right to cease unsafe work**

2 **83. Definition of *cease work under this Division***

3 In this Division:

4 *cease work under this Division* means:

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

6 (b)

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

8 **84. Right of worker to cease unsafe work**

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

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

16 Note: Section 85 is not required in WA.

17 **86. Worker to notify if ceases work**

18 A worker who ceases work under this Division must:

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

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

23 **87. Alternative work**

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

29 **88. Continuity of engagement of worker**

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

34 (a) at the same or another workplace; and

1 (b) that was safe and appropriate for the worker to carry out.

2 **89. Request to regulator to appoint inspector to assist**

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

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

9 **Division 7 — Provisional improvement notices**

10 **90. Provisional improvement notices**

- 11 (1) This section applies if a health and safety representative  
12 reasonably believes that a person:
- 13 (a) is contravening a provision of this Act; or  
14 (b) has contravened a provision of this Act in circumstances  
15 that make it likely that the contravention will continue  
16 or be repeated.
- 17 (2) The health and safety representative may issue a provisional  
18 improvement notice requiring the person to:
- 19 (a) remedy the contravention; or  
20 (b) prevent a likely contravention from occurring; or  
21 (c) remedy the things or operations causing the  
22 contravention or likely contravention.
- 23 (3) However, the health and safety representative must not issue a  
24 provisional improvement notice to a person unless he or she has  
25 first consulted the person.
- 26 (4) A health and safety representative cannot issue a provisional  
27 improvement notice unless the representative has:
- 28 (a) completed initial training prescribed by the regulations  
29 referred to in section 72(1)(b); or  
30 (b) previously completed that training when acting as a  
31 health and safety representative for another work group;  
32 or  
33 (c) completed training equivalent to that training under a  
34 corresponding WHS law.
- 35 (5) A health and safety representative cannot issue a provisional  
36 improvement notice in relation to a matter if an inspector has

1 already issued (or decided not to issue) an improvement notice  
2 or prohibition notice in relation to the same matter.

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

4 A provisional improvement notice must be in writing.

5 **92. Contents of provisional improvement notice**

6 A provisional improvement notice must state:

- 7 (a) that the health and safety representative believes the  
8 person:
- 9 (i) is contravening a provision of this Act; or  
10 (ii) has contravened a provision of this Act in  
11 circumstances that make it likely that the  
12 contravention will continue or be repeated; and
- 13 (b) the provision the representative believes is being, or has  
14 been, contravened; and
- 15 (c) briefly, how the provision is being, or has been  
16 contravened; and
- 17 (d) the day, at least 8 days after the notice is issued, by  
18 which the person is required to remedy the  
19 contravention or likely contravention.

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

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

27 (2) A direction included in a provisional improvement notice may:  
28 (a) refer to a code of practice; and  
29 (b) offer the person to whom it is issued a choice of ways in  
30 which to remedy the contravention.

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

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

- 34 (a) for clarification; or  
35 (b) to correct errors or references; or  
36 (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.

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- 1       (2) The person must comply with the provisional improvement  
2       notice within the time specified in the notice.
- 3       Penalty:
- 4               (a) in the case of an individual, a fine of \$50 000;
- 5               (b) in the case of a body corporate, a fine of \$250 000.

6       **100. Request for review of provisional improvement notice**

- 7       (1) If a provisional improvement notice is issued to a person:
- 8               (a) the person to whom it was issued; or
- 9               (b) if the person is a worker, the person conducting the  
10              business or undertaking at the workplace at which the  
11              worker carries out work,
- 12       may ask the regulator to appoint an inspector to review the  
13       notice.
- 14       (2) If a request is made under subsection (1), the operation of the  
15       provisional improvement notice is stayed until the inspector  
16       makes a decision on the review.
- 17       (3) A request made under subsection (1) must be received by the  
18       regulator not later than the time specified in the provisional  
19       improvement notice for the purposes of section 99(2).

20       **101. Regulator to appoint inspector to review notice**

- 21       (1) The regulator must ensure that an inspector attends the  
22       workplace as soon as practicable after a request is made under  
23       section 100.
- 24       (2) The inspector must review the provisional improvement notice  
25       and inquire into the circumstances that are the subject of the  
26       provisional improvement notice.
- 27       (3) An inspector may review a provisional improvement notice  
28       even if the period for compliance with the notice has expired.

29       **102. Decision of inspector on review of provisional improvement  
30       notice**

- 31       (1) After reviewing the provisional improvement notice, the  
32       inspector must:
- 33               (a) confirm the provisional improvement notice; or
- 34               (b) confirm the provisional improvement notice with  
35               changes; or
- 36               (c) cancel the provisional improvement notice.

- 1       (2)   The inspector must give a copy of his or her decision to:
- 2               (a)   the applicant for the review of the provisional
- 3                       improvement notice; and
- 4               (b)   the health and safety representative who issued the
- 5                       notice.
- 6       (3)   A provisional improvement notice that is confirmed (with or
- 7               without changes) by an inspector is taken to be an improvement
- 8               notice issued by the inspector under this Act.

9                       **Division 8 — Part not to apply to prisoners**

10   **103.     Part does not apply to prisoners**

11               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)

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

- (ii) 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.



1            (d)

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

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

7            **106. What is a *prohibited reason***

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

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

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

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

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

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

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

34           (g) assists or has assisted or proposes to assist, or gives or  
35           has given or proposes to give any information to any  
36           person exercising a power or performing a function  
37           under this Act; or

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**Part 6** Discriminatory, coercive and misleading conduct

**Division 1** Prohibition of discriminatory, coercive or misleading conduct

**s. 107**

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- 1 (h) raises or has raised or proposes to raise an issue or  
2 concern about work health and safety with:
- 3 (i) the person conducting a business or undertaking;  
4 or  
5 (ii) an inspector; or  
6 (iii)
- 7 Note: Subparagraph (iii) is not required in WA.
- 8 (iv) a health and safety representative; or  
9 (v) a member of a health and safety committee; or  
10 (vi) another worker; or  
11 (vii) any other person who has a duty under this Act  
12 in relation to the matter; or  
13 (viii) any other person exercising a power or  
14 performing a function under this Act; or
- 15 (i) is involved in, has been involved in or proposes to be  
16 involved in resolving a work health and safety issue  
17 under this Act; or
- 18 (j) is taking action, has taken action or proposes to take  
19 action to seek compliance by any person with any duty  
20 or obligation under this Act.

21 **107. Prohibition of requesting, instructing, inducing,**  
22 **encouraging, authorising or assisting discriminatory**  
23 **conduct**

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

27 Penalty:

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

30 Note: Civil proceedings may be brought under Division 3 of this Part if a  
31 person requested, instructed, induced, encouraged, authorised or  
32 assisted another person to engage in discriminatory conduct for a  
33 prohibited reason.

1      **108.      Prohibition of coercion or inducement**

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

- 5              (a)      to exercise or not to exercise a power, or to propose to  
6              exercise or not to exercise a power, under this Act; or  
7              (b)      to perform or not to perform a function, or to propose to  
8              perform or not to perform a function, under this Act; or  
9              (c)      to exercise or not to exercise a power or perform a  
10             function, or to propose to exercise or not to exercise a  
11             power or perform a function, in a particular way; or  
12             (d)      to refrain from seeking, or continuing to undertake, a  
13             role under this Act.

14             Penalty:

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

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

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

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

26      **109.      Misrepresentation**

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

- 30              (a)      rights or obligations under this Act; or  
31              (b)      ability to initiate, or participate in, a process or  
32              proceedings under this Act; or  
33              (c)      ability to make a complaint or inquiry to a person or  
34              body empowered under this Act to seek compliance with  
35              this Act.

36             Penalty:

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

- 1 (2) Subsection (1) does not apply if the person to whom the  
2 representation is made would not be expected to rely on it.

3 **Division 2 — Criminal proceedings in relation to**  
4 **discriminatory conduct**

5 **110. Proof of discriminatory conduct**

6 Note: Section 110 is not required in WA.

7 **111. Order for compensation or reinstatement**

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

- 11 (a) an order that the offender pay (within a specified period)  
12 the compensation to the person who was the subject of  
13 the discriminatory conduct that the court considers  
14 appropriate;
- 15 (b) in relation to a person who was or is an employee or  
16 prospective employee, an order that:
- 17 (i) the person be reinstated or re-employed in his or  
18 her former position or, if that position is not  
19 available, in a similar position; or
- 20 (ii) the person be employed in the position for which  
21 he or she had applied or a similar position.

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

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

- 26 (1) An eligible person may apply to the Tribunal for an order under  
27 this section.
- 28 (2) The Tribunal may make 1 or more of the orders set out in  
29 subsection (3) in relation to a person who has:
- 30 (a) engaged in discriminatory conduct for a prohibited  
31 reason; or
- 32 (b) requested, instructed, induced, encouraged, authorised  
33 or assisted another person to engage in discriminatory  
34 conduct for a prohibited reason; or
- 35 (c) contravened section 108.

- 1       (3) For the purposes of subsection (2), the orders that the Tribunal  
2       may make are:
- 3           (a) an injunction; or
- 4           (b) in the case of conduct referred to in subsection (2)(a) or  
5           (b), an order that the person pay (within a specified  
6           period) the compensation to the person who was the  
7           subject of the discriminatory conduct that the Tribunal  
8           considers appropriate; or
- 9           (c) in the case of conduct referred to in subsection (2)(a) in  
10          relation to a worker who was or is an employee or  
11          prospective employee, an order that:
- 12               (i) the worker be reinstated or re-employed in his or  
13               her former position or, if that position is not  
14               available, in a similar position; or
- 15               (ii) the prospective worker be employed in the  
16               position for which he or she had applied or a  
17               similar position; or
- 18          (d) any other order that the Tribunal considers appropriate.
- 19       (4) For the purposes of this section, a person may be found to have  
20       engaged in discriminatory conduct for a prohibited reason only  
21       if a reason referred to in section 106 was a substantial reason for  
22       the conduct.
- 23       (5) Nothing in this section is to be construed as limiting any other  
24       power of the Tribunal.
- 25       (6) For the purposes of this section, each of the following is an  
26       eligible person:
- 27           (a) a person affected by the contravention;
- 28           (b) a person authorised by a person referred to in  
29           paragraph (a).

30       **113. Procedure for civil actions for discriminatory conduct**

- 31       (1) A proceeding brought under section 112 must be commenced  
32       not more than 1 year after the date on which the applicant knew  
33       or ought to have known that the cause of action accrued.
- 34       (2)

35       Note: Subsection (2) is not required in WA.

10 **Division 4 — General**

- (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.

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,

1 application or complaint in relation to the same matter  
2 under a law of the Commonwealth or a State, other than  
3 a proceeding, application or complaint relating to  
4 workers' compensation.

1 **Part 7 — Workplace entry by WHS entry**  
2 **permit holders**

3 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*,

1 any power or duty of the regulator under another provision of  
2 this Act.

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

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

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

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

12 **Division 2 — Powers of regulator to obtain information**

13 **155. Powers of regulator to obtain information**

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

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

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

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

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

33 (3) The notice must:

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

35 (b) contain a statement to the effect that a failure to comply  
36 with a requirement is an offence; and

- 1           (c) if the notice requires the person to provide information  
2           or documents or answer questions:
- 3               (i) contain a statement about the effect of  
4               sections 172 and 269; and
- 5               (ii) state that the person may attend with a legal  
6               practitioner.
- 7       (4) The regulator must not make a requirement under  
8       subsection (2)(c) unless the regulator has taken all reasonable  
9       steps to obtain the information under subsections (2)(a) and (b)  
10      and has been unable to do so.
- 11      (5) A person must not, without reasonable excuse, refuse or fail to  
12      comply with a requirement under this section.
- 13      Penalty:
- 14           (a) in the case of an individual, a fine of \$10 000;  
15           (b) in the case of a body corporate, a fine of \$50 000.
- 16      (6) Subsection (5) places an evidential burden on the accused to  
17      show a reasonable excuse.
- 18      (7) Section 172 (with any necessary changes) applies to a  
19      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.

1     **159.     Suspension and ending of appointment of inspectors**

- 2         (1)    The regulator may suspend or end the appointment of an  
3                inspector.
- 4         (2)    A person's appointment as an inspector ends when the person  
5                ceases to be eligible for appointment as an inspector.

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

7     **160.     Functions and powers of inspectors**

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

- 10              (a)   to provide information and advice about compliance  
11                  with this Act;
- 12              (b)   to assist in the resolution of:
- 13                  (i)   work health and safety issues at workplaces; and  
14                  (ii)  issues related to access to a workplace by an  
15                        assistant to a health and safety representative;  
16                        and  
17                  (iii)

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

- 19              (c)   to review disputed provisional improvement notices;
- 20              (d)   to require compliance with this Act through the issuing  
21                  of notices;
- 22              (e)   to investigate contraventions of this Act and assist in the  
23                  prosecution of offences.
- 24              (f)

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

26     **161.     Conditions on inspectors' compliance powers**

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

29     **162.     Inspectors subject to regulator's directions**

- 30         (1)    An inspector is subject to the regulator's directions in the  
31                exercise of the inspector's compliance powers.
- 32         (2)    A direction under subsection (1) may be of a general nature or  
33                may relate to a specified matter or specified class of matter.

1                                      **Division 3 — Powers relating to entry**

2                                      **Subdivision 1 — General powers of entry**

3    **163.      Powers of entry**

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

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

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

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

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

15    **164.      Notification of entry**

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

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

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

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

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

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

32            (4)    In this section:

33                      ***relevant person conducting a business or undertaking*** means  
34                                  the person conducting any business or undertaking in relation to  
35                                  which the inspector is exercising the powers of entry.

1     **165.     General powers on entry**

- 2         (1)   An inspector who enters a workplace under section 163 may do  
3             all or any of the following:
- 4                 (a)   inspect, examine and make inquiries at the workplace;  
5                 (b)   inspect and examine anything (including a document) at  
6                     the workplace;  
7                 (c)   bring to the workplace and use any equipment or  
8                     materials that may be required;  
9                 (d)   take measurements, conduct tests and make sketches or  
10                  recordings (including photographs, films, audio, video,  
11                  digital or other recordings);  
12                 (e)   take and remove for analysis a sample of any substance  
13                     or thing without paying for it;  
14                 (f)   require a person at the workplace to give the inspector  
15                     reasonable help to exercise the inspector's powers under  
16                     paragraphs (a) to (e);  
17                 (g)   exercise any compliance power or other power that is  
18                     reasonably necessary to be exercised by the inspector for  
19                     the purposes of this Act.
- 20         (2)   A person required to give reasonable help under  
21             subsection (1)(f) must not, without reasonable excuse, refuse or  
22             fail to comply with the requirement.
- 23             Penalty:
- 24                 (a)   in the case of an individual, a fine of \$10 000;  
25                 (b)   in the case of a body corporate, a fine of \$50 000.
- 26         (3)   Subsection (2) places an evidential burden on the accused to  
27             show a reasonable excuse.

28     **166.     Persons assisting inspectors**

- 29         (1)   A person (the *assistant*), including an interpreter, may  
30             accompany the inspector entering a workplace under  
31             section 163 to assist the inspector if the inspector considers the  
32             assistance is necessary.
- 33         (2)   The assistant:
- 34                 (a)   may do the things at the place and in the manner that the  
35                     inspector reasonably requires to assist the inspector to  
36                     exercise compliance powers; but  
37                 (b)   must not do anything that the inspector does not have  
38                     power to do, except as permitted under a search warrant.

**Subdivision 2 — Search warrants**

5 (1A) In this section:

6 ***remote communication*** means any way of communicating at a

7 distance including by telephone, fax, email and radio.

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

14 (a) the search warrant is needed urgently; and  
15 (b) the inspector reasonably suspects that a magistrate is not  
16 available within a reasonable distance of the inspector,

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

22 (2B) The application must be made in writing unless:

26 in which case:

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

31 (a) the application is made by remote communication; and  
32 (b) it is not practicable for the magistrate to administer an  
33 oath to the inspector,

35 (c) it may be made in an unsworn form; and



- 1           (d) if the magistrate issues a search warrant, the inspector  
2           must as soon as practicable send the magistrate an  
3           affidavit verifying the application and any information  
4           given in support of it.
- 5   (2D) If on an application made by remote communication a  
6   magistrate issues a search warrant, the magistrate must, if  
7   practicable, send a copy of the original search warrant to the  
8   inspector by remote communication, but otherwise:
- 9           (a) the magistrate must give the inspector by remote  
10          communication any information that must be stated in  
11          the search warrant; and
- 12          (b) the inspector must complete a form of a search warrant  
13          with the information received and give the magistrate a  
14          copy of the form as soon as practicable after doing so;  
15          and
- 16          (c) the magistrate must attach the copy of the form to the  
17          original search warrant and any affidavit received from  
18          the inspector and make them available for collection by  
19          the inspector.
- 20   (2E) The copy of the original search warrant sent, or the form of the  
21   search warrant completed, as the case may be, under  
22   subsection (2D) has the same force and effect as the original  
23   search warrant.
- 24   (2)
- 25   Note: Subsection (2) is not required in WA.
- 26   (3) The magistrate may refuse to consider the application until the  
27   inspector gives the magistrate all the information the magistrate  
28   requires about the application in the way the magistrate  
29   requires.
- 30   **Example**
- 31   The magistrate may require additional information supporting the application  
32   to be given by statutory declaration.
- 33   (4) The magistrate may issue a search warrant only if the magistrate  
34   is satisfied there are reasonable grounds for suspecting:
- 35          (a) there is a particular thing or activity (the *evidence*) that  
36          may provide evidence of an offence against this Act;  
37          and
- 38          (b) the evidence is, or may be within the next 72 hours, at  
39          the place.

