

Notes

¹ This is a compilation of the *Occupational Safety and Health Act 1984* and includes the amendments made by the other written laws referred to in the following table ^{1a}.

Compilation table

| Short Title | Number and Year | Assent | Commencement | Miscellaneous |
|--|-----------------|-------------------|---|---|
| <i>Occupational Health, Safety and Welfare Act 1984</i> | 101 of 1984 | 19 December 1984 | 4 April 1985 (see section 2 and <i>Gazette</i> 4 April 1985 p.1241) | Short title subsequently amended. (See note under section 1) |
| <i>Occupational Health, Safety and Welfare Amendment Act 1987</i> | 43 of 1987 | 6 July 1987 | 16 September 1988 (see section 2 and <i>Gazette</i> 16 September 1988 p.3757) | |
| <i>Occupational Health, Safety and Welfare Amendment Act (No. 2) 1987</i> | 55 of 1987 | 3 November 1987 | 3 November 1987 (see section 2) | |
| <i>Occupational Health, Safety and Welfare Amendment Act 1990</i> | 84 of 1990 | 17 December 1990 | 14 January 1991 | |
| <i>Acts Amendment (Public Sector Management) Act 1994, section 19</i> | 32 of 1994 | 29 June 1994 | 1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p.4948) | |
| <i>Mines Safety and Inspection Act 1994, section 109</i> | 62 of 1994 | 7 November 1994 | 9 December 1995 (see section 2 and <i>Gazette</i> 8 December 1995 p.5935) | |
| <i>Occupational Safety and Health Legislation Amendment Act 1995, Part 2</i> | 30 of 1995 | 11 September 1995 | 1 October 1995 (see section 2 and <i>Gazette</i> 15 September 1995 p.4301) | Section 49: transitional ³ ; section 50: savings ⁴ |

| Short Title | Number and Year | Assent | Commencement | Miscellaneous |
|---|------------------------|-----------------|---|---|
| <i>Industrial Relations Legislation Amendment and Repeal Act 1995</i> , section 67(5) | 79 of 1995 | 16 January 1996 | 16 January 1996 (see section 3(1)) | |
| <i>Sentencing (Consequential Provisions) Act 1995</i> , Part 55 | 78 of 1995 | 16 January 1996 | 4 November 1996 (see section 2 and <i>Gazette</i> 25 October 1996 p.5632) | |
| <i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> , section 56 | 10 of 1998 | 30 April 1998 | 30 April 1998 (see section 2(1)) | |
| <i>Occupational Safety and Health (Validation) Act 1998</i> | 63 of 1998 | 12 January 1999 | 12 January 1999 (see section 2) | Section 4: validation ⁵ ; section 5(2): transitional ⁶ |
| <i>Occupational Safety and Health Amendment Act 2002</i> | 54 of 2002 | 3 January 2003 | s. 8: 3 January 2003 (see s. 2(2)); balance: 3 January 2004 (see s. 2(1)) | Section 8: transitional ⁷ |
| <i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 87(1)-(6) ⁹ | 74 of 2003 | 15 Dec 2003 | 15 Dec 2003 (see s. 2) | |
| <i>Occupational Safety and Health Legislation Amendment and Repeal Act 2004</i> Pt. 1-6 (other than s. 65, 66 and 68), Pt. 7 and s. 104-114 ^{8, 14, 15} | 51 of 2004 | 12 Nov 2004 | Act other than Pt. 4 & 6 and s. 105 & 106: 1 Jan 2005 (see s. 2 and <i>Gazette</i> 14 Dec 2004 p. 5999-6000); Pt. 4, Pt. 6 (other than s. 65, 66 & 68), s. 105 & 106: 4 Apr 2005 (see s. 2 and <i>Gazette</i> 14 Dec 2004 p. 5999-6000) | |

| Short Title | Number and Year | Assent | Commencement | Miscellaneous |
|--|-----------------|------------|--|---------------|
| <i>Mines Safety and Inspection Amendment Act 2004</i> s. 94 | 68 of 2004 | 8 Dec 2004 | 4 Apr 2005 (see s. 2(1) and <i>Gazette</i> 11 Feb 2005 p. 695) | |

