

## Notes

<sup>1</sup> 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 <sup>1a</sup>.

**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 <sup>3</sup> ; section 50: savings <sup>4</sup>

<b>Short Title</b>	<b>Number and Year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<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 <sup>5</sup> ; section 5(2): transitional <sup>6</sup>
<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 <sup>7</sup>
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 87(1)-(6) <sup>9</sup>	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. 1-3, 5, 7 and s. 104, 107-114	51 of 2004	12 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 14 Dec 2004 p. 5999-6000)	

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**

<b>Short title</b>	<b>Number and Year</b>	<b>Assent</b>	<b>Commencement</b>
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<i>Occupational Safety and Health Legislation Amendment and Repeal Act 2004</i> Pt. 4, Pt. 6 and s. 105-106 <sup>10</sup>	51 of 2004	12 Nov 2004	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. 5999-600); s. 65, 66 & 68: to be proclaimed
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141 <sup>11</sup>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Mines Safety and Inspection Amendment Act 2004</i> s. 94 <sup>12</sup>	68 of 2004	8 Dec 2004	4 Apr 2005 (see s. 2(1) and <i>Gazette</i> 11 Feb 2005 p. 695)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 78 and 80 <sup>13</sup>	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))

<sup>2</sup> 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*.

<sup>3</sup> 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.

”.

<sup>4</sup> 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

No longer applicable

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* Pt. 4, Pt. 6 and s. 105-106 had not come into operation. They read as follows:

“

#### **Part 4 — Amendments relating to safety and health representatives and committees**

##### **38. Section 3 amended**

Section 3(1) is amended as follows:

- (a) by inserting after the definition of “prohibition notice” —

“

“**provisional improvement notice**” means a provisional improvement notice issued under Part VI Division 2;

”;

- (b) in the definition of “safety and health committee” by inserting after “Part IV” —  
“ Division 2 ”;

- (c) in the definition of “safety and health representative” by inserting after “Part IV” —  
“ Division 1 ”.

##### **39. Part IV Division 1 heading inserted**

After the heading to Part IV the following heading is inserted —

“

#### **Division 1 — Safety and health representatives**

”.

##### **40. Section 29 amended**

- (1) Section 29 is amended by inserting before “An employee” the subsection designation “(1)”.

- (2) At the end of section 29 the following subsection is inserted —

“

- (2) The fact that a notice under subsection (1) requires an election for the workplace at which the employee works does not prevent —

- (a) the establishment of a scheme under section 30A that extends beyond that workplace; or  
(b) the making of a determination under section 30(4a) for that purpose.

”.

**41. Section 30 amended**

- (1) Section 30(4) is amended by deleting paragraphs (aa) and (b) and “and” after them and inserting instead —

“

- (b) the matters, areas or kinds of work in respect of which each safety and health representative is to exercise functions, so far as those things are not to be dealt with by provision of a kind mentioned in section 30B(2) or (3);
- (ba) how a vacancy in an office of safety and health representative that occurs in the circumstances mentioned in section 32(2)(b), (ba), (c) or (d) is to be dealt with; and

”.

- (2) After section 30(4) the following subsection is inserted —

“

- (4a) The employer and the delegate or delegates consulting under subsection (3a) may determine that provision of a kind mentioned in section 30B(2) or (3) should be made.

”.

- (3) Section 30(5) is repealed and the following subsection is inserted instead —

“

- (5) For the purposes of subsection (4)(c), but without limiting the generality of that provision, the employer and the delegate or delegates consulting under subsection (3a) may determine that —
- (a) the Electoral Commissioner appointed under the *Electoral Act 1907*; or
  - (b) an organisation registered under Part II Division 4 of the *Industrial Relations Act 1979*,
- is to be requested to conduct an election.

”.

**42. Sections 30A, 30B and 30C inserted**

After section 30 the following sections are inserted —

“

**30A. Election scheme may be established**

- (1) In this section —

“**consulting parties**” means the employer and the delegate or delegates consulting under section 30(3a) on matters relating to the election of a safety and health representative for a workplace, and includes any delegates or delegates appointed under section 30C.

- (2) If the consulting parties in respect of a workplace have made a determination referred to in section 30(4a), a written agreement may be made between the consulting parties establishing a scheme under this section.

- (3) If the consulting parties cannot reach agreement on any matter for the purposes of subsection (2) they may refer the matter to the Commissioner, who is to attempt to resolve it to the satisfaction of the consulting parties.
- (4) If the Commissioner is unable to resolve the matter, the Commissioner is to refer it to the Tribunal for determination.
- (5) If subsection (4) applies, references in this Division to a scheme under this section are references to a scheme consisting of the provisions of —
  - (a) an agreement under subsection (2); and
  - (b) the determination of the Tribunal under subsection (4).

