

WESTERN AUSTRALIA

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**OCCUPATIONAL SAFETY AND  
HEALTH LEGISLATION  
AMENDMENT ACT 1995**

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**No. 30 of 1995**

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**AN ACT to amend the —**

- *Occupational Health, Safety and Welfare Act 1984;*
- *Mines Safety and Inspection Act 1994;* and
- *Industrial Relations Act 1979,*

**and for related purposes.**

*[Assented to 11 September 1995.]*

The Parliament of Western Australia enacts as follows:

**PART 1 — PRELIMINARY**

**Short title**

1. This Act may be cited as the *Occupational Safety and Health Legislation Amendment Act 1995*.

**Commencement**

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

**PART 2 — OCCUPATIONAL HEALTH, SAFETY AND  
WELFARE ACT 1984**

**Principal Act**

3. In this Part the *Occupational Health, Safety and Welfare Act 1984\** is referred to as the principal Act.

[\* *Reprinted as at 23 January 1989.*

*For subsequent amendments see 1993 Index to  
Legislation of Western Australia, Table 1, p. 148 and  
Act No. 32 of 1994.]*

**Long title amended**

4. The long title to the principal Act is amended —

(a) by deleting “**health, safety and welfare**” in both places where it occurs and substituting in each case the following —

“ **safety and health** ”; and

(b) by deleting “**Occupational Health, Safety and Welfare**” and substituting the following —

“ **WorkSafe Western Australia** ”.

**Section 1 amended**

5. Section 1 of the principal Act is amended by deleting “*Health, Safety and Welfare*” and substituting the following —

“ *Safety and Health* ”.

**Section 3 amended**

**6. Section 3 of the principal Act is amended —**

(a) in subsection (1) —

(i) in the definition of “appointed member” by deleting “section 6 (2) (d)” and substituting the following —

“ section 6 (2) (a) or (d) ”;

(ii) in the definition of “Commission” by deleting “Occupational Health, Safety and Welfare” and substituting the following —

“ WorkSafe Western Australia ”;

(iii) in the definition of “Commissioner” by deleting “Commissioner for Occupational Health, Safety and Welfare” and substituting the following —

“  
WorkSafe Western Australia  
Commissioner  
”;

(iv) by deleting the definitions of “employee” and “employer” and substituting the following definitions —

“  
“**employee**” means —

(a) a person by whom work is done under a contract of employment; or

(b) an apprentice or industrial trainee;

**“employer”** means —

- (a) a person by whom an employee is employed under a contract of employment; and
- (b) in relation to an apprentice, or industrial trainee, the person by whom the apprentice or industrial trainee is employed under an apprenticeship or industrial training agreement;  
”;
- (v) in the definition of “self-employed person” by deleting “apprenticeship” and substituting the following —  
“  
an apprenticeship or industrial training agreement  
”;
- (vi) in the definition of “trade union” by deleting “*Conciliation and Arbitration Act 1904*” and substituting the following —  
“ *Industrial Relations Act 1988* ”;
- (vii) in the definition of “workplace” by inserting after “employees” the following —  
“ or self-employed persons ”;

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(viii) by inserting in the appropriate alphabetical positions the following definitions —

“

**“apprentice”** means an apprentice under the *Industrial Training Act 1975*;

**“chairperson”** means the chairperson of the Commission;

**“industrial trainee”** means an industrial trainee under the *Industrial Training Act 1975*;

**“safety and health committee”** means a safety and health committee established under Part IV;

**“safety and health magistrate”** means a person holding office as a safety and health magistrate under section 51B;

**“safety and health representative”** means a safety and health representative elected under Part IV;

”;

and

(ix) by deleting the definitions of “health and safety committee”, “health and safety representative”, “Industrial Relations Commission” and “welfare”;

and

- (b) by inserting after subsection (2) the following subsection —

“

(3) For the purposes of sections 19 (7), 20 (5), 21 (3), 22 (5), 23 (5) and 23A (3), a contravention causes serious harm to a person if it causes any bodily injury to the person, or causes the person to have a disease, of such a nature as to —

- (a) endanger, or be likely to endanger, the person's life; or
- (b) result, or be likely to result, in permanent injury or harm to the person's health.

”.

### **Section 3A repealed**

7. Section 3A of the principal Act is repealed.

### **Section 6 amended**

8. Section 6 of the principal Act is amended —

- (a) by repealing subsections (1) and (2) and substituting the following subsections —

“

(1) There shall be a WorkSafe Western Australia Commission.

(2) The Commission shall consist of —

- (a) a person nominated by the Minister and appointed by the Governor as chairperson;

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- (b) the Commissioner;
- (c) 2 officers of the Public Service nominated in writing by the Minister; and
- (d) 9 persons appointed by the Governor of whom —
  - (i) 3 shall be persons nominated for appointment by the body known as the Chamber of Commerce and Industry of Western Australia (Inc);
  - (ii) 3 shall be persons nominated for appointment by the body known as The Trades and Labor Council of Western Australia; and
  - (iii) 3 shall be persons having knowledge of or experience in occupational safety and health who shall be nominated for appointment by the Minister after consultation between the Minister and the bodies referred to in subparagraphs (i) and (ii).

”  
;

- (b) in subsection (4) by deleting “(b) or”; and



- (c) by inserting after subsection (4) the following subsections —

“

(5) In addition to the name mentioned in subsection (1), the Commission may use, and operate under, the name “WorkSafe WA”.

(6) A person other than the Commission who uses or operates under the name mentioned in subsection (1) or (5), or any name that is so similar that it is likely to be misunderstood as referring to the Commission, commits an offence.

(7) Nothing in subsection (6) prevents the department of the Public Service principally assisting the Minister in the administration of this Act from using or operating under the name of “WorkSafe Western Australia” or a similar name if that designation is given to it under section 35 of the *Public Sector Management Act 1994*.

”

### **Section 6A inserted**

9. After section 6 of the principal Act the following section is inserted —

“

#### **Deputy chairperson**

**6A.** (1) The Minister shall appoint one of the members of the Commission to be deputy chairperson of the Commission.

(2) During any vacancy in the office of chairperson or while the chairperson is unable to act by reason of sickness, absence or other cause, the deputy chairperson shall perform the functions of the chairperson.

(3) No act or omission of the deputy chairperson acting as the chairperson shall be questioned on the ground that the occasion for so acting had not arisen or had ceased.

”

### **Section 7 repealed and a section substituted**

**10.** Section 7 of the principal Act is repealed and the following section is substituted —

“

#### **Acting members**

**7.** (1) If —

- (a) an appointed member is unable to act by reason of sickness, absence or other cause; or
- (b) the office of an appointed member is vacant and has not been filled in accordance with this Act,

the Minister may appoint an eligible person to act temporarily in the place of that appointed member, and while so acting according to the tenor of the appointment that other person has all of the functions, powers and immunities of that appointed member.

(2) Where an appointed member who is deputy chairperson is performing the functions of the chairperson, the Minister may, under subsection (1),

appoint another eligible person to act in the place of that appointed member.

(3) No act or omission of a person acting in the place of another under this section is to be questioned on the ground that the occasion for the appointment or so acting had not arisen or had ceased.

(4) The appointment of a person as an acting member may be terminated at any time by the Minister.

”

### **Section 9 amended**

11. Section 9 of the principal Act is amended —

(a) in subsection (1) by deleting “Commissioner for Occupational Health, Safety and Welfare” and substituting the following —

“ WorkSafe Western Australia Commissioner ”;

and

(b) by inserting after subsection (7) the following subsection —

“

(8) In addition to the name mentioned in subsection (1), the Commissioner may use, and operate under, the name “WorkSafe W A Commissioner”.