- 1a On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

| Short title | Number and Year | Assent | Commencement |
|---|-----------------|-------------|--|
| <i>Occupational Safety and Health Legislation Amendment and Repeal Act 2004</i> s. 65, 66 and 68 ¹⁰ | 51 of 2004 | 12 Nov 2004 | To be proclaimed (see s. 2) |
| <i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141 ¹¹ | 59 of 2004 | 23 Nov 2004 | 1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128) |
| <i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 78 and 80 ¹³ | 84 of 2004 | 16 Dec 2004 | 2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53)) |

- 2 Now to be read as a reference to the Minister for Public Sector Management. See section 112(2) of the *Public Sector Management Act 1984*.

- 3 Section 49 of the *Occupational Safety and Health Legislation Amendment Act 1995* (Act No. 30 of 1995) reads as follows —

“

49. Transitional: Matters referred to Industrial Relations Commission; prosecutions

- (1) Any matter referred to the Industrial Relations Commission under the principal Act and not finally determined before the commencement of this section may be dealt with after that commencement as if the principal Act had not been amended by this Act.
- (2) An appeal in respect of the decision of the Industrial Relations Commission made before the commencement of this section may be —
 - (a) determined;
 - (b) heard and determined; or
 - (c) instituted, heard and determined,

as the case requires, under the *Industrial Relations Act 1979* as if the principal Act had not been amended by this Act.

- (3) Proceedings instituted under section 52 of the principal Act and not finally determined before the commencement of this section may be dealt with after that commencement as if that section had not been amended by this Act.

”.

4 Section 50 of the *Occupational Safety and Health Legislation Amendment Act 1995* (Act No. 30 of 1995) reads as follows —

“

50. Change of title and constitution

- (1) The amendments effected by this Act to change the titles of the Commissioner and health and safety representatives elected under the principal Act do not affect the continuity or tenure of those offices and the amendments effected by this Act to change the title of the Commission and health and safety committees established under the principal Act do not affect the continuity of those bodies.
- (2) Notwithstanding the amendments effected by section 8, persons who were appointed members of the Commission immediately before the commencement of that section continue to be members of the Commission on the same terms and conditions as those on which they were appointed..

”.

5 Section 4 of the *Occupational Safety and Health (Validation) Act 1998* (Act No. 63 of 1998) reads as follows —

“

4. Validation

- (1) In this section —
“**Commissioner**” means —
 - (a) the Commissioner for Occupational Health, Safety and Welfare within the meaning of the *Occupational Health, Safety and Welfare Act 1984* as in force before 1 October 1995; or
 - (b) the WorkSafe Western Australia Commissioner within the meaning of the *Occupational Safety and Health Act 1984* as in force on and from 1 October 1995.
- (2) No act, matter or thing done before 8 October 1996 —
 - (a) by or in respect of William Neil Bartholomaeus; or
 - (b) under the direction, authority or control or purported direction, authority or control of, or pursuant to a delegation or purported delegation made by, William Neil Bartholomaeus,

in his capacity or purported capacity as Commissioner is, or ever has been, invalid by reason that there was a defect in his appointment as Commissioner, or that he had not been appointed at all.

- (3) Each act, matter or thing referred to in subsection (2) is, and always has been, as valid, and effective and authorized by the principal Act as it would have been if William Neil Bartholomaeus had been duly appointed as Commissioner at the time the act, matter or thing was done, the direction, authority or control exercised or the delegation made.

”.

6 Section 5(2) of the *Occupational Safety and Health (Validation) Act 1998* (Act No. 63 of 1998) reads as follows —

“

- (2) Section 52(3) of the *Occupational Safety and Health Act 1984*, as inserted by subsection (1), applies in respect of an offence committed against that Act before the commencement of subsection (1) despite the fact that the time for commencing proceedings for that offence expired before the commencement of subsection (1).

”.

