

Western Australia

**Occupational Safety and Health Legislation
Amendment and Repeal Act 2004**

As at 12 Nov 2004

No. 51 of 2004

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Occupational Safety and Health Legislation Amendment and Repeal Act 2004

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Western Australia

Occupational Safety and Health Legislation Amendment and Repeal Act 2004

No. 51 of 2004

An Act to amend —

- **the *Occupational Safety and Health Act 1984*;**
 - **the *Industrial Relations Act 1979*; and**
 - **the *Mines Safety and Inspection Act 1994*,**
- and to repeal the *Shearers' Accommodation Act 1912*.**

[Assented to 12 November 2004]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Occupational Safety and Health Legislation Amendment and Repeal Act 2004*.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. The Act amended

The amendments in Parts 2 to 8, except those in sections 70 and 115, are to the *Occupational Safety and Health Act 1984**.

[* *Reprinted as at 22 March 1999.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2003, Table 1, p. 267.]*

**Part 2 — Amendments relating to general
workplace duties**

4. Part III Division 2 heading inserted

After section 18A the following heading is inserted —

“

Division 2 — General workplace duties

”.

5. Section 19 amended

Section 19(3), (4) and (5) are repealed.

6. Section 21 amended

Section 21(1) is repealed and the following subsections are inserted instead —

“

- (1) A self-employed person shall take reasonable care to ensure his or her own safety and health at work.
- (2) An employer or self-employed person shall, so far as is practicable, ensure that the safety or health of a person, not being (in the case of an employer) an employee of the employer, is not adversely affected wholly or in part as a result of —
 - (a) work that has been or is being undertaken by —
 - (i) the employer or any employee of the employer; or
 - (ii) the self-employed person;
 - or
 - (b) any hazard that arises from or is increased by —
 - (i) the work referred to in paragraph (a); or

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- (ii) the system of work that has been or is being operated by the employer or the self-employed person.

”.

7. Sections 21B and 21C inserted

After section 21A the following sections are inserted —

“

21B. Duty placed on body corporate to which section 23D, 23E or 23F applies

- (1) If section 23D, 23E or 23F makes any other provision of this Act apply to a body corporate as if it were the employer of a particular person, this section and section 21C apply to the body corporate at such times as the other provision is made to apply.
- (2) A body corporate to which this section applies shall, so far as is practicable, ensure that the safety or health of a person is not adversely affected wholly or in part as a result of —
 - (a) work that has been or is being undertaken by —
 - (i) the body corporate; or
 - (ii) a person carrying out work under the direction of the body corporate;
 - or
 - (b) any hazard that arises from or is increased by —
 - (i) the work referred to in paragraph (a); or
 - (ii) the system of work that has been or is being operated by the body corporate.

21C. Breaches of section 21B

- (1) If a body corporate contravenes section 21B(2) in circumstances of gross negligence, the body corporate commits an offence and is liable to a level 4 penalty.
- (2) If —
 - (a) a body corporate —
 - (i) contravenes section 21B(2); and
 - (ii) by the contravention causes the death of, or serious harm to, a person;
 - and
 - (b) subsection (1) does not apply,the body corporate commits an offence and is liable to a level 3 penalty.
- (3) If —
 - (a) a body corporate contravenes section 21B(2); and
 - (b) neither subsection (1) nor subsection (2) applies,the body corporate commits an offence and is liable to a level 2 penalty.
- (4) A body corporate charged with an offence under —
 - (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
 - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

”.

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**8. Part III Divisions 3, 4 and 5 and heading for Division 6
inserted**

After section 23B the following Divisions and Division heading
are inserted —

“

**Division 3 — Certain workplace situations to be treated
as employment**

23C. Terms used in this Division

In this Division —

“**business**” includes the operations of a public
authority;

“**public authority**” means —

- (a) a Minister of the Crown acting in the
Minister’s official capacity;
- (b) a State Government department, State
trading concern, State instrumentality or
State agency; or
- (c) any other body or person, whether corporate
or not and including a local government, that
under a written law administers or carries on
a social service or public utility for the
benefit of the State or a part of the State.

23D. Contract work arrangements

- (1) This section applies where a person (the “**principal**”)
in the course of trade or business engages a contractor
(the “**contractor**”) to carry out work for the principal.
- (2) Where this section applies, section 19 has effect —
 - (a) as if the principal were the employer of —
 - (i) the contractor; and

- (ii) any person employed or engaged by the contractor to carry out or assist in carrying out the work concerned, in relation to matters over which the principal has the capacity to exercise control; and
- (b) as if —
 - (i) the contractor; and
 - (ii) any person referred to in paragraph (a)(ii),
were employees of the principal in relation to matters over which the principal has the capacity to exercise control.
- (3) Where this section applies, the further duties referred to in subsection (4) apply —
 - (a) as if the principal were the employer of —
 - (i) the contractor; and
 - (ii) any person employed or engaged by the contractor to carry out or assist in carrying out the work concerned;and
 - (b) as if —
 - (i) the contractor; and
 - (ii) any person referred to in paragraph (a)(ii),
were employees of the principal.
- (4) The further duties mentioned in subsection (3) are —
 - (a) the duties of an employee under section 20; and
 - (b) the duties of an employer under sections 23G(2) and 23I(3).

- (5) An agreement or arrangement is void for the purposes of this section if it purports to give control to —
- (a) a contractor; or
 - (b) a person referred to in subsection (2)(a)(ii),
- of any matter that —
- (c) comes within section 19 or 23G(2); and
 - (d) is a matter over which the principal has the capacity to exercise control,
- but this subsection does not prevent the making of a written agreement as mentioned in section 23G(3).
- (6) A purported waiver by a contractor of a right that arises directly or indirectly under this section is void.
- (7) Nothing in this section derogates from —
- (a) the duties of the principal to the contractor; or
 - (b) the duties of the contractor to any person employed or engaged by the contractor.

23E. Labour arrangements in general

- (1) This section applies where —
- (a) a person (the **“worker”**) for remuneration carries out work for another person (the **“person mentioned in subsection (1)(a)”**) in the course of trade or business;
 - (b) that person has the power of direction and control in respect of the work in a similar manner to the power of an employer under a contract of employment;
 - (c) there is no contract of employment between the worker and that person; and
 - (d) neither section 23D nor section 23F applies.

- (2) Where this section applies, section 19 has effect as if —
 - (a) the person mentioned in subsection (1)(a) were the employer of the worker; and
 - (b) the worker were the employee of that person,in relation to any matter that —
 - (c) comes within section 19; and
 - (d) is a matter over which that person has the capacity to exercise control.
- (3) Where this section applies, the further duties referred to in subsection (4) apply as if —
 - (a) the person mentioned in subsection (1)(a) were the employer of the worker; and
 - (b) the worker were the employee of that person.
- (4) The further duties mentioned in subsection (3) are —
 - (a) the duties of an employee under section 20; and
 - (b) the duties of an employer under section 23I(3).
- (5) An agreement or arrangement is void for the purposes of this section to the extent that it purports to give control to the worker of any matter that —
 - (a) comes within section 19; and
 - (b) is a matter over which the person mentioned in subsection (1)(a) has the capacity to exercise control.
- (6) This section applies despite anything to the contrary in, or any inconsistent provision of, an agreement, whether made orally or in writing.
- (7) A purported waiver by a worker of a right that arises directly or indirectly under this section is void.

23F. Labour hire arrangements

- (1) In this section —
“**agent**” —
 - (a) means a person that carries on a business of providing workers to carry out work for clients of the person; and
 - (b) includes a group training organisation as defined in section 7(1) of the *Industrial Relations Act 1979*;“**worker**” includes an employee or a contractor.
- (2) This section applies where, under a labour hire arrangement, work is carried out for remuneration by a worker for a client of an agent (the “**client**”) in the course of the client’s trade or business.
- (3) A labour hire arrangement exists where —
 - (a) an agent has for remuneration agreed with the client to provide a worker to carry out work for the client;
 - (b) there is no contract of employment between the worker and the client in relation to the work;
 - (c) there is an agreement (which may be a contract of employment) between the worker and the agent as to the carrying out of work including in respect of remuneration and other entitlements; and
 - (d) that agreement applies to the carrying out of the work by the worker for the client.
- (4) Where this section applies, section 19 has effect as if —
 - (a) each of the agent and the client were the employer of the worker; and

- (b) the worker were an employee of each of the agent and the client,
- in relation to any matter that —
- (c) comes within section 19; and
 - (d) as regards —
 - (i) the agent, is a matter over which the agent has the capacity to exercise control; or
 - (ii) the client, is a matter over which the client has the capacity to exercise control.
- (5) Where this section applies, the further duties referred to in subsection (6) apply as if —
 - (a) each of the agent and the client were the employer of the worker; and
 - (b) the worker were an employee of each of the agent and the client.
- (6) The further duties mentioned in subsection (5) are —
 - (a) the duties of an employee under section 20; and
 - (b) the duties of an employer under section 23I(3).
- (7) This section applies despite anything to the contrary in, or any inconsistent provision of, an agreement, whether made orally or in writing.
- (8) A purported waiver by a worker of a right that arises directly or indirectly under this section is void.