- 1            (5) The search warrant must state:
- 2                    (a) that a stated inspector may, with necessary and
- 3                                reasonable help and force, enter the place and exercise
- 4                                the inspector's compliance powers; and
- 5                    (b) the offence for which the search warrant is sought; and
- 6                    (c) the evidence that may be seized under the search
- 7                                warrant; and
- 8                    (d) the hours of the day or night when the place may be
- 9                                entered; and
- 10                  (e) the date, within 7 days after the search warrant's issue,
- 11                                the search warrant ends.

12    **168.      Announcement before entry on warrant**

- 13            (1) Before executing a search warrant, the inspector named in the
- 14                                warrant or an assistant to the inspector must:
- 15                    (a) announce that he or she is authorised by the warrant to
- 16                                enter the place; and
- 17                    (b) give any person at the place an opportunity to allow that
- 18                                entry.
- 19            (2) However, the inspector or an assistant to the inspector is not
- 20                                required to comply with subsection (1) if he or she believes on
- 21                                reasonable grounds that immediate entry to the place is needed
- 22                                to ensure:
- 23                    (a) the safety of any person; or
- 24                    (b) that the effective execution of the warrant is not
- 25                                frustrated.

26    **169.      Copy of warrant to be given to person with management or**

27                                **control of place**

- 28            If the person who has or appears to have management or control
- 29                                of a place is present at the place when a search warrant is being
- 30                                executed, the inspector must:
- 31                    (a) identify himself or herself to that person by producing
- 32                                his or her identity card for inspection; and
- 33                    (b) give that person a copy of the execution copy of the
- 34                                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.

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**Part 9**                      Securing compliance

**Division 3**                Powers relating to entry

**s. 172**

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- 1            (4)    Subsection (3) does not limit the operation of section 166 or  
2                      prevent a representative of the person being interviewed from  
3                      being present at the interview.
- 4            (5)    Subsection (3) may be invoked during an interview by:  
5                      (a)    the inspector; or  
6                      (b)    the person being interviewed,  
7                      in which case the subsection applies to the remainder of the  
8                      interview.
- 9            (6)    A person must not, without reasonable excuse, refuse or fail to  
10                      comply with a requirement under this section.  
11                      Penalty:  
12                      (a)    in the case of an individual, a fine of \$10 000;  
13                      (b)    in the case of a body corporate, a fine of \$50 000.
- 14                      Note: See sections 172 and 173 in relation to self-incrimination and  
15                      section 269 in relation to legal professional privilege.
- 16            (7)    Subsection (6) places an evidential burden on the accused to  
17                      show a reasonable excuse.

18    **172.    Abrogation of privilege against self-incrimination**

- 19            (1)    A person is not excused from answering a question or providing  
20                      information or a document under this Part on the ground that the  
21                      answer to the question, or the information or document, may  
22                      tend to incriminate the person or expose the person to a penalty.
- 23            (2)    However, the answer to a question or information or a document  
24                      provided by an individual is not admissible as evidence against  
25                      that individual in civil or criminal proceedings other than  
26                      proceedings arising out of the false or misleading nature of the  
27                      answer, information or document.

28    **173.    Warning to be given**

- 29            (1)    Before requiring a person to answer a question or provide  
30                      information or a document under this Part, an inspector must:  
31                      (a)    identify himself or herself to the person as an inspector  
32                      by producing the inspector's identity card or in some  
33                      other way; and  
34                      (b)    warn the person that failure to comply with the  
35                      requirement or to answer the question, without  
36                      reasonable excuse, would constitute an offence; and  
37                      (c)    warn the person about the effect of section 172; and

- 1           (d) advise the person about the effect of section 269.
- 2       (2) It is not an offence for an individual to refuse to answer a  
3           question put by an inspector or provide information or a  
4           document to an inspector under this Part on the ground that the  
5           question, information or document might tend to incriminate  
6           him or her, unless he or she was first given the warning in  
7           subsection (1)(c).
- 8       (3) Nothing in this section prevents an inspector from obtaining and  
9           using evidence given to the inspector voluntarily by any person.

10 **174. Powers to copy and retain documents**

- 11       (1) An inspector may:
- 12           (a) make copies of, or take extracts from, a document given  
13           to the inspector in accordance with a requirement under  
14           this Act; and
- 15           (b) keep that document for the period that the inspector  
16           considers necessary.
- 17       (2) While an inspector retains custody of a document, the inspector  
18           must permit the following persons to inspect or make copies of  
19           the document at all reasonable times:
- 20           (a) the person who produced the document;
- 21           (b) the owner of the document;
- 22           (c) a person authorised by a person referred to in  
23           paragraph (a) or (b).

24 **175. Power to seize evidence etc.**

- 25       (1) An inspector who enters a workplace under section 163 may  
26           seize anything (including a document) at the place if the  
27           inspector reasonably believes the thing is evidence of an offence  
28           against this Act.
- 29       (2) An inspector who enters a place with a search warrant may seize  
30           the evidence for which the warrant was issued.
- 31       (3) An inspector may also seize anything else at the place if the  
32           inspector reasonably believes:
- 33           (a) the thing is evidence of an offence against this Act; and
- 34           (b) the seizure is necessary to prevent the thing being  
35           hidden, lost or destroyed or used to continue or repeat  
36           the offence.

1     **176.     Inspector's power to seize dangerous workplaces and things**

- 2            (1)     This section applies if an inspector who enters a workplace  
3                   under this Part reasonably believes that:
- 4                   (a)     the workplace or part of the workplace; or  
5                   (b)     plant at the workplace; or  
6                   (c)     a substance at the workplace or part of the workplace; or  
7                   (d)     a structure at a workplace,  
8                   is defective or hazardous to a degree likely to cause serious  
9                   injury or illness or a dangerous incident to occur.
- 10           (2)     The inspector may seize the workplace or part, the plant, the  
11                   substance or the structure.
- 12           (3)     An inspector's powers under this section may be exercised only  
13                   by:
- 14                   (a)     the regulator; or  
15                   (b)     a person to whom the regulator has, under section 154,  
16                   delegated the powers and functions that the regulator has  
17                   under section 153(2).

18     **177.     Powers supporting seizure**

- 19           (1)     Having seized a thing, an inspector may:
- 20                   (a)     move the thing from the place where it was seized (the  
21                   *place of seizure*); or  
22                   (b)     leave the thing at the place of seizure but take  
23                   reasonable action to restrict access to it; or
- 24                   **Examples**
- 25                   1            Sealing a thing and marking it to show access to it is  
26                   restricted.
- 27                   2            Sealing the entrance to a room where the seized thing is  
28                   situated and marking it to show access to it is restricted.
- 29                   (c)     if the thing is plant or a structure—dismantle or cause to  
30                   be dismantled the plant or structure.
- 31           (2)     If an inspector restricts access to a seized thing, a person must  
32                   not tamper, or attempt to tamper, with the thing or something  
33                   restricting access to the thing without an inspector's approval.
- 34                   Penalty:
- 35                   (a)     in the case of an individual, a fine of \$10 000;  
36                   (b)     in the case of a body corporate, a fine of \$50 000.

- 1       (3) To enable a thing to be seized, an inspector may require the  
2       person in control of it:
- 3           (a) to take it to a stated reasonable place by a stated  
4           reasonable time; and
- 5           (b) if necessary, to remain in control of it at the stated place  
6           for a reasonable time.
- 7       (4) The requirement:
- 8           (a) must be made by written notice; or
- 9           (b) if for any reason it is not practicable to give the notice,  
10          may be made orally and confirmed by written notice as  
11          soon as practicable.
- 12       (5) A further requirement may be made under this section in  
13       relation to the same thing if it is necessary and reasonable to  
14       make the further requirement.
- 15       (6) The person must not, without reasonable excuse, refuse or fail  
16       to comply with a requirement under subsection (3) or (5).
- 17       Penalty:
- 18           (a) in the case of an individual, a fine of \$10 000;
- 19           (b) in the case of a body corporate, a fine of \$50 000.
- 20       (7) Subsection (6) places an evidential burden on the accused to  
21       show a reasonable excuse.
- 22       (8) An inspector's powers under this section in relation to a thing  
23       seized under section 176(2) may be exercised only by:
- 24           (a) the regulator; or
- 25           (b) a person to whom the regulator has, under section 154,  
26           delegated the powers and functions that the regulator has  
27           under section 153(2).

28       **178. Receipt for seized things**

- 29       (1) As soon as practicable after an inspector seizes a thing, the  
30       inspector must give a receipt for it to the person from whom it  
31       was seized.
- 32       (2) However, if for any reason it is not practicable to comply with  
33       subsection (1), the inspector must leave the receipt in a  
34       conspicuous position and in a reasonably secure way at the  
35       place of seizure.
- 36       (3) The receipt must describe generally each thing seized and its  
37       condition.

- 1            (4)    This section does not apply to a thing if it is impracticable or  
2                        would be unreasonable to give the receipt required by this  
3                        section (given the thing's nature, condition and value).

4    **179.    Forfeiture of seized things**

- 5            (1)    A seized thing is forfeited to the State if the regulator:

- 6                        (a)    cannot find the person entitled to the thing after making  
7                                        reasonable inquiries; or  
8                        (b)    cannot return it to the person entitled to it, after making  
9                                        reasonable efforts; or  
10                        (c)    reasonably believes it is necessary to forfeit the thing to  
11                                        prevent it being used to commit an offence against this  
12                                        Act.

- 13            (2)    Subsection (1)(a) does not require the regulator to make  
14                        inquiries if it would be unreasonable to make inquiries to find  
15                        the person entitled to the thing.

- 16            (3)    Subsection (1)(b) does not require the regulator to make efforts  
17                        if it would be unreasonable to make efforts to return the thing to  
18                        the person entitled to it.

- 19            (4)    If the regulator decides to forfeit the thing under  
20                        subsection (1)(c), the regulator must tell the person entitled to  
21                        the thing of the decision by written notice.

- 22            (5)    Subsection (4) does not apply if:

- 23                        (a)    the regulator cannot find the person entitled to the thing,  
24                                        after making reasonable inquiries; or  
25                        (b)    it is impracticable or would be unreasonable to give the  
26                                        notice.

- 27            (6)    The notice must state:

- 28                        (a)    the reasons for the decision; and  
29                        (b)    that the person entitled to the thing may apply within  
30                                        28 days after the date of the notice for the decision to be  
31                                        reviewed; and  
32                        (c)    how the person may apply for the review; and  
33                        (d)    that the person may apply for a stay of the decision if the  
34                                        person applies for a review.

- 35            (7)    In deciding whether and, if so, what inquiries and efforts are  
36                        reasonable or whether it would be unreasonable to give notice



1           about a thing, regard must be had to the thing's nature,  
2           condition and value.

3       (8)   Any costs reasonably incurred by the State in storing or  
4           disposing of a thing forfeited under subsection (1)(c) may be  
5           recovered in a court of competent jurisdiction as a debt due to  
6           the State from that person.

7       (9)   In this section *person entitled* to a thing means the person from  
8           whom it was seized unless that person is not entitled to possess  
9           it in which case it means the owner of the thing.

10   **180.   Return of seized things**

11       (1)   If a seized thing has not been forfeited, the person entitled to the  
12           thing may apply to the regulator for the return of the thing after  
13           the end of 6 months after it was seized.

14       (2)   The regulator must return the thing to the applicant under  
15           subsection (1) unless the regulator has reasonable grounds to  
16           retain the thing.

17       (3)   The regulator may impose any conditions on the return of the  
18           thing under this section that the regulator considers appropriate  
19           to eliminate or minimise any risk to work health or safety  
20           related to the thing.

21       (4)   In this section *person entitled* to a thing means the person  
22           entitled to possess the thing or the owner of the thing.

23   **181.   Access to seized things**

24       (1)   Until a seized thing is forfeited or returned, the regulator must  
25           permit the following persons to inspect it and, if it is a  
26           document, to make copies of it at all reasonable times:

- 27           (a)   the person from whom the thing was seized;  
28           (b)   the owner of the thing;  
29           (c)   a person authorised by a person referred to in  
30           paragraph (a) or (b).

31       (2)   Subsection (1) does not apply if it is impracticable or would be  
32           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

- 1           (c) the inspector reasonably believes that the person may be  
2           able to assist in the investigation of an offence against  
3           this Act.
- 4       (2) When asking a person to provide his or her name and residential  
5       address, the inspector must:
- 6           (a) tell the person the reason for the requirement to provide  
7           his or her name and residential address; and
- 8           (b) warn the person that it is an offence to fail to state that  
9           name and residential address, unless the person has a  
10          reasonable excuse.
- 11       (3) If the inspector reasonably believes that the name or residential  
12       address is false, the inspector may require the person to give  
13       evidence of its correctness.
- 14       (4) A person must not, without reasonable excuse, refuse or fail to  
15       comply with a requirement under subsection (1) or (3).  
16       Penalty: a fine of \$10 000.
- 17       (5) Subsection (4) places an evidential burden on the accused to  
18       show a reasonable excuse.

19       **186. Inspector may take affidavits**

20           An inspector is authorised to take affidavits for any purpose  
21           relating or incidental to the exercise of his or her compliance  
22           powers.

23       **187. Attendance of inspector at coronial inquests**

24           Note: Section 187 is not required in WA.

25           **Division 6 — Offences in relation to inspectors**

26       **188. Offence to hinder or obstruct inspector**

27           A person must not intentionally hinder or obstruct an inspector  
28           in exercising his or her compliance powers, or induce or attempt  
29           to induce any other person to do so.

30           Penalty:

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

1     **189.     Offence to impersonate inspector**

2                      A person who is not an inspector must not, in any way, hold  
3                      himself or herself out to be an inspector.

4                      Penalty: a fine of \$10 000.

5     **190.     Offence to assault, threaten or intimidate inspector**

6                      A person must not directly or indirectly assault, threaten or  
7                      intimidate, or attempt to assault, threaten or intimidate, an  
8                      inspector or a person assisting an inspector.

9                      Penalty:

10                      (a)    in the case of an individual, a fine of \$50 000 or  
11                      imprisonment for 2 years or both;

12                      (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.

1     **193. Compliance with improvement notice**

2             The person to whom an improvement notice is issued must  
3             comply with the notice within the period specified in the notice.

4             Penalty:

- 5                 (a) in the case of an individual, a fine of \$50 000;  
6                 (b) in the case of a body corporate, a fine of \$250 000.

7     **194. Extension of time for compliance with improvement notices**

8             (1) This section applies if a person has been issued with an  
9             improvement notice.

10            (2) An inspector may, by written notice given to the person, extend  
11            the compliance period for the improvement notice.

12            (3) However, the inspector may extend the compliance period only  
13            if the period has not ended.

14            (4) In this section:

15                 ***compliance period*** means the period stated in the improvement  
16                 notice under section 192, and includes that period as extended  
17                 under this section.

18                             **Division 2 — Prohibition notices**

19     **195. Power to issue prohibition notice**

20            (1) This section applies if an inspector reasonably believes that:

21                 (a) an activity is occurring at a workplace that involves or  
22                 will involve a serious risk to the health or safety of a  
23                 person emanating from an immediate or imminent  
24                 exposure to a hazard; or

25                 (b) an activity may occur at a workplace that, if it occurs,  
26                 will involve a serious risk to the health or safety of a  
27                 person emanating from an immediate or imminent  
28                 exposure to a hazard.

29            (2) The inspector may give a person who has control over the  
30            activity a direction prohibiting the carrying on of the activity, or  
31            the carrying on of the activity in a specified way, until an  
32            inspector is satisfied that the matters that give or will give rise  
33            to the risk have been remedied.

34            (3) The direction may be given orally, but must be confirmed by  
35            written notice (a ***prohibition notice***) issued to the person as  
36            soon as practicable.