7 The *Occupational Safety and Health Amendment Act 2002* s. 8 reads as follows:

“

8. Election of safety and health representatives by police officers before the commencement of this Act

- (1) In this section —
“**commencement day**” means the day on which this Act comes into operation;
“**police officer**” has the same meaning as it has in section 3(1) of the *Occupational Safety and Health Act 1984* on and after the commencement day;
“**transition period**” means the period of 9 months ending immediately before the commencement day.
- (2) The provisions listed in the Table to this subsection are to be treated as being in operation during the transition period for the purposes of allowing police officers to elect safety and health representatives for a workplace and for the training of those representatives during that period.

Table

| | |
|---|---------------------|
| 1. This Act | |
| s. 4 | |
| s. 5 | |
| 2. Occupational Safety and Health Act 1984 | |
| s. 3(1) | s. 32(2)(b) and (c) |
| s. 29 | s. 35(1)(e) |
| s. 30 | s. 35(3)(b) |
| s. 31 | s. 56(1) |
| s. 32(1) | |
| 3. Occupational Safety and Health Regulations 1996 | |
| r. 2.2 | |

- (3) The term of a safety and health representative elected before the commencement day begins, for the purpose of section 32(1) of the *Occupational Safety and Health Act 1984*, on the commencement day.
- (4) Despite subsection (3), regulation 2.2(3) of the *Occupational Safety and Health Regulations 1996* applies to a safety and health representative elected before the commencement day in relation to the first 12 months of being so elected.

”

8

The *Occupational Safety and Health Legislation Amendment and Repeal Act 2004* s. 44 reads as follows:

“

44. Saving provision for existing safety and health representatives

The amendments made by section 43 do not affect the continuation in office of any safety and health representative who held office under Part IV of the *Occupational Safety and Health Act 1984* immediately before the commencement of that section.

”

9

The *Statutes (Repeals and Minor Amendments) Act 2003* s. 87(6) reads as follows:

“

- (6) The amendment made by subsection (5) to the name of the Commission referred to in that subsection does not affect the appointment of a member of that Commission who holds office immediately before the commencement of this section.

”

10

On the date as at which this compilation was prepared the *Occupational Safety and Health Legislation Amendment and Repeal Act 2004* s. 65, 66 and 68 had not come into operation. They read as follows:

“

65. Section 51C amended

- (1) Section 51C(1) is amended by deleting paragraph (a) and “and” after that paragraph.
- (2) Section 51C(2), (3) and (4) are repealed.

66. Section 51D repealed

Section 51D is repealed.

68. Section 54B amended

Section 54B(2), (3) and (4) are repealed.

”

11

On the date as at which this compilation was prepared, the *Courts Legislation Amendment and Repeal Act 2004* s. 141, which gives effect to Sch. 1 had not come into operation. It reads as follows:

“

141. Various Acts amended

Each Act listed in Schedule 1 is amended as set out in that Schedule immediately below the short title of the Act.

”.

Schedule 1 cl. 109 reads as follows:

“

Schedule 1 — Amendments to various Acts

109. Occupational Safety and Health Act 1984

| | |
|--------------------|--|
| s. 51C(1)(b) | Delete “ <i>Justices Act 1902</i> ” and insert instead — “ <i>Criminal Procedure (Summary) Act 1902</i> ”. After “section 52” insert — “ , subject to section 19(1) of the <i>Children’s Court of Western Australia Act 1988</i> ”. |
| s. 51C(3) | Delete “ <i>Local Courts Act 1904</i> ” and insert instead — “ <i>Magistrates Court (Civil Proceedings) Act 2004</i> ”. Delete “a court under that Act.” and insert instead — “ the Magistrates Court. ”. |
| s. 51C(4) | Delete “ <i>Local Courts Act 1904</i> ” and insert instead — “ <i>Magistrates Court (Civil Proceedings) Act 2004</i> ”. |
| After s. 51C(5) | Insert the following subsection — “ (6) Sections 15, 16, 35 and 36 and Part 3 Division 2 of the <i>Magistrates Court Act 2004</i> apply to and in relation to a safety and health magistrate in the same way as they apply to and in relation to the Magistrates Court and its officers. ”. |
| s. 51E | Delete “Chief Stipendiary Magistrate” and insert instead — “ Chief Magistrate of the Magistrates Court ”. |
| s. 52(2) | Delete “Proceedings” and insert instead — “ Subject to section 19(1) of the <i>Children’s Court of Western Australia Act 1988</i> , proceedings ”. |
| s. 54B(1) | Repeal the subsection and insert instead — “ (1) Part VIII of the <i>Criminal Procedure (Summary) Act 1902</i> applies in respect of decisions of a safety and health magistrate made under section 52. ”. |

”.