**Division 4 — Duty relating to certain
employment accommodation**

23G. Duty of employer to maintain safe premises

- (1) In this section —
- “residential premises” —
- (a) means residential premises that are situated outside —
- (i) a townsite within the meaning in section 26(1) of the *Land Administration Act 1997*; and
- (ii) the metropolitan region as defined in section 6 of the *Metropolitan Region Town Planning Scheme Act 1959*;
- and
- (b) includes land and outbuildings that are intended to be used in connection with the occupation of the premises.
- (2) Where —
- (a) an employee occupies residential premises that are owned by or under the control of the employee’s employer; and
- (b) the occupancy is necessary for the purposes of the employment because other accommodation is not reasonably available in the area concerned,
- the employer must, so far as is practicable, maintain the premises so that the employee occupying the premises is not exposed to hazards at the premises.
- (3) Subsection (2) does not apply if the occupancy is pursuant to a written agreement containing terms that

might reasonably be expected to apply to a letting of the residential premises to a tenant.

- (4) This section does not apply to the occupation of residential premises by an employee who is employed at a workplace referred to in section 4(2).

23H. Breaches of section 23G

- (1) If an employer contravenes section 23G(2) in circumstances of gross negligence, the employer commits an offence and is liable to a level 4 penalty.

- (2) If —

- (a) an employer —

- (i) contravenes section 23G(2); and
(ii) by the contravention causes the death of, or serious harm to, an employee occupying premises as mentioned in that section;

and

- (b) subsection (1) does not apply,

the employer commits an offence and is liable to a level 3 penalty.

- (3) If —

- (a) an employer contravenes section 23G(2); and
(b) neither subsection (1) nor subsection (2) applies,

the employer commits an offence and is liable to a level 2 penalty.

- (4) In proceedings against a person for an offence under subsection (1) or (2) it is a defence if the person proves that the death or serious harm, as the case may be, would not have occurred if the employee had taken

reasonable care to ensure the employee's own safety and health at the premises concerned.

- (5) An employer charged with an offence under —
- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
 - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

Division 5 — Other duties

23I. Notification of deaths, injuries and diseases

- (1) In this section —
- “business of an employer”** means —
- (a) the conduct of the undertaking or operations of an employer; and
 - (b) work undertaken by an employer or any employee of an employer;
- “business of a self-employed person”** means —
- (a) the conduct of the undertaking or operations of a self-employed person; and
 - (b) work undertaken by that person.
- (2) This section applies where —
- (a) at a workplace, or at residential premises to which section 23G(2) applies, an employee incurs an injury, or is affected by a disease, that —
 - (i) results in the death of the employee; or
 - (ii) is of a kind that is prescribed;
- or

- (b) at a workplace, a person who is not an employee incurs an injury in prescribed circumstances that —
 - (i) results in the death of the person; or
 - (ii) is of a kind that is prescribed, in connection with —
 - (iii) the business of an employer; or
 - (iv) the business of a self-employed person.
- (3) The relevant person must —
 - (a) forthwith; or
 - (b) as otherwise provided by the regulations, notify the Commissioner in the prescribed form of the injury or disease giving such particulars as may be prescribed.
- (4) The relevant person is the employer concerned where —
 - (a) subsection (2)(a) applies; or
 - (b) the person incurs the injury in connection with the business of an employer.
- (5) The relevant person is the self-employed person concerned where the person incurs the injury in connection with the business of a self-employed person.

23J. Breaches of section 23I

- (1) If an employer or self-employed person contravenes section 23I(3), the employer or self-employed person commits an offence.
- (2) In proceedings for an offence under subsection (1) against a person who is taken by section 23D(2) to be

an employer it is a defence if the person proves that subsection (4) applies.

- (3) In proceedings against a person for an offence under subsection (1) that relates to an injury mentioned in section 23I(2)(b) it is a defence if the person proves that subsection (4) applies.
- (4) This subsection applies if the person did not know, and could not reasonably be expected to have known, of the injury or disease concerned.

23K. Duty to inform employee who reports a hazard or injury

- (1) This section applies where an employer receives from an employee a report of a kind described in section 20(2)(d).
- (2) The employer must, within a reasonable time after receiving the report —
 - (a) investigate the matter that has been reported and determine the action, if any, that the employer intends to take in respect of the matter; and
 - (b) notify the employee of the determination so made.
- (3) If an employer contravenes subsection (2), the employer commits an offence.

23L. Notification of hazard to person having control of workplace

- (1) In this section —
“**workplace**” includes the means of access to and egress from the workplace.
- (2) If —

- (a) the employer of any employee; or
- (b) a self-employed person carrying out work,
at a workplace becomes of the opinion that —
- (c) a situation exists at the workplace that could
constitute a hazard to any person;
- (d) the hazard is one that a person having control of
the relevant part of the workplace (the
“responsible person”) has a duty to remedy
under section 22; and
- (e) the situation has not come to the attention of
that person,

the employer or self-employed person must, so far as it
is reasonably practicable to do so, give notice of the
situation to the responsible person.

- (3) A notice under subsection (2) must be given as soon as
is reasonably practicable after the employer or
self-employed person becomes of the opinion
mentioned in that subsection.
- (4) An employer or self-employed person that fails to
comply with subsection (2) commits an offence.

**Division 6 — Resolution of workplace issues, and
refusal to work on grounds of risk**

”.

9. Section 41A inserted

After the heading to Part V the following section is inserted —

“

41A. Extended meaning of “employer” and “employee”

In this Part —

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“employer” and **“employee”** include a person taken to be an employer and an employee respectively by operation of section 23D, 23E or 23F.

”.

10. Section 43 amended

After section 43(1) the following subsection is inserted —

“

(1a) In subsection (1) —

“workplace” includes residential premises that an employer is or was under a duty to maintain by virtue of section 23G(2).

”.

11. Section 47A inserted

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

“

47A. Extended meaning of “employer” and “employee”

In this Part —

“employer” and **“employee”** include a person taken to be an employer and an employee respectively by operation of section 23D, 23E or 23F.

”.

12. Section 49 amended

(1) Section 49(2) is amended by inserting after “prohibition notice” —

“

, other than in respect of an activity as defined in subsection (7),

”.

(2) After section 49(6) the following subsection is inserted —

“

(7) The application of this section extends to residential premises that are being or may be occupied by an employee as mentioned in section 23G(2), and for that purpose —

(a) in this section —

(i) **“workplace”** includes such premises;
and

(ii) references to imminent and serious injury to, or imminent and serious harm to the health of, a person are to be read as applying only to an employee;

and

(b) in this section and section 50 **“activity”** includes the occupation of such premises.

”.

13. Schedule amended

The Schedule is amended in item 24A by deleting “19(3)” and inserting instead —

“ 23I ”.

Part 3 — Amendments relating to offences and penalties

14. Section 3 amended

Section 3(3) is amended by deleting “19(7), 20(5), 21(3), 22(5), 23(5) and 23A(3)” and inserting instead —

“

18A, 19A(2), 20A(2), 21A(2), 21C(2), 22A(2), 23AA(2),
23B(2) and 23H(2)

”.