- 1       (4) An inspector who is at the workplace when the inspector issues  
2       a prohibition notice prohibiting the carrying on of an activity, or  
3       the carrying on of an activity in a specified way, other than in  
4       respect of an activity as defined in subsection (5), must remain  
5       at the workplace until the activity or the carrying on of the  
6       activity in the specified way has ceased, unless it is not  
7       practicable to do so.
- 8       (5) The application of this section extends to accommodation  
9       premises that are being or may be occupied by a worker as  
10      mentioned in section 19(4) and for that purpose, in this Division  
11      and, insofar as they apply to a prohibition notice, in Divisions 4  
12      and 6:
- 13           (a) **workplace** includes those premises; and  
14           (b) references to a serious risk to the health or safety of a  
15              person emanating from an immediate or imminent  
16              exposure to a hazard are to be read as applying only to a  
17              worker; and  
18           (c) **activity** includes the occupation of those premises.
- 19      **196. Contents of prohibition notice**
- 20      (1) A prohibition notice must state:
- 21           (a) that the inspector believes that grounds for the issue of  
22              the prohibition notice exist and the basis for that belief;  
23              and  
24           (b) briefly, the activity that the inspector believes involves  
25              or will involve the risk and the matters that give or will  
26              give rise to the risk; and  
27           (c) the provision of this Act that the inspector believes is  
28              being, or is likely to be, contravened by that activity.
- 29      (2) A prohibition notice may include directions on the measures to  
30      be taken to remedy the risk, activities or matters to which the  
31      notice relates, or the contravention or likely contravention  
32      referred to in subsection (1)(c).
- 33      (3) Without limiting section 195, a prohibition notice that prohibits  
34      the carrying on of an activity in a specified way may do so by  
35      specifying 1 or more of the following:
- 36           (a) a workplace, or part of a workplace, at which the  
37              activity is not to be carried out;  
38           (b) anything that is not to be used in connection with the  
39              activity;

- 1 (c) any procedure that is not to be followed in connection  
2 with the activity.

3 **197. Compliance with prohibition notice**

4 The person to whom a direction is given under section 195(2) or  
5 a prohibition notice is issued must comply with the direction or  
6 notice.

7 Penalty:

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

10 **Division 3 — Non-disturbance notices**

11 **198. Issue of non-disturbance notice**

12 An inspector may issue a non-disturbance notice to the person  
13 with management or control of a workplace if the inspector  
14 reasonably believes that it is necessary to do so to facilitate the  
15 exercise of his or her compliance powers.

16 **199. Contents of non-disturbance notice**

- 17 (1) A non-disturbance notice may require the person to:  
18 (a) preserve the site at which a notifiable incident has  
19 occurred for a specified period; or  
20 (b) prevent the disturbance of a particular site (including the  
21 operation of plant) in other circumstances for a specified  
22 period that is reasonable in the circumstances.
- 23 (2) A non-disturbance notice must specify the period (of no more  
24 than 7 days) for which it applies and set out:  
25 (a) the obligations of the person to whom the notice is  
26 issued; and  
27 (b) the measures to be taken to preserve a site or prevent  
28 disturbance of a site; and  
29 (c) the penalty for contravening the notice.
- 30 (3) In subsection (1) a reference to a site includes any plant,  
31 substance, structure or thing associated with the site.
- 32 (4) A non-disturbance notice does not prevent any action:  
33 (a) to assist an injured person; or  
34 (b) to remove a deceased person; or



- 1 (c) that is essential to make the site safe or to prevent a  
2 further incident; or  
3 (d) that is associated with a police investigation; or  
4 (e) for which an inspector has given permission.

5 **200. Compliance with non-disturbance notice**

- 6 (1) A person must not, without reasonable excuse, refuse or fail to  
7 comply with a non-disturbance notice issued to the person.

8 Penalty:

- 9 (a) in the case of an individual, a fine of \$50 000;  
10 (b) in the case of a body corporate, a fine of \$250 000.

- 11 (2) Subsection (1) places an evidential burden on the accused to  
12 show a reasonable excuse.

13 **201. Issue of subsequent notices**

14 If an inspector considers it necessary to do so, he or she may  
15 issue 1 or more subsequent non-disturbance notices to a person,  
16 whether before or after the expiry of the previous notice, each of  
17 which must comply with section 199.

18 **Division 4 — General requirements applying to notices**

19 **202. Application of Division**

20 In this Division:

21 **notice** means improvement notice, prohibition notice or  
22 non-disturbance notice.

23 **203. Notice to be in writing**

24 A notice must be in writing.

25 **204. Directions in notices**

26 A direction included in an improvement notice or prohibition  
27 notice may:

- 28 (a) refer to a code of practice; and  
29 (b) offer the person to whom it is issued a choice of ways in  
30 which to remedy the contravention.

31 **205. Recommendations in notice**

- 32 (1) An improvement notice or prohibition notice may include  
33 recommendations.

- 1       (2) It is not an offence to fail to comply with recommendations in a  
2       notice.

3       **206. Changes to notice by inspector**

- 4       (1) An inspector may make minor changes to a notice:  
5           (a) for clarification; or  
6           (b) to correct errors or references; or  
7           (c) to reflect changes of address or other circumstances.
- 8       (2) An inspector may also, in accordance with section 194, extend  
9       the compliance period for an improvement notice.

10      **207. Regulator may vary or cancel notice**

11           Except as provided in section 206, a notice issued by an  
12           inspector may only be varied or cancelled by the regulator.

13      **208. Formal irregularities or defects in notice**

- 14           A notice is not invalid only because of:  
15           (a) a formal defect or irregularity in the notice unless the  
16               defect or irregularity causes or is likely to cause  
17               substantial injustice; or  
18           (b) a failure to use the correct name of the person to whom  
19               the notice is issued if the notice sufficiently identifies  
20               the person and is issued or given to the person in  
21               accordance with section 209.

22      **209. Issue and giving of notice**

- 23       (1) A notice may be issued or given to a person:  
24           (a) by delivering it personally to the person or sending it by  
25               post or facsimile or electronic transmission to the  
26               person's usual or last known place of residence or  
27               business; or  
28           (b) by leaving it for the person at the person's usual or last  
29               known place of residence or business with a person who  
30               appears to be over 16 years and who appears to reside or  
31               work there; or  
32           (c) by leaving it for the person at the workplace to which  
33               the notice relates with a person who is or appears to be  
34               the person with management or control of the  
35               workplace; or  
36           (d) in a prescribed manner.

- 1       (2) The regulations may prescribe:
- 2           (a) the manner of issuing a notice; and
- 3           (b) the steps a person to whom a notice is issued must take
- 4               to bring it to the attention of other persons.

5       **210. Display of notice**

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

10       Penalty:

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

- 13       (2) A person must not intentionally remove, destroy, damage or
- 14           deface a notice displayed under subsection (1) while the notice
- 15           is in force.

16       Penalty:

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

19       **Division 5 — Remedial action**

20       Note: Part 10 Division 5 (sections 211, 212 and 213) is not required in WA.

21       **Division 6 — Injunctions**

22       **214. Application of Division**

23       In this Division:

24       *notice* means improvement notice, prohibition notice or

25       non-disturbance notice.

26       **215. Injunctions for noncompliance with notices**

- 27       (1) The regulator may apply to a court for an injunction:
- 28           (a) compelling a person to comply with a notice; or
- 29           (b) restraining a person from contravening a notice.
- 30       (2) The regulator may do so:
- 31           (a) whether or not proceedings have been brought for an
- 32               offence against this Act in connection with any matter in
- 33               relation to which the notice was issued; and
- 34           (b) whether any period for compliance with the notice has
- 35               expired.

1                                      **Part 11 — Enforceable undertakings**

2                      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*).

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
1	Section 54(2) (decision following failure to commence negotiations)	<ul style="list-style-type: none"> <li>(1) A worker whose interests are affected by the decision or his or her representative appointed for the purpose of section 52(1)(b).</li> <li>(2) A person conducting a business or undertaking whose interests are affected by the decision.</li> <li>(3) A health and safety representative who represents a worker whose interests are affected by the decision.</li> </ul>
2	Section 72(6) (decision in relation to training of health and safety representative)	<ul style="list-style-type: none"> <li>(1) A person conducting a business or undertaking whose interests are affected by the decision.</li> <li>(2) A health and safety representative whose interests are affected by the decision.</li> </ul>
3	Section 76(6) (decision relating to health and safety committee)	<ul style="list-style-type: none"> <li>(1) A worker whose interests are affected by the decision.</li> <li>(2) A person conducting a business or undertaking whose interests are affected by the decision.</li> <li>(3) A health and safety</li> </ul>

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Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
		representative who represents a worker whose interests are affected by the decision.
4	Section 102 (decision on review of provisional improvement notice)	(1) The person to whom the provisional improvement notice was issued.  (2)  (3)  (4)  (5) A person conducting a business or undertaking whose interests are affected by the decision.  Note: Subitems (2), (3) and (4) are not required in WA.
5	Section 179 (forfeiture of thing)	The person entitled to the thing.
6	Section 180 (return of seized things)	The person entitled to the thing.
7	Section 191 (issue of improvement notice)	(1) The person to whom the notice was issued.  (2) A person conducting a business or undertaking whose interests are affected by the decision.  (3)  (4)  Note: Subitems (3) and (4) are not required in WA.
8	Section 194 (extension of time for compliance with improvement notice)	(1) The person to whom the notice was issued.  (2) A person conducting a business or undertaking whose interests are affected by the decision.  (3)  (4)

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
		Note: Subitems (3) and (4) are not required in WA.
9	Section 195 (issue of prohibition notice)	<p>(1) The person to whom the notice was issued.</p> <p>(2) The person with management or control of the workplace, plant or substance.</p> <p>(3) A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>(4)</p> <p>(5)</p> <p>(6)</p> <p>Note: Subitems (4), (5) and (6) are not required in WA.</p>
10	Section 198 (issue of a non-disturbance notice)	<p>(1) The person to whom the notice was issued.</p> <p>(2) The person with management or control of the workplace.</p> <p>(3) A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>(4)</p> <p>(5)</p> <p>Note: Subitems (4) and (5) are not required in WA.</p>
11	Section 201 (issue of subsequent notice)	<p>(1) The person to whom the notice was issued.</p> <p>(2) The person with management or control of the workplace.</p> <p>(3) A person conducting a business or undertaking whose interests are affected by the decision.</p>

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Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
		(4) (5) Note: Subitems (4) and (5) are not required in WA.
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.

- 1 (2) Unless the contrary intention appears, a reference in this Part to  
2 a decision includes a reference to:
- 3 (a) making, suspending, revoking or refusing to make an  
4 order, determination or decision;
- 5 (b) giving, suspending, revoking or refusing to give a  
6 direction, approval, consent or permission;
- 7 (c) issuing, suspending, revoking or refusing to issue an  
8 authorisation;
- 9 (d) imposing a condition;
- 10 (e) making a declaration, demand or requirement;
- 11 (f) retaining, or refusing to deliver up, a thing; or
- 12 (g) doing or refusing to do any other act or thing.



- 1       (3) In this section:  
2               *person entitled* to a thing means the person from whom it was  
3               seized unless that person is not entitled to possess it, in which  
4               case it means the owner of the thing.

5               Note: Decisions under the regulations that will be reviewable decisions will  
6               be set out in the regulations.

7                               **Division 2 — Internal review**

8       **224. Application for internal review**

- 9       (1) An eligible person in relation to a reviewable decision, other  
10       than a decision made by the regulator or a delegate of the  
11       regulator, may apply to the regulator for review (an *internal*  
12       *review*) of the decision within:  
13               (a) the prescribed time after the day on which the decision  
14               first came to the eligible person's notice; or  
15               (b) such longer period as the regulator allows.  
16       (2) The application must be made in the manner and form required  
17       by the regulator.  
18       (3) For the purposes of this section, the *prescribed time* is:  
19               (a) in the case of a decision to issue an improvement notice,  
20               the period specified in the notice for compliance with  
21               the notice; and  
22               (b) in any other case, 14 days.

23       **225. Internal reviewer**

- 24       (1) The regulator may appoint a person or body to review decisions  
25       on applications under this Division.  
26       (2) The person who made the decision cannot be an internal  
27       reviewer in relation to that decision.

28       **226. Decision of internal reviewer**

- 29       (1) The internal reviewer must review the reviewable decision and  
30       make a decision as soon as is reasonably practicable after the  
31       application for internal review is received.  
32       (2) The decision may be:  
33               (a) to confirm or vary the reviewable decision; or

- 1 (b) to set aside the reviewable decision and substitute  
2 another decision that the internal reviewer considers  
3 appropriate.

4 (3)

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

- 6 (4) The applicant must provide further information within the time  
7 (being not less than 7 days) specified by the internal reviewer in  
8 a request for information.

- 9 (5) If the applicant does not provide the further information within  
10 the required time, the decision is taken to have been confirmed  
11 by the internal reviewer at the end of that time.

12 (6)

13 Note: Subsection (6) is not required in WA.

14 **227. Decision on internal review**

15 As soon as practicable after reviewing the decision, the internal  
16 reviewer must give the applicant in writing:

- 17 (a) the decision on the internal review; and  
18 (b) the reasons for the decision.

19 **228. Stays of reviewable decisions on internal review**

- 20 (1) An application for an internal review of a reviewable decision  
21 (other than a decision to issue a prohibition notice or a  
22 non-disturbance notice) stays the operation of the decision.

- 23 (2) If an application is made for an internal review of a decision to  
24 issue a prohibition notice or a non-disturbance notice, the  
25 reviewer may stay the operation of the decision.

- 26 (3) The reviewer may make the decision to stay the operation of a  
27 decision on the reviewer's own initiative or on the application  
28 of the applicant for review.

- 29 (4) The reviewer must make a decision on an application for a stay  
30 as soon as is reasonably practicable within the period of  
31 3 working days after the reviewer receives the application.

- 32 (5) If the reviewer has not made a decision to stay a decision within  
33 the time set out in subsection (4), the reviewer is taken to have  
34 made a decision not to grant a stay.

1       (6) A stay of the operation of a decision pending a decision on an  
2       internal review continues until whichever of the following is the  
3       earlier:

4           (a) the end of the prescribed period for applying for a  
5           review (an *external review*) of the decision made on the  
6           internal review;

7           (b) an application for external review is made.

8                           **Division 3 — External review**

9       **229. Application for external review**

10       (1) An eligible person may apply to the Tribunal for review of:

11           (a) a reviewable decision, other than under section 179 or  
12           180; or

13           (b) a decision made, or taken to have been made, on an  
14           internal review.

15       (2A) An eligible person may apply to a court for review of a  
16       reviewable decision under section 179 or 180 made by the  
17       regulator.

18       (2) The application must be made:

19           (a) if the decision was to forfeit a thing (including a  
20           document), within 28 days after the day on which the  
21           decision first came to the applicant's notice; or

22           (b) in the case of any other decision, within 14 days after  
23           the day on which the decision first came to the  
24           applicant's notice; or

25           (c) if the decision maker is required by the Tribunal or court  
26           to give the eligible person a statement of reasons, within  
27           14 days after the day on which the statement is given to  
28           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.

- 1       (2) A proceeding for a Category 1 offence may be brought after the  
2       end of the applicable limitation period in subsection (1) if fresh  
3       evidence relevant to the offence is discovered and the court is  
4       satisfied that the evidence could not reasonably have been  
5       discovered within the relevant limitation period.

6       **233. Multiple contraventions of health and safety duty provision**

- 7       (1) Two or more contraventions of a health and safety duty  
8       provision by a person that arise out of the same factual  
9       circumstances may be charged as a single offence or as separate  
10      offences.
- 11      (2) This section does not authorise contraventions of 2 or more  
12      health and safety duty provisions to be charged as a single  
13      offence.
- 14      (3) A single penalty only may be imposed in relation to 2 or more  
15      contraventions of a health and safety duty provision that are  
16      charged as a single offence.
- 17      (4) In this section:  
18      *health and safety duty provision* means a provision of  
19      Division 2, 3 or 4 of Part 2.

20                                   **Division 2 — Sentencing for offences**

21       **234. Application of this Division**

22                   This Division applies if a court convicts a person, or finds a  
23                   person guilty (the *offender*), of an offence against this Act.

24       **235. Orders generally**

- 25      (1) One or more orders may be made under this Division against the  
26      offender.
- 27      (2) Orders may be made under this Division in addition to any  
28      penalty that may be imposed or any other action that may be  
29      taken in relation to the offence.