**30B. What may be included in a scheme**

- (1) In this section —  
“**contractor**” and “**principal**” have the meanings given to those terms in section 23D(1).
- (2) A scheme under section 30A (a “**scheme**”) may include provision for the election of one or more safety and health representatives for —
  - (a) one or more workplaces in addition to the workplace referred to in section 30A(2); or
  - (b) any group of employees of the employer concerned that constitutes a distinct unit of the employer’s workforce,or may make provision for both of those matters, as the case may require.
- (3) A scheme may despite any provision of this Part —
  - (a) provide for —
    - (i) a contractor; and
    - (ii) any person employed by a contractor, to be treated, for the purposes of this Part, as employees of the principal that engages the contractor; and
  - (b) provide for the principal that engages a contractor to be treated, for the purposes of this Part, as the employer of —
    - (i) the contractor; and
    - (ii) any person employed by the contractor.
- (4) A scheme may make provision for —
  - (a) the scheme to apply to any subsequent election of a safety and health representative; and
  - (b) the manner in which an amendment may be made to the scheme after it has been determined.

**30C. Appointment of further delegates may be required**

- (1) In this section —  
“**additional employees**” means employees who have not been invited to appoint a delegate or delegates under section 30(1) or (2) because that subsection has not become applicable to the workplace at which they work.



- (2) A scheme under section 30A cannot make provision of the kind mentioned in section 30B(2) that will affect additional employees unless subsection (3) of this section is complied with.
- (3) If it is proposed that such provision be made the employer must invite any additional employees at a workplace to appoint a delegate or delegates in accordance with subsection (4).
- (4) Additional employees who work at a workplace may, upon being invited under subsection (3) to do so, appoint a delegate or delegates from amongst their number to represent them for the purposes of making an agreement under section 30A(2).

”.

**43. Section 31 amended**

- (1) Section 31(1) is repealed and the following subsection is inserted instead —

“

- (1) In this section —  
**“election”** means an election required for the purpose of electing a safety and health representative following —
  - (a) the giving of a notice under section 29 in relation to a workplace; or
  - (b) a decision of an employer under section 30(2);**“relevant employee”**, in relation to an election, means —
  - (a) an employee who works at the workplace to which the election relates; or
  - (b) if a scheme has been established under section 30A for the election, an employee who —
    - (i) works at a workplace; or
    - (ii) is a member of a group of employees, to which the scheme applies.

”.

- (2) Section 31(6) is repealed and the following subsections are inserted instead —

“

- (6) Subject to this section, an election shall be conducted and safety and health representatives shall be elected in accordance with —
  - (a) any determination under section 30; and
  - (b) if applicable, a scheme established under section 30A.
- (6a) If there is any inconsistency between a determination under section 30 and a scheme established under section 30A, the latter prevails.

”.

- (3) Section 31(7) and (8) are repealed and the following subsections are inserted instead —

“

- (7) An election shall be by secret ballot.
- (8) Every relevant employee is entitled to vote at an election.

- (8a) Only a relevant employee is eligible to be elected as a safety and health representative at an election.

”.

- (4) Section 31(9) is amended by inserting after “If” —

“

, after the relevant steps provided for by or under this Division have been taken,

”.

- (5) Section 31(10) is amended by inserting after “notify the” —

“ Commissioner and the ”.

- (6) Section 31(10a) and (10b) are repealed.

**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.

**45. Section 32 amended**

Section 32(2)(b) is deleted and the following paragraphs are inserted instead —

“

- (b) the person ceases to be an employee who works at a workplace for which the person was elected;
- (ba) if the person was elected for a group of employees pursuant to a scheme under section 30A, the person ceases to be an employee who belongs to that group of employees;

”.

**46. Section 33 amended**

After section 33(3) the following subsection is inserted —

“

- (4) If a scheme has been established under section 30A, the references in this section to **“the workplace”**, **“that workplace”** and **“a workplace”** include —

- (a) if the scheme applies to more than one workplace, each workplace to which the scheme applies; and
- (b) if under the scheme a safety and health representative is elected for a group of employees, each workplace or part of a workplace at which any member of the group works.

”.

**47. Section 34 amended**

- (1) Section 34(2) is amended by deleting paragraph (b) and “or” after it and inserting instead —

“

- (b) a relevant employee; or

”.

(2) After section 34(4) the following subsection is inserted —

“

(5) In subsection (2)(b) —

“**relevant employee**” means —

- (a) an employee who works at the workplace concerned;
- (b) if the safety and health representative was elected for more than one workplace pursuant to a scheme established under section 30A, an employee who works at any such workplace; or
- (c) if under a scheme referred to in paragraph (b) the safety and health representative was elected for a group of employees, an employee who is a member of the group.

”.

**48. Section 35 amended**

(1) Section 35(1)(d) and (e) are deleted and the following paragraph is inserted instead —

“

- (d) ensure that a safety and health representative receives any entitlement that becomes due to him or her under subsection (1b) or (3);

”.

(2) Section 35(1)(f) is amended by deleting “part of the”.

(3) After section 35(1) the following subsections are inserted —

“

(1a) If, pursuant to a scheme under section 30A, a safety and health representative has been elected for a group of employees, the references in subsection (1) to “**a workplace**” and “**the workplace**” include any workplace at which any member of the group works.