”

**Section 13 amended**

**12.** Section 13 of the principal Act is amended —

- (a) in subsection (1) by deleting “Commissioner” in both places where it occurs and substituting in each case the following —

“ chairperson ”;

- (b) in subsection (3) by deleting “Commissioner” and substituting the following —

“ chairperson ”;

- (c) by repealing subsection (4) and substituting the following subsection —

“  
(4) If both the chairperson and the deputy chairperson are absent from a meeting of the Commission, the members present shall elect by secret ballot one of their number to preside at that meeting and that member shall have, in addition to the powers of a member of the Commission, the powers of the chairperson under this section.  
”;

and

- (d) by repealing subsection (6) and substituting the following subsections —

“  
(6) Subject to subsection (6a), at a meeting of the Commission —

- (a) only members appointed under section 6 (2) (d) are entitled to vote; and

(b) where any question requiring a vote arises the question shall be decided by a majority of the votes of the members appointed under section 6 (2) (d) if, and only if, not less than 6 of those members also constitute such majority.

(6a) If —

(a) on a vote at a meeting of the Commission, a majority of the votes of members appointed under section 6 (2) (d) is constituted by 5 of those members; and

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

the chairperson may, at that subsequent meeting, cast a vote to be included in the majority vote.

**Section 19 amended**

13. Section 19 of the principal Act is amended —

- (a) by repealing subsection (3) and substituting the following subsection —

“

(3) If, at a workplace, an employee incurs an injury, or is affected by a disease, that —

(a) results in the death of the employee; or

(b) is of a kind prescribed in the regulations for the purposes of this subsection,

the employer of that employee shall forthwith notify the Commissioner in the prescribed form giving such particulars as may be prescribed.

”;

and

- (b) by repealing subsection (6) and substituting the following subsections —

“

(6) An employer who contravenes subsection (1) commits an offence and is liable to a fine of \$100 000.

(7) An employer who contravenes subsection (1) and by that contravention causes the death of, or serious harm to, an employee commits an offence and is liable to a fine of \$200 000.

(8) An employer who contravenes subsection (3) commits an offence and is liable to a fine of \$25 000.

(9) An employer charged with an offence against subsection (7) may, instead of being convicted of that offence, be convicted of an offence against subsection (6).

”.

### **Section 20 amended**

14. Section 20 of the principal Act is amended by repealing subsection (4) and substituting the following subsections —

“

(4) An employee who contravenes subsection (1) or (3) commits an offence and is liable to a fine of \$10 000.

(5) An employee who contravenes subsection (1) or (3) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable to a fine of \$20 000.

(6) An employee charged with an offence against subsection (5) may, instead of being convicted of that offence, be convicted of an offence against subsection (4).

”.

### **Section 21 amended**

15. Section 21 of the principal Act is amended by repealing subsection (2) and substituting the following subsections —

“

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine of \$100 000.

(3) A person who contravenes subsection (1) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable to a fine of \$200 000.

(4) A person charged with an offence against subsection (3) may, instead of being convicted of that offence, be convicted of an offence against subsection (2).

”.

### **Section 22 repealed and a section substituted**

16. Section 22 of the principal Act is repealed and the following section is substituted —

“

#### **Duties of persons who have control of workplaces**

22. (1) A person who has, to any extent, control of —

- (a) a workplace where persons who are not employees of that person work or are likely to be in the course of their work; or
- (b) the means of access to and egress from a workplace,

shall take such measures as are practicable to ensure that the workplace, or the means of access to or egress from the workplace, as the case may be, are such that persons who are at the workplace or use the means of access to and egress from the workplace are not exposed to hazards.

(2) Where a person has, by virtue of a contract or lease, an obligation of any extent in relation to the



maintenance or repair of a workplace or the means of access to and egress from the workplace, the person shall be treated for the purposes of subsection (1) as being a person who has control of that workplace or that means of access or egress.

(3) A reference in this section to a person having control of any workplace or means of access to or egress from a workplace is a reference to a person having control of that workplace or that means of access or egress in connection with the carrying on by that person of a trade, business or undertaking (whether for profit or not).

(4) A person who contravenes subsection (1) commits an offence and is liable to a fine of \$100 000.

(5) A person who contravenes subsection (1) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable to a fine of \$200 000.

(6) A person charged with an offence against subsection (5) may, instead of being convicted of that offence, be convicted of an offence against subsection (4).

(7) This section does not apply to a person whose duties are set out in section 20.

**Section 23 amended**

**17. Section 23 of the principal Act is amended —**

- (a) by deleting paragraph (a) of subsection (1) and substituting the following —

“

- (a) ensure that the design and construction of the plant is such that persons who properly install, maintain or use the plant are not in doing so, exposed to hazards;

”;

- (b) in subsection (1) (c) —

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

- (ii) in subparagraph (iii) by deleting “hazards,” and substituting the following —

“

hazards; and

- (iv) the proper maintenance of the plant,

”;

- (c) by inserting after subsection (3) the following subsection —

“

(3a) A person who designs or constructs any building or structure, including a temporary structure, for use at a workplace shall, so far as is practicable

ensure that the design and construction of the building or structure is such that —

- (a) persons who properly construct, maintain, repair or service the building or structure; and
- (b) persons who properly use the building or structure,

are not, in doing so, exposed to hazards.

”;

and

- (d) by repealing subsection (4) and substituting the following subsections —

“

(4) A person who contravenes subsection (1), (2), (3) or (3a) commits an offence and is liable to a fine of \$100 000.

(5) A person who contravenes subsection (1), (2), (3) or (3a) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable to a fine of \$200 000.

(6) A person charged with an offence against subsection (5) may, instead of being convicted of that offence, be convicted of an offence against subsection (4).

”.

**Sections 23A and 23B inserted**

18. After section 23 of the principal Act the following sections are inserted —

“

**Prohibited activities in prescribed areas**

**23A.** (1) A person shall not —

- (a) engage in any activity, other than a prescribed activity; or
- (b) engage in a prescribed activity, other than in a prescribed manner,

at a workplace in an area of the State prescribed for the purposes of this section.

(2) A person who contravenes subsection (1), commits an offence and is liable to a fine of \$100 000.

(3) A person who contravenes subsection (1) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable to a fine of \$200 000.

(4) A person charged with an offence against subsection (3) may, instead of being convicted of that offence, be convicted of an offence against subsection (2).

**No double jeopardy**

**23B.** A person is not liable to be punished twice under this Act in respect of any act or omission.

”

**Section 25 amended**

19. Section 25 (1) of the principal Act is amended by deleting “or a health and safety representative” and substituting the following —

“  
    , a safety and health representative or, if there is no  
    safety and health representative, an employee  
”.

**Section 26 amended**

20. Section 26 of the principal Act is amended —

(a) by inserting after subsection (1) the following subsection —

“  
    (1a) In determining whether an  
    employee has reasonable grounds for the  
    belief referred to in subsection (1) it is  
    relevant to consider whether an inspector  
    has attended the workplace upon being  
    notified under section 25 (1) of the risk and  
    whether —

- (a) the measures, if any, required by the inspector to be taken to remedy the matters giving rise to the risk have been taken;
- (b) the requirements, if any, of the inspector to remedy the matters giving rise to the risk have ceased to have effect; or
- (c) the inspector has determined that no action is required to be taken under this Act.

”.