15. Sections 3A and 3B inserted

After section 3 the following sections are inserted —

“

3A. Penalty levels defined

(1) Where a person is liable to a level one penalty for an offence against this Act the person is liable —

(a) if the offence was committed by the person as an employee —

(i) for a first offence, to a fine of \$5 000;
and

(ii) for a subsequent offence, to a fine of
\$6 250;

(b) if paragraph (a) does not apply —

(i) in the case of an individual —

(I) for a first offence, to a fine of
\$25 000; and

(II) for a subsequent offence, to a
fine of \$31 250;

or

- (ii) in the case of a body corporate —
 - (I) for a first offence, to a fine of \$50 000; and
 - (II) for a subsequent offence, to a fine of \$62 500.
- (2) Where a person is liable to a level 2 penalty for an offence against this Act the person is liable —
 - (a) in the case of an individual —
 - (i) for a first offence, to a fine of \$100 000; and
 - (ii) for a subsequent offence, to a fine of \$125 000;
 - or
 - (b) in the case of a body corporate —
 - (i) for a first offence, to a fine of \$200 000; and
 - (ii) for a subsequent offence, to a fine of \$250 000.
- (3) Where a person is liable to a level 3 penalty for an offence against this Act the person is liable —
 - (a) in the case of an individual —
 - (i) for a first offence, to a fine of \$200 000; and
 - (ii) for a subsequent offence, to a fine of \$250 000;
 - or
 - (b) in the case of a body corporate —
 - (i) for a first offence, to a fine of \$400 000; and
 - (ii) for a subsequent offence, to a fine of \$500 000.

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- (4) Where a person is liable to a level 4 penalty for an offence against this Act the person is liable —
- (a) in the case of an individual —
- (i) for a first offence, to a fine of \$250 000 and imprisonment for 2 years; and
- (ii) for a subsequent offence, to a fine of \$312 500 and imprisonment for 2 years;
- or
- (b) in the case of a body corporate —
- (i) for a first offence, to a fine of \$500 000; and
- (ii) for a subsequent offence, to a fine of \$625 000.

3B. Meaning of “first offence” and “subsequent offence”

- (1) In this section —
- “relevant day”** means the day on which section 15 of the *Occupational Safety and Health Legislation Amendment and Repeal Act 2004* comes into operation.
- (2) For the purposes of this Act —
- (a) an offence is a first offence committed by a person if, at the time when the offence is committed, the person has not previously been convicted of any offence against this Act committed on or after the relevant day; and
- (b) an offence is a subsequent offence committed by a person if, at the time when the offence is committed, the person has previously been convicted of one or more offences against this Act committed on or after the relevant day.

”.

16. Part III Division 1 inserted

After the heading to Part III the following Division is inserted —

“

Division 1 — Preliminary

18A. Meaning of gross negligence in relation to certain breaches of this Part

- (1) This section applies to a contravention of section 19(1), 20(1) or (3), 21(1) or (2), 21B(2), 22(1), 23(1), (2), (3) or (3a), 23A or 23G(2).
- (2) A contravention of a provision mentioned in subsection (1) is committed in circumstances of gross negligence if —
 - (a) the offender —
 - (i) knew that the contravention would be likely to cause the death of, or serious harm to, a person to whom a duty is owed under that provision; but
 - (ii) acted or failed to act in disregard of that likelihood;
 - and
 - (b) the contravention did in fact cause the death of, or serious harm to, such a person.

”.

17. Section 19 amended

Section 19(6), (7), (8) and (9) are repealed.

18. Section 19A inserted

After section 19 the following section is inserted —

“

19A. Breaches of section 19(1)

- (1) If an employer contravenes section 19(1) in circumstances of gross negligence, the employer commits an offence and is liable to a level 4 penalty.
- (2) If —
 - (a) an employer —
 - (i) contravenes section 19(1); and
 - (ii) by the contravention causes the death of, or serious harm to, an employee;
 - and
 - (b) subsection (1) does not apply,the employer commits an offence and is liable to a level 3 penalty.
- (3) If —
 - (a) an employer contravenes section 19(1); and
 - (b) neither subsection (1) nor subsection (2) applies,the employer commits an offence and is liable to a level 2 penalty.
- (4) An employer charged with an offence under —
 - (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
 - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

”.

19. Section 20 amended

Section 20(4), (5) and (6) are repealed.

20. Section 20A inserted

After section 20 the following section is inserted —

“

20A. Breaches of section 20(1) or (3)

- (1) If an employee contravenes section 20(1) or (3) in circumstances of gross negligence, the employee commits an offence and is liable —
 - (a) for a first offence, to a fine of \$25 000; and
 - (b) for a subsequent offence, to a fine of \$31 250.
- (2) If —
 - (a) an employee —
 - (i) contravenes section 20(1) or (3); and
 - (ii) by the contravention causes the death of, or serious harm to, a person;
 - and
 - (b) subsection (1) does not apply,the employee commits an offence and is liable —
 - (c) for a first offence, to a fine of \$20 000; and
 - (d) for a subsequent offence, to a fine of \$25 000.
- (3) If —
 - (a) an employee contravenes section 20(1) or (3); and
 - (b) neither subsection (1) nor subsection (2) applies,the employee commits an offence and is liable —

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- (c) for a first offence, to a fine of \$10 000; and
 - (d) for a subsequent offence, to a fine of \$12 500.
- (4) An employee charged with an offence under —
- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
 - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

”.

21. Section 21 amended

Section 21(2), (3) and (4) are repealed.

22. Section 21A inserted

After section 21 the following section is inserted —

“

21A. Breaches of section 21

- (1) If an employer or a self-employed person contravenes section 21(1) or (2) in circumstances of gross negligence, the employer or a self-employed person commits an offence and is liable to a level 4 penalty.
- (2) If —
 - (a) an employer or self-employed person —
 - (i) contravenes section 21(1) or (2); and
 - (ii) by the contravention causes the death of, or serious harm to, a person;
 - and
 - (b) subsection (1) does not apply,the employer or self-employed person commits an offence and is liable to a level 3 penalty.

- (3) If —
- (a) an employer or self-employed person contravenes section 21(1) or (2); and
 - (b) neither subsection (1) nor subsection (2) applies,
- the employer or self-employed person commits an offence and is liable to a level 2 penalty.
- (4) An employer or self-employed person charged with an offence under —
- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
 - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

”.

23. Section 22 amended

Section 22(4), (5) and (6) are repealed.

24. Section 22A inserted

After section 22 the following section is inserted —

“

22A. Breaches of section 22(1)

- (1) If a person contravenes section 22(1) in circumstances of gross negligence, the person commits an offence and is liable to a level 4 penalty.
- (2) If —
 - (a) a person —
 - (i) contravenes section 22(1); and

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- (ii) by the contravention causes the death of, or serious harm to, a person —
 - (I) who is at; or
 - (II) who is using the means of access to or egress from, the workplace;
 - and
 - (b) subsection (1) does not apply,
- the person commits an offence and is liable to a level 3 penalty.
- (3) If —
- (a) a person contravenes section 22(1); and
 - (b) neither subsection (1) nor subsection (2) applies,
- the person commits an offence and is liable to a level 2 penalty.
- (4) A person charged with an offence under —
- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
 - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

”.

25. Section 23 amended

Section 23(4), (5) and (6) are repealed.

26. Section 23AA inserted

After section 23 the following section is inserted —

“

23AA. Breaches of section 23

- (1) If a person contravenes section 23(1), (2), (3) or (3a) in circumstances of gross negligence, the person commits an offence and is liable to a level 4 penalty.
- (2) If —
 - (a) a person —
 - (i) contravenes section 23(1), (2), (3) or (3a); and
 - (ii) by the contravention causes the death of, or serious harm to, a person to whom a duty is owed under that subsection;
 - and
 - (b) subsection (1) does not apply,the person commits an offence and is liable to a level 3 penalty.
- (3) If —
 - (a) a person contravenes section 23(1), (2), (3) or (3a); and
 - (b) neither subsection (1) nor subsection (2) applies,the person commits an offence and is liable to a level 2 penalty.
- (4) A person charged with an offence under —
 - (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or

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- (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

”.

27. Section 23A amended

Section 23A(2), (3) and (4) are repealed.

28. Section 23B inserted

After section 23A the following section is inserted —

“

23B. Breaches of section 23A

- (1) If a person contravenes section 23A in circumstances of gross negligence, the person commits an offence and is liable to a level 4 penalty.
- (2) If —
 - (a) a person —
 - (i) contravenes section 23A; and
 - (ii) by the contravention causes the death of, or serious harm to, a person;
 - and
 - (b) subsection (1) does not apply,the person commits an offence and is liable to a level 3 penalty.
- (3) If —
 - (a) a person contravenes section 23A; and
 - (b) neither subsection (1) nor subsection (2) applies,the person commits an offence and is liable to a level 2 penalty.

- (4) A person charged with an offence under —
- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
 - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

”.

29. Section 23B repealed

Section 23B is repealed.