(1b) Where a safety and health representative attends a course of training —

- (a) for which, under subsection (3), the representative is entitled to take time off work; and
- (b) that is prescribed for the purposes of this paragraph, the employer is liable to pay, to the extent that is prescribed —
- (c) the tuition fee for the course; and
- (d) other costs incurred by the representative in connection with attendance at the course.

”.

(4) Section 35(3) is amended as follows:

- (a) by deleting “time that a safety and health representative is to be permitted to take off work, with pay,” and inserting instead —

“

entitlements of a safety and health representative

- ”;
- (b) by deleting “time a safety and health representative is to be permitted to take off work, with pay,” and inserting instead —  
“ entitlements ”.

(5) After section 35(3) the following subsection is inserted —

“

(3a) In subsection (3) —

“**entitlements**” means —

- (a) the time that a safety and health representative is to be permitted to take off work with pay; and
- (b) payments to which a safety and health representative is entitled for attendance at a course of training in his or her own time.

”.

**49. Sections 35A, 35B, 35C and 35D inserted**

After section 35 the following sections are inserted —

“

**35A. Discrimination against safety and health representative in relation to employment**

- (1) An employer or a prospective employer must not cause disadvantage to a person for the dominant or substantial reason that the person —
  - (a) is or was a safety and health representative; or
  - (b) is performing or has performed any function as a safety and health representative.
- (2) For the purposes of subsection (1) an employer causes disadvantage to a person if the employer —
  - (a) dismisses the person from employment;
  - (b) demotes the person or fails to give the person a promotion that the person could reasonably have expected;
  - (c) detrimentally alters the person’s employment position; or
  - (d) detrimentally alters the person’s pay or other terms and conditions of employment.
- (3) For the purposes of subsection (1) a prospective employer causes disadvantage to a person if the prospective employer refuses to employ the person.
- (4) An employer or prospective employer that contravenes subsection (1) commits an offence.

**35B. Discrimination against safety and health representative in relation to contract for services**

- (1) In this section —  
“**contractor**” and “**principal**” have the meanings given to those terms in section 23D(1).

- (2) Where a scheme under section 30A makes provision of the kind described in section 30B(3), a principal must not —
- (a) terminate the engagement of a contractor; or
  - (b) subject a contractor to any other detriment,
- for the dominant or substantial reason that the contractor or a person employed by the contractor —
- (c) is or was a safety and health representative; or
  - (d) is performing or has performed any function as a safety and health representative.
- (3) A principal that contravenes subsection (2) commits an offence.

**35C. Claim may be referred to the Tribunal**

- (1) A person may —
- (a) refer to the Tribunal —
    - (i) a claim that the person's employer or a prospective employer has caused disadvantage to the person in contravention of section 35A; or
    - (ii) in the case of a contractor referred to in section 35B, a claim that the principal has contravened that section;
- and
- (b) request the Tribunal to make one or more of the orders provided for by section 35D.
- (2) Subsection (1) applies whether or not —
- (a) the employer or prospective employer has been convicted of an offence under section 35A(4); or
  - (b) the principal has been convicted of an offence under section 35B(3).
- (3) A referral under subsection (1) may also be made on a person's behalf by an agent or legal practitioner referred to in section 31 of the *Industrial Relations Act 1979*.
- (4) Section 80E(1) of the *Industrial Relations Act 1979* does not apply to a claim under subsection (1) by a Government officer within the meaning of that section.

**35D. Remedies that may be granted**

- (1) If, on the hearing of a claim under section 35C(1)(a)(i), the Tribunal is satisfied that an employer or a prospective employer has contravened section 35A, the Tribunal may —
- (a) in the case of an employer, order the employer —
    - (i) to reinstate the claimant if the claimant was dismissed from employment;
    - (ii) to pay to the claimant such sum of money as the Tribunal considers adequate as compensation for loss of employment or loss of earnings; or
    - (iii) both to reinstate the claimant and to pay the claimant the sum of money referred to in subparagraph (ii),
- as the Tribunal thinks fit; or

- (b) in the case of a prospective employer, order that person to pay the claimant such sum of money as the Tribunal thinks fit.
- (2) If, on the hearing of a claim under section 35C(1)(a)(ii), the Tribunal is satisfied that a principal has contravened section 35B, the Tribunal may order the principal to pay the claimant such sum of money as the Tribunal thinks fit.
- (3) In determining a claim under section 35C(1)(a)(i) the Tribunal may make any order of the kind mentioned in section 23A(3), (4) and (5)(a) of the *Industrial Relations Act 1979* as if the claim were a claim to which section 23A of that Act applies.
- (4) In the determination of the amount of compensation for any loss of employment, loss of earnings or detriment —
  - (a) the Tribunal is to have regard to any redress the claimant has obtained under another enactment; and
  - (b) the claimant is not entitled to compensation both under this section and otherwise for the same loss of employment, loss of earnings or detriment.

”.