30       **236. Adverse publicity orders**

- 31      (1) A court may make an order (an *adverse publicity order*) in  
32      relation to the offender requiring the offender:
- 33              (a) to take either or both of the following actions within the  
34              period specified in the order:
- 35                      (i) to publicise, in the way specified in the order, the  
36                      offence, its consequences, the penalty imposed  
37                      and any other related matter;

- 1 (ii) to notify a specified person or specified class of  
2 persons, in the way specified in the order, of the  
3 offence, its consequences, the penalty imposed  
4 and any other related matter; and
- 5 (b) to give the regulator, within 7 days after the end of the  
6 period specified in the order, evidence that the action or  
7 actions were taken by the offender in accordance with  
8 the order.
- 9 (2) A court may make an adverse publicity order on its own  
10 initiative or on the application of the person prosecuting the  
11 offence.
- 12 (3) If the offender fails to give evidence to the regulator in  
13 accordance with subsection (1)(b), the regulator, or a person  
14 authorised in writing by the regulator, may take the action or  
15 actions specified in the order.
- 16 (4) However, if:
- 17 (a) the offender gives evidence to the regulator in  
18 accordance with subsection (1)(b); and
- 19 (b) despite that evidence, the regulator is not satisfied that  
20 the offender has taken the action or actions specified in  
21 the order in accordance with the order,
- 22 the regulator may apply to a court for an order authorising the  
23 regulator, or a person authorised in writing by the regulator, to  
24 take the action or actions.
- 25 (5) If the regulator or a person authorised in writing by the regulator  
26 takes an action or actions in accordance with subsection (3) or  
27 an order under subsection (4), the regulator is entitled to recover  
28 from the offender, by action in a court of competent jurisdiction,  
29 an amount in relation to the reasonable expenses of taking the  
30 action or actions as a debt due to the regulator.
- 31 **237. Orders for restoration**
- 32 (1) The court may order the offender to take such steps as are  
33 specified in the order, within the period so specified, to remedy  
34 any matter caused by the commission of the offence that  
35 appears to the court to be within the offender's power to  
36 remedy.
- 37 (2) The period in which an order under this section must be  
38 complied with may be extended, or further extended, by order

1 of the court but only if an application for the extension is made  
2 before the end of that period.

3 **238. Work health and safety project orders**

- 4 (1) The court may make an order requiring the offender to  
5 undertake a specified project for the general improvement of  
6 work health and safety within the period specified in the order.
- 7 (2) The order may specify conditions that must be complied with in  
8 undertaking the specified project.

9 **239. Release on the giving of a court-ordered WHS undertaking**

- 10 (1) The court may (with or without recording a conviction) adjourn  
11 the proceeding for a period of up to 2 years and make an order  
12 for the release of the offender on the offender giving an  
13 undertaking with specified conditions (a ***court-ordered WHS***  
14 ***undertaking***).
- 15 (2) A court-ordered WHS undertaking must specify the following  
16 conditions:
- 17 (a) that the offender appears before the court if called on to  
18 do so during the period of the adjournment and, if the  
19 court so specifies, at the time to which the further  
20 hearing is adjourned;
- 21 (b) that the offender does not commit, during the period of  
22 the adjournment, any offence against this Act;
- 23 (c) that the offender observes any special conditions  
24 imposed by the court.
- 25 (3) An offender who has given a court-ordered WHS undertaking  
26 under this section may be called on to appear before the court  
27 by order of the court.
- 28 (4) An order under subsection (3) must be served on the offender  
29 not less than 4 days before the time specified in it for the  
30 appearance.
- 31 (5) If the court is satisfied at the time to which a further hearing of a  
32 proceeding is adjourned that the offender has observed the  
33 conditions of the court-ordered WHS undertaking, it must  
34 discharge the offender without any further hearing of the  
35 proceeding.

1     **240.     Injunctions**

2             If a court finds a person guilty of an offence against this Act, the  
3             court may issue an injunction requiring the person to cease  
4             contravening this Act.

5             Note: An injunction may also be obtained under section 215 for  
6             noncompliance with a non-disturbance notice, improvement notice or  
7             prohibition notice.

8     **241.     Training orders**

9             The court may make an order requiring the person to undertake  
10            or arrange for 1 or more workers to undertake a specified course  
11            of training.

12    **242.     Offence to fail to comply with order**

13        (1)    A person must not, without reasonable excuse, fail to comply  
14        with an order under this Division.

15        Penalty:

- 16            (a)   in the case of an individual, a fine of \$50 000;  
17            (b)   in the case of a body corporate, a fine of \$250 000.

18        (2)    Subsection (1) places an evidential burden on the accused to  
19        show a reasonable excuse.

20        (3)    This section does not apply to an order or injunction under  
21        section 239 or 240.

22                   **Division 3 — Infringement notices**

23             Note: Part 13 Division 3 (section 243) is not required in WA.

24                   **Division 4 — Offences by bodies corporate**

25    **244.     Imputing conduct to bodies corporate**

26        (1)    For the purposes of this Act, any conduct engaged in on behalf  
27        of a body corporate by an employee, agent or officer of the body  
28        corporate acting within the actual or apparent scope of his or her  
29        employment, or within his or her actual or apparent authority, is  
30        conduct also engaged in by the body corporate.

31        (2)    If an offence under this Act requires proof of knowledge,  
32        intention or recklessness, it is sufficient in proceedings against a  
33        body corporate for that offence to prove that the person referred  
34        to in subsection (1) had the relevant knowledge, intention or  
35        recklessness.



- 1       (3) If for an offence against this Act mistake of fact is relevant to  
2       determining liability, it is sufficient in proceedings against a  
3       body corporate for that offence if the person referred to in  
4       subsection (1) made that mistake of fact.

5                                   **Division 5 — The Crown**

6   **245.       Offences and the Crown**

- 7       (1) If the Crown is guilty of an offence against this Act, the penalty  
8       to be imposed on the Crown is the penalty applicable to a body  
9       corporate.
- 10      (2) For the purposes of this Act, any conduct engaged in on behalf  
11      of the Crown by an employee, agent or officer of the Crown  
12      acting within the actual or apparent scope of his or her  
13      employment, or within his or her actual or apparent authority, is  
14      conduct also engaged in by the Crown.
- 15      (3) If an offence under this Act requires proof of knowledge,  
16      intention or recklessness, it is sufficient in proceedings against  
17      the Crown for that offence to prove that the person referred to in  
18      subsection (2) had the relevant knowledge, intention or  
19      recklessness.
- 20      (4) If for an offence against this Act mistake of fact is relevant to  
21      determining liability, it is sufficient in proceedings against the  
22      Crown for that offence if the person referred to in subsection (2)  
23      made that mistake of fact.

24   **246.       WHS civil penalty provisions and the Crown**

25       Note: Section 246 is not required in WA.

26   **247.       Officers**

- 27      (1) A person who makes, or participates in making, decisions that  
28      affect the whole, or a substantial part, of a business or  
29      undertaking of the Crown is taken to be an officer of the Crown  
30      for the purposes of this Act.
- 31      (2) A Minister of a State or the Commonwealth is not in that  
32      capacity an officer for the purposes of this Act.

33   **248.       Responsible agency for the Crown**

- 34      (1) A provisional improvement notice, improvement notice,  
35      prohibition notice, non-disturbance notice or infringement

1 notice to be given to or served on the Crown under this Act may  
2 be given to or served on the responsible agency.

3 (2) If an infringement notice is to be served on the Crown for an  
4 offence against this Act, the responsible agency may be  
5 specified in the infringement notice.

6 (3) If proceedings are brought against the Crown for an offence  
7 against this Act or in relation to a contravention of this Act, the  
8 responsible agency in relation to the offence or contravention  
9 may be specified in any document initiating, or relating to, the  
10 proceedings.

11 (4) The responsible agency in relation to an offence or a  
12 contravention of this Act is entitled to act in proceedings against  
13 the Crown for the offence or relating to the contravention and,  
14 subject to any relevant rules of court, the procedural rights and  
15 obligations of the Crown as the accused or defendant in the  
16 proceedings are conferred or imposed on the responsible  
17 agency.

18 (5) The person prosecuting the offence or bringing the proceedings  
19 may change the responsible agency during the proceedings with  
20 the court's leave.

21 (6) In this section, the ***responsible agency***:

22 (a) in relation to a notice referred to in subsection (1) is:

23 (i) in the case of a provisional improvement notice,  
24 improvement notice or infringement notice, the  
25 agency of the Crown the acts or omissions of  
26 which are alleged to contravene this Act;

27 (ii) in the case of a prohibition notice, the agency of  
28 the Crown which has control over the activity  
29 referred to in section 195(1)(a) or (b);

30 (iii) in the case of a non-disturbance notice, the  
31 agency of the Crown with the management and  
32 control of the workplace;

33 (iv)

34 Note: Subparagraph (iv) is not required in WA.

35 and

36 (b) in relation to an offence or proceedings for a  
37 contravention of this Act, is the agency of the Crown:

38 (i) the acts or omissions of which are alleged to  
39 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.

1     **253. Proceedings against successors to public authorities**

2         (1) Proceedings for an offence against this Act that were instituted  
3             against a public authority before its dissolution, or that could  
4             have been instituted against a public authority if not for its  
5             dissolution, may be continued or instituted against its successor  
6             if the successor is a public authority.

7         (2) An infringement notice served on a public authority for an  
8             offence against this Act is taken to be an infringement notice  
9             served on its successor if the successor is a public authority.

10        (3) Similarly, any penalty paid by a public authority in relation to  
11            an infringement notice is taken to be a penalty paid by its  
12            successor if the successor is a public authority.

13                     **Division 7 — WHS civil penalty provisions**

14                     Note: Part 13 Division 7 (sections 254 to 266) is not required in WA.

15                     **Division 8 — Civil liability not affected by this Act**

16     **267. Civil liability not affected by this Act**

17             Except as provided in Part 6, nothing in this Act is to be  
18             construed as:

- 19                 (a) conferring a right of action in civil proceedings in  
20                     relation to a contravention of a provision of this Act; or  
21                 (b) conferring a defence to an action in civil proceedings or  
22                     otherwise affecting a right of action in civil proceedings;  
23                     or  
24                 (c) affecting the extent (if any) to which a right of action  
25                     arises, or civil proceedings may be brought, in relation  
26                     to breaches of duties or obligations imposed by the  
27                     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.

- 1   **269.    Act does not affect legal professional privilege**
- 2           Nothing in this Act requires a person to produce a document  
3           that would disclose information, or otherwise provide  
4           information, that is the subject of legal professional privilege.
- 5   **270.    Immunity from liability**
- 6       (1)   A person who is or has been an inspector, or other person  
7           engaged in the administration of this Act, incurs no civil  
8           liability for an act or omission done or omitted to be done in  
9           good faith and in the execution or purported execution of  
10          powers and functions under this Act.
- 11       (2)   A civil liability that would, but for subsection (1), attach to a  
12          person, attaches instead to the State.
- 13   **271.    Confidentiality of information**
- 14       (1)   This section applies if a person obtains information or gains  
15           access to a document in exercising any power or function under  
16           this Act.
- 17       (2)   The person must not do any of the following:
- 18           (a)   disclose to anyone else:
- 19               (i)   the information; or
- 20               (ii)  the contents of or information contained in the  
21                  document;
- 22           (b)   give access to the document to anyone else;
- 23           (c)   use the information or document for any purpose.
- 24       Penalty:
- 25           (a)   in the case of an individual, a fine of \$10 000;
- 26           (b)   in the case of a body corporate, a fine of \$50 000.
- 27       (3)   Subsection (2) does not apply to the disclosure of information,  
28           or the giving of access to a document or the use of information  
29           or a document:
- 30           (a)   about a person, with the person's consent; or
- 31           (b)   that is necessary for the exercise of a power or function  
32           under this Act; or

- 1 (c) that is made or given by the regulator or a person  
2 authorised by the regulator if the regulator reasonably  
3 believes the disclosure, access or use:
- 4 (i) is necessary for administering, or monitoring or  
5 enforcing compliance with, this Act; or
- 6 (ii) is necessary or convenient for the administration  
7 or enforcement of another Act of this State  
8 prescribed by the regulations, a Commonwealth  
9 law prescribed by the regulations or a law of  
10 another State prescribed by the regulations; or
- 11 (iii) is necessary for the administration or  
12 enforcement of another Act or law, if the  
13 disclosure, access or use is necessary to lessen or  
14 prevent a serious risk to public health or safety;  
15 or
- 16 (iv) is necessary for the recognition of authorisations  
17 under a corresponding WHS law; or
- 18 (v) is required for the exercise of a power or  
19 function under a corresponding WHS law; or
- 20 (d) that is required by any court, tribunal, authority or  
21 person having lawful authority to require the production  
22 of documents or the answering of questions; or
- 23 (e) that is required or authorised under a law; or
- 24 (f) to a Minister.
- 25 (4) A person must not intentionally disclose to another person the  
26 name of an individual who has made a complaint in relation to  
27 that other person unless:
- 28 (a) the disclosure is made with the consent of the  
29 complainant; or
- 30 (b) the disclosure is required under a law.
- 31 Penalty:
- 32 (a) in the case of an individual, a fine of \$10 000;
- 33 (b) in the case of a body corporate, a fine of \$50 000.

34 **272. No contracting out**

35 A term of any agreement or contract that purports to exclude,  
36 limit or modify the operation of this Act or any duty owed under  
37 this Act or to transfer to another person any duty owed under  
38 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)
- Note: Paragraph (a) is not required in WA.
- (b) unions; and
  - (c) 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



- 1 (b) each document applied, adopted or incorporated (to any  
2 extent) by an approved code of practice,  
3 is available for inspection by members of the public without  
4 charge at the office of the regulator during normal business  
5 hours.

6 **275. Use of codes of practice in proceedings**

- 7 (1) This section applies in a proceeding for an offence against  
8 this Act.  
9 (2) An approved code of practice is admissible in the proceeding as  
10 evidence of whether or not a duty or obligation under this Act  
11 has been complied with.  
12 (3) The court may:  
13 (a) have regard to the code as evidence of what is known  
14 about a hazard or risk, risk assessment or risk control to  
15 which the code relates; and  
16 (b) rely on the code in determining what is reasonably  
17 practicable in the circumstances to which the code  
18 relates.

19 Note: See section 18 for the meaning of *reasonably practicable*.

- 20 (4) Nothing in this section prevents a person from introducing  
21 evidence of compliance with this Act in a manner that is  
22 different from the code but provides a standard of work health  
23 and safety that is equivalent to or higher than the standard  
24 required in the code.

25 **Division 3 — Regulation-making powers**

26 **276. Regulation-making powers**

- 27 (1) The Governor may make regulations in relation to:  
28 (a) any matter relating to work health and safety; and  
29 (b) any matter or thing required or permitted by this Act to  
30 be prescribed or that is necessary or convenient to be  
31 prescribed to give effect to this Act.  
32 (2) Without limiting subsection (1), the regulations may make  
33 provision for or in relation to matters set out in Schedule 3.  
34 (3) The regulations may:  
35 (a) be of general or limited application; or

- 1 (b) differ according to differences in time, place or  
2 circumstance; or
- 3 (c) leave any matter or thing to be, from time to time,  
4 determined, applied or approved by the regulator, an  
5 inspector or any other prescribed person or body of  
6 persons; or
- 7 (d) apply, adopt or incorporate any matter contained in any  
8 document formulated, issued or published by a person or  
9 body whether:
- 10 (i) with or without modification; or
- 11 (ii) as in force at a particular time or as in force or  
12 remade from time to time; or
- 13 (e) prescribe exemptions from complying with any of the  
14 regulations on the terms and conditions (if any)  
15 prescribed; or
- 16 (f) allow the regulator to provide exemptions from  
17 complying with any of the regulations on the terms and  
18 conditions (if any) prescribed or, if the regulations  
19 allow, on the terms and conditions (if any) determined  
20 by the regulator; or
- 21 (g) prescribe fees for doing any act or providing any service  
22 for the purposes of this Act and prescribe the  
23 circumstances and way in which fees can be refunded,  
24 waived or reduced; or
- 25 (h) prescribe a penalty for any contravention of the  
26 regulations not exceeding a fine of \$6 000 for an  
27 individual or \$30 000 for a body corporate.
- 28 (i)

29 Note: Paragraph (i) is not required in WA.

- 30 (4) Nothing in subsection (3) limits the operation of the  
31 *Interpretation Act 1984* in relation to regulations under this Act.
- 32 (5) A regulation made under this Act is inoperative to the extent  
33 that it is inconsistent with a regulation made under the  
34 *Industrial Relations Act 1979* relating to the Tribunal.

35 **Division 4 — Review of Act**

36 **277. Review of Act**

- 37 (1) The Minister must carry out a review of the operation and  
38 effectiveness of this Act as soon as is practicable after every

- 1            fifth anniversary of the commencement of this section and, in  
2            the course of each review, the Minister must consider and have  
3            regard to —
- 4            (a)    the outcomes of the most recently completed review of  
5                legislation in other Australian jurisdictions based on the  
6                *Model Work Health and Safety Bill* (mentioned in  
7                section 9(3)) conducted by the Select Council on  
8                Workplace Relations; and
- 9            (b)    the effectiveness of the operations of the Commission  
10               and each committee, as those terms are defined in  
11               Schedule 2 clause 1; and
- 12           (c)    the need for the continuation of the Commission and  
13               each committee.
- 14        (2)    The Minister must prepare a report based on each review carried  
15               out under subsection (1) and, as soon as is practicable after the  
16               preparation of the report, cause it to be laid before each House  
17               of Parliament.