- (b) by inserting after subsection (2) the following subsections —

“

(2a) An employee who refuses to work as mentioned in subsection (1) shall not leave the workplace concerned until the employee has notified the employer under subsection (2) and that employer has authorized the employee to leave that workplace.

(2b) Subsection (2a) does not apply if the employee has reasonable grounds to believe that to remain at the workplace concerned would expose the employee to a risk of imminent and serious injury or imminent and serious harm to his or her health.

”;

and

- (c) in subsection (3) by deleting “subsection (2)” and substituting the following —

“ subsection (2) or (2a) ”.

### **Section 28 amended**

#### **21. Section 28 of the principal Act is amended —**

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

“

(1a) Subsection (1) does not apply if —

- (a) the employee leaves the workplace without the

authorization of the employer as required under section 26 (2a); or

- (b) the employee refuses to do reasonable alternative work that the employee is given under section 27.

”.

and

- (b) in subsection (2) by deleting “the Industrial Relations Commission.” and substituting the following —

“

a safety and health magistrate for determination.

”.

### **Section 28A inserted**

**22.** After section 28 of the principal Act the following section is inserted —

“

#### **Offences — refusal to work**

**28A.** (1) In this section “**disentitled employee**” means an employee who refuses to work for any period —

- (a) on the grounds that to do so would involve a risk of injury or harm to the health of any person; or
- (b) on the grounds that another employee refuses to work because to do so would involve a risk of injury or harm to the health of any person,

but does not include a person who has refused to work as mentioned in section 26 (1) and who is entitled to pay and other benefits under section 28 (1).

(2) An employee who accepts from his or her employer, in respect of any period during which that employee is a disentitled employee, any pay or other benefits to which the employee would have been entitled if he or she had continued to work commits an offence.

(3) An employer who pays or provides to an employee, in respect of any period during which the employee is a disentitled employee, any pay or other benefits to which the employee would have been entitled if the employee had continued to work commits an offence.

(4) In subsections (2) and (3) a reference to pay and other benefits does not include a reference to any payment or benefit prescribed for the purposes of this section.

(5) This section has effect despite any provision of any other written law, including the *Industrial Relations Act 1979*, and any order, award or agreement made or registered under that Act.

”.

### **Section 30 amended**

**23.** Section 30 of the principal Act is amended —

(a) by repealing subsections (1), (2) and (3) and substituting the following subsections —

“

(1) An employer shall, within 21 days of being given notice under section 29



requiring the election of a safety and health representative, invite the employees who work at the workplace in respect of which the notice is given to appoint a delegate or delegates in accordance with subsection (3).

(2) An employer may, at any time the employer requires the election of a safety and health representative for a workplace of the employer, invite the employees who work at the workplace to appoint a delegate or delegates in accordance with subsection (3).

(3) The employees who work at a workplace may, upon being invited under this section to do so, appoint a delegate or delegates from amongst their number to represent them.

(3a) An employer shall consult with the delegate or delegates, as the case requires, appointed under this section as to the matters which are required to be determined under this section.

”;

(b) in subsection (4) —

(i) by inserting after paragraph (a) the following paragraph —

“

(aa) the matters or areas in respect of which each safety and health representative is to exercise functions in the workplace;

”;

and

- (ii) in paragraph (c) by deleting “where none of the employees who work at a workplace is a member of a trade union,”;
- (c) by repealing subsections (5) and (6) and substituting the following subsections —

“

(5) Where they wish to do so, the parties consulting under subsection (3a) may request that an election to be held for the purpose of electing a safety and health representative be conducted by the Electoral Commissioner appointed under the *Electoral Act 1907*.

(6) Any matter mentioned in subsection (4) that remains unresolved notwithstanding attempts to resolve it under subsection (3a) may be referred to the Commissioner who shall, if unable to resolve the matter to the satisfaction of each of the parties concerned, refer the matter to a safety and health magistrate for determination.

”;

and

- (d) in subsection (7) by inserting after “subsection (1)” the following —

“ or (3a) ”.

### **Section 31 amended**

**24.** Section 31 of the principal Act is amended —

- (a) by repealing subsections (2), (3), (4) and (5);

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- (b) in subsection (6) by inserting after “Subject to this section,” the following —

“ an election shall be conducted and ”;

- (c) in subsection (7) by deleting “, where any of the parties consulting under section 30 to determine matters in relation to that election so requires,”;

- (d) in subsection (10) by deleting “A trade union” and substituting the following —

“ The person ”;

- (e) by inserting after subsection (10) the following subsections —

“

(10 a) A safety and health representative shall, within 14 days of being elected under this section, notify the Commissioner in the prescribed form of that election and give such further particulars as are prescribed in that form.

(10 b) A safety and health representative who contravenes subsection (10a) commits an offence.

”; and

- (f) in subsection (11) —

- (i) by deleting “Commissioner who may” and substituting the following —

“ Commissioner who shall ”; and

- (ii) by deleting “the Industrial Relations Commission” and substituting the following —

“ a safety and health magistrate ”.

**Section 33 amended**

**25.** Section 33 of the principal Act is amended —

- (a) in subsection (1) (a) by deleting “to inspect the workplace” and substituting the following —

“ to inspect that workplace ”; and

- (b) by repealing subsection (2) and substituting the following subsection —

“

(2) A safety and health representative for a workplace has such powers as are necessary for the carrying out of the safety and health representative’s functions under this Part and in particular, but without limiting the generality of this provision may, where requested to do so by an inspector, accompany an inspector while the inspector is carrying out, at the workplace, any of the inspector’s functions under this Act.

”.

**Section 34 amended**

**26.** Section 34 of the principal Act is amended —

- (a) in subsection (1) by deleting “the Industrial Relations Commission” and substituting the following —

“ a safety and health magistrate ”;

- (b) in subsection (2) (b) by deleting “any trade union a member of which” and substituting the following —

“ any employee who ”;

(c) in subsection (3) —

(i) by deleting “the Industrial Relations Commission” and substituting the following —

“ a safety and health magistrate ”; and

(ii) by deleting “it may” and substituting the following —

“ the safety and health magistrate may ”;

and

(d) in subsection (4) —

(i) by deleting “the Industrial Relations Commission” and substituting the following —

“ a safety and health magistrate ”; and

(ii) by deleting “it considers” and substituting the following —

“  
the safety and health magistrate  
considers  
”.

**Section 35 amended**

27. Section 35 (3) of the principal Act is amended by deleting “the Industrial Relations Commission upon a reference made to it” and substituting the following —

“

a safety and health magistrate upon a reference made to the safety and health magistrate

”.

**Section 36 amended**

28. Section 36 of the principal Act is amended —

(a) by repealing subsection (1) and substituting the following subsection —

“

(1) An employee who works at a workplace may request the employer to establish a safety and health committee for the workplace under this Part.

”;

(b) in subsection (2) —

(i) by deleting “by a health and safety representative” and substituting the following —

“ by an employee ”;

(ii) in paragraph (a) by deleting “the health and safety representative” and substituting the following —

“

the employee and any safety and health representative for the workplace

”;

and

- (iii) in paragraph (b) by deleting “the health and safety representative” and substituting the following —

“  
the employee and any safety and  
health representative for the  
workplace  
”;

and

- (c) in subsection (3) by deleting “and the health and safety representative” and substituting the following —

“ and the employee ”.

### **Section 37 amended**

**29.** Section 37 of the principal Act is amended by inserting after subsection (3) the following subsection —

“  
(4) If the employer and the safety and health representatives of the workplaces concerned so determine, a safety and health committee constituted by —

(a) the person or persons nominated by that employer; and

(b) those safety and health representatives,

may exercise its functions in relation to each of those workplaces.