**50. Sections 36, 37, 38 and 39 repealed and replaced by a Division heading and sections 36 to 39G**

Sections 36, 37, 38 and 39 are repealed and the following heading and sections are inserted instead —

“

**Division 2 — Safety and health committees**

**36. Interpretation**

- (1) In this Division —
  - “**allowed period**” means —
    - (a) 3 months; or
    - (b) such longer period as the Commissioner may allow on application by a consultation party;
  - “**consultation party**” means a person that comes within section 39C(2)(a), (b) or (c);
  - “**prescribed requirements**” means —
    - (a) the provisions of —
      - (i) an agreement under section 39C(2); and
      - (ii) section 39C(3);
    - (b) the terms of a determination of —
      - (i) the Commissioner, under section 39D; or
      - (ii) the Tribunal, under section 39G, in respect of the workplace concerned or, if any agreement under section 39E applies, any workplace concerned; and
    - (c) any requirement of the regulations.
- (2) In this Division references to a “**safety and health representative for the workplace**” or a “**safety and health representative for a workplace**” include a safety and health representative elected for

a group of employees pursuant to a scheme under section 30A if any member of the group works at the workplace concerned.

**37. Employees to appoint representatives**

Whenever required for the purpose of making an agreement under section 39C(2) or 39E(1) in respect of a workplace, the employees who work at the workplace are to appoint, from amongst their number, one or more employees —

- (a) to represent them for that purpose; or
- (b) as may be required, to replace any employee previously appointed under this section.

**38. Obligation of employer to establish a safety and health committee**

- (1) An employer must, in accordance with the prescribed requirements, establish a safety and health committee for a workplace within the allowed period after —
  - (a) the coming into operation of a regulation requiring the employer to do so;
  - (b) service on the employer of a notice by the Commissioner requiring the employer to do so; or
  - (c) being requested under section 39(1) to do so,

unless, in the case mentioned in paragraph (c), the Commissioner has decided under section 39A that a safety and health committee is not required to be established for the workplace concerned.

- (2) If an employer contravenes subsection (1), the employer commits an offence.

**39. Request for establishment of safety and health committee**

- (1) An employee who works at a workplace may request the employer to establish a safety and health committee for the workplace.
- (2) If a request is made under subsection (1), the employer must within 21 days after the request is received either —
  - (a) notify —
    - (i) the employee who made the request; and
    - (ii) any safety and health representative for the workplace,that the employer agrees to the request; or
  - (b) under section 39A, refer to the Commissioner the question whether a safety and health committee should be established for the workplace.
- (3) If an employer contravenes subsection (2), the employer commits an offence.

**39A. Referral of question to Commissioner**

- (1) If —
  - (a) a request has been made to an employer under section 39(1) in respect of a workplace; and
  - (b) the employer considers that the circumstances of the case are such that the employer should not be required to establish a safety and health committee for the workplace,

the employer may refer to the Commissioner the question of whether a safety and health committee should be so established.

- (2) The employer must give notice of a referral under this section to —
  - (a) the employee concerned; and
  - (b) any safety and health representative for the workplace.
- (3) The Commissioner is to —
  - (a) decide a question referred to the Commissioner under subsection (1); and
  - (b) notify the employer and the employee concerned of the decision.

**39B. Employer may establish a safety and health committee**

An employer may, on the employer's own initiative and in accordance with the prescribed requirements, establish a safety and health committee for a workplace if —

- (a) a regulation referred to in section 38(1)(a) has not come into operation;
- (b) a notice referred to in section 38(1)(b) has not been served on the employer; or
- (c) a request has not been made under section 39(1),

in respect of the workplace.

**39C. How safety and health committee to be constituted**

- (1) In this section —  
“**workplace**”, where an agreement under section 39E applies, includes 2 or more workplaces.
- (2) Subject to subsection (3), the composition, and the manner in which persons become members, of a safety and health committee for a workplace are to be determined by agreement in writing between —
  - (a) the employer;
  - (b) any safety and health representative for the workplace; and
  - (c) the employees appointed under section 37 in respect of the workplace.
- (3) At least one half of the members of a safety and health committee for a workplace must be persons each of whom is —
  - (a) a safety and health representative for the workplace; or
  - (b) an employee who works at the workplace and holds office as a member representing other employees.

**39D. Commissioner may make determination in certain cases**

- (1) This section applies if —
  - (a) a consultation party considers that discussions for the purpose of making an agreement under section 39C —
    - (i) cannot commence or continue because there are no employees appointed under section 37 in respect of the workplace concerned;
    - (ii) have not been commenced or continued in good faith by any party;



(iii) are being unreasonably delayed; or

(iv) have broken down;

or

(b) the employer concerned considers that for some other reason it is unlikely that the employer will be able to comply with section 38(1) within the allowed period under that section.

(2) The employer or other consultation party may refer to the Commissioner for determination —

(a) the matters that are required to be settled by agreement under section 39C; or

(b) any particular matter mentioned in paragraph (a) on which the parties cannot agree.

(3) On such a referral, the Commissioner is to —

(a) make any necessary determination; and

(b) notify the employer or other party concerned of the determination.