30. Part VII Division 1 heading inserted

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

“

Division 1 — General provisions

”.

31. Section 54 replaced

Section 54 is repealed and the following section is inserted instead —

“

54. General penalty

If a person commits an offence against this Act for which a penalty is not otherwise provided, the person is liable to a level one penalty.

”.

32. Section 54AA repealed

Section 54AA is repealed.

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33. Section 54A amended

Section 54A(2) is amended by deleting “and is liable to a fine not exceeding \$200 where the offence is committed by a person as an employee and \$1 000 in any other case for every day on which the offence is so continued” and inserting instead —

“

and is liable to a fine not exceeding —

- (a) \$200, where the offence is committed by a person as an employee;
- (b) \$1 000, where the offence is committed by an individual and paragraph (a) does not apply; and
- (c) \$2 000, where the offence is committed by a body corporate,

for every day on which the offence is so continued

”.

34. Section 55 amended

- (1) After section 55(1) the following subsections are inserted —

“

- (1a) Despite subsection (1), if a body corporate is guilty of an offence under section 19A(1), 21A(1), 21C(1), 22A(1), 23AA(1), 23B(1) or 23H(1) the following provisions apply —

- (a) a person referred to in subsection (1) is guilty of that offence if it is proved that —
 - (i) the offence was attributable to any neglect on the part of the person; or
 - (ii) the person consented to or connived in the acts or omissions to which section 18A(2)(a)(ii) applied that were proved against the body corporate,

in circumstances where the person —

(iii) knew that the contravention would be likely to cause the death of, or serious harm to, a person to whom a duty was owed; but

(iv) acted or failed to act as mentioned in subparagraph (i) or (ii) in disregard of that likelihood;

(b) if paragraph (a) does not apply, a person referred to in subsection (1) is guilty of an offence under section 19A(2), 21A(2), 21C(2), 22A(2), 23AA(2), 23B(2) or 23H(2), as the case may require, if it is proved that the offence of the body corporate —

(i) occurred with the consent or connivance of the person; or

(ii) was attributable to any neglect on the part of the person.

(1b) A person convicted of an offence by virtue of subsection (1) or (1a) is liable to the penalty to which an individual who is convicted of that offence is liable.

”.

(2) Section 55(2) is amended by deleting “subsection (1)” and inserting instead —

“ subsections (1) and (1a) ”.

35. Section 55A inserted

After section 55 the following section is inserted —

“

55A. No double jeopardy

A person is not liable to be punished twice under this Act in respect of any act or omission.

”.

36. Part VII Divisions 2 and 3 inserted

After section 55A the following Divisions are inserted —

“

Division 2 — Criminal proceedings against the Crown

55B. Crown may be prosecuted

The Crown in any capacity may, in accordance with this Division, be prosecuted for an offence against this Act.

55C. Prosecution against body corporate

- (1) Where the act or omission constituting the offence is alleged against a body corporate that is an agent of the Crown, the prosecution proceedings are to be taken against the body corporate.
- (2) Subsection (1) includes a case where —
 - (a) a body corporate is the successor in law, as defined in section 55F(1), of an agency or department; or
 - (b) a body corporate is determined under section 55F(3).

55D. Prosecution in other cases

- (1) Where —
 - (a) the act or omission constituting the offence is alleged against an agency or department that is an agent of the Crown (the “**responsible agency**”); and
 - (b) section 55C does not apply,

the prosecution proceedings are to be taken against the Crown.

- (2) For the purposes of subsection (1) the WA Police is to be treated as an agency of the Crown.
- (3) Proceedings referred to in subsection (1) may be brought against the Crown under the title “State of Western Australia”.

55E. Provisions applicable to responsible agency

- (1) In this section —
 - “**chief executive**” means the person who is for the time being responsible for the day to day administration of a responsible agency;
 - “**prosecution proceedings**” means proceedings referred to in section 55D(1).
 - (2) For the purposes of prosecution proceedings —
 - (a) the responsible agency —
 - (i) is to be specified in the charge for the offence;
 - (ii) is entitled to act for the Crown in the proceedings; and
 - (iii) subject to any rules of court, has the procedural rights and obligations of the Crown as the defendant in the proceedings;
- and

- (b) the complainant may during the proceedings, with the leave of the court, substitute another responsible agency for the agency in the proceedings.
- (3) In prosecution proceedings a person authorised by the chief executive of the responsible agency concerned may act on behalf of the agency, and it is not necessary for proof to be given of the authority of the person to do so.
- (4) It is sufficient service of a document required to be served on a responsible agency for the purposes of prosecution proceedings if the document —
 - (a) is delivered to a person who is or appears to be the chief executive of the responsible agency, or a person acting as such, at a place of business of the responsible agency; or
 - (b) is sent by pre-paid letter addressed and posted to the responsible agency at its principal place of business in the State.

55F. Proceedings where agency has ceased to exist

- (1) In this section —
 - “successor in law”**, in relation to an agency or department, means —
 - (a) the sole successor; or
 - (b) if there is more than one successor, the one that has the relevant functions formerly vested in the agency or department.
- (2) If an agency or department referred to in section 55D(1)(a) —
 - (a) has ceased to exist; but

- (b) has a successor in law to which section 55C(2) does not apply,

the successor in law is the responsible agency for the purposes of section 55D(1).

- (3) If an agency or department referred to in section 55D(1)(a) —

- (a) has ceased to exist; and

- (b) either —

- (i) it has no apparent successor in law; or

- (ii) there is doubt as to which agency or department has the relevant functions,

the responsible agency for the purposes of that section is such agency of the Crown as the Minister determines.

55G. Penalties in proceedings against the Crown

- (1) In subsection (3)(b) —

“successor in law”, in relation to an agency or department, means —

- (a) the successor in law as defined in section 55F(1); or

- (b) the agency of the Crown determined under section 55F(3).

- (2) The penalty that may be imposed on the Crown if it is convicted of an offence against this Act in proceedings referred to in section 55D(1) is the penalty applicable to a body corporate.

- (3) In proceedings referred to in section 55D(1), a higher penalty may be imposed for an offence involving a responsible agency on the ground that it is a subsequent

offence, only if the acts or omissions constituting the previous offence or offences were those of —

- (a) the same responsible agency; or
 - (b) a responsible agency of which it is the successor in law.
- (4) A penalty imposed in proceedings referred to in section 55D(1) cannot be enforced under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

Division 3 — Undertaking by offender in lieu of payment of fine

55H. Terms used in this Division

In this Division —

“**convicted**” means found guilty of an offence, whether after a plea of guilty or otherwise;

“**court**” means a safety and health magistrate exercising jurisdiction under section 51C(1)(b);

“**relevant offence**” means an offence against —

- (a) section 24(4), 30(7), 35(4), 38(2), 39(3), 45(5), 47(1), 48(4), (5) or (6) or 49(5) or (6); or
- (b) the regulations.

55I. Court may allow offender to make election

(1) Where —

- (a) a person (the “**offender**”) is convicted of one or more relevant offences; and
- (b) the court has fined the offender,

the court may, subject to subsection (2), make an order allowing the offender to elect either —

- (c) to pay the fine or fines; or
 - (d) as an alternative, to enter into an undertaking with the Commissioner under section 55M not later than a day specified by the court.
- (2) A court is not to make an order under this section unless the court is satisfied that —
 - (a) the breach of the relevant offence did not result in physical harm to any person;
 - (b) the offender wishes an order to be made and the complainant does not oppose that being done;
 - (c) the offender and the Commissioner are likely to reach agreement on the provisions of the proposed undertaking within the time that the court proposes to specify under subsection (1)(d); and
 - (d) the cost to the offender of complying with the proposed undertaking will be substantially equivalent to the amount of the fine or fines imposed.
- (3) After the court has fined the offender, the court may adjourn the proceedings to allow —
 - (a) the offender time to consider whether the offender wishes an order to be made; and
 - (b) the complainant time to consider whether to oppose that being done,as mentioned in subsection (2)(b).
- (4) Nothing in this Division limits the powers of a court under the *Sentencing Act 1995*.

55J. Making of election

- (1) An election is made, pursuant to an order under section 55I(1), by the offender —

- (a) lodging an election in writing with the clerk of the court in which the order was made; and
- (b) serving a copy of the election on the Commissioner,

not later than 28 days after the day on which the order was made.

(2) If —

- (a) an order is made under section 55I(1); but
- (b) the offender fails to make an election in accordance with subsection (1),

the offender is taken, at the expiry of the period mentioned in subsection (1), to have elected to pay the fine or fines.