3 Note: Schedule 1 is not required in WA.

**Schedule 2 — The WorkSafe Western Australia  
Commissioner and Commission for Occupational  
Health and Safety**

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**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

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1 Minister from time to time on the recommendation of the Public  
2 Sector Commissioner.

3 (3) A person appointed to be Commissioner who, immediately before the  
4 appointment was a public service officer, retains all existing and  
5 accruing rights on appointment as Commissioner despite the  
6 appointment.

7 (4) A person appointed to be Commissioner who, immediately before the  
8 appointment was a public service officer, is entitled upon resigning  
9 the person's office as Commissioner or upon ceasing to be  
10 Commissioner to be appointed to an office in the Public Service not  
11 lower in status than the office the person occupied immediately before  
12 appointment as Commissioner.

13 (5) The Commissioner must not engage in paid employment outside the  
14 Commissioner's duties and functions under this Act without first  
15 obtaining the approval in writing of the Minister.

16 **Division 3 — Commission for Occupational Health and Safety**

17 **Subdivision 1 — The Commission**

18 **4. Commission established**

19 A body called the Commission for Occupational Health and Safety is  
20 established.

21 **5. Membership of Commission**

22 (1) The Commission consists of 13 members, of whom —

23 (a) one must be a person appointed by the Governor as the  
24 presiding member on the nomination of the Minister; and

25 (b) one must be the Commissioner; and

26 (c) 2 must be public service officers of whom —

27 (i) one must be nominated by the Minister; and

28 (ii) the other must be an officer of the department, as  
29 defined in the *Mines Safety and Inspection Act 1994*  
30 section 4(1) or in an Act that replaces that Act,  
31 nominated by the Minister to whom the  
32 administration of that Act is committed;

33 and

34 (d) 9 must be appointed by the Governor, of whom —

35 (i) 2 must be persons nominated for appointment by the  
36 body known as the Chamber of Commerce and  
37 Industry of Western Australia (Inc); and

- 1 (ii) 3 must be persons nominated for appointment by the  
2 body known as UnionsWA, and of whom one is a  
3 person who has knowledge of and experience in the  
4 mining industry in the State; and
- 5 (iii) 3 must be persons having knowledge of or experience  
6 in occupational health and safety who are nominated  
7 for appointment by the Minister after consultation  
8 between the Minister and the bodies referred to in  
9 subparagraphs (i) and (ii); and
- 10 (iv) one must be nominated by the Chamber of Minerals  
11 and Energy of Western Australia Inc.
- 12 (2) Where any of the bodies referred to in subclause (1)(d)(i), (ii) or (iv)  
13 fails to make a nomination within 60 days after being requested in  
14 writing by the Minister to do so the Governor may appoint any person  
15 who is suitably qualified, and any person so appointed must be taken  
16 to have been nominated under subclause (1)(d)(i), (ii) or (iv), as the  
17 case may be.
- 18 (3) A nomination for the purposes of subclause (1)(c) may be made from  
19 time to time, may be made by reference to the holder of a specified  
20 office and may be expressed to operate for a period or in such  
21 circumstances as are specified in the instrument of nomination.
- 22 (4) Each member of the Commission must be a natural person.
- 23 **6. Offence to use Commission's names or similar**
- 24 (1) A person other than the Commission must not use or operate under  
25 the name referred to in clause 4, "WorkSafe Western Australia", or  
26 any name that is so similar that it is likely to be misunderstood as  
27 referring to the Commission.
- 28 Penalty:
- 29 (a) in the case of an individual, a fine of \$10 000;  
30 (b) in the case of a body corporate, a fine of \$50 000.
- 31 (2) Nothing in subclause (1) —
- 32 (a) prevents the department from using or operating under a  
33 name as referred to in subclause (1) if that designation is  
34 given to it under the *Public Sector Management Act 1994*  
35 section 35; or  
36 (b) affects clause 2(4).
- 37 **7. Deputy presiding member**
- 38 The Minister must appoint one of the members of the Commission to  
39 be deputy presiding member of the Commission.

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**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.

**Subdivision 2 — Commission's functions and powers**

**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) this Act; and
  - (ii) 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
  - (iii) 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



- 1 (j) to collect, publish and disseminate information on work  
2 health and safety; and
- 3 (k) to formulate reporting procedures and monitoring  
4 arrangements for identification of workplace hazards, and  
5 incidents in which injury or death is likely to occur in a work  
6 situation; and
- 7 (l) to commission and sponsor research into work health and  
8 safety; and
- 9 (m) to perform other functions that are conferred on the  
10 Commission under this Act or any other Act.
- 11 (2) The Commission may issue for public review and comment on any  
12 regulations, codes of practice or guidelines with respect to which it  
13 proposes under subclause (1)(b) to make any recommendations to the  
14 Minister.
- 15 (3) The Commission must ensure, as far as is practicable, that any  
16 information it provides is in such language and form as are  
17 appropriate for the persons to whom the information is directed.
- 18 (4) The Minister must within 60 days after receiving from the  
19 Commission a recommendation under subclause (1) reply in writing  
20 to the Commission in relation to that recommendation.

21 **Subdivision 3 — Committees**

22 **10. Committees**

- 23 (1) The Commission may from time to time establish any committee.
- 24 (2) The Commission may —
- 25 (a) determine a committee's functions, membership and  
26 constitution; and
- 27 (b) subject to subclause (3), appoint a committee's members and  
28 other persons as it thinks fit to be committee members; and
- 29 (c) give directions with respect to a committee's functions and  
30 procedures.
- 31 (3) In appointing persons to be members of committees the  
32 Commission —
- 33 (a) must, as far as is practicable, appoint persons who represent  
34 duty holders under this Act, workers and persons having  
35 knowledge of or experience in work health and safety; and
- 36 (b) must have regard to the desirability of having a reasonable  
37 number of men and women, including persons of differing  
38 ethnic backgrounds and other groups with special needs.

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1 (4) A committee must comply with a direction given to it under  
2 subclause (2)(c).

3 (5) At the request of the Commission, a committee must report on the  
4 performance of its functions to the Commission, in accordance with  
5 the Commission's request.

6 **11. Provisions relating to committees**

7 (1) Each member of a committee must be a natural person.

8 (2) The Commission may remove a person from membership of a  
9 committee and may reconstitute or discharge a committee established  
10 by the Commission.

11 (3) A committee must ensure that an accurate record is kept and  
12 preserved of the proceedings of each meeting of the committee and of  
13 each resolution passed by the committee.

14 (4) Subject to this Act, a committee may determine its own procedures.

15 (5) A person with special knowledge or experience may be invited to act  
16 in an advisory capacity to a committee if the committee is of the  
17 opinion that the person will assist the committee in the performance  
18 of its functions and the Commission has approved the invitation.

19 **Subdivision 4 — Constitution and proceedings of the Commission**

20 **12. Term of office**

21 Subject to clause 30, an appointed member holds office for the term,  
22 not exceeding 3 years, that is specified in the member's instrument of  
23 appointment and is eligible for reappointment.

24 **13. Functions of deputy presiding member**

25 (1) The deputy presiding member must perform the functions of the  
26 presiding member when the presiding member is unable to do so by  
27 reason of illness, absence or other cause, or when the office of  
28 presiding member is vacant.

29 (2) No act or omission of the deputy presiding member acting as  
30 presiding member is to be questioned on the ground that the occasion  
31 for the deputy presiding member so acting had not arisen or had  
32 ceased.

33 **14. Deputy members**

34 (1) The Minister may appoint an eligible person to be a deputy of an  
35 appointed member and may terminate such an appointment at any  
36 time.

- 1       (2)   The provisions of clause 5 that apply to and in relation to the  
2       appointment of a member apply, with any necessary modification, to  
3       and in relation to the appointment of the deputy of that member.
- 4       (3)   A deputy of an appointed member may perform the functions of the  
5       member when the member is unable to do so by reason of illness,  
6       absence or other cause.
- 7       (4)   Despite anything in this Act, a deputy of an appointed member may  
8       continue to act as a member, after the occasion for so acting has  
9       ceased, for the purpose of completing any function.
- 10      (5)   A deputy of an appointed member, while acting as a member, has all  
11      the functions of and all the protection given to a member.
- 12      (6)   No act or omission of a person acting in place of another under this  
13      section is to be questioned on the ground that the occasion for so  
14      acting had not arisen or had ceased.
- 15      **15.       General procedure concerning meetings**
- 16      (1)   The presiding member may at any time and must when so requested  
17      by the Minister or by not less than 5 members of the Commission  
18      convene a meeting of the Commission to be held at a time and place  
19      to be determined by the presiding member.
- 20      (2)   The Commission must meet at least 4 times a year at intervals of not  
21      more than 3 months.
- 22      (3)   The presiding member must preside at all meetings of the  
23      Commission at which the presiding member is present.
- 24      (4)   If both the presiding member and deputy presiding member are absent  
25      from a meeting the members present are to appoint, by secret ballot,  
26      one of their number to preside, and that person has the powers of the  
27      presiding member under clause 16 in addition to any voting  
28      entitlements that the member otherwise has.
- 29      (5)   A quorum for a meeting of the Commission is 7 members.
- 30      (6)   The procedure for convening meetings of the Commission and the  
31      conduct of business at those meetings is, subject to this Act, to be as  
32      determined by the Commission.
- 33      **16.       Voting**
- 34      (1)   Subject to subclause (2), at a meeting of the Commission —
- 35          (a)   only members appointed under clause 5(1)(d) are entitled to  
36          vote; and
- 37          (b)   if any question requiring a vote arises the question must be  
38          decided by a majority of the votes of the members appointed

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**Schedule 2**      The WorkSafe Western Australia Commissioner and  
Commission for Occupational Health and Safety

**Division 3**      Commission for Occupational Health and Safety

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1                                      under clause 5(1)(d) if, and only if, not less than 6 of those  
2                                      members also constitute such majority.

3            (2)    If —

4                                      (a)    on a vote at a meeting of the Commission, a majority of the  
5                                      votes of members appointed under clause 5(1)(d) is  
6                                      constituted by 5 of those members; and

7                                      (b)    on a vote at a subsequent meeting of the Commission on the  
8                                      same question, a majority of the votes is constituted by 5 of  
9                                      those members,

10                                    the presiding member may, at that subsequent meeting, cast a vote to  
11                                    be included in the majority vote.

12            (3)    It is the duty of the Commission to work for the attainment of the  
13                                    objects of this Act by achieving a consensus, as far as this is  
14                                    practicable, among its members.

15    **17.      Holding meetings remotely**

16                                    The presence of a person at a meeting of the Commission need not be  
17                                    by attendance in person but may be by that person and each other  
18                                    person at the meeting being simultaneously in contact by telephone,  
19                                    or other means of instantaneous communication.

20    **18.      Resolution without meeting**

21                                    A resolution in writing signed by 7 members of the Commission,  
22                                    appointed under clause 5(1)(d), by letter, facsimile transmission,  
23                                    electronic mail or other written means has effect as if it had been  
24                                    passed at a meeting of the Commission.

25    **19.      Minutes**

26                                    The Commission must ensure that an accurate record is kept and  
27                                    preserved of the proceedings at each meeting of the Commission and  
28                                    of each resolution passed by the Commission.

29                                    **Subdivision 5 — Disclosure of interests etc.**

30    **20.      Term used: member**

31                                    In this Division —

32                                    **member** means a member of the Commission or a member of a  
33                                    committee, as the case may be.

34    **21.      Disclosure of interests**

35            (1)    A member who has a material personal interest in a matter being  
36                                    considered or about to be considered by the Commission or a  
37                                    committee must, as soon as possible after the relevant facts have come

1 to the member's knowledge, disclose the nature of the interest at a  
2 meeting of the Commission or the committee, as is relevant.

3 Penalty: a fine of \$10 000.

4 (2) A disclosure under subclause (1) must be recorded in the minutes of  
5 the meeting.

6 **22. Exclusion of interested member**

7 (1) A member who has a material personal interest in a matter that is  
8 being considered by the Commission or a committee —

9 (a) must not vote, whether at a meeting or otherwise, on the  
10 matter; and

11 (b) must not be present while the matter is being considered at a  
12 meeting.

13 (2) In subclause (1)(a) or (b) a reference to a matter also refers to a  
14 proposed resolution under clause 23 in respect of the matter, whether  
15 relating to that member or a different member.

16 **23. Commission or committee may resolve that clause 22 inapplicable**

17 Clause 22 does not apply if the Commission or a committee has at any  
18 time passed a resolution that —

19 (a) specifies the member, the interest and the matter; and

20 (b) states that the members voting for the resolution are satisfied  
21 that the interest should not disqualify the member from  
22 considering or voting on the matter.

23 **24. Voting where clause 22 applies**

24 (1) Despite clause 16, when the Commission is dealing with a matter in  
25 relation to which a member of the Commission is disqualified under  
26 clause 22, a question requiring a vote must be decided by a majority  
27 of the votes of the members appointed under clause 5(1)(d) if, and  
28 only if, not less than 5 of those members also constitute such majority.

29 (2) The Minister may deal with a matter to the extent that the  
30 Commission cannot deal with it because of subclause (1).

31 **25. Minister may declare clauses 22 and 24 inapplicable**

32 (1) The Minister may by writing declare that clause 22 or 24 does not  
33 apply in relation to a specified matter, either generally or for the  
34 purpose of dealing with particular proposed resolutions.

35 (2) The Minister must, within 14 sitting days after a declaration under  
36 subclause (1) is made, cause a copy of the declaration to be laid  
37 before each House of Parliament.

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**Schedule 2**      The WorkSafe Western Australia Commissioner and  
Commission for Occupational Health and Safety

**Division 4**      Matters relevant to the Commissioner and the Commission  
**cl. 26**

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**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.

- 1       (2)   The Commission may, by arrangement with the department, make use  
2       of any of the department's facilities.
- 3       (3)   An arrangement under subclause (1) or (2) must be made on the terms  
4       that are agreed to by the parties.
- 5   **30.       Vacation of office by Commissioner, appointed member**
- 6       (1)   The Commissioner or an appointed member may resign from office  
7       by notice in writing given to the Minister.
- 8       (2)   The Commissioner or an appointed member (the *person*) may be  
9       removed from office by the Minister —
- 10           (a)   for mental or physical disability, incompetence, neglect of  
11           duty or misconduct that impairs the performance of the  
12           person's duties; or
- 13           (b)   if the person is, according to the *Interpretation Act 1984*  
14           section 13D, a bankrupt or a person whose affairs are under  
15           insolvency laws; or
- 16           (c)   if the person is absent without leave of the Commission from  
17           3 consecutive meetings of the Commission of which the  
18           person has had notice; or
- 19           (d)   for any other act or omission that in the opinion of the  
20           Minister may cause prejudice or injury to the Commission.
- 21       (3)   An appointed member who is appointed under clause 5(1)(d)(i), (ii)  
22       or (iv) must be removed from office by the Minister if the person's  
23       nomination is revoked.

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## **Schedule 3 — Regulation making powers**

[s. 276]

### **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



- 1                    (c) matters relating to health and safety in relation to  
2                    accommodation provided to workers.

3      **5.       Hazards and risks**

4                    Matters relating to hazards and risks including —

- 5                    (a) the prescribing of standards relating to the use of or exposure  
6                    to any physical, biological, chemical or psychological hazard;  
7                    and  
8                    (b) matters relating to safety cases, safety management plans and  
9                    safety management systems (however described); and  
10                   (c) matters relating to measures to control risks.

11      **6.       Records and notices**

12            6.1    The keeping and availability of records of health and safety  
13            representatives.

14            6.2    The keeping of records in relation to incidents.

15            6.3    The keeping of records of specified activities, matters or things to be  
16            kept by specified persons.

17            6.4    The giving of notice of or information about specified activities,  
18            matters or things to the regulator, an inspector or other specified  
19            person.

20      **7.       Authorisations**

21            7.1    Matters relating to authorisations (including licences, registrations and  
22            permits) and qualifications, and experience for the purposes of Part 4  
23            or the regulations including providing for —

- 24                   (a) applications for the grant, issue, renewal, variation,  
25                   suspension and cancellation of authorisations, including the  
26                   minimum age to be eligible for an authorisation; and  
27                   (b) the evidence and information to be provided in relation to  
28                   applications including the provision of statutory declarations;  
29                   and  
30                   (c) exemptions; and  
31                   (d) variations of authorisations by the regulator whether on  
32                   application or otherwise; and  
33                   (e) authorisation of persons as trainers and assessors; and  
34                   (f) examination of applicants for authorisations; and  
35                   (g) conditions of authorisations; and  
36                   (h) fees for applications for the grant, issue, renewal and  
37                   variation of authorisations.