**39E. Functions of committee may cover more than one workplace**

(1) If —

(a) an employer —

(i) is under an obligation by operation of section 38(1); or

(ii) wishes to take action for the purposes of section 39B,

in respect of more than one workplace of the employer; and

(b) a safety and health committee has not been established for one or more of those workplaces,

the parties concerned may agree in writing that one safety and health committee is to be established to exercise functions in relation to each of the workplaces to which paragraph (b) applies.

(2) For the purposes of subsection (1) the parties concerned are —

(a) the employer;

(b) any safety and health representative for a workplace to which subsection (1)(b) applies; and

(c) the employees appointed under section 37 in respect of that workplace.

(3) An agreement under subsection (1) may provide —

(a) for the establishment of a safety and health committee to exercise functions in relation to more than one workplace; and

(b) for that committee to have subcommittees for each workplace —

(i) to advise the committee on the exercise of its functions in relation to that workplace; and

(ii) to exercise some or all of those functions as the delegate of the committee in accordance with the terms of a delegation to it.

- (4) The composition of any subcommittee referred to in subsection (3) is to be determined by the parties referred to in subsection (2).

**39F. Amendment of agreement and abolition of committee**

- (1) In this section —  
“**relevant parties**”, in respect of a workplace, means —
- (a) the employer; and
  - (b) each member for the time being of the safety and health committee for the workplace.
- (2) Where —
- (a) an agreement has been made under section 39C(2); or
  - (b) the matters referred to in section 39C(2) are governed by provisions consisting —
    - (i) wholly of a determination made under section 39D, whether or not it has been varied or confirmed under section 39G; or
    - (ii) partly of an agreement under section 39C(2) and partly of a determination made under section 39D, whether or not it has been varied or confirmed under section 39G,
- the relevant parties may by agreement in writing made between them —
- (c) vary —
    - (i) the agreement or provisions; or
    - (ii) if applicable, the agreement or provisions as previously varied under this subsection; and
  - (d) make any transitional provision that is necessary or expedient in respect of the variation.
- (3) Where a safety and health committee has been established for a workplace, the relevant parties may by agreement in writing —
- (a) abolish the committee; and
  - (b) make any transitional provision that is necessary or expedient in respect of the abolition.
- (4) If the relevant parties cannot agree on the exercise of a power referred to in subsection (2) or (3), any such party may refer to the Commissioner for determination any question —
- (a) whether the agreement or provisions concerned should be varied;
  - (b) as to the manner in which the agreement or provisions should be varied; or
  - (c) whether a safety and health committee should be abolished,
- or as to transitional provisions that should be made in respect of such a matter.
- (5) On such a referral, the Commissioner is to —
- (a) make any necessary determination; and
  - (b) notify the relevant parties of the determination.

**39G. Review of Commissioner’s decision**

- (1) Where the Commissioner has made a decision under section 39A(3) in respect of a workplace —
  - (a) the employer;
  - (b) a safety and health representative for the workplace; or
  - (c) an employee who works at the workplace,may refer the decision to the Tribunal for review.
- (2) Where the Commissioner has made a determination under section 39D(3) in respect of one or more workplaces —
  - (a) the employer;
  - (b) any safety and health representative for a workplace concerned; or
  - (c) an employee appointed under section 37 in respect of a workplace concerned,may refer the determination to the Tribunal for review.
- (3) Where the Commissioner has made a determination under section 39F(5) in respect of —
  - (a) an agreement; or
  - (b) a safety and health committee,a relevant party, within the meaning in that section, in relation to the workplace concerned may refer the determination to the Tribunal for review.
- (4) The Tribunal may confirm, vary or revoke a decision or determination of the Commissioner referred to it under this section.

”.

**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.

**52. Section 40 amended**

- (1) At the beginning of section 40 the following subsection is inserted —

“

- (1) In this section —  
**“workplace”**, where an agreement under section 39E applies to the establishment of a safety and health committee, means any workplace in relation to which the committee may exercise functions.

”

- (2) Section 40 is amended by inserting before “The functions” the subsection designation “(2)”.

**53. Section 41 amended**

- (1) Section 41(1) is amended by deleting “subsection (2) and to”.
- (2) Section 41(2) is repealed.

**54. Part VI Division 1 heading inserted**

After the heading to Part VI the following heading is inserted —

“

**Division 1 — Issue of notices by inspector**

”

**55. Part VI Division 2 inserted**

After section 51A the following Division is inserted —

“

**Division 2 — Issue of provisional improvement notices by safety and health representative**

**51AB. Definition**

In this Division —

**“qualified representative”** means a safety and health representative who has completed a course of training prescribed for the purposes of this definition.

