

Western Australia

**Occupational Safety and Health Legislation
Amendment Act 2009**

As at 03 Dec 2009

No. 36 of 2009

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Occupational Safety and Health Legislation Amendment Act 2009

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Western Australia

Occupational Safety and Health Legislation Amendment Act 2009

No. 36 of 2009

An Act to amend the *Occupational Safety and Health Act 1984* and to make related amendments to the *Industrial Relations Act 1979*.

[Assented to 3 December 2009]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Occupational Safety and Health Legislation Amendment Act 2009*.

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 (*assent day*);
- (b) sections 11, 12 and 15 — on a day fixed by proclamation;
- (c) section 13 and Part 3 — on the 28th day after assent day;
- (d) the rest of the Act — on the day after assent day.

Part 2 — *Occupational Safety and Health Act 1984* amended

3. Act amended

This Part amends the *Occupational Safety and Health Act 1984*.

4. Section 3 amended

In section 3(4) delete “Crown.” and insert:

Crown and the Crown is to be treated as the employer
of a police officer.

5. Section 23D amended

(1) In section 23D(2) delete “section 19 has” and insert:

sections 19 and 19A have

(2) In section 23D(3) delete “apply —” and insert:

apply and sections 20A, 23H and 23J have effect —

6. Section 23E amended

(1) In section 23E(2) delete “section 19 has” and insert:

sections 19 and 19A have

s. 7

(2) In section 23E(3) delete “apply” and insert:

apply, and sections 20A and 23J have effect,

7. Section 23F amended

(1) In section 23F(4) delete “section 19 has” and insert:

sections 19 and 19A have

(2) In section 23F(5) delete “apply” and insert:

apply, and sections 20A and 23J have effect,

8. Section 33 amended

In section 33(2) delete “Part” and insert:

Act

9. Section 35 amended

In section 35(1)(g) delete “Part.” and insert:

Act.

10. Section 43 amended

In section 43(1)(k)(i)(II) delete “39G(2),” and insert:

23G(2),

11. Section 51A amended

In section 51A(2) delete “in the prescribed form”.

12. Section 51G amended

In section 51G(1) delete “(3) and 51A(1).” and insert:

(3), 51A(1) and 61A.

13. Section 51H amended

(1) Delete section 51H(1)(a) and “or” after it and insert:

(a) by the commissioner designated under the
Industrial Relations Act 1979 section 16(2A) to
exercise the jurisdiction; or

(2) After section 51H(3) insert:

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

14. Section 60 amended

In section 60(5) delete “the Schedule.” and insert:

Schedule 1.

15. Section 61A inserted

After section 60 insert:

61A. Review of Commissioner's decisions under the regulations

(1) In this section —

reviewable decision means —

- (a) a decision made under the regulations by the Commissioner himself or herself; and
- (b) a determination of the Commissioner on the review, under the regulations, of a decision made under the regulations by a person other than the Commissioner, whether or not the decision was made by that person as a delegate of the Commissioner,

but does not include a decision made by a person acting as a delegate of the Commissioner.

- (2) A person who is not satisfied with a reviewable decision may, within 14 days of receiving notice of the decision, refer the decision to the Tribunal for review.
- (3) On reference of a decision under subsection (2), the Tribunal is to inquire into the circumstances relevant to the decision and may —
 - (a) affirm the decision; or
 - (b) set aside the decision; or
 - (c) substitute for the decision any decision that the Tribunal considers the Commissioner should have made in the first instance.

- (4) Pending the decision on a reference under this section, the operation of the reviewable decision is to continue, subject to any decision to the contrary made by the Tribunal.

16. Schedule heading replaced

Delete:

Schedule

Subject matter for regulations

and insert:

Schedule 1 — Subject matter for regulations

[s. 60(5)]

Part 3 — *Industrial Relations Act 1979* amended

17. Act amended

This Part amends the *Industrial Relations Act 1979*.

18. Section 8 amended

Delete section 8(2a) and insert:

- (3A) At least one commissioner who holds office under subsection (2)(d) must, in addition to the other attributes required for appointment, have —
- (a) knowledge of or experience in the field of occupational safety and health; and
 - (b) knowledge of the *Occupational Safety and Health Act 1984*, the *Mines Safety and Inspection Act 1994*, the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum Pipelines Act 1969* or the *Petroleum (Submerged Lands) Act 1982*,

sufficient for exercising the jurisdiction that the commissioner designated under section 16(2A) is required to exercise.

19. Section 16 amended

After section 16(1a) insert:

- (2A) The Chief Commissioner must, in writing, designate one commissioner, who holds office under section 8(2)(d) and who satisfies the additional requirements referred to in section 8(3A), to exercise the jurisdiction conferred by the *Occupational Safety and Health Act 1984* section 51G.

- (2B) Without affecting the Chief Commissioner's duty under subsection (2A) to ensure that, at any one time, one commissioner is designated, the Chief Commissioner —
- (a) may at or after the time when a commissioner is designated under subsection (2A), in writing, specify a date when the designation ceases to have effect; and
 - (b) may, in writing, vary any date so specified.
- (2C) The designation of a commissioner under subsection (2A) to exercise the jurisdiction conferred by the *Occupational Safety and Health Act 1984* section 51G does not preclude the commissioner from also performing other functions as a commissioner under this Act.
- (2D) The commissioner who, immediately before commencement, was the commissioner whose appointment satisfied the requirements of section 8(2a) (as it was before the commencement) is, on and from commencement, to be taken to be designated under subsection (2A) to exercise the jurisdiction conferred by the *Occupational Safety and Health Act 1984* section 51G.
- (2E) In subsection (2D) —
commencement means the commencement of the *Occupational Safety and Health Legislation Amendment Act 2009* section 19.
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