”.

**Section 38 amended**

**30.** Section 38 of the principal Act is amended —

(a) in subsection (1) —

(i) by deleting paragraph (b) and the “and” after that paragraph and substituting the following —

“ (b) if there are no safety and health representatives, the person or persons elected by the employees for the purposes of this section; and  
and ”;

(ii) in paragraph (c) by deleting “nominated” and substituting the following —

“ appointed ”;

(b) by repealing subsections (2) and (3) and substituting the following subsections —

“ (2) Subject to subsections (4) and (5) —

(a) the number of persons to be elected by the employees for the purposes of this section shall be as is substantially agreed between the employer and employees concerned; and



- (b) the number of persons to be appointed by the employer for the purposes of this section shall be —
    - (i) as is agreed between the employer and the safety and health representative or, where there are 2 or more of them, the safety and health representatives, for the workplace; or
    - (ii) if there is no safety and health representative, as is substantially agreed between the employer and employees.
- (3) If there is —
- (a) in the opinion of the Commissioner, failure to substantially agree the matter under subsection (2) (a), the number of persons to be elected by the employees for the purposes of this section shall be as decided by the Commissioner;
  - (b) failure to agree the matter under subsection (2) (b) (i), the number of persons to be appointed by the employer for the purposes of this section shall be as decided by the Commissioner; or

(c) in the opinion of the Commissioner, failure to substantially agree the matter under subsection (2) (b) (ii), the number of persons to be appointed by the employer for the purposes of this section shall be as decided by the Commissioner.

”;

(c) in subsection (4) by deleting “health and safety representatives or” and substituting the following —

“ safety and health representatives or, where there are no safety and health representatives,

”;

(d) in subsection (5) —

(i) by inserting after “for a workplace unless he is” the following —

“ the employer or ”; and

(ii) by deleting “nominated” and substituting the following —

“ appointed ”; and

(e) by inserting after subsection (5) the following subsections —

“ (6) An employer may appoint himself or herself as a member of a safety and health committee.

(7) An election for the purposes of this section shall be by secret ballot.

”.

### **Section 39 amended**

**31.** Section 39 of the principal Act is amended —

- (a) by inserting after the section designation “39.” the subsection designation “(1)”;
- (b) by deleting “a health and safety representative, or a trade union any member of which works at a workplace may refer to the Industrial Relations Commission for review by it” and substituting the following —

“

a safety and health representative, or an employee who works at a workplace may refer to a safety and health magistrate for review by that safety and health magistrate

”;

and

- (c) by inserting the following subsection —

“

(2) A safety and health magistrate may confirm, vary or revoke a decision of the Commissioner referred under subsection (1).

”.

**Section 43 amended**

**32.** Section 43 of the principal Act is amended by inserting after subsection (2) the following subsection —

“

(3) In carrying out the functions of an inspector under this Act, an inspector shall act in such a manner as to avoid unduly or unreasonably interfering with any work or work process.

”

**Section 46 amended**

**33.** Section 46 of the principal Act is amended —

(a) in subsection (1) by inserting after “to a workplace,” the following —

“ if practicable ”;

(b) in subsection (2) by deleting “Where” and substituting the following —

“ Subject to subsection (3), where ”; and

(c) by inserting after subsection (2) the following subsection —

“

(3) Subsection (2) does not apply in respect of the results of the analysis of a personal biological sample provided by an employee unless —

(a) the employee has authorized the inspector to notify the person concerned; or

- (b) the results are in a form that could not reasonably be expected to lead to the identification of any person to whom they relate.

”.

### **Section 47 amended**

**34.** Section 47 (1) of the principal Act is amended by inserting after paragraph (b) the following paragraph —

“

- (ba) uses any threat or any abusive or insulting language to an inspector lawfully acting in the performance of a function conferred on an inspector under this Act, or any interpreter or other person assisting an inspector in the performance of that function;

”.

### **Section 48 amended**

**35.** Section 48 of the principal Act is amended —

- (a) in subsection (2) —

- (i) by deleting paragraph (b) and substituting the following paragraph —

“

- (b) state reasonable grounds for forming that opinion;

”;

and

- (ii) in paragraph (e) by deleting “section 51” and substituting the following —

“ sections 51 and 51A ”;

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- (b) by inserting after subsection (3) the following subsections —

“

(3a) A person shall not remove an improvement notice displayed under subsection (3) before the requirements of that improvement notice have been satisfied.

(3b) Subsection (3a) does not apply in respect of an improvement notice that is suspended under section 51 or 51A or that has ceased to have effect.

(3c) If an improvement notice is issued to a self-employed person in respect of a contravention of section 21, that person shall comply with subsection (3) as if the person were an employer.

”;

- (c) in subsection (4) by deleting “section 51” and substituting the following —

“ sections 51 and 51A ”; and

- (d) in subsection (6) by inserting after “subsection (3)” the following —

“ , (3a) or (3c) ”.

**Section 49 amended**

**36.** Section 49 of the principal Act is amended —

- (a) by repealing subsection (1) and substituting the following subsection —

“

(1) Where an inspector is of the opinion that an activity is occurring or may occur at a workplace which activity involves or will involve a risk of imminent and serious injury to, or imminent and serious harm to the health of, any person, the inspector may issue to a person who is or will be carrying on the activity, or a person who has or may be reasonably presumed to have control over the activity, a prohibition notice prohibiting the carrying on of the activity until an inspector is satisfied that the matters which give or will give rise to the risk are remedied.

”;

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(b) in subsection (3) —

(i) by deleting paragraph (b) and substituting the following paragraph —

“  
    (b) state reasonable grounds for forming that opinion;  
”;  
and

(ii) in paragraph (e) by deleting “section 51” and substituting the following —

“ sections 51 and 51A ”;

(c) by inserting after subsection (4) the following subsections —

“  
    (4a) A person shall not remove a prohibition notice displayed under subsection (4) before the requirements of that prohibition notice, taking into account any modifications made under section 51 (5), have been satisfied or the prohibition notice has ceased to have effect.

    (4b) If a prohibition notice is issued to a self-employed person in respect of a contravention of section 21, that person shall comply with subsection (4) as if the person were an employer.  
”;

(d) in subsection (5) by deleting “section 51” and substituting the following —

“ sections 51 and 51A ”; and



- (e) in subsection (6) by inserting after “subsection (4)” the following —

“ , (4a) or (4b) ”.

### **Section 51 amended**

- 37.** Section 51 of the principal Act is amended —

- (a) by repealing subsection (1) and substituting the following subsection —

“

(1) An improvement notice or prohibition notice may, in accordance with this section, be referred for review to the Commissioner by —

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

”;

- (b) by repealing subsections (3) and (4);

- (c) in subsection (5) —

- (i) by deleting “or, as the case may be, the Industrial Relations Commission”; and
- (ii) by deleting “and the notice shall have effect” and substituting the following —

“

and, subject to section 51A, the notice shall have effect

”;

- (d) by repealing subsection (6) and substituting the following subsections —

“

(6) The Commissioner shall give to the person who referred the matter for review, and to any other person who was entitled under subsection (1) to refer the notice for review, a notice in writing of the decision on the reference and of the reasons for that decision.

(6a) In dealing with a reference for the review of a prohibition notice the Commissioner may refer to an expert chosen by the Commissioner such matters as appear appropriate and may accept the advice of that expert.

”

and

- (e) in subsection (7) (b) by deleting “Industrial Relations Commission” and substituting the following —

“ Commissioner ”.