**51AC. Issue of provisional improvement notices**

- (1) Subsection (2) applies where a qualified representative —
  - (a) is of the opinion that a person —
    - (i) is contravening a provision of this Act; or
    - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated;
  - and
  - (b) has undertaken the consultations required by section 51AD.
- (2) The qualified representative may issue to the person a provisional improvement notice requiring the person to remedy —
  - (a) the contravention or likely contravention; or
  - (b) the matters or activities occasioning the contravention or likely contravention.
- (3) A qualified representative may exercise the power conferred by subsection (2) only —

- (a) in respect of a workplace for which the qualified representative was elected; or
  - (b) if, pursuant to a scheme under section 30A, the qualified representative was elected for a group of employees, in respect of any workplace at which any member of the group works.
- (4) If a provisional improvement notice is issued to an employee, the employee must, as soon as is practicable, give a copy of the notice to the employee's employer.

**51AD. Consultation required before issue**

- (1) In this section —  
“**consult**” means consult about the matters or activities to which an intended notice will relate.
- (2) Before issuing a provisional improvement notice a qualified representative must —
- (a) consult with the person that is to be issued with the notice; and
  - (b) if there is any other safety and health representative for the workplace concerned, consult with another representative for that workplace so far as it is reasonably practicable to do so.
- (3) The reference in subsection (2) to a safety and health representative includes a safety and health representative elected for a group of employees pursuant to a scheme under section 30A if any member of the group works at the workplace concerned.
- (4) The regulations may make provision requiring a qualified representative, in specified circumstances, to consult with a person who holds a prescribed office in the department before issuing a provisional improvement notice.

**51AE. Contents of notice**

- (1) A provisional improvement notice must —
- (a) state that the qualified representative is of the opinion that the person —
    - (i) is contravening a provision of this Act; or
    - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated;
  - (b) state reasonable grounds for the representative being of that opinion;
  - (c) specify the provision of this Act in respect of which the opinion is held;
  - (d) specify the day before which the person is required to remedy —
    - (i) the contravention or likely contravention; or
    - (ii) the matters or activities occasioning the contravention or likely contravention;
- and
- (e) contain a brief summary of the right to have the notice reviewed by an inspector under section 51AH.

- (2) The day specified for the purposes of subsection (1)(d) must be more than 7 days after the day on which the notice is issued.

**51AF. Provisional notices may include directions**

- (1) A qualified representative may include in a provisional improvement notice directions as to the measures to be taken to remedy —
  - (a) any contravention or likely contravention; or
  - (b) matters or activities,to which the notice relates.
- (2) Any direction under subsection (1) may —
  - (a) refer to any code of practice; and
  - (b) offer the person issued with the notice a choice of ways in which to effect the remedy.

**51AG. Failure to comply with notice**

- (1) A person commits an offence if the person fails to comply with a provisional improvement notice issued to the person.
- (2) Subsection (1) does not apply if the right conferred by section 51AH(2) is exercised.

**51AH. Review of notice by an inspector**

- (1) In this section —

**“affected person”** means —

  - (a) the person issued with a provisional improvement notice; or
  - (b) in the case of a notice issued to an employee —
    - (i) the employee; and
    - (ii) the employer of the employee.
- (2) An affected person may, in writing delivered or sent to the department (a **“review notice”**), require that an inspector review a provisional improvement notice.
- (3) A review notice —
  - (a) may be sent —
    - (i) by letter addressed to, and posted to a place of business of, the department;
    - (ii) by transmission to a facsimile number used by the department; or
    - (iii) by electronic data transmission to an email address used by the department;and
  - (b) must be received by the department not later than the day specified in the provisional improvement notice for the purposes of section 51AE(1)(d).
- (4) The operation of the provisional improvement notice is suspended by the receipt by the department of a review notice in accordance with this section.
- (5) Where a review notice is received by the department in accordance with this section, an inspector must as soon as is practicable —
  - (a) attend at the workplace; and

- (b) inquire into the circumstances relating to the notice, and having done so may —
  - (c) affirm the notice;
  - (d) affirm the notice with modifications; or
  - (e) cancel the notice.
- (6) If an inspector affirms a provisional improvement notice, with or without modifications, the notice as so affirmed has effect as if it had been issued by the inspector under section 48.

”

**56. Section 56 amended**

Section 56(1)(a) and (b) are each amended by deleting “a safety and health representative or”.

**57. Schedule amended**

The Schedule is amended by inserting after item 26C the following item —

“

26D. The establishment of safety and health committees by employers.

”

**Part 6 — Amendments relating to the establishment of a tribunal**

**Division 1 — Amendments to the *Occupational Safety and Health Act 1984***

**62. Long title amended**

The long title is amended by inserting after “Safety and Health,” —

“

**to provide for a tribunal for the determination of certain matters and claims,**

”

**63. Section 3 amended**

Section 3(1) is amended by inserting after the definition of “transferred law” the following definition —

“

“**Tribunal**” has the meaning given to that term in section 51G(2);

”

**64. Section 51A amended**

Section 51A(6) is repealed.

**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.

**67. Part VIB inserted**

After section 51E the following Part is inserted —

“

**Part VIB — Occupational Safety and Health Tribunal**

**51F. Interpretation**

In this Part —

“**Commission**” and “**Chief Commissioner**” have the meanings given to those terms in section 7(1) of the *Industrial Relations Act 1979*;

“**matter**” includes a claim under section 35C.