12 Footnote no longer applicable.

13 On the date as at which this compilation was prepared, the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 78 & 80, which give effect to Sch. 1 & 2, had not come into operation. They read as follows:

“

78. Various Acts amended (Sch 1)

Each Act listed in Schedule 1 is amended as set out in that Schedule immediately below the short title of the Act.

”.

Schedule 1 cl. 22 reads as follows:

“

Schedule 1 — Amendments to various Acts

[s. 78]

22. Occupational Safety and Health Act 1984

| | |
|--------------|---|
| s. 51C(1)(b) | Delete “ <i>Criminal Procedure (Summary) Act 1902</i> ” and insert instead — “ <i>Criminal Procedure Act 2004</i> ”. |
| s. 54B(1) | Delete “Part VIII of the <i>Criminal Procedure (Summary) Act 1902</i> ” and insert instead — “ Part 2 of the <i>Criminal Appeals Act 2004</i> ”. |

”.

“

80. Various Acts amended (Sch 2)

Each Act listed in Schedule 2 is amended as set out in that Schedule immediately below the short title of the Act.

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Schedule 2 cl. 94 reads as follows:

“

Schedule 2 — Amendments to change terminology

[s. 80]

94. Occupational Safety and Health Act 1984

| | |
|-------|--|
| s. 53 | Delete “complaint” and insert instead — “ charge ”. |
|-------|--|

”.

14 The *Occupational Safety and Health Legislation Amendment and Repeal Act 2004* s. 51 reads as follows:

“

51. Savings and transitional provisions for existing safety and health committees

- (1) The repeal of section 37 of the *Occupational Safety and Health Act 1984* (the “**OSH Act**”) by section 50 does not affect the status

of a safety and health committee that is in existence under the OSH Act immediately before that repeal.

- (2) Any such committee is to be taken, after the commencement of section 50, to have been established under section 38 or 39B of the OSH Act inserted by section 50, as the case may be.
- (3) If before the commencement of section 50 —
 - (a) a request was made in respect of a workplace under section 36(1) of the OSH Act repealed by section 50; but
 - (b) a safety and health committee had not been established for the workplace under section 37 of the OSH Act so repealed,

the duty of the employer under section 37 of the OSH Act to establish a safety and health committee for the workplace lapses on that commencement.

”.

15 The *Occupational Safety and Health Legislation Amendment and Repeal Act 2004* Pt. 6 Div. 3 reads as follows:

“

Division 3 — Transitional provisions

71. Existing referrals to safety and health magistrate

- (1) A matter referred to a safety and health magistrate under the *Occupational Safety and Health Act 1984* and not finally determined before the commencement of section 65 —
 - (a) may continue to be dealt with; and
 - (b) any order made in such a proceeding may be appealed against or enforced,as if that section and section 68 had not been enacted.
- (2) A determination or decision of a safety and health magistrate made before the commencement of section 65 may be the subject of —
 - (a) an application for leave to appeal under section 54B(2) of the *Occupational Safety and Health Act 1984* repealed by section 68; and
 - (b) an appeal for which leave is granted under section 54B(2),

as if section 68 had not been enacted.

72. Appeal proceedings in progress

- (1) An application for leave to appeal made under section 54B(2) of the *Occupational Safety and Health Act 1984* but not finally determined before the commencement of section 68, and an appeal for which leave is granted on such an application, may be dealt with and determined as if that section had not been enacted.
- (2) An appeal brought under section 54B(2) of the *Occupational Safety and Health Act 1984* but not finally determined before the commencement of section 68, may be dealt with and determined as if that section had not been enacted.

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