### **Section 51A inserted**

**38.** After section 51 of the principal Act the following section is inserted —

“

#### **Further review of notices**

**51A.** (1) A person to whom notice of a decision is issued under section 51 (6) may, if not satisfied with the Commissioner’s decision, refer the matter in accordance with subsection (2) to a safety and health magistrate for further review.

(2) A reference under subsection (1) may be made in the prescribed form within 7 days of the issue of the notice under section 51 (6).

(3) A review of a decision made under section 51 shall be in the nature of a rehearing.

(4) A safety and health magistrate shall act as quickly as is practicable in determining a matter referred under this section.

(5) On a reference under subsection (1) the safety and health magistrate shall inquire into the circumstances relating to the notice and may —

- (a) affirm the decision of the Commissioner;
- (b) affirm the decision of the Commissioner with such modifications as seem appropriate; or
- (c) revoke the decision of the Commissioner and make such other decision with respect to the notice as seems fit,

and the notice shall have effect or, as the case may be, cease to have effect accordingly.

(6) In dealing with a reference under this section the safety and health magistrate may refer to an expert chosen by the safety and health magistrate such matters as appear appropriate and the report of any such expert may be accepted as evidence.

(7) Pending the decision on a reference under this section, irrespective of the decision of the Commissioner under section 51, the operation of the notice in respect of which the reference is made shall —

- (a) in the case of an improvement notice, be suspended; and
- (b) in the case of a prohibition notice, continue, subject to any decision to the contrary made by the safety and health magistrate.

”.

**Part VIA inserted**

39. Before section 52 of the principal Act the following Part is inserted —

“

**PART VIA — SAFETY AND HEALTH  
MAGISTRATES**

**Safety and health magistrates**

**51B.** Every magistrate holds office as a safety and health magistrate by virtue of this section and ceases to hold that office upon ceasing to hold office as a magistrate.

**Jurisdiction of safety and health magistrate**

**51C.** (1) A safety and health magistrate has jurisdiction to —

- (a) hear and determine any matter referred to a safety and health magistrate under this Act; and

(b) hear and determine under the *Justices Act 1902* proceedings instituted under section 52.

(2) A decision by a safety and health magistrate on a matter referred under this Act has effect according to its substance.

(3) Except as otherwise prescribed by or under this Act —

(a) the powers of a safety and health magistrate; and

(b) the practice and procedure to be observed by a safety and health magistrate,

when exercising jurisdiction under subsection (1) (a) are those provided for by the *Local Courts Act 1904* and when exercising that jurisdiction a safety and health magistrate is taken to be a court under that Act.

(4) If, in relation to a matter referred to a safety and health magistrate under this Act, no provision of the *Local Courts Act 1904* or this Act is applicable the matter shall be dealt with in such manner as the safety and health magistrate may direct.

(5) When exercising jurisdiction under subsection (1) (b) a safety and health magistrate constitutes a court of summary jurisdiction.

### **Representation**

**51D.** In the hearing and determination of a matter under section 51C (1) (a) before a safety and health magistrate a party may appear personally or be

represented by any agent, including a legal practitioner.

### **Administrative arrangements**

**51E.** The Chief Stipendiary Magistrate shall make such administrative arrangements as are necessary to enable a safety and health magistrate to carry out functions under this Act.

”.

### **Section 52 amended**

**40.** Section 52 (2) of the principal Act is amended by deleting “a court of summary jurisdiction composed of a” and substituting the following —

“ a safety and health ”.

### **Section 53 amended**

**41.** Section 53 of the principal Act is amended —

(a) in paragraph (c) by deleting the following —

“ or control ”; and

(b) by deleting “shall be deemed to be proved in the absence of proof to the contrary.” and substituting the following —

“ is, in the absence of evidence to the contrary, taken to be proved.

”.

**Section 54 repealed and sections 54, 54A and 54B substituted**

**42.** Section 54 of the principal Act is repealed and the following sections are substituted —

“

**General penalty**

**54.** A person who commits an offence against this Act is liable, if a penalty is not expressly provided for that offence —

- (a) where the offence is committed by a person as an employee, to a fine of \$5 000; and
- (b) in any other case, to a fine of \$25 000.

**Continuing offences**

**54A.** (1) Where an offence is committed by a person by reason of the contravention of a provision of this Act under which the person is required or directed to do any act or thing, or to refrain from doing any act or thing, that offence is taken to continue so long as the act or thing so required or directed remains undone, or continues to be done, as the case may be.

(2) Where an offence is taken to continue, the person who committed the offence, whether by act or omission, commits an additional offence on each day during which the offence is taken to continue after notice of the offence has been given by or on behalf of an inspector to the offender, and is liable to a fine not exceeding \$200 where the offence is committed by a person as an employee and \$1000 in any other case for every day on which the offence is so continued.

## Appeals

54B. (1) Part VIII of the *Justices Act 1902* applies to an appeal from a decision of a safety and health magistrate under section 52.

(2) A party to proceedings before a safety and health magistrate, other than proceedings referred to in section 52, may, by leave of the Supreme Court, appeal to the Supreme Court on a question of law against a determination or decision of the safety and health magistrate.

(3) An appeal or an application for leave to appeal to the Supreme Court under subsection (2) shall be brought in the manner and in the time prescribed by rules made by the Supreme Court and shall be heard and determined by a single judge of the Supreme Court.

(4) Without limiting the rules of the Supreme Court, where an appeal under subsection (2) has commenced, the court —

(a) may suspend the operation or effect of the determination or decision appealed against until the appeal is determined or is withdrawn; and

(b) may revoke any such suspension.

”



**Section 56 amended**

**43.** Section 56 of the principal Act is amended —

(a) in subsection (1) —

(i) by deleting “by reason only” and substituting the following —

“ for the dominant or substantial  
reason ”;  
and

(ii) by inserting after paragraph (c) the following —

“ or ”;

and

(b) in subsection (2) by deleting “by reason only” and substituting the following —

“ for the dominant or substantial reason ”.

**Section 57 amended**

**44.** Section 57 of the principal Act is amended —

(a) in subsection (1) by deleting “, and employees” and substituting the following —

“ , employees, and other persons on whom a  
duty is imposed under Part III of this Act, ”;

- (b) in subsection (4) by inserting after “under this section” the following —

“  
and the approval or revocation comes into  
force on the day of such publication  
”;  
and

- (c) by inserting after subsection (7) the following subsection —

“  
(8) Where it is alleged in a proceeding under this Act that a person has contravened a provision of this Act or the regulations in relation to which a code of practice was in effect at the time of the alleged contravention —

(a) the code of practice is admissible in evidence in that proceeding;  
and

(b) demonstration that the person complied with the provision of the Act or regulations whether or not by observing that provision of the code of practice is a satisfactory defence.  
”

### **Section 60 amended**

**45.** Section 60 of the principal Act is amended by inserting after subsection (5) the following subsection —

“

(6) Regulations made under this Act may provide that contravention of a regulation constitutes an offence and provide for penalties not exceeding —

(a) \$5 000 where the offence is committed by a person as an employee; and

- (b) \$25 000 in any other case,

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

- (c) \$200 where the offence is committed by a person as an employee; and

- (d) \$1 000 in any other case,

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.

”.

### **Schedule amended**

**46.** The Schedule to the principal Act is amended —

- (a) in item 1 —

- (i) by deleting “or” at the end of paragraph (e); and

- (ii) in paragraph (f) by deleting “substance.” and substituting the following —

“

substance; or

- (g) in the design or construction of any building or structure, including a temporary structure.

”.