55K. Failure to enter into undertaking

An election under section 55J to enter into an undertaking lapses if the undertaking is for any reason not entered into before the time allowed under section 55I(1)(d).

55L. Time for payment of fines

- (1) The liability of the offender to pay the fine or fines in connection with which an order is made under section 55I(1) is suspended by the making of the order.
- (2) If the offender elects to pay the fine or fines, for the purposes of section 32 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* the fine or fines are taken to have been imposed on the day on which the election is made.
- (3) If the offender is taken by section 55J(2) to have elected to pay the fine or fines, for the purposes of the section referred to in subsection (2) the fine or fines are

taken to have been imposed at the time mentioned in section 55J(2).

- (4) If —
- (a) the offender elects to enter into an undertaking; but
 - (b) the election lapses under section 55K,

for the purposes of the section referred to in subsection (2) the fine or fines are taken to have been imposed on the day specified under section 55I(1)(d).

55M. Nature and terms of undertaking

- (1) An undertaking for the purposes of this Division is a document by which the offender gives undertakings to the Commissioner that the offender will —
- (a) take the action specified in the undertaking;
 - (b) bear the costs and expenses of doing so; and
 - (c) complete all of the required action not later than a day specified in the document.
- (2) The action required to be taken by the offender is to come within the provisions described in section 55N(2) or (3).
- (3) The provisions of the undertaking are to be such as are agreed between the Commissioner and the offender.
- (4) The Commissioner is to furnish a copy of an undertaking, and of any amendment made under section 55Q, to the court concerned.

55N. What may be included in undertaking

- (1) In this section —
- “**specified**” means specified in the undertaking.

- (2) An undertaking is to provide for the offender to do one or more of the following —
- (a) to take specified steps for the improvement of occupational safety and health —
 - (i) at a specified workplace; or
 - (ii) in connection with the business or operations of the offender;
 - (b) to take specified steps to publicise details of —
 - (i) any specified offence;
 - (ii) its consequences;
 - (iii) the amount of the fine or fines imposed and the fact that the undertaking has been entered into under this Division; or
 - (iv) any other related matter;
 - (c) to remedy any consequence of a specified offence, so far as it is practicable to do so, but not in a way that is excluded by subsection (4);
 - (d) to carry out a specified project or activity for the improvement of occupational safety and health —
 - (i) in the community;
 - (ii) in a particular section of the community; or
 - (iii) in connection with a particular kind of activity in the State.
- (3) The Commissioner may require that an undertaking contain any incidental or supplementary provision that the Commissioner considers necessary or expedient to achieve its purpose, including provision for —
- (a) the reporting of matters; and
 - (b) providing proof of compliance,

to the Commissioner.

- (4) An undertaking cannot provide for the offender to take any action —
 - (a) that the offender has a duty to take in order to comply with any provision of this Act; or
 - (b) for the taking of which an improvement notice or a prohibition notice could be issued.

55O. Effect of undertaking

The liability of the offender to pay the fine or fines in connection with which the undertaking is given —

- (a) is suspended by the giving of the undertaking; and
- (b) is cancelled by the full discharge of the offender's obligations under the undertaking.

55P. Failure to comply with undertaking

- (1) An offender commits an offence if the offender fails to fully discharge the obligations under an undertaking before the day specified in the undertaking in accordance with section 55M(1)(c).
- (2) A court that convicts an offender of an offence against subsection (1) must order that the fine or fines to which the undertaking relates be paid in addition to any penalty imposed for the offence against subsection (1).
- (3) For the purposes of section 32 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, the fine or fines to which an order under subsection (2) applies are taken to be imposed on the day on which that order is made.

55Q. Amendment of undertaking

An undertaking may be amended by an instrument in writing signed by the offender and the Commissioner.

55R. Undertaking may be published

The Commissioner may cause an undertaking to be published in any manner the Commissioner thinks fit including —

- (a) by publication in a newspaper; or
- (b) by posting a copy of the undertaking on an internet website maintained by the Commissioner.

”.

37. Section 60 amended

Section 60(6) is repealed and the following subsection is inserted instead —

“

- (6) Regulations made under this Act may provide that contravention of a regulation constitutes an offence and provide for penalties not exceeding —
 - (a) in the case of an offence committed by a person as an employee —
 - (i) for a first offence, a fine of \$5 000; and
 - (ii) for a subsequent offence, a fine of \$6 250;
 - (b) in the case of an offence committed by an individual where paragraph (a) does not apply —
 - (i) for a first offence, a fine of \$25 000; and
 - (ii) for a subsequent offence, a fine of \$31 250;

or

- (c) in the case of an offence committed by a body corporate —
 - (i) for a first offence, a fine of \$50 000; and
 - (ii) for a subsequent offence, a fine of \$62 500,

and if the offence is a continuing one a further penalty not exceeding —

- (d) \$200, in the case of an offence committed by a person as an employee;
- (e) \$1 000, in the case of an offence committed by an individual where paragraph (d) does not apply; and
- (f) \$2 000, in the case of an offence committed by a body corporate,

for each day or part of a day during which the offence continues after notice of the offence has been given by or on behalf of an inspector to the offender.

”.

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.

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- (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 5 — Amendments relating to inspectors

58. Section 42 replaced by sections 42, 42A, 42B and 42C

Section 42 is repealed and the following sections are inserted instead —

“

42. Appointment of inspectors

The Commissioner, by instrument in writing, is to appoint such officers of the department as the Commissioner considers necessary to be inspectors for the purposes of this Act.

42A. Appointment of restricted inspectors

- (1) The Commissioner may, by instrument in writing, appoint any person employed in the Public Service under Part 3 of the *Public Sector Management Act 1994* to be a restricted inspector for —
 - (a) the State; or
 - (b) any specified area of the State,during the period specified in the instrument.
- (2) A person ceases to be a restricted inspector —
 - (a) when the period of the person's appointment expires; or
 - (b) if the person's appointment is revoked by the Commissioner.
- (3) A person who ceases to be a restricted inspector must, as soon as practicable, return the certificate provided to the person under section 42C to the Commissioner or to any other person authorised by the Commissioner to receive it.

42B. Powers of restricted inspector

- (1) A restricted inspector has, in respect of —
 - (a) the State; or
 - (b) the area of the State for which the restricted inspector is appointed,such of the functions of an inspector under this Act as are specified in the instrument of appointment.
- (2) The performance of a function by a restricted inspector may be made subject to any condition or limitation.
- (3) To the extent provided by the instrument of appointment, and subject to that instrument, a restricted inspector is taken to be an inspector appointed under section 42.

42C. Certificate of appointment

- (1) Every inspector and restricted inspector is to be provided with a certificate of appointment signed by the Commissioner or an officer of the department authorised in that behalf by the Commissioner.
- (2) An inspector or a restricted inspector must produce the certificate to a person if —
 - (a) the inspector has performed, or is about to perform, any functions under this Act in relation to a person; and
 - (b) the person requests that the certificate be produced.
- (3) A certificate purporting to have been provided under subsection (1) is, without proof of the signature of the person purporting to have signed it or of the person's authority to have signed it, evidence in a court —

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- (a) of the appointment to which the certificate purports to relate; and
- (b) of any other matter specified in the certificate.

”.

59. Section 43 amended

- (1) After section 43(1)(e) the following paragraph is inserted —

“

- (ea) provide information to any person for the purpose of facilitating compliance with this Act;

”.

- (2) Section 43(1)(k) is deleted and the following paragraph is inserted instead —

“

- (k) in accordance with subsections (1b) and (1c), interview any person who the inspector has reasonable grounds to believe —
 - (i) is, or was at any time during the preceding 3 years —
 - (I) an employee working at a workplace; or
 - (II) an employee occupying residential premises mentioned in section 39G(2),
in relation to which the inspector is inquiring;
 - (ii) was at such a workplace or such residential premises at a time that is relevant to a matter about which the inspector is inquiring; or

- (iii) may otherwise be able to provide information relevant to a matter about which the inspector is inquiring;

”.

- (3) After subsection (1a) the following subsections are inserted —

“

- (1b) An interview referred to in subsection (1)(k) is to be conducted in private if —

- (a) the inspector considers that to be appropriate; or

- (b) the person to be interviewed so requests,

but this subsection does not limit the operation of subsection (2) or section 44.