1        7.2    The recognition of authorisations under corresponding WHS laws and  
2           exceptions to recognition.

3        7.3    The sharing of information with corresponding regulators relating to  
4           the grant, issue, renewal, variation, suspension or cancellation of  
5           authorisations.

6        **8.        Work groups**

7           Matters relating to work groups and variation of work groups and  
8           agreements or variations of agreements relating to the determination  
9           of work groups.

10       **9.        Health and safety committees and health and safety**  
11           **representatives**

12           Matters relating to health and safety committees and health and safety  
13           representatives.

14       **10.       Issue resolution**

15           Matters relating to issue resolution including —

- 16           (a)    the minimum requirements for an agreed procedure for  
17           resolving an issue; and  
18           (b)    the requirements for a default issue resolution procedure  
19           where there is no agreed procedure.

20       **11.       WHS entry permits**

21           Note: Item 11 is not required in WA.

22       **12.       Identity cards**

23           Matters relating to identity cards.

24       **13.       Forfeiture**

25           Matters relating to —

- 26           (a)    costs of forfeiture and disposal of forfeited things; and  
27           (b)    disposal of seized things and forfeited things.

28       **14.       Review of decisions**

29           Matters relating to the review of decisions under the regulations  
30           including —

- 31           (a)    prescribing decisions as reviewable decisions for the purposes  
32           of Part 12 or for the purposes of the regulations; and  
33           (b)    prescribing procedures for internal and external review of  
34           decisions under the regulations, subject to section 276(5); and  
35           (c)    conferring jurisdiction on the Tribunal to conduct reviews of  
36           decisions under the regulations.

## **Schedule 4 — Work Health and Safety Tribunal**

[s. 4]

### **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

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1 determination of part heard proceedings after the commissioner  
2 referred to in subclause (1)(a) has resumed the commissioner's duties.

3 (4) A person who is a commissioner may, even though the person's  
4 designation has ceased to have effect under the *Industrial Relations*  
5 *Act 1979* section 16(2B), continue and complete the hearing and  
6 determination of part heard proceedings after another commissioner  
7 has been designated under section 16(2A) of that Act.

8 **4. Tribunal's review powers**

9 (1) A person who applies under section 229(1) for a review of a decision  
10 may apply for a stay of the operation of the decision and the Tribunal  
11 may, on the conditions that the Tribunal determines, order that the  
12 operation of the decision be stayed wholly or in part pending the  
13 determination of the review.

14 (2) In determining an application made under section 229(1) for review of  
15 a decision the Tribunal may —

- 16 (a) confirm or vary the decision; or  
17 (b) set aside the decision and substitute another decision that the  
18 Tribunal considers appropriate.

19 **5. Practice, procedure and appeals**

20 (1) The provisions of the *Industrial Relations Act 1979* sections 22B,  
21 26(1), (2) and (3), 27, 28, 31(1), (2), (3) and (5), 33, 34(1), (3) and  
22 (4), 36 and 49 that apply to and in relation to the exercise of the  
23 jurisdiction of the Commission constituted by a commissioner apply  
24 to the exercise of the jurisdiction conferred by clause 2 —

- 25 (a) with such modifications as are prescribed under section 113  
26 of that Act; and  
27 (b) with such other modifications as may be necessary or  
28 appropriate.

29 (2) For the purposes of subclause (1), the *Industrial Relations Act 1979*  
30 section 31(1) applies as if paragraph (c) were deleted and the  
31 following paragraph were inserted:

- 32  
33 (c) by a legal practitioner.  
34

35 **6. Hearing certain claims and matters together**

36 (1) Subclauses (2) and (3) apply if —

- 37 (a) under the *Industrial Relations Act 1979*, an employee has  
38 referred to the Commission a claim that the employee has  
39 been harshly, oppressively or unfairly dismissed from  
40 employment; and

- 1                    (b) a matter —
- 2                            (i) involving the same parties; and
- 3                            (ii) arising out of the same circumstances,
- 4                    has been referred for determination under the jurisdiction conferred
- 5                    by clause 2.
- 6            (2) An employee referred to in subclause (1) may in writing request that a
- 7                    claim referred to in subclause (1)(a) be heard and determined by the
- 8                    commissioner who is hearing and determining the matter referred to
- 9                    in subclause (1)(b).
- 10           (3) If such a request is made, the Chief Commissioner, in exercising the
- 11                    powers conferred by the *Industrial Relations Act 1979* section 16,
- 12                    must allocate the hearing and determination of the claim and the
- 13                    matter accordingly.
- 14           (4) If —
- 15                    (a) an employee has referred to the Commission a claim of the
- 16                            kind described in the *Industrial Relations Act 1979*
- 17                            section 29(1)(b)(ii); and
- 18                    (b) the claim involves the same employer and arises out of the
- 19                            same circumstances as a matter that has been referred for
- 20                            determination under the jurisdiction conferred by clause 2,
- 21                    nothing in this section prevents the Chief Commissioner exercising
- 22                    the powers conferred by section 16 of that Act so that the claim is
- 23                    heard and determined by the commissioner who is hearing and
- 24                    determining the matter referred to in paragraph (b).

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**Schedule 5 — Health and Safety Magistrates**

[s. 4]

**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.

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**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).

**Work Health and Safety Bill 2014**

**Schedule 7** Repeals, consequential amendments to other Acts

**Division 1** Repeal of occupational safety and health legislation

**cl. 1**

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**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

**Work Health and Safety Bill 2014**

**Schedule 7** Repeals, consequential amendments to other Acts

**Division 4** Fair Trading Act 2010 amended

**cl. 7**

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- 1 (iii) is necessary for the administration or  
2 enforcement of another Act or law, if  
3 the disclosure, access or use is  
4 necessary to lessen or prevent a serious  
5 risk to public health or safety;  
6 or  
7 (d) that is required by any court, tribunal, authority  
8 or person having lawful authority to require the  
9 production of documents or the answering of  
10 questions; or  
11 (e) that is required or authorised under a law.  
12

13 **7. Schedule 1 amended**

14 In Schedule 1 after clause 10(6) insert:  
15

- 16 (7A) The sharing of information with a regulator as defined in the  
17 *Work Health and Safety Act 2014* section 4 relating to the  
18 grant, issue, renewal, variation, suspension or cancellation  
19 of authorisations under that Act.  
20

21 **Division 4 — Fair Trading Act 2010 amended**

22 **8. Act amended**

23 This Division amends the *Fair Trading Act 2010*.

24 **9. Schedule 1 amended**

- 25 (1) In Schedule 1 delete:  
26 *Occupational Safety and Health Act 1984*  
27 *Veterinary Chemical Control and Animal Feeding Stuffs Act 1976*.  
28 (2) In Schedule 1 insert in alphabetical order:  
29  
30 *Veterinary Chemical Control and Animal Feeding Stuffs Act 1976*  
31 *Work Health and Safety Act 2014*  
32

33 **Division 5 — Health Act 1911 amended**

34 **10. Act amended**

35 This Division amends the *Health Act 1911*.

1     **11.     Section 246B amended**

2             In section 246B(2)(f) delete “within the meaning of the  
3             *Occupational Safety and Health Act 1984*,” and insert:

4  
5                             of the Public Service of the State principally  
6                             assisting the Minister in the administration of  
7                             the *Work Health and Safety Act 2014*,  
8

9             **Division 6 — *Industrial Relations Act 1979* amended**

10    **12.     Act amended**

11             This Division amends the *Industrial Relations Act 1979*.

12    **13.     Section 7 amended**

13             In section 7(3):

14                 (a)   delete “section 51G of the *Occupational Safety and*  
15                         *Health Act 1984*” and insert:

16  
17                             the *Work Health and Safety Act 2014*  
18                             Schedule 4 clause 2  
19

20                 (b)   delete paragraph (a) and insert:

21  
22                             (a)   the *Work Health and Safety Act 2014*  
23                             Schedule 4 clause 2(1); or  
24

25    **14.     Section 8 amended**

26             In section 8(3A):

27                 (a)   in paragraph (a) delete “occupational safety and health;  
28                         and” and insert:

29  
30                             work health and safety; and  
31

32                 (b)   in paragraph (b) delete “*Occupational Safety and Health*  
33                         *Act 1984*,” and insert:

34  
35                             *Work Health and Safety Act 2014*,  
36

**Work Health and Safety Bill 2014**

**Schedule 7** Repeals, consequential amendments to other Acts

**Division 7** Local Government Act 1995 amended

**cl. 15**

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1 **15. Section 16 amended**

2 (1) In section 16(2A) delete “*Occupational Safety and Health*  
3 *Act 1984* section 51G.” and insert:

4  
5 *Work Health and Safety Act 2014* Schedule 4 clause 2.  
6

7 (2) In section 16(2C) delete “*Occupational Safety and Health*  
8 *Act 1984* section 51G” and insert:

9  
10 *Work Health and Safety Act 2014* Schedule 4 clause 2  
11

12 (3) Delete section 16(2D) and (2E).

13 **16. Section 49I amended**

14 In section 49I(1) delete “*Occupational Safety and Health*  
15 *Act 1984*,” and insert:

16  
17 *Work Health and Safety Act 2014*,  
18

19 **17. Section 113 amended**

20 Delete section 113(1)(d)(ii)(I) and insert:

21  
22 (I) the *Work Health and Safety*  
23 *Act 2014*; and  
24

25 **Division 7 — Local Government Act 1995 amended**

26 **18. Act amended**

27 This Division amends the *Local Government Act 1995*.

28 **19. Section 5.40 amended**

29 In section 5.40(e) delete “*Occupational Safety and Health*  
30 *Act 1984*; and” and insert:

31  
32 *Work Health and Safety Act 2014*; and  
33

**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:

*Work Health and Safety Act 2014* section 4.

(2) In section 6A(2):

(a) delete “*Occupational Safety and Health Act 1984*” and insert:

*Work Health and Safety Act 2014*

**Work Health and Safety Bill 2014**

**Schedule 7** Repeals, consequential amendments to other Acts

**Division 8** Mines Safety and Inspection Act 1994 amended

**cl. 23**

---

- 1 (b) delete “*Occupational Safety and Health Act 1984*,” and  
2 insert:

3

4 *Work Health and Safety Act 2014*,

5

- 6 (3) In section 6A(3) delete “*Occupational Safety and Health Act 1984*  
7 does not include any provision of Part II of that Act.” and insert:

8

9 *Work Health and Safety Act 2014* does not include any  
10 provision of Schedule 2 of that Act.

11

- 12 (4) In section 6A(4) delete “*Occupational Safety and Health*  
13 *Act 1984*” and insert:

14

15 *Work Health and Safety Act 2014*

16

- 17 (5) After section 6A(5) insert:

18

- 19 (6) On and from the day on which the *Work Health and*  
20 *Safety Act 2014* Schedule 7 clause 22 comes into  
21 operation, each reference in an instrument under this  
22 section that was in effect immediately before that day  
23 to the *Occupational Safety and Health Act 1984* must  
24 be taken to be a reference to the *Work Health and*  
25 *Safety Act 2014*.

26

27 Note: The heading to amended section 6A is to read:

28 **Application of this Act to workplace under *Work Health and***  
29 ***Safety Act 2014***

30 **23. Part 3 Division 1A inserted**

31 At the beginning of Part 3 insert:

32

33 **Division 1A — Mining Industry Advisory Committee**

34 **16A. Mining Industry Advisory Committee**

- 35 (1) In this section —

36 *commencement day* means the commencement of the  
37 *Work Health and Safety Act 2014* Schedule 7 clause 1;

- 1           **Commission** means the Commission for Occupational  
2           Health and Safety established under the *Work Health*  
3           *and Safety Act 2014* Schedule 2;
- 4           **committee** means the committee referred to in  
5           subsection (2);
- 6           **mining industry** means the mining industry in the  
7           State;
- 8           **Ministers** means these Ministers acting jointly —
- 9           (a)   the Minister to whom the administration of this  
10           Act is committed (the **Minister for Mines**); and
- 11           (b)   the Minister to whom the administration of the  
12           *Work Health and Safety Act 2014* is committed.
- 13           (2)   The advisory committee called the Mining Industry  
14           Advisory Committee that was in effect under the  
15           *Occupational Safety and Health Act 1984* immediately  
16           before commencement day is continued by and in  
17           accordance with this section.
- 18           (3)   A person who, immediately before commencement  
19           day, was a member of the Mining Industry Advisory  
20           Committee that was in effect under the *Occupational*  
21           *Safety and Health Act 1984* is, on and from that day, to  
22           be taken to be a member of the committee continued by  
23           subsection (2) for the balance of the person's term of  
24           appointment, and is eligible for reappointment under  
25           this Act.
- 26           (4)   The functions of the committee are —
- 27           (a)   to advise and make recommendations to the  
28           Ministers and the Commission on health and  
29           safety matters concerning the mining industry;  
30           and
- 31           (b)   to liaise with the Commission to coordinate  
32           activities on related functions and to maintain  
33           parallel standards,
- 34           and in particular, but without limiting the generality of  
35           paragraphs (a) and (b) —
- 36           (c)   to inquire into and report to the Ministers  
37           regarding any matter referred to it by the  
38           Ministers relating to health and safety in the  
39           mining industry; and

**Work Health and Safety Bill 2014**

**Schedule 7** Repeals, consequential amendments to other Acts

**Division 8** Mines Safety and Inspection Act 1994 amended

**cl. 24**

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- 1 (d) to make recommendations to the Minister for  
2 Mines regarding the formulation, amendment  
3 or repeal of laws relating to work health and  
4 safety for which that Minister is responsible;  
5 and
- 6 (e) to prepare or recommend the adoption of codes  
7 of practice, guidelines, standards, specifications  
8 or other forms of guidance for the purpose of  
9 assisting employers, self-employed persons,  
10 employees, manufacturers or other persons to  
11 maintain appropriate standards of work health  
12 and safety in the mining industry; and
- 13 (f) to provide advice on —  
14 (i) education and publications; and  
15 (ii) training and training courses,  
16 with respect to work health and safety in the  
17 mining industry.
- 18 (5) The chairperson of the committee is to be the officer of  
19 the department nominated by the Minister for Mines to  
20 be a member of the Commission under the *Work*  
21 *Health and Safety Act 2014* Schedule 2  
22 clause 5(1)(c)(ii).
- 23 (6) Subject to subsection (4), the Ministers —  
24 (a) are to appoint the members of; and  
25 (b) may alter or reconstitute,  
26 the committee.
- 27 (7) The members of the committee are entitled to be paid  
28 such remuneration and travelling and other allowances  
29 as may be determined by the Ministers on the  
30 recommendation of the Public Sector Commissioner.
- 31 (8) Subject to any direction given to it by the Commission,  
32 the committee must determine its own procedures.  
33
- 34 **24. Section 16 amended**  
35 After section 16(7) insert:  
36
- 37 (8) The State mining engineer and the State coal mining  
38 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.