**51G. Industrial Relations Commission sitting as the Occupational Safety and Health Tribunal**

- (1) By this subsection the Commission has jurisdiction to hear and determine matters that may be referred for determination under sections 28(2), 30(6), 30A(4), 31(11), 34(1), 35(3), 35C, 39G(1), (2) and (3) and 51A(1).
- (2) When sitting in exercise of the jurisdiction conferred by subsection (1) the Commission is to be known as the Occupational Safety and Health Tribunal (the “**Tribunal**”).
- (3) A determination of the Tribunal on a matter mentioned in subsection (1) has effect according to its substance and an order containing the determination is an instrument to which section 83 of the *Industrial Relations Act 1979* applies.

**51H. Jurisdiction to be exercised by Commissioner with requisite qualifications**

- (1) The jurisdiction conferred by section 51G in respect of any matter is to be exercised —
  - (a) by the Commissioner appointed for the purposes of section 8(2a) of the *Industrial Relations Act 1979*; 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 section 17 of the *Industrial Relations Act 1979*, to whom the Chief Commissioner may allocate the matter under section 16 of that Act.
- (2) In allocating a matter for the purposes of subsection (1)(b) the Chief Commissioner is to have regard to the desirability of the Commissioner concerned having relevant knowledge in the field of occupational safety and health.
- (3) A Commissioner to whom a matter has been allocated under subsection (1)(b) may continue and complete the hearing and determination of part-heard proceedings after the Commissioner referred to in subsection (1)(a) has resumed his or her duties.



**51I. Practice, procedure and appeals**

- (1) The provisions of sections 22B, 26(1), (2) and (3), 27, 28, 31(1), (2), (3), (5) and (6), 33, 34(1), (3) and (4), 36 and 49 of the *Industrial Relations Act 1979* that apply to and in relation to the exercise of the jurisdiction of the Commission constituted by a Commissioner apply to the exercise of the jurisdiction conferred by section 51G —
  - (a) with such modifications as are prescribed under section 113 of that Act; and
  - (b) with such other modifications as may be necessary or appropriate.
- (2) For the purposes of subsection (1), section 31(1) of the *Industrial Relations Act 1979* applies as if paragraph (c) were deleted and the following paragraph were inserted instead —

“ (c) by a legal practitioner. ”.

**51J. Conciliation**

- (1) This section applies where a matter has been referred to the Tribunal for determination under section 28(2), 30(6), 30A(4), 31(11), 35(3) or 39G.
- (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;
    - (ii) arrange for the parties or their representatives to confer among themselves at a conference at which the Tribunal is not present; and
    - (iii) otherwise encourage the parties to exchange or divulge attitudes or information that in the opinion of the Tribunal would assist in the resolution of the issues.
- (3) The Tribunal may give any direction or make any order or declaration that the Tribunal thinks expedient for the purposes of this section, and any such direction, order or declaration is enforceable as if it were given or made under section 32 of the *Industrial Relations Act 1979*.
- (4) If the Tribunal gives or makes a direction, order or declaration under subsection (3) the Tribunal must —
  - (a) if it is given or made orally, reduce the direction, order or declaration to writing as soon as is practicable; and
  - (b) make the text of the direction, order or declaration available to the parties as soon as is practicable after it is given or made.
- (5) If the Tribunal —
  - (a) takes action under subsection (2)(a); and
  - (b) is satisfied that the parties have reached agreement on all of the issues involved,

the Tribunal may, with the consent of the parties, make a determination for the purposes of section 51G in terms of that agreement.

- (6) If the Tribunal —
  - (a) takes action under subsection (2)(a); and
  - (b) subsection (5)(b) does not apply,the Tribunal is to determine the matter for the purposes of section 51G.
- (7) In making a determination mentioned in subsection (6) the Tribunal is to endeavour to ensure that the matter is resolved —
  - (a) taking into account any agreement reached by the parties on any particular issue; and
  - (b) subject to paragraph (a), on terms that could reasonably have been agreed between the parties in the first instance or by conciliation.

**51K. Certain matters to be heard together**

- (1) The section applies if —
  - (a) under the *Industrial Relations Act 1979*, an employee has referred to the Commission a claim that the employee has been harshly, oppressively or unfairly dismissed from employment; and
  - (b) a matter —
    - (i) involving the same employer and employee; and
    - (ii) arising out of the same circumstances,has been referred for determination under the jurisdiction conferred by section 51G.
- (2) An employee referred to in subsection (1) may in writing request that a matter referred to in subsection (1)(a) be heard and determined by the Commissioner who is hearing and determining the matter referred to in subsection (1)(b).
- (3) If such a request is made, the Chief Commissioner, in exercising the powers conferred by section 16 of the *Industrial Relations Act 1979*, is to allocate the hearing and determination of the matter accordingly.
- (4) If —
  - (a) an employee has referred to the Commission a claim of the kind described in section 29(1)(b)(ii) of the *Industrial Relations Act 1979*; and
  - (b) the claim involves the same employer and arises out of the same circumstances as a matter that has been referred for determination under the jurisdiction conferred by section 51G,

nothing in this section prevents the Chief Commissioner exercising the powers conferred by section 16 of that Act so that the claim is heard and determined by the Commissioner who is hearing and determining the matter referred to in paragraph (b).