- (1c) Subsection (1b) may be invoked during an interview by —

- (a) the inspector; or

- (b) the person being interviewed,

in which case that subsection applies to the remainder of the interview.

”.

60. Section 45 amended

- (1) Section 45(1) and (2) are repealed and the following subsections are inserted instead —

“

- (1) In this section —

“relevant” —

- (a) in relation to an employer, means an employer whose employees —

- (i) carry out, in a workplace, work of a kind; or

- (ii) carry out work, or are likely to be, in an area of a workplace, that is relevant to any purpose for which an inspector has entered the workplace; and
 - (b) in relation to —
 - (i) a safety and health representative; or
 - (ii) a safety and health committee,means a representative or committee that has functions that are relevant to any purpose referred to in paragraph (a).
 - (2) On entering a workplace an inspector shall, as soon as is practicable, take all reasonable steps to notify any relevant employer of the inspector's presence.
 - (2a) An employer, upon being notified of the presence of an inspector at a workplace shall, as soon as is practicable, notify any relevant safety and health representative of the presence.
- ”.
- (2) Section 45(3) is amended by deleting “the employer, and any safety and health representative or safety and health committee concerned,” and inserting instead —

“
any relevant employer and any relevant safety and health representative or safety and health committee
”.
 - (3) Section 45(4) is amended by deleting “the employer and any safety and health representative concerned” and inserting instead —

“
any relevant employer and any relevant safety and health representative
”.

61. Section 47 amended

Section 47(2) is repealed and the following subsections are inserted instead —

“

- (2) A person is not excused from complying with a requirement under this Act to —
 - (a) answer a question;
 - (b) provide information; or
 - (c) produce a document,on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (3) However —
 - (a) an answer given or information provided by a person when so required; or
 - (b) the fact that a document produced by the person to comply with the requirement was produced,is not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence under this Act arising out of the false or misleading nature of the answer, information or document.
- (4) Subsection (3) does not apply —
 - (a) to —
 - (i) information in a document produced in compliance with a requirement under section 43(1)(i); or
 - (ii) the fact that such a document was produced;or

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- (b) to —
 - (i) an answer given or information provided; or
 - (ii) the fact that a document was produced, by or on behalf of a body corporate.

”.

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)
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s. 70

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 2 — Amendments to the *Industrial Relations Act 1979*

70. The *Industrial Relations Act 1979* amended

- (1) The amendments in this section are to the *Industrial Relations Act 1979**.
- [* Reprinted as at 8 November 2002.
For subsequent amendments see *Western Australian
Legislation Information Tables for 2003, Table 1, p. 187.*]

- (2) Section 7(3) is repealed and the following subsection is inserted instead —

“

- (3) A matter that has been referred under a provision of the *Occupational Safety and Health Act 1984* to the Tribunal provided for by section 51G of that Act is not an industrial matter.

”.

- (3) After section 8(2) the following subsection is inserted —

“

- (2a) For the purposes of section 51H of the *Occupational Safety and Health Act 1984*, one Commissioner appointed under subsection (2)(d) is to be a person who, in addition to the other attributes required for appointment, has —

- (a) knowledge of or experience in the field of occupational safety and health; and
- (b) knowledge of that Act,

but the function given by section 51H(1) of that Act to the Commissioner so appointed does not preclude that Commissioner from otherwise performing the functions of a Commissioner under this Act.

”.

- (4) Section 113(1)(d) is deleted and the following paragraph is inserted instead —

“

- (d) without limiting paragraph (c), regulating the practice and procedure to be followed in relation to —
 - (i) appeals under section 33P of the *Police Act 1892*; and
 - (ii) the referral, hearing and determination of matters under the *Occupational Safety and Health Act 1984*;

”.

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.

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- (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 7 — Amendments to make expressions in the Act gender neutral

73. Section 3 amended

Section 3 is amended in the definition of “employer” as follows:

- (a) in paragraph (a), by deleting “by whom an employee is employed” and inserting instead —
“ that employs an employee ”;
- (b) in paragraph (b), by deleting “by whom the apprentice or industrial trainee is employed” and inserting instead —
“ that employs the apprentice or trainee ”.

74. Section 4 amended

- (1) Section 4(4) is amended by deleting “on whom a duty under this Act would devolve” and inserting instead —
“ that would be subject to a duty under this Act ”.
- (2) Section 4(5) is amended as follows:
 - (a) by deleting “on whom a copy of the relevant instrument was served under subsection (4), in relation to whom a provision of or under this Act applies by reason of subsection (4)” and inserting instead —
“
served with the instrument under subsection (4), that is subject to a provision of or under this Act by reason of that subsection
”;
 - (b) by deleting “he proves that he” and inserting instead —
“ the person proves that the person ”;

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- (c) by deleting “of the application in relation to him of the provision” and inserting instead —
“ that the provision so applied ”.

75. Section 8 amended

Section 8(1) is amended by deleting “his”.

76. Section 9 amended

- (1) Section 9(2) is amended by deleting “his appointment and on the expiration of his” and inserting instead —
“ appointment and on the expiration of the ”.
- (2) Section 9(4) is amended by deleting “he shall notwithstanding that appointment retain his existing and accruing rights on his” and inserting instead —
“
the person shall despite that appointment retain all existing
and accruing rights on
”.
- (3) Section 9(5) is amended as follows:
 - (a) by deleting “he is entitled upon resigning his” and inserting instead —
“ the person is entitled upon resigning his or her ”;
 - (b) by deleting “he so occupied immediately before his” and inserting instead —
“ the person so occupied immediately before ”.

77. Section 10 replaced

Section 10 is repealed and the following section is inserted instead —

“

10. Vacation of office

A person's office as Commissioner or as an appointed member becomes vacant if —

- (a) the person's term of office expires; or
- (b) the person —
 - (i) dies;
 - (ii) becomes permanently incapable of performing the duties of the office;
 - (iii) resigns from office by written notice addressed to the Minister;
 - (iv) is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
 - (v) is removed from office by the Governor on the grounds of neglect of duty, incompetence or the person's behaviour;
 - or
 - (vi) is absent without leave of the Minister from 3 consecutive meetings of the Commission;
- or
- (c) being a member appointed under section 6(2)(d)(i), (ii) or (iv), the person's nomination is revoked.

”.

78. Section 19 amended

Section 19(1) is amended as follows:

- (a) by deleting “his employees” in the first place where it occurs and inserting instead —
“ the employees of the employer (the “**employees**”) ”;
- (b) by deleting “his” in each place where it occurs and inserting instead —
“ the ”.

79. Section 20 amended

(1) Section 20(2) is amended as follows:

- (a) by deleting “if he” and inserting instead —
“ if the employee ”;
- (b) by deleting paragraph (a) and inserting instead —
“
 - (a) fails to comply, so far as the employee is reasonably able, with instructions given by the employee’s employer for the safety or health of the employee or for the safety or health of other persons;”;
- (c) in paragraph (d), by deleting “his employer” and inserting instead —
“ the employee’s employer ”;
- (d) by deleting subparagraph (d)(i) and “or” after it and inserting instead —
“
 - (i) any situation at the workplace that the employee has reason to believe could constitute a hazard to any person that the employee cannot correct; or”.

- (2) Section 20(3) is repealed and the following subsection is inserted instead —

“

- (3) An employee shall cooperate with the employee’s employer in the carrying out by the employer of the obligations imposed on the employer under this Act.

”.

80. Section 22 amended

Section 22(1) is amended by deleting “who” in the first place where it occurs and inserting instead —

“ that ”.

81. Section 23 amended

Section 23(1), (2) and (3a) are each amended by deleting “who” in the first place where it occurs and inserting instead —

“ that ”.

82. Section 24 amended

Section 24(4) is repealed and the following subsection is inserted instead —

“

- (4) If a person contravenes subsection (1) or (3), the person commits an offence.

”.

83. Section 27 amended

Section 27 is amended by deleting “until he” and inserting instead —

“ until the employee ”.

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84. Section 28 amended

Section 28(1) is amended by deleting “if he” and inserting instead —

“ if the employee ”.

85. Section 30 amended

Section 30(7) is repealed and the following subsection is inserted instead —

“

(7) If an employer contravenes subsection (1) or (3a), the employer commits an offence.

”.

86. Section 32 amended

Section 32(2) is amended as follows:

(a) by deleting paragraph (a) and inserting instead —

“

(a) the person’s term of office expires and the person is not re-elected;

”;

(b) by deleting paragraph (c) and inserting instead —

“

(c) the person resigns from office by notice given to the employer;

”.