**Work Health and Safety Bill 2014**

**Schedule 7** Repeals, consequential amendments to other Acts

**Division 8** Mines Safety and Inspection Act 1994 amended

**cl. 28**

---

- 1       (2) In section 102(3):  
2               (a) delete paragraph (a) and insert:  
3  
4                       (a) the *Work Health and Safety Act 2014*  
5                       Schedule 4; or  
6  
7               (b) in paragraph (b) delete “Part,” and insert:  
8  
9                       Schedule,  
10  
11       (3) Delete section 102(4).
- 12   **28. Section 102AAA inserted**  
13       At the end of Part 9 Division 3 insert:  
14  
15       **102AAA. Conciliation**  
16               (1) This section applies where a matter has been referred to  
17               the Tribunal for determination under section 55(6),  
18               55A(4), 56(11), 62(1), 67F or 74(2) of this Act.  
19               (2) If the Tribunal considers that the issues involved may  
20               be resolved by conciliation —  
21                       (a) the Tribunal may endeavour to assist the parties  
22                       to reach an agreement on those issues; and  
23                       (b) for that purpose the Tribunal may —  
24                               (i) arrange conferences of the parties or  
25                               their representatives presided over by  
26                               the Tribunal; and  
27                               (ii) arrange for the parties or their  
28                               representatives to confer among  
29                               themselves at a conference at which the  
30                               Tribunal is not present; and  
31                               (iii) otherwise encourage the parties to  
32                               exchange or divulge attitudes or  
33                               information that in the opinion of the  
34                               Tribunal would assist in the resolution  
35                               of the issues.  
36               (3) The Tribunal may give any direction or make any order  
37               or declaration that the Tribunal thinks expedient for the  
38               purposes of this section, and any such direction, order

- 1                   or declaration is enforceable as if it were given or made  
2                   under the *Industrial Relations Act 1979* section 32.
- 3           (4)   If the Tribunal gives or makes a direction, order or  
4                   declaration under subsection (3) the Tribunal must —
- 5                   (a)   if it is given or made orally, reduce the  
6                           direction, order or declaration to writing as  
7                           soon as is practicable; and
- 8                   (b)   make the text of the direction, order or  
9                           declaration available to the parties as soon as is  
10                          practicable after it is given or made.
- 11          (5)   If the Tribunal —
- 12                   (a)   takes action under subsection (2)(a); and
- 13                   (b)   is satisfied that the parties have reached  
14                          agreement on all of the issues involved,
- 15                   the Tribunal may, with the consent of the parties, make  
16                   a determination for the purposes of section 102 in  
17                   terms of that agreement.
- 18          (6)   If the Tribunal —
- 19                   (a)   takes action under subsection (2)(a); and
- 20                   (b)   subsection (5)(b) does not apply,
- 21                   the Tribunal must determine the matter for the  
22                   purposes of section 102.
- 23          (7)   In making a determination mentioned in subsection (6)  
24                   the Tribunal must endeavour to ensure that the matter  
25                   is resolved —
- 26                   (a)   taking into account any agreement reached by  
27                           the parties on any particular issue; and
- 28                   (b)   subject to paragraph (a), on terms that could  
29                           reasonably have been agreed between the  
30                           parties in the first instance or by conciliation.  
31

**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

- 1 (iii) is necessary for the administration or  
2 enforcement of another Act or law, if  
3 the disclosure, access or use is  
4 necessary to lessen or prevent a serious  
5 risk to public health or safety;  
6 or  
7 (d) that is required by any court, tribunal, authority  
8 or person having lawful authority to require the  
9 production of documents or the answering of  
10 questions; or  
11 (e) that is required or authorised under a law.  
12 (4) Nothing in this section affects the operation of  
13 section 26.  
14

15 **30. Section 104 amended**

16 After section 104(1)(zm) insert:  
17

- 18 (zna) the sharing of information with a regulator as  
19 defined in the *Work Health and Safety Act 2014*  
20 section 4 relating to the grant, issue, renewal,  
21 variation, suspension or cancellation of  
22 authorisations under that Act;  
23

24 **Division 9 — Petroleum (Submerged Lands) Act 1982 amended**

25 **31. Act amended**

26 This Division amends the *Petroleum (Submerged Lands) Act 1982*.

27 **32. Schedule 5 amended**

- 28 (1) In Schedule 5 clause 3 in the definition of **Tribunal** delete  
29 “*Occupational Safety and Health Act 1984* section 51G(2);” and  
30 insert:  
31

32 *Work Health and Safety Act 2014* Schedule 4 clause 2(2);  
33

**Work Health and Safety Bill 2014**

**Schedule 7** Repeals, consequential amendments to other Acts

**Division 9** Petroleum (Submerged Lands) Act 1982 amended

**cl. 32**

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- 1       (2) In Schedule 5 clause 70(2):
- 2           (a) in paragraph (c) delete “Part VIB of the *Occupational Safety*
- 3               *and Health Act 1984*; or” and insert:
- 4
- 5               the *Work Health and Safety Act 2014* Schedule 4; or
- 6
- 7           (b) in paragraph (d) delete “Part.” and insert:
- 8
- 9               Schedule.
- 10
- 11       (3) In Schedule 5 clause 70(3):
- 12           (a) delete paragraph (a) and insert:
- 13
- 14               (a) the *Work Health and Safety Act 2014* Schedule 4;
- 15               and
- 16
- 17           (b) in paragraph (b) delete “Part,” and insert:
- 18
- 19               Schedule,
- 20
- 21       (4) Delete Schedule 5 clause 70(4).
- 22       (5) At the end of Schedule 5 Division 5 insert:
- 23
- 24       **71A. Conciliation**
- 25           (1) This clause applies where a matter has been referred to the
- 26               Tribunal for determination under clause 67 in relation to a
- 27               decision made under clause 22.
- 28           (2) If the Tribunal considers that the issues involved may be
- 29               resolved by conciliation —
- 30               (a) the Tribunal may endeavour to assist the parties to
- 31               reach an agreement on those issues; and
- 32               (b) for that purpose the Tribunal may —
- 33                   (i) arrange conferences of the parties or their
- 34                   representatives presided over by the
- 35                   Tribunal; and
- 36                   (ii) arrange for the parties or their
- 37                   representatives to confer among themselves
- 38                   at a conference at which the Tribunal is not
- 39                   present; and

- 
- 1 (iii) otherwise encourage the parties to exchange  
2 or divulge attitudes or information that in  
3 the opinion of the Tribunal would assist in  
4 the resolution of the issues.
- 5 (3) The Tribunal may give any direction or make any order or  
6 declaration that the Tribunal thinks expedient for the  
7 purposes of this clause, and any such direction, order or  
8 declaration is enforceable as if it were given or made under  
9 the *Industrial Relations Act 1979* section 32.
- 10 (4) If the Tribunal gives or makes a direction, order or  
11 declaration under subclause (3) the Tribunal must —
- 12 (a) if it is given or made orally, reduce the direction,  
13 order or declaration to writing as soon as is  
14 practicable; and
- 15 (b) make the text of the direction, order or declaration  
16 available to the parties as soon as is practicable after  
17 it is given or made.
- 18 (5) If the Tribunal —
- 19 (a) takes action under subclause (2)(a); and  
20 (b) is satisfied that the parties have reached agreement  
21 on all of the issues involved,
- 22 the Tribunal may, with the consent of the parties, make a  
23 determination for the purposes of clause 70 in terms of that  
24 agreement.
- 25 (6) If the Tribunal —
- 26 (a) takes action under subclause (2)(a); and  
27 (b) subclause (5)(b) does not apply,
- 28 the Tribunal must determine the matter for the purposes of  
29 clause 70.
- 30 (7) In making a determination mentioned in subclause (6) the  
31 Tribunal must endeavour to ensure that the matter is  
32 resolved —
- 33 (a) taking into account any agreement reached by the  
34 parties on any particular issue; and
- 35 (b) subject to paragraph (a), on terms that could  
36 reasonably have been agreed between the parties in  
37 the first instance or by conciliation.  
38

**Schedule 7** Repeals, consequential amendments to other Acts  
**Division 10** Petroleum and Geothermal Energy Resources Act 1967  
amended

**Division 10 — *Petroleum and Geothermal Energy Resources***  
***Act 1967 amended***

This Division amends the *Petroleum and Geothermal Energy Resources Act 1967*.

(1) In Schedule 1 clause 3 in the definition of ***Tribunal*** delete “*Occupational Safety and Health Act 1984* section 51G(2);” and insert:

(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

**Work Health and Safety Bill 2014**

**Schedule 7** Repeals, consequential amendments to other Acts

**Division 11** Petroleum Pipelines Act 1969 amended

**cl. 35**

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1 (b) is satisfied that the parties have reached agreement  
2 on all of the issues involved,  
3 the Tribunal may, with the consent of the parties, make a  
4 determination for the purposes of clause 69 in terms of that  
5 agreement.

6 (6) If the Tribunal —  
7 (a) takes action under subclause (2)(a); and  
8 (b) subclause (5)(b) does not apply,  
9 the Tribunal must determine the matter for the purposes of  
10 clause 69.

11 (7) In making a determination mentioned in subclause (6) the  
12 Tribunal must endeavour to ensure that the matter is  
13 resolved —  
14 (a) taking into account any agreement reached by the  
15 parties on any particular issue; and  
16 (b) subject to paragraph (a), on terms that could  
17 reasonably have been agreed between the parties in  
18 the first instance or by conciliation.  
19

20 **Division 11 — *Petroleum Pipelines Act 1969* amended**

21 **35. Act amended**

22 This Division amends the *Petroleum Pipelines Act 1969*.

23 **36. Schedule 1 amended**

24 (1) In Schedule 1 clause 3 in the definition of ***Tribunal*** delete  
25 “*Occupational Safety and Health Act 1984* section 51G(2);” and  
26 insert:  
27

28 *Work Health and Safety Act 2014* Schedule 4 clause 2(2);  
29

30 (2) In Schedule 1 clause 69(2):  
31 (a) in paragraph (c) delete “Part VIB of the *Occupational Safety*  
32 *and Health Act 1984*; or” and insert:  
33

34 the *Work Health and Safety Act 2014* Schedule 4; or  
35

36 (b) in paragraph (d) delete “Part.” and insert:  
37

38 Schedule.  
39

- 1       (3) In Schedule 1 clause 69(3):  
2           (a) delete paragraph (a) and insert:  
3  
4               (a) the *Work Health and Safety Act 2014* Schedule 4;  
5               and  
6  
7           (b) in paragraph (b) delete “Part,” and insert:  
8  
9               Schedule,  
10  
11       (4) Delete Schedule 1 clause 69(4).  
12       (5) At the end of Schedule 1 Division 5 insert:  
13  
14       **70A. Conciliation**  
15           (1) This clause applies where a matter has been referred to the  
16           Tribunal for determination under clause 66 in relation to a  
17           decision made under clause 21.  
18           (2) If the Tribunal considers that the issues involved may be  
19           resolved by conciliation —  
20               (a) the Tribunal may endeavour to assist the parties to  
21               reach an agreement on those issues; and  
22               (b) for that purpose the Tribunal may —  
23                   (i) arrange conferences of the parties or their  
24                   representatives presided over by the  
25                   Tribunal; and  
26                   (ii) arrange for the parties or their  
27                   representatives to confer among themselves  
28                   at a conference at which the Tribunal is not  
29                   present; and  
30                   (iii) otherwise encourage the parties to exchange  
31                   or divulge attitudes or information that in  
32                   the opinion of the Tribunal would assist in  
33                   the resolution of the issues.  
34           (3) The Tribunal may give any direction or make any order or  
35           declaration that the Tribunal thinks expedient for the  
36           purposes of this clause, and any such direction, order or  
37           declaration is enforceable as if it were given or made under  
38           the *Industrial Relations Act 1979* section 32.

**Work Health and Safety Bill 2014**

**Schedule 7** Repeals, consequential amendments to other Acts

**Division 12** Public Sector Management Act 1994 amended

**cl. 37**

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- 1 (4) If the Tribunal gives or makes a direction, order or  
2 declaration under subclause (3) the Tribunal must —
- 3 (a) if it is given or made orally, reduce the direction,  
4 order or declaration to writing as soon as is  
5 practicable; and
- 6 (b) make the text of the direction, order or declaration  
7 available to the parties as soon as is practicable after  
8 it is given or made.
- 9 (5) If the Tribunal —
- 10 (a) takes action under subclause (2)(a); and  
11 (b) is satisfied that the parties have reached agreement  
12 on all of the issues involved,
- 13 the Tribunal may, with the consent of the parties, make a  
14 determination for the purposes of clause 69 in terms of that  
15 agreement.
- 16 (6) If the Tribunal —
- 17 (a) takes action under subclause (2)(a); and  
18 (b) subclause (5)(b) does not apply,
- 19 the Tribunal must determine the matter for the purposes of  
20 clause 69.
- 21 (7) In making a determination mentioned in subclause (6) the  
22 Tribunal must endeavour to ensure that the matter is  
23 resolved —
- 24 (a) taking into account any agreement reached by the  
25 parties on any particular issue; and  
26 (b) subject to paragraph (a), on terms that could  
27 reasonably have been agreed between the parties in  
28 the first instance or by conciliation.  
29

30 **Division 12 — *Public Sector Management Act 1994* amended**

31 **37. Act amended**

32 This Division amends the *Public Sector Management Act 1994*.

33 **38. Section 8 amended**

34 In section 8(1)(e) delete “*Occupational Safety and Health*  
35 *Act 1984*.” and insert:

36  
37 *Work Health and Safety Act 2014*.  
38

1     **39.     Section 29 amended**

2             In section 29(1)(m) delete “*Occupational Safety and Health*  
3             *Act 1984*,” and insert:

4  
5             *Work Health and Safety Act 2014*,

6  
7                     **Division 13 — *Rail Safety Act 2010* amended**

8     **40.     Act amended**

9             This Division amends the *Rail Safety Act 2010*.

10    **41.     Section 59 amended**

11            In section 59(2)(b) delete “a safety and health representative as  
12            defined in the *Occupational Safety and Health Act 1984*  
13            section 3(1)” and insert:

14  
15                               a health and safety representative as defined in  
16                               the *Work Health and Safety Act 2014* section 4

17  
18    **42.     Various references to *Occupational Safety and Health Act 1984***  
19            **amended**

20            In the provisions listed in the Table:

21               (a) delete “***Occupational Safety and Health***  
22               ***Act 1984***” and insert:

23  
24                               ***Work Health and Safety Act 2014***

25  
26               (b) delete “*Occupational Safety and Health Act 1984*” (each  
27               occurrence) and insert:

28  
29                               *Work Health and Safety Act 2014*

30  
31                                               **Table**

Pt. 2 heading	s. 10
s. 11	s. 12

**Work Health and Safety Bill 2014**

**Schedule 7** Repeals, consequential amendments to other Acts

**Division 14** Workers' Compensation and Injury Management Act 1981 amended

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s. 13	s. 14(b)
s. 215(2)(e)	

Note: The headings to the amended sections listed in the Table are to read as set out in the Table.

**Table**

Amended section	Section heading
s. 10	<b>Act adds to protection provided by <i>Work Health and Safety Act 2014</i></b>
s. 11	<b><i>Work Health and Safety Act 2014</i> prevails</b>
s. 12	<b>Compliance with this Act is no defence to prosecution under <i>Work Health and Safety Act 2014</i></b>
s. 13	<b>Relationship between duties under this Act and <i>Work Health and Safety Act 2014</i></b>

**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:

*Work Health and Safety Act 2014*.

- (2) In section 48(3) delete "*Occupational Safety and Health Act 1984*" and insert:

*Work Health and Safety Act 2014*

1   **45.       Section 95 amended**

2               In section 95(1)(b) delete “*Occupational Safety and Health*  
3               *Act 1984*; and” and insert:

4  
5               *Work Health and Safety Act 2014*; and  
6

7   **46.       Section 100B amended**

8               In section 100B(1) delete “*Occupational Safety and Health*  
9               *Act 1984*” and insert:

10  
11              *Work Health and Safety Act 2014*  
12

**cl. 1**

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1       **Schedule 8 — Transitional provisions arising from the**  
2       **enactment of the Work Health and Safety Act 2014**

3       **1.       Terms used**

4               In this Schedule —

5               *commencement day* means the day on which Schedule 7 clause 1(1)  
6               comes into operation;

7               *repealed Act* means the *Occupational Safety and Health Act 1984* as  
8               in force immediately before commencement day.

9       **2.       Interpretation Act 1984 not affected**

10              Except where the contrary intention appears, the provisions of this  
11              Schedule do not prejudice or affect the application of the  
12              *Interpretation Act 1984* to and in relation to the repeals effected by  
13              Schedule 7 clause 1.

14       **3.       Regulations for transitional matters**

15              The regulations may contain provisions that are necessary or  
16              convenient for dealing with matters concerning the transition from the  
17              provisions of any written law applying before commencement day to  
18              the provisions of this Act, including regulations made under this Act,  
19              applying after commencement day.

20       **4.       WorkSafe Western Australia Commissioner**

21              (1)   The person who, immediately before commencement day, was the  
22              WorkSafe Western Australia Commissioner under the repealed Act is,  
23              on and from commencement day, to be taken to be the WorkSafe  
24              Western Australia Commissioner appointed under Schedule 2 clause 2  
25              on the same terms and conditions, including as to remuneration, as  
26              those which applied to the person immediately before commencement  
27              day.

28              (2)   A person to whom subclause (1) applies retains all existing and  
29              accruing rights and benefits as if the appointment under this Act were  
30              a continuation of the person's appointment under the repealed Act  
31              immediately before commencement day.

32       **5.       Commission**

33              (1)   The Commission for Occupational Safety and Health under the  
34              repealed Act is, on and from commencement day, to be taken to be  
35              the Commission for Occupational Health and Safety established under  
36              Schedule 2 clause 4.

37              (2)   A person who, immediately before commencement day, was a  
38              member of the Commission for Occupational Safety and Health under



1           the repealed Act is, on and from that day, to be taken to be the  
2           member of the Commission for Occupational Health and Safety  
3           established under Schedule 2 clause 4, in the position that most  
4           closely corresponds to the appointment or nomination of that person  
5           as a member under the repealed Act, for the balance of the person's  
6           term under the repealed Act.