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- (b) by inserting after item 6 the following item —

“

6A. The prohibition of the use, handling, treatment, storage, transportation or disposal of any prescribed substance at a workplace.

”;

- (c) by inserting after item 24 the following item —

“

24A. The reporting of injuries incurred at workplaces, or diseases affecting employees at workplaces, other than injuries and diseases prescribed for the purposes of section 19 (3).

”;

and

- (d) by inserting after item 26 the following items —

“

26A. The conduct of elections under this Act by secret ballot.

26B. The powers of safety and health magistrates.

26C. The remuneration of agents for services performed in connection with appearances under section 51D.

”.

### **Minor amendments**

**47.** (1) The provisions of the principal Act referred to in Column 1 of Schedule 1 to this Part are amended in the manner set out opposite them in Column 2.

(2) The provisions of the principal Act listed in the Table to this subsection are amended by deleting “health, safety and welfare” wherever it occurs in those provisions and substituting the following —

“ safety and health ”.

TABLE

s. 5 (a), (f) and (g)	s. 40 (a), (b) and (c)
s. 14 (1) (b) (ii), (c), (e), (g), (h), (j) and (l)	s. 58 (1)
s. 18 (1) and (2)	s. 61 (1) (b)
s. 19 (1) (c)	Schedule, clauses 12, 16 and 25
s. 38 (5)	

(3) The provisions of the principal Act listed in the Table to this subsection are amended by deleting “health, safety or welfare” wherever it occurs in those provisions and substituting the following —

“ safety or health ”.

TABLE

s. 20 (2) (c)	s. 40 (e)
s. 24 (1)	s. 56 (1) (d)
s. 33 (1) (f) and (g)	s. 57 (2)
s. 35 (1) (b) and (c)	Schedule, clause 10

(4) The provisions of the principal Act listed in the Table to this subsection are amended by deleting “health and safety” wherever it occurs in those provisions and substituting the following —

“ safety and health ”.

TABLE

s. 5 (e)	s. 34 (1), (2), (3) and (4)
s. 14 (1) (d), (f) and (i)	s. 35 (1), (2) and (3)
s. 15 (5) (a)	s. 36 (2)
s. 19 (1) (c)	s. 37 (1) and (3)
s. 20 (1) (a)	s. 38 (1), (4) and (5)
s. 21 (1) (a)	s. 39
s. 24 (1) (a) and (b), and (3)	s. 40
s. 26 (2)	s. 41 (1) and (2)
s. 29	s. 45 (2), (3) and (4)
s. 30 (4) (a)	s. 46 (2)
s. 31 (1), (6), (8) and (9)	s. 56 (1) (a), (b), (c) and (d), and (2)
s. 32 (1) and (2)	
s. 33 (1) and (3)	

**Consequential amendments**

48. The Acts referred to in Schedule 2 to this Part are amended in the manner set out in that Schedule.

**Transitional: Matters referred to Industrial Relations Commission; prosecutions**

49. (1) Any matter referred to the Industrial Relations Commission under the principal Act and not finally determined before the commencement of this section may be dealt with after that commencement as if the principal Act had not been amended by this Act.

(2) An appeal in respect of the decision of the Industrial Relations Commission made before the commencement of this section may be —

- (a) determined;
- (b) heard and determined; or

(c) instituted, heard and determined,

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

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

### **Change of title and constitution**

**50.** (1) The amendments effected by this Act to change the titles of the Commissioner and health and safety representatives elected under the principal Act do not affect the continuity or tenure of those offices and the amendments effected by this Act to change the title of the Commission and health and safety committees established under the principal Act do not affect the continuity of those bodies.

(2) Notwithstanding the amendments effected by section 8, persons who were appointed members of the Commission immediately before the commencement of that section continue to be members of the Commission on the same terms and conditions as those on which they were appointed.

**SCHEDULE 1**

[Section 47]

**MINOR AMENDMENTS**

*Column 1*

*Column 2*

Heading to  
Part II

Delete "OCCUPATIONAL HEALTH, SAFETY  
AND WELFARE" and substitute the following —

" WORKSAFE WESTERN AUSTRALIA "

s.9 (3)

Delete "Recommendation" and substitute the  
following —

" recommendation "

s.14 (1) (h)

Delete "National Commission for Occupational  
Health, Safety and Welfare" and substitute the  
following —

" National Occupational Health and Safety  
Commission "

s.14 (2)

Delete "proposed" and substitute the following —

" proposes "

s. 17

Delete "officer" and substitute the following —

" officers "

Heading to  
Part III

Delete "HEALTH, SAFETY AND WELFARE" and  
substitute the following —

" SAFETY AND HEALTH "

s. 20 (1) (b)

Delete "health or safety" and substitute the  
following —

" safety or health "

s. 20 (2) (a)

Delete "health or safety" in both places where it  
occurs and substitute in each case the following —

" safety or health "

s. 21 (1) (b)

Delete "health or safety" and substitute the  
following —

" safety or health "



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- s. 28 (2) After "benefit;" insert the following —  
" or ".
- Heading to Part IV Delete "HEALTH AND SAFETY" and substitute the following —  
" SAFETY AND HEALTH ".
- s.30 (7) Delete "and" and substitute the following —  
" an ".
- Schedule In clause 1 delete "Health, safety and welfare" and substitute the following —  
" Safety and health ".
- In clause 18 delete "welfare" and substitute the following —  
" safety and health ".

**SCHEDULE 2**

[Section 48]

**CONSEQUENTIAL AMENDMENTS**

<i>Short title of Act</i>	<i>Amendment</i>
1. <i>Factories and Shops Act 1963</i>	<p>In section 5 (1) delete the definition of "Commission" and substitute the following —</p> <p>“ <b>“Commission”</b> means the WorkSafe Western Australia Commission established under the <i>Occupational Safety and Health Act 1984</i>. ”.</p>
2. <i>Parliamentary Commissioner Act 1971</i>	<p>In the Schedule delete "The Occupational Health, Safety and Welfare Commission established under the <i>Occupational Health, Safety and Welfare Act 1984</i> and any advisory committee appointed under that Act." and insert at the end of the Schedule the following —</p> <p>“ WorkSafe Western Australia Commission established under the <i>Occupational Safety and Health Act 1984</i> and any advisory committee appointed under that Act. ”.</p>
3. <i>Public Sector Management Act 1994</i>	<p>In section 8 (1) (e) delete "<i>Occupational Health, Safety and Welfare Act 1984</i>" and substitute the following —</p> <p>“ <i>Occupational Safety and Health Act 1984</i> ”.</p> <p>In section 29 (1) (m) delete "<i>Occupational Health, Safety and Welfare Act 1984</i>" and substitute the following —</p> <p>“ <i>Occupational Safety and Health Act 1984</i> ”.</p>
4. <i>Workers' Compensation and Rehabilitation Act 1981</i>	<p>In section 48 (2) delete "<i>Occupational Health, Safety and Welfare Act 1984</i>" and substitute the following —</p> <p>“ <i>Occupational Safety and Health Act 1984</i> ”.</p>

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In section 48 (3) delete "*Occupational Health, Safety and Welfare Act 1984*" and substitute the following —

" *Occupational Safety and Health Act 1984* ".

In section 95 (3) (e) delete "*Occupational Health, Safety and Welfare Act 1984*" and substitute the following —

" *Occupational Safety and Health Act 1984* ".

**PART 3 — MINES SAFETY AND INSPECTION ACT 1994**

**Principal Act**

51. In this Part the *Mines Safety and Inspection Act 1994* is referred to as the principal Act.

**Long title amended**

52. The long title to the principal Act is amended by deleting “**health, safety and welfare**” and substituting the following —

“ **safety and health** ”.