87. Section 33 amended

Section 33(1)(c) is amended by inserting after “himself” —

“ or herself ”.

88. Section 34 amended

- (1) Section 34(1)(a) is amended by deleting “his employer or a commercial or business undertaking of his employer” and inserting instead —

“

the representative’s employer or a commercial
or business undertaking of the employer

”.

- (2) Section 34(1)(b) is amended as follows:

- (a) by deleting “his employer” in the first place where it occurs and inserting instead —

“ the representative’s employer ”;

- (b) by deleting “his employer” in the second and third places where it occurs and inserting instead —

“ the employer ”.

89. Section 35 amended

Section 35 is amended as follows:

- (a) in subsection (1)(b) by deleting “his” and inserting instead —

“ the employer’s ”;

- (b) in subsection (2)(a)(i) by deleting “him” and inserting instead —

“ the employer ”;

- (c) by repealing subsection (4) and inserting instead —

“

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

”.

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90. Section 40 amended

Section 40(a) is amended by deleting “his employees” and inserting instead —

“ the employees of the employer ”.

91. Section 43 amended

Section 43(1)(l) is amended by deleting “he interviews” and inserting instead —

“ the inspector interviews ”.

92. Section 45 amended

Section 45(5) is repealed and the following subsection is inserted instead —

“

(5) If an employer contravenes subsection (2a), the employer commits an offence.

”.

93. Section 47 amended

Section 47(1) is amended as follows:

(a) by deleting “A person who” and inserting instead —

“ If a person ”;

(b) by inserting immediately before “commits an offence” —

“ the person ”.

94. Section 48 amended

(1) Section 48(3) is amended by deleting “to whom an improvement notice is issued” and inserting instead —

“ issued with an improvement notice ”.

- (2) Section 48(4) is repealed and the following subsection is inserted instead —

“

- (4) Subject to sections 51 and 51A, if a person —
- (a) is issued with an improvement notice; and
 - (b) does not comply with the notice within the time specified in it,
- the person commits an offence.

”.

- (3) Section 48(5) is amended by deleting “to whom an improvement notice is issued” and inserting instead —

“ issued with an improvement notice ”.

- (4) Section 48(6) is repealed and the following subsection is inserted instead —

“

- (6) If a person contravenes subsection (3), (3a), (3c) or (3d), the person commits an offence.

”.

95. Section 49 amended

- (1) Section 49(1) is amended by deleting “who” in both places where it appears and inserting instead —

“ that ”.

- (2) Section 49(5) and (6) are repealed and the following subsections are inserted instead —

“

- (5) Subject to sections 51 and 51A, if a person issued with a prohibition notice does not comply with the notice, the person commits an offence.
- (6) If a person contravenes subsection (4), (4a), (4b) or (4c), the person commits an offence.

”.

96. Section 50 amended

Section 50(2)(b) is amended by deleting “to whom it is issued” and inserting instead —

“ issued with the notice ”.

97. Section 51 amended

Section 51(1)(a) and (b) are deleted and the following paragraphs are inserted instead —

“

- (a) the person issued with the notice; or
- (b) the employer (if any) of the person issued with the notice.

”.

98. Section 51A amended

Section 51A(1) is amended by deleting “to whom notice of a decision is issued” and inserting instead —

“ issued with notice of a decision ”.

99. Section 56 amended

Section 56(1) is amended as follows:

- (a) by deleting “An employer or prospective employer who in any way treats an employee or prospective employee less favourably than he otherwise would” and inserting instead —

“

If an employer or prospective employer in any way treats an employee or prospective employee less favourably than would otherwise be the case

”;

- (b) by inserting immediately before “commits” —
“ the employer or prospective employer ”.

100. Section 57 amended

- (1) Section 57(1) is amended by deleting “on whom a duty is imposed” and inserting instead —
“ that are subject to a duty ”.
- (2) Section 57(7) is amended by deleting “he” and inserting instead —
“ the person ”.

101. Schedule amended

The Schedule is amended as follows:

- (a) in item 9(a) by deleting “his employees” and inserting instead —
“ the employees of the employer, ”;
- (b) in item 9(b) by deleting “his” and inserting instead —
“ the employer, ”;
- (c) in items 16 and 25 by deleting “his employees” and inserting instead —
“ the employees of the employer ”.

102. Feminine pronoun inserted in various provisions

- (1) Each provision specified in the Table to this subsection is amended by inserting after “he” —
“ or she ”.

Table

s. 12	s. 33(1)(e)
s. 13(3)	s. 34(1)(a), (b) and (c)
s. 20(2)(b) and (d)(ii)	s. 43(1)(c) and (d)

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s. 25(2)(a)	s. 44
s. 26(1)	s. 45(3) (2 places)
s. 28(1)	s. 45(4) and (4)(a)
s. 31(11)	s. 46(1) (2 places)
s. 32(2)(d)	s. 55(1) and (2)
s. 33(1)	s. 56(2)
s. 33(1)(a)(ii)	

- (2) Each provision specified in the Table to this subsection is amended by inserting after “his” —

“ or her ”.

Table

s. 9(6)	s. 34(2)(a)
s. 18(4)	s. 34(4)(b)
s. 20(1), (2)(b) and (d)(ii)	s. 35(3)(a) and (b)
s. 26(1) and (2)	s. 43(1)(b), (m), (n) and (o)
s. 27	s. 43(2) (2 places)
s. 28(1)	s. 44
s. 33(1)(c), (d) and (f)	s. 47(1)(b) (2 places)
s. 33(3) (2 places)	s. 55(2)
s. 34(1)(b) (2 nd and 3 rd places) and (c)	s. 61(2)

- (3) Each provision specified in the Table to this subsection is amended by inserting after “him” —

“ or her ”.

Table

s. 16(2)	s. 34(3)
s. 18(4)	s. 43(1)(c), (l) and (o)
s. 26(1)	s. 61(1)(e)

103. Relative pronoun replaced

Each provision specified in the Table to this section is amended by deleting “who” and inserting instead —

“ that ”.

Table

s. 6(6)	s. 28A(3)
s. 22(2)	s. 51(6) (2 places)
s. 23(3)	s. 54A(2)

Part 8 — Miscellaneous amendments

104. Section 3 amended

- (1) Section 3(1) is amended by inserting in the appropriate alphabetical positions —

“

“Australian Standard” means a document having that title published by Standards Australia International Limited (ACN 087 326 690);

“Australian/New Zealand Standard” means a document having that title published jointly by —

- (a) Standards Australia International Limited (ACN 087 326 690); and
- (b) the Standards Council of New Zealand;

“import” means to bring into the State, whether from outside Australia or otherwise;

“trainee” means a person belonging to a class of persons defined by the regulations as trainees for the purposes of this Act;

”.

- (2) Section 3(1) is amended by deleting the definition of “apprentice” and inserting instead —

“

“apprentice” —

- (a) means an apprentice under the *Industrial Training Act 1975*; or
- (b) if Part 7 of the *Vocational Education and Training Act 1996* comes into operation, means a person who, as an employee, has entered into an apprenticeship within the meaning of that term in section 58 of that Act;

”.

- (3) Section 3(1) is amended in the definition of “employee”, in paragraph (b), by deleting “industrial”.
- (4) Section 3(1) is amended in the definition of “employer”, in paragraph (b) as follows:
- (a) by deleting “, or industrial trainee” and inserting instead —
“ or trainee ”;
 - (b) by deleting “industrial training agreement” and inserting instead —
“
traineeship scheme under the *Industrial Training Act 1975*
”.
- (5) Section 3(1) is amended by deleting the definition of “industrial trainee”.
- (6) Section 3(1) is amended in the definition of “inspector” by deleting “Part V” and inserting instead —
“
section 42, and subject to section 42B(3), includes a restricted inspector appointed under section 42A
”.
- (7) Section 3(1) is amended by deleting the definition of “self-employed person” and inserting instead —
“
“**self-employed person**” means an individual who works for gain or reward otherwise than —
(a) under a contract of employment; or
(b) as an apprentice or trainee,
whether or not the individual is an employer;
”.

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- (8) Section 3(1) is amended by deleting the definition of “supply” and inserting instead —

“

“**supply**”, in relation to any plant or substance,
includes supply and re-supply by way of —

- (a) sale (including by auction), exchange, lease, hire, or hire-purchase, whether as principal or agent;
- (b) the disposal in a manner referred to in paragraph (a) of assets of a business that include any plant or substance; and
- (c) the disposal of all of the shares in a company that owns any plant or substance;

”.