7       **6.       Advisory committees**

8           (1)   An advisory committee appointed under section 15 of the repealed  
9           Act that is in effect immediately before commencement day is, on and  
10          from that day, to be taken to be a committee established under  
11          Schedule 2 clause 10.

12          (2)   A person who, immediately before commencement day, was a  
13          member of an advisory committee appointed under section 15 of the  
14          repealed Act is, on and from that day, to be taken to be a member of a  
15          committee established under Schedule 2 clause 10 for the balance of  
16          the person's term under the repealed Act.

17       **7.       Tribunal commissioners**

18          (1)   The commissioner who, immediately before commencement day, was  
19          the commissioner designated under the *Industrial Relations Act 1979*  
20          section 16(2A) to exercise the jurisdiction of the Occupational Safety  
21          and Health Tribunal under the repealed Act is, on and from  
22          commencement day, to be taken to be the commissioner referred to in  
23          Schedule 4 clause 3(1)(a).

24          (2)   A commissioner who, immediately before commencement day, was a  
25          commissioner referred to in section 51H(1)(b)(i) or (ii) of the repealed  
26          Act is, on and from commencement day, to be taken to be a  
27          commissioner referred to in Schedule 4 clause 3(1)(b)(i) or (ii), as is  
28          applicable to the case.

29       **8.       Duties of designers**

30          (1)   Subject to this clause, the duties imposed on a designer under  
31          section 22 of this Act do not apply to or in relation to the designing of  
32          any plant, substance or structure (including with respect to carrying  
33          out any calculations, analysis, testing or examination or with respect  
34          to the provision of any information) if the designer commenced (or  
35          commenced and completed) designing the plant, substance or  
36          structure before commencement day.

37          (2)   If —

- 38                  (a)   subclause (1) applies in relation to a particular design; and  
39                  (b)   the designer would be subject to the operation of section 23  
40                  of the repealed Act if that section were still in operation,

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- 1           then —
- 2           (c) the designer must comply with the relevant requirements of
- 3                 that section as if the repealed Act were still in operation; and
- 4           (d) if the designer fails to comply with paragraph (c), then action
- 5                 may be brought against the designer (including by the
- 6                 undertaking of a prosecution) as if the repealed Act were still
- 7                 in operation.
- 8       (3) If a designer commenced designing any plant, substance or structure
- 9           before commencement day but has not completed the design by the
- 10           second anniversary of commencement day, then the designer will, in
- 11           relation to the design, cease to have the benefit of subclause (1) and
- 12           the designer must comply with the requirements of this Act in relation
- 13           to the duties of a designer (as if this Act had been in operation at the
- 14           time that the designer commenced designing).
- 15       (4) Despite a preceding subclause, if —
- 16           (a) a designer carries out any calculations, analysis, testing or
- 17                 examination in connection with the performance of a duty
- 18                 under the repealed Act (as taken to be in operation under
- 19                 subclause (2)(d)); and
- 20           (b) the designer would, if the calculations, analysis, testing or
- 21                 examination were carried out under this Act, be subject to a
- 22                 requirement set out in section 22(4)(b) or (5) of this Act,
- 23           then the designer must comply with those requirements as if that
- 24           section applied in relation to the plant, substance or structure.

25       **9. Duties of manufacturers**

- 26       (1) Subject to this clause, the duties imposed on a manufacturer under
- 27           section 23 of this Act do not apply to or in relation to the manufacture
- 28           of any plant, substance or structure (including with respect to carrying
- 29           out any calculations, analysis, testing or examination or with respect
- 30           to the provision of any information) if the manufacturer commenced
- 31           (or commenced and completed) any process associated with the
- 32           manufacturing of the plant, substance or structure before
- 33           commencement day.
- 34       (2) If —
- 35           (a) subclause (1) applies in relation to the manufacture of any
- 36                 particular plant, substance or structure; and

- 1           (b) the manufacturer would be subject to the operation of  
2           section 23 of the repealed Act if that section were still in  
3           operation,  
4           then —  
5           (c) the manufacturer must comply with the relevant requirements  
6           of that section as if the repealed Act were in operation; and  
7           (d) if the manufacturer fails to comply with paragraph (c), then  
8           action may be brought against the manufacturer (including by  
9           the undertaking of a prosecution) as if the repealed Act were  
10          still in operation.
- 11       (3) If a manufacturer commenced any process associated with the  
12       manufacture of any plant, substance or structure before  
13       commencement day but has not completed the manufacture by the  
14       first anniversary of commencement day, then the manufacturer will,  
15       in relation to the manufacture of the plant, substance or structure,  
16       cease to have the benefit of subclause (1) and the manufacturer must  
17       comply with the requirements of the Act in relation to the duties of a  
18       manufacturer (as if this Act had been in operation at the time that the  
19       manufacturer commenced this process).
- 20       (4) Despite a preceding subclause, if —  
21           (a) a manufacturer carries out any calculations, analysis, testing  
22           or examination in connection with the performance of a duty  
23           under the repealed Act (as taken to be in operation under  
24           subclause (2)(d)); and  
25           (b) the manufacturer would, if the calculations, analysis, testing  
26           or examination were carried out under this Act, be subject to  
27           a requirement set out in section 23(4)(b) or (5) of this Act,  
28       then the manufacturer must comply with those requirements as if that  
29       section applied in relation to the plant, substance or structure.
- 30       **10. Duties of importers**
- 31       (1) Subject to this clause, the duties imposed on an importer under  
32       section 24 of this Act do not apply to or in relation to the importing of  
33       any plant, substance or structure (including with respect to carrying  
34       out any calculations, analysis, testing or examination or with respect  
35       to the provision of any information) if the importer commenced (or  
36       commenced and completed) any steps constituting the importation of  
37       the plant, substance or structure before commencement day.
- 38       (2) If —  
39           (a) subclause (1) applies in relation the importing of any  
40           particular plant, substance or structure; and  
41           (b) the importer would be subject to the operation of section 23  
42           of the repealed Act if that section were still in operation,

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- 1           then —
- 2           (c) the importer must comply with the relevant requirements of
- 3                 that section as if the repealed Act were in operation; and
- 4           (d) if the importer fails to comply with paragraph (c), then action
- 5                 may be brought against the importer (including by the
- 6                 undertaking of a prosecution) as if the repealed Act were still
- 7                 in operation.
- 8       (3) If an importer commenced any process associated with the importing
- 9           of any plant, substance or structure before commencement day but has
- 10           not completed the importing by the first anniversary of
- 11           commencement day, then the importer will, in relation to the
- 12           importing of the plant, substance or structure, cease to have the
- 13           benefit of subclause (1) and the importer must comply with the
- 14           requirements of the Act in relation to the duties of an importer (as if
- 15           the Act had been in operation at the time that the importer
- 16           commenced this process).
- 17       (4) Despite a preceding subclause, if —
- 18           (a) an importer carries out any calculations, analysis, testing or
- 19                 examination in connection with the performance of a duty
- 20                 under the repealed Act (as taken to be in operation under
- 21                 subclause (2)(d)); and
- 22           (b) the importer would, if the calculations, analysis, testing or
- 23                 examination were carried out under this Act, be subject to a
- 24                 requirement set out in section 24(4)(b) or (5) of this Act,
- 25           then the importer must comply with those requirements as if that
- 26           section applied in relation to the plant, substance or structure.
- 27       **11. Duties of suppliers**
- 28       (1) Subject to this clause, the duties imposed on a supplier under
- 29           section 25 of this Act do not apply to or in relation to the supply of
- 30           any plant, substance or structure (including with respect to carrying
- 31           out any calculations, analysis, testing or examination or with respect
- 32           to the provision of any information) if the supplier commenced (or
- 33           commenced and completed) any process associated with the supply of
- 34           the plant, substance or structure before commencement day.
- 35       (2) If —
- 36           (a) subclause (1) applies in relation to the supply of any
- 37                 particular plant, substance or structure; and
- 38           (b) the supplier would be subject to the operation of section 23 of
- 39                 the repealed Act as if that section were still in operation,
- 40           then —

- 1           (c) the supplier must comply with the relevant requirement of  
2           that section as if the repealed Act were in operation; and
- 3           (d) if the supplier fails to comply with paragraph (c), then action  
4           may be brought against the supplier (including by the  
5           undertaking of a prosecution) as if the repealed Act were still  
6           in operation.
- 7       (3) If a supplier commenced any process associated with the supply of  
8       any plant, substance or structure before commencement day but has  
9       not completed the supply by the first anniversary of commencement  
10      day, then the supplier will, in relation to the supply of the plant,  
11      substance or structure, cease to have the benefit of subclause (1) and  
12      the supplier must comply with the requirements of the Act in relation  
13      to the duties of a supplier (as if this Act had been in operation at the  
14      time that the supplier commenced this process).
- 15      (4) Despite a preceding subclause, if —
- 16           (a) a supplier carries out any calculations, analysis, testing or  
17           examination in connection with the performance of a duty  
18           under the repealed Act (as taken to be in operation under  
19           subclause (2)(d)); and
- 20           (b) the supplier would, if the calculations, analysis, testing or  
21           examination were carried out under this Act, be subject to a  
22           requirement set out in section 25(4)(b) or (5) of this Act,
- 23      then the supplier must comply with those requirements as if that  
24      section applied in relation to the plant, substance or structure.
- 25      **12. Duties of persons who install, construct or commission plant or**  
26      **structures**
- 27      (1) In this clause —
- 28           *designated person* means a person who conducts a business or  
29           undertaking that installs, constructs or commissions plant or a  
30           structure.
- 31      (2) Subject to this clause, the duties imposed on a designated person  
32      under section 26 of this Act do not apply to or in relation to the  
33      installation, construction or commissioning of any plant or structure if  
34      the designated person commenced (or commenced and completed)  
35      any process associated with the installation, construction or  
36      commissioning of the plant or structure before commencement day.
- 37      (3) If a designated person commenced any process associated with the  
38      installation, construction or commissioning of any plant or structure  
39      before commencement day but had not completed the installation,  
40      construction or commissioning by the second anniversary of  
41      commencement day, then the designated person will, in relation to the  
42      installation, construction or commissioning of the plant or structure,

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1           cease to have the benefit of subclause (2) and the designated person  
2           must comply with the requirements of the Act in relation to the duties  
3           of a designated person (as if this Act had been in operation at the time  
4           that the designated person commenced this process).

5   **13.       Safety and health representatives and committees, inspectors**

6       (1)   A person who, immediately before commencement day, was an  
7           inspector under the repealed Act is, on and from commencement day,  
8           to be taken to have been appointed as an inspector under this Act.

9       (2)   A person who, immediately before commencement day was, under  
10          the repealed Act, a safety and health representative for a workplace is,  
11          on and from commencement day, to be taken to be a health and safety  
12          representative under this Act for the work group that corresponds to  
13          the former workplace (with a term of office corresponding to the  
14          balance of the person's term of office under the repealed Act).

15       (3)   A safety and health committee for a workplace that, immediately  
16          before commencement day, was in effect under the repealed Act is, on  
17          and from commencement day, to be taken to be a health and safety  
18          committee under this Act for the workplace or part of the workplace  
19          that corresponds to the former workplace (with the membership as  
20          constituted under the repealed Act).

21       (4)   If a process or proceeding —  
22           (a)   to elect a safety and health representative; or  
23           (b)   to establish or constitute a safety and health committee,  
24          was commenced (but not completed) under the repealed Act before  
25          commencement day, the process or proceeding may be continued and  
26          completed under the repealed Act as if the repealed Act were still in  
27          operation, and is to have effect as if it were completed immediately  
28          before commencement day.

29       (5)   Subclause (4)(a) ceases to apply at the expiration of 3 months after  
30          commencement day.

31   **14.       Training for issue of provisional improvement notice**

32       (1)   A person who has completed a course of training prescribed for the  
33          purposes of the definition of *qualified representative* in section 51AB  
34          of the repealed Act must be taken to have completed any training  
35          required under section 90(4) of this Act.

36       (2)   Subclause (1) ceases to apply at the expiration of 6 months after  
37          commencement day (and any relevant course of training under the  
38          repealed Act will then cease to have effect for the purposes of this  
39          Act).

1     **15.       Functions and powers of inspectors**

2       (1)    An inspector may, on or after commencement day, perform a function  
3              or exercise a power under this Act in relation to anything arising  
4              under or relevant to the repealed Act before commencement day (and  
5              this Act applies in relation to the performance or exercise of such a  
6              function or power as if a reference to this Act included a reference to  
7              the repealed Act).

8       (2)    Without limiting subclause (1) —

9              (a)   a reference in this Act to a contravention of this Act includes  
10                 a reference to a contravention of the repealed Act; and

11             (b)   a reference in this Act to an offence against this Act includes  
12                 a reference to an offence against the repealed Act.

13       (3)    Any action taken or information acquired under this Act (including on  
14              account of the operation of this clause) may be used for the purposes  
15              of the repealed Act (insofar as it may be relevant to an act, omission  
16              or circumstance occurring before commencement day).

17       (4)    Nothing in this clause affects or limits any action that may be taken  
18              under or with respect to the repealed Act by virtue of the operation of  
19              any other Act or law.

20     **16.       Disqualifications**

21              A disqualification under section 34 of the repealed Act (including a  
22              disqualification made after commencement day on appeal from a  
23              decision of the Tribunal) has effect for the purposes of section 60 of  
24              this Act as if it were a disqualification under section 65.

25     **17.       Codes of practice**

26       (1)    In this clause —

27              *prescribed code of practice* means an approved code of practice in  
28              force under section 57 of the repealed Act immediately before  
29              commencement day that is prescribed by the regulations for the  
30              purposes of this clause.

31       (2)    A prescribed code of practice must be taken to be an approved code of  
32              practice under this Act (without the need to take any other step or to  
33              publish any notice under section 274).

34       (3)    A prescribed code of practice under subclause (2) may be varied or  
35              revoked by the Minister in accordance with section 274.

36     **18.       Authorisations**

37       (1)    In this clause —

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- 1           **authorisation** means a registration, licence, permit, accreditation or  
2           other form of authorisation granted or recognised under the repealed  
3           Act.
- 4           (2) An authorisation —
- 5               (a) of a class prescribed by the regulations for the purposes of  
6               this clause; and
- 7               (b) that was in effect immediately before commencement day,
- 8           is to have effect under this Act in the manner, and for the time,  
9           prescribed by the regulations (and, to the extent prescribed by the  
10          regulations, must be taken to be a registration, licence, permit,  
11          accreditation or other form of authorisation granted or recognised  
12          under this Act).
- 13          (3) If an application for an authorisation of a kind referred to in  
14          subclause (2)(a) was commenced (but not completed) under the  
15          repealed Act before commencement day, the application may be  
16          continued and completed under the repealed Act as if the repealed Act  
17          were still in operation and any authorisation granted or recognised  
18          under that application is to have effect as if it were in effect  
19          immediately before commencement day.
- 20       **19. Improvement and prohibition notices, provisional improvement**  
21       **notices**
- 22          (1) In this clause —
- 23               **notice** means an improvement notice, prohibition notice or  
24               provisional improvement notice as those terms are defined in the  
25               repealed Act.
- 26          (2) The repealed Act continues to apply, on and from commencement  
27          day, in relation to a notice that was in effect immediately before  
28          commencement day as if the repealed Act were still in operation.
- 29       **20. Reviews etc.**
- 30          (1) In this clause —
- 31               **former provisions** means —
- 32                   (a) the repealed Act as in force immediately before  
33                   commencement day; and
- 34                   (b) the *Industrial Relations Act 1979* as in force immediately  
35                   before commencement day;
- 36               **proceedings** includes conciliation arrangements under section 51J of  
37               the repealed Act.
- 38          (2) Without affecting the *Interpretation Act 1984* section 37(1) —



- 1           (a) any right under the former provisions to take proceedings to  
2           refer a matter or claim for determination, to review a decision  
3           or document or to appeal a decision is not affected by the  
4           repeal of the *Occupational Safety and Health Act 1984*; and
- 5           (b) any proceedings under the repealed provisions in respect of a  
6           determination, review or appeal that had commenced but  
7           were not completed before commencement day may be  
8           continued as if the repealed provisions were still in operation;  
9           and
- 10          (c) any decision arising from proceedings referred to in  
11          paragraph (a) or (b) must be taken, for the purposes of  
12          clauses 13(2) and (3), 18(2) and 19(2) to have been in effect  
13          immediately before commencement day.

14   **21. Instruments**

15           An instrument under section 4(3) of the repealed Act that was in  
16           effect immediately before commencement day is, on and from  
17           commencement day, to be taken to be an instrument under  
18           section 12(4) and if a provision of or under the repealed Act is  
19           specified in the instrument, that provision must be taken to be the  
20           provision of or under this Act that most closely corresponds to the  
21           specified provision.

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**WESTERN AUSTRALIA**

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# **Work Health and Safety Bill 2014**

## **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.