**Section 4 amended**

53. Section 4 of the principal Act is amended —

(a) in subsection (1) —

(i) by inserting after the definition of “rock” the following definitions —

“

**“safety and health committee”**  
means a safety and health  
committee established under  
section 65;

**“safety and health magistrate”**  
means a person holding office as  
a safety and health magistrate  
under section 51B of the  
*Occupational Safety and Health  
Act 1984*;

**“safety and health representative”**

means a safety and health representative elected under section 56;

”;

and

- (ii) by deleting the definitions of “health and safety committee”, “health and safety representative”, “Industrial Relations Commission” and “welfare”;

and

- (b) by inserting after subsection (3) the following subsection —

“

(4) For the purposes of sections 9 (8), 10 (5), 12 (3), 13 (3) and 14 (6) a contravention causes serious harm to a person if it causes any bodily injury to the person, or causes the person to have a disease, of such a nature as to —

(a) endanger, or be likely to endanger, the person’s life; or

(b) result, or be likely to result, in permanent injury or harm to the person’s health.

”.

**Section 9 amended**

**54.** After section 9 (7) of the principal Act the following subsections are inserted —

“

(8) An employer who contravenes subsection (1) and by that contravention causes the death of, or

serious harm to, an employee commits an offence and is liable in the case of a corporation to a fine of \$200 000 and in the case of an individual to a fine of \$20 000.

(9) An employer charged with an offence against subsection (8) may, instead of being convicted of that offence, be convicted of an offence against subsection (7).

”

### **Section 10 amended**

**55.** After section 10 (4) of the principal Act the following subsections are inserted —

“

(5) An employee who contravenes subsection (1) or (3) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable to a fine of \$20 000.

(6) An employee charged with an offence against subsection (5) may, instead of being convicted of that offence, be convicted of an offence against subsection (4).

”

### **Section 12 amended**

**56.** After section 12 (2) of the principal Act the following subsections are inserted —

“

(3) A person who contravenes subsection (1) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable

in the case of a corporation to a fine of \$200 000 and in the case of an individual to a fine of \$20 000.

(4) A person charged with an offence against subsection (3) may, instead of being convicted of that offence, be convicted of an offence against subsection (2).

”.

### **Section 13 amended**

57. After section 13 (2) of the principal Act the following subsections are inserted—

“

(3) A person who contravenes subsection (1) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable in the case of a corporation to a fine of \$200 000 and in the case of an individual to a fine of \$20 000.

(4) A person charged with an offence against subsection (3) may, instead of being convicted of that offence, be convicted of an offence against subsection (2).

”.

### **Section 14 amended**

58. (1) Section 14 of the principal Act is amended —

(a) in subsection (1) (a) by deleting “use” and substituting the following —

“ install, maintain or use ”; and

- (b) by repealing subsection (3) and substituting the following subsection —

“

(3) A person who designs or constructs any building or structure, including a temporary structure, for use at a mine must, so far as is practicable, ensure that the design and construction of the building or structure is such that —

- (a) persons who properly construct, maintain, repair or service the building or structure; and
- (b) persons who properly use the building or structure,

are not, in doing so, exposed to hazards.

”

- (2) After section 14 (5) of the principal Act the following subsections are inserted —

“

(6) A person who contravenes subsection (1), (2), (3) or (4) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable in the case of a corporation to a fine of \$200 000 and in the case of an individual to a fine of \$20 000.

(7) A person charged with an offence against subsection (6) may, instead of being convicted of that offence, be convicted of an offence against subsection (5).

”



**Section 15 repealed and a section substituted**

**59.** Section 15 of the principal Act is repealed and the following section is substituted —

“

**No double jeopardy**

**15.** (1) A duty imposed on a person under this Part —

- (a) does not affect the application of any other more specific duty imposed on that person under this Act; and
- (b) applies notwithstanding any other more specific duty imposed on that person under this Part.

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

”

**Section 30 amended**

**60.** Section 30 (6) of the principal Act is amended by deleting “the court” in both places where it occurs and substituting in each case the following —

“ the safety and health magistrate ”.

**Section 53 amended**

**61.** Section 53 of the principal Act is amended by repealing subsection (2) and substituting the following subsection —

“

(2) A safety and health representative for a mine has such powers as are necessary for the carrying out

of the representative's functions under this Part and in particular, but without limiting the generality of the preceding statement, may, where requested to do so by an inspector, accompany an inspector while the inspector is carrying out, at the mine, any of the inspector's functions under this Act.

”

### **Section 55 amended**

**62.** Section 55 of the principal Act is amended —

- (a) by repealing subsections (1), (2) and (3) and substituting the following subsections —

“

(1) An employer must, within 21 days of being given notice under section 54 requiring the election of a safety and health representative, invite the employees who work at the mine in respect of which the notice is given to appoint a delegate or delegates in accordance with subsection (3).

(2) An employer may, at any time the employer requires the election of a safety and health representative for a mine, invite the employees who work at the mine to appoint a delegate or delegates in accordance with subsection (3).

(3) The employees who work at a mine may, upon being invited under this section to do so, appoint a delegate or delegates from amongst their number to represent them.

(3a) An employer must consult with the delegate or delegates, as the case requires, appointed under this section as to the matters which are required to be determined under this section.

”;

(b) in subsection (4) (c) by deleting “where none of the employees who work at a workplace is a member of a trade union,”;

(c) in subsection (5) by deleting “subsection (1)” and substituting the following —

“ subsection (3a) ”; and

(d) by repealing subsection (6) and substituting the following subsections —

“

(6) Any matter mentioned in subsection (4) that remains unresolved notwithstanding attempts to resolve it under subsection (3a) may be referred to the State mining engineer who must, if unable to resolve the matter to the satisfaction of each of the parties concerned, refer the matter to a safety and health magistrate for determination.

(7) An employer who contravenes subsection (1) or (3a) commits an offence.

”.

**Section 56 amended**

**63.** Section 56 of the principal Act is amended —

- (a) by repealing subsections (2), (3), (4) and (5);
- (b) in subsection (6) by inserting after “Subject to this section,” the following —

“ an election is to be conducted and ”;

- (c) in subsection (7) by deleting “, where any of the parties consulted under section 55 to determine matters in relation to that election so requires,”;
- (d) in subsection (10) by deleting “A trade union” and substituting the following —

“ The person ”;

- (e) by inserting after subsection (10) the following subsections —

“

(10a) A safety and health representative shall, within 14 days of being elected under this section, notify the State mining engineer the prescribed form of that election and give such further particulars as are prescribed in that form.

(10b) A safety and health representative who contravenes subsection (10a) commits an offence.

”; and

- (f) in subsection (11) —
- (i) by deleting “engineer who may” and substituting the following —
- “ engineer who must ”; and
- (ii) by deleting “the Industrial Relations Commission” and substituting the following —
- “ a safety and health magistrate ”.

**Section 59 amended**

**64.** Section 59 of the principal Act is amended —

- (a) in subsection (1) by deleting “the Industrial Relations Commission” and substituting the following —
- “ a safety and health magistrate ”;
- (b) in subsection (2) (b) by deleting “a trade union a member of which” and substituting the following —
- “ an employee who ”;
- (c) in subsection (3) —
- (i) by deleting “the Industrial Relations Commission” and substituting the following —
- “ a safety and health magistrate ”; and
- (ii) by deleting “it may” and substituting the following —
- “ the safety and health magistrate may ”;
- and

(d) in subsection (4) —

(i) by deleting “the Industrial Relations Commission” and substituting the following —

“ a safety and health magistrate ”; and

(ii) by deleting “it considers” and substituting the following —

“  
the safety and health magistrate  
considers  
”.