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.
- (6) The members of the committee are entitled to be paid such remuneration and travelling and other allowances as may be determined by the Ministers on the recommendation of the Minister for Public Sector Management.

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- (7) Subject to any direction given to it by the Commission,
the committee is to determine its own procedures.

”.

107. Section 48 amended

- (1) Section 48(3c) is repealed and the following subsection is
inserted instead —

“

- (3c) If an improvement notice is issued —

- (a) to a self-employed person in respect of a
contravention of section 21; or
- (b) to a body corporate to which section 21B
applies in respect of a contravention of that
section,

the person or body shall comply with subsection (3)
and (3d) as if the person or body were an employer.

”.

- (2) After section 48(3c) the following subsection is inserted —

“

- (3d) If an improvement notice is modified by the
Commissioner under section 51(5)(b), the employer
shall cause a copy of the Commissioner’s decision to
be displayed with the improvement notice, or a copy of
it, as required by subsection (3).

”.

108. Section 49 amended

- (1) Section 49(4b) is repealed and the following subsection is
inserted instead —

“

- (4b) If a prohibition notice is issued —

- (a) to a self-employed person in respect of a contravention of section 21; or
- (b) to a body corporate to which section 21B applies in respect of a contravention of that section,

the person or body shall comply with subsection (4) and (4c) as if the person or body were an employer.

”.

- (2) After section 49(4b) the following subsection is inserted —

“

- (4c) If a prohibition notice is modified by the Commissioner under section 51(5)(b), the employer shall cause a copy of the Commissioner’s decision to be displayed with the prohibition notice, or a copy of it, as required by subsection (4).

”.

109. Section 50A inserted

After section 50 the following section is inserted —

“

50A. Notices may be issued to the Crown

- (1) An improvement notice and a provisional improvement notice may be issued in respect of a contravention of this Act by the Crown in any of its capacities.
- (2) A prohibition notice may be issued in respect of an activity of or controlled by the Crown in any of its capacities.
- (3) If the contravention or activity relates to a body corporate that is an agent of the Crown, the notice is to be issued to the body corporate.
- (4) In the case of any other contravention or activity that relates to the Crown, the notice —

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- (a) is to be issued to the Crown under the title “State of Western Australia”; and
 - (b) is to show the name of the responsible agency under Part VII Division 2 that would be specified in a charge for an offence in respect of that contravention or activity.
- (5) It is sufficient for the purposes of subsection (3) or (4) if the notice —
 - (a) is delivered to a person at the workplace concerned who has, or reasonably appears to have, responsibility for the management or control of the workplace; or
 - (b) is sent by pre-paid letter addressed and posted to the body corporate or responsible agency concerned at its principal place of business in the State.
- (6) If a notice is delivered to a person as mentioned in subsection (5)(a) the person must, as soon as is practicable, give a copy of the notice to the executive who is responsible for the day to day administration of the body corporate or responsible agency concerned.

”.

110. Section 51AA inserted

After section 51 the following section is inserted —

“

51AA. Further power of Commissioner to cancel notice

- (1) The Commissioner, on his or her own initiative, may cancel an improvement notice or a prohibition notice by giving notice in writing of the cancellation, and the reasons for it —
 - (a) to the person issued with the notice; and

- (b) if that person is an employee, to the employee's employer.
- (2) The power conferred by subsection (1) is not to be exercised in respect of a notice —
 - (a) during a period when a referral of the notice under section 51 is awaiting a determination of the Commissioner under that section; or
 - (b) after a decision in respect of the notice has been referred to the Tribunal under section 51A,but may be exercised at any other time and whether or not the notice has been affirmed under section 51(5)(a) or (b).

”.

111. Section 53 amended

- (1) Section 53 is amended by inserting before “In proceedings” the subsection designation “(1)”.
- (2) Section 53(b) is amended by deleting “of persons at a particular workplace”.
- (3) After section 53(b) the following paragraphs are inserted —

“

 - (ba) a particular person was an employer of particular persons;
 - (bb) a particular person was an employer at a particular workplace;

”.
- (4) Section 53(f) is amended by deleting “inspector,” and inserting instead —

“ inspector or a restricted inspector under section 42A, ”.
- (5) At the end of section 53 the following subsections are inserted —

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“

(2) The person commencing a prosecution for an offence against this Act is taken to be authorised under section 52(1) to commence the prosecution, in the absence of evidence to the contrary.

(3) In proceedings for an offence against this Act, production of a copy of —

- (a) a code of practice;
- (b) an Australian Standard; or
- (c) an Australian/New Zealand Standard,

purporting to be certified by the Commissioner to be a true copy as at any date or during any period is, without proof of the signature of the Commissioner, sufficient evidence of the contents of the code of practice or Standard as at that date or during that period.

”.

112. Section 56 amended

Section 56(1)(d) is deleted and the following paragraph is inserted instead —

“

(d) makes or has made a complaint in relation to safety or health to —

- (i) the Commissioner;
- (ii) an inspector;
- (iii) a person who is or was his or her employer or fellow employee;
- (iv) a safety and health representative; or
- (v) a member of a safety and health committee,

”.

113. Section 57A inserted

After section 57 the following section is inserted —

“

57A. Visitors to comply with directions

(1) In this section —

“authorised person”, in relation to a workplace,
means —

- (a) an employer of any employee at the workplace, including a person that is an employer by operation of section 23D, 23E or 23F;
- (b) any self-employed person carrying out work at the workplace; and
- (c) a person at the workplace who has the management and control of —
 - (i) the workplace; or
 - (ii) the work being carried out at the workplace;

“conduct” includes a failure to do a particular act or thing;

“employee” includes a person who is an employee by operation of section 23D, 23E or 23F.

(2) Subsection (3) applies if —

- (a) a person (a **“visitor”**) is at a workplace otherwise than in the capacity of —
 - (i) an employer;
 - (ii) an employee;
 - (iii) a self-employed person; or
 - (iv) a person having control, to any extent, of the workplace;

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- and
- (b) an authorised person believes on reasonable grounds that —
 - (i) any conduct of the visitor at the workplace; or
 - (ii) the presence of the visitor in the workplace or in a particular part of the workplace,constitutes a hazard to any person.
 - (3) The authorised person may direct the visitor —
 - (a) to immediately cease engaging in the conduct concerned; or
 - (b) to immediately leave the workplace and not to return as a visitor to the workplace until permitted by the authorised person to do so.
 - (4) A person who, without reasonable excuse, fails to comply with a direction given to the person under subsection (3) commits an offence.

”.

114. Schedule amended

The Schedule is amended as follows:

- (a) by inserting after item 1 the following item —

“

 - 1A. The imposition of duties on persons in relation to —
 - (a) the identification of hazards at workplaces;
 - (b) the assessment of risks resulting from such hazards;
and
 - (c) the taking of remedial or other action.

”;

- (b) by inserting after item 4 the following item —
- “
- 4A. Duties to be observed by —
- (a) the owner; or
- (b) a person having the control,
of plant used at a workplace.
- ”.

115. *Mines Safety and Inspection Act 1994* amended and saving provision

- (1) The amendments in this section are to the *Mines Safety and Inspection Act 1994**.

[* *Reprinted as at 17 March 2000.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2003, Table 1, p. 250.]*

- (2) Section 4(1) is amended by deleting the definition of “Mines Occupational Safety and Health Advisory Board”.
- (3) Section 90 is repealed.
- (4) Section 93(1) is amended by deleting “Mines Occupational Safety and Health Advisory Board” and inserting instead —
- “ Mining Industry Advisory Committee ”.
- (5) Section 103 is amended by deleting “Mines Occupational Safety and Health Advisory Board,” and inserting instead —
- “ Mining Industry Advisory Committee ”.
- (6) Section 110(1)(b) is amended by deleting “the Mines Occupational Safety and Health Advisory Board,”.
- (7) The amendment made by subsection (5) does not affect the operation of section 103 of the *Mines Safety and Inspection Act 1994*, before the commencement of that subsection, in relation to members of the Mines Occupational Safety and

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Health Advisory Board established under the section repealed
by subsection (3).

Part 9 — Repeal of *Shearers' Accommodation Act 1912*

116. *Shearers' Accommodation Act 1912* repealed

The *Shearers' Accommodation Act 1912* is repealed.