”.

**68. Section 54B amended**

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

**69. Various references to a safety and health magistrate amended**

- (1) Each provision specified in the Table to this subsection is amended by deleting “a safety and health magistrate” and inserting instead —  
“ the Tribunal ”.

**Table**

s. 28(2)	s. 34(3)
s. 30(6)	s. 34(4)
s. 31(11)	s. 35(3)
s. 34(1)	s. 51A(1)

- (2) Each provision specified in the Table to this subsection is amended by deleting “the safety and health magistrate” and inserting instead —  
“ the Tribunal ”.

**Table**

s. 34(3) and (4)	s. 51A(5)
s. 35(3)	s. 51A(7)

- (3) Section 51A(4) is amended by deleting “A safety and health magistrate” and inserting instead —  
“ The Tribunal ”.
- (4) The Schedule is amended by deleting item 26B.

**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.

## **Part 8 — Miscellaneous amendments**

### **105. Section 6 amended**

- (1) Section 6 is amended by deleting subsection (2)(c) and “and” after it and inserting instead —

“

- (c) 2 persons employed in the Public Service under Part 3 of the *Public Sector Management Act 1994*, of whom —
- (i) one shall be nominated by the Minister; and
  - (ii) the other shall be an officer of the department, as defined in section 4(1) of the *Mines Safety and Inspection Act 1994*, nominated by the Minister to whom the administration of that Act is committed;

and

”.

- (2) Section 6(2)(d) is amended as follows:

- (a) in subparagraph (i) by deleting “3” and inserting instead —

“ 2 ”;

- (b) in subparagraph (ii) by inserting after “persons” —

“

, of whom one shall be a person who has knowledge of and experience in the mining industry in the State,

”;

- (c) by deleting “and” after subparagraph (ii);

- (d) in subparagraph (iii) by deleting the full stop and inserting instead —

“ ; and ”;

- (e) by inserting after subparagraph (iii) the following subparagraph —

“

- (iv) one shall be a person nominated by the Chamber of Minerals and Energy of Western Australia Inc.

”.

- (3) Section 6(3) is amended as follows:

- (a) by deleting “or (ii)” in both places where it occurs and inserting instead —

“ , (ii) or (iv) ”;

- (b) by deleting “considered suitable” and inserting instead —

“ who is suitably qualified, ”.

### **106. Section 14A inserted**

After section 14 the following section is inserted —

#### 14A. Mining Industry Advisory Committee

- (1) In this section —
- “**committee**” means the committee referred to in subsection (2);
- “**mining industry**” means the mining industry in the State;
- “**Ministers**” means —
- (a) the Minister to whom the administration of this Act is committed; and
  - (b) the Minister to whom the administration of the *Mines Safety and Inspection Act 1994* is committed (the “**Minister for Mines**”),
- acting jointly.
- (2) There is to be an advisory committee called the Mining Industry Advisory Committee.
- (3) The functions of the committee are —
- (a) to advise and make recommendations to the Ministers and the Commission on occupational safety and health matters concerning the mining industry; and
  - (b) to liaise with the Commission to coordinate activities on related functions and to maintain parallel standards,
- and in particular, but without limiting the generality of paragraphs (a) and (b) —
- (c) to inquire into and report to the Ministers regarding any matter referred to it by the Ministers relating to occupational safety and health in the mining industry;
  - (d) to make recommendations to the Minister for Mines regarding the formulation, amendment, or repeal of laws relating to occupational safety and health for which that Minister is responsible;
  - (e) to prepare or recommend the adoption of codes of practice, guidelines, standards, specifications or other forms of guidance for the purpose of assisting employers, self-employed persons, employees, manufacturers or other persons to maintain appropriate standards of occupational safety and health in the mining industry; and
  - (f) to provide advice on —
    - (i) education and publications; and
    - (ii) training and training courses,
 with respect to occupational safety and health in the mining industry.
- (4) The chairperson of the committee is to be the member of the Commission nominated under section 6(2)(c)(ii).
- (5) Subject to subsection (4), the Ministers —
- (a) are to appoint the members of; and
  - (b) may alter or reconstitute,
- the committee.



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 On the date as at which this compilation was prepared, the *Mines Safety and Inspection Amendment Act 2004* s. 94 had not come into operation. It reads as follows:

“

**94. Occupational Safety and Health Act 1984 amended**

- (1) The amendment in this section is to the *Occupational Safety and Health Act 1984*.  
(2) After section 4(1a) the following subsection is inserted —

“

- (1b) This Act has effect subject to any instrument for the time being in force under section 6A of the *Mines Safety and Inspection Act 1994*.

”.

”.

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> ”.
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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> ”.
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”.

“

**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.

”.

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 ”.
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”.