### **Section 62 amended**

**65.** Section 62 of the principal Act is amended by deleting “the Industrial Relations Commission upon a reference made to it” and substituting the following —

“  
a safety and health magistrate upon a reference made  
to the safety and health magistrate  
”.

### **Section 64 amended**

**66.** Section 64 of the principal Act is amended —

(a) by repealing subsection (1) and substituting the following subsection —

“  
(1) An employee who works at a mine  
may request an employer at the mine to  
establish a safety and health committee for  
the mine.  
”.

(b) in subsection (2) —

(i) by deleting “by a health and safety representative” and substituting the following —

“ by an employee ”;

(ii) in paragraph (a) by deleting “the health and safety representative” and substituting the following —

“  
the employee and any safety and  
health representative for the mine ”;

and

(iii) in paragraph (b) by deleting “the health and safety representative” and substituting the following —

“  
the employee and any safety and  
health representative for the mine ”;

and

(c) in subsection (3) by deleting “and the health and safety representative” and substituting the following —

“ and the employee ”.

**Section 66 amended**

**67.** Section 66 of the principal Act is amended —

(a) in subsection (1) —

(i) by deleting paragraph (b) and the “and” after that paragraph and substituting the following —

“

(b) if there is no safety and health representative, the person or persons elected by the employees for the purposes of this section; and

”;

and

(ii) in paragraph (c) by deleting “nominated” and substituting the following —

“ appointed ”;

(b) by repealing subsections (2) and (3) and substituting the following subsections —

“

(2) Subject to subsections (4) and (5) —

(a) the number of persons to be elected by the employees is to be as is substantially agreed between the employer or employers and employees concerned; and



- (b) the number of persons to be appointed by the employer or employers is to be —
    - (i) as is agreed between the employer or employers and the safety and health representative or, where there are 2 or more of them, the safety and health representatives, for the mine; or
    - (ii) if there is no safety and health representative, as is substantially agreed between the employer or employers and employees.
- (3) If there is —
- (a) in the opinion of the State mining engineer, failure to substantially agree the matter under subsection (2) (a), the number of persons to be elected by the employees for the purposes of this section is to be as decided by the State mining engineer;
  - (b) failure to agree the matter under subsection (2) (b) (i), the number of persons to be appointed by the employer or employers for the purposes of this section is to be as decided by the State mining engineer; or

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(c) in the opinion of the State mining engineer, failure to substantially agree the matter under subsection (2) (b) (ii), the number of persons to be appointed by the employer or employers for the purposes of this section is to be as decided by the State mining engineer.

”;

(c) in subsection (4) by deleting “health and safety representatives or” and substituting the following —

“

safety and health representatives or, where there are no safety and health representatives,

”;

(d) in subsection (5) by deleting “nominated” and substituting the following —

“ appointed ”; and

(e) by inserting after subsection (5) the following subsections —

“

(6) An employer may appoint himself or herself as a member of a safety and health committee.

(7) An election for the purposes of this section shall be by secret ballot.

”.

**Section 67 amended**

**68.** Section 67 of the principal Act is amended —

- (a) by inserting after the section designation “67.” the subsection designation “(1)”;
- (b) by deleting “a health and safety representative, or a trade union any member of which works at the mine, may refer to the Industrial Relations Commission” and substituting the following —

“

a safety and health representative, or an employee who works at the mine may refer to a safety and health magistrate

”;

and

- (c) by inserting the following subsection —

“

(2) A safety and health magistrate may confirm, vary or revoke a decision of the State mining engineer referred under subsection (1).

”.

**Section 72 amended**

**69.** Section 72 of the principal Act is amended —

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

“

(1a) In determining whether an employee has reasonable grounds for the belief referred to in subsection (1) it is relevant to consider whether a district

inspector has attended the workplace upon being notified under section 71 (1) of the risk and whether —

- (a) the measures, if any, required by the district inspector to be taken to remedy the matters giving rise to the risk have been taken;
- (b) the requirements, if any, of the district inspector to remedy the matters giving rise to the risk have ceased to have effect; or
- (c) the district inspector has determined that no action is required to be taken under this Act.

”;

- (b) by inserting after subsection (2) the following subsections —

“

(2a) An employee who refuses to work as mentioned in subsection (1) must not leave the mine concerned until the employee has notified the employer under subsection (2) and that employer has authorized the employee to leave that mine.

(2b) Subsection (2a) does not apply if the employee has reasonable grounds to believe that to remain at the mine concerned would expose the employee to a risk of imminent and serious injury or imminent and serious harm to his or her health.

”;

and

- (c) in subsection (3) by deleting “subsection (2)” and substituting the following —

“ subsection (2) or (2a) ”.

**Section 74 amended**

**70. Section 74 of the principal Act is amended —**

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

“

(1a) Subsection (1) does not apply if —

- (a) the employee leaves the mine without the authorization of the employer as required under section 72 (2a); or
- (b) the employee refuses to do reasonable alternative work that the employee is given under section 73.

”;

and

- (b) in subsection (2) by deleting “the Industrial Relations Commission.” and substituting the following —

“

a safety and health magistrate for determination.

”.

**Section 74A inserted**

**71.** After section 74 of the principal Act the following section is inserted —

“

**Offences — refusal to work**

**74A.** (1) In this section “**disentitled employee**” means an employee who refuses to work for any period —

- (a) on the grounds that to do so would involve a risk of injury or harm to the health of any person; or
- (b) on the grounds that another employee refuses to work because to do so would involve a risk of injury or harm to the health of any person,

but does not include a person who has refused to work as mentioned in section 72 (1) and who is entitled to pay and other benefits under section 74 (1).

(2) An employee who accepts from his or her employer, in respect of any period during which that employee is a disentitled employee, any pay or other benefits to which the employee would have been entitled if the employee had continued to work commits an offence.

(3) An employer who pays or provides to an employee, in respect of any period during which the employee is a disentitled employee, any pay or other benefits to which the employee would have been entitled if the employee had continued to work commits an offence.

(4) In subsections (2) and (3) a reference to pay and other benefits does not include a reference to any payment or benefit prescribed for the purposes of this section.

(5) This section has effect despite any provision of any other written law, including the *Industrial Relations Act 1979*, and any order, award or agreement made or registered under that Act.

”

### **Section 95 amended**

**72.** Section 95 (2) of the principal Act is amended by deleting “\$500 in the case of a corporation and \$100” and substituting the following —

“ \$1 000 in the case of a corporation and \$200 ”.

### **Section 96A inserted**

**73.** After section 96 of the principal Act the following section is inserted —

“

#### **Proceedings to be determined by safety and health magistrate**

**96A.** Every proceeding for an offence under this Act is to be heard and determined by a safety and health magistrate.

”

**Section 102 repealed and a section substituted**

74. Section 102 of the principal Act is repealed and the following section is substituted —

“

**Jurisdiction of safety and health magistrate**

102. (1) Where under this Act —

- (a) a matter is capable of being referred to a safety and health magistrate, the matter may be heard and determined as if it were a matter in which jurisdiction were conferred on the safety and health magistrate by the *Occupational Safety and Health Act 1984*; or
- (b) a proceeding for an offence is to be heard and determined by a safety and health magistrate, the proceeding may be heard and determined as if it were a proceeding in which jurisdiction were conferred on the safety and health magistrate by the *Occupational Safety and Health Act 1984*,

and that Act is, so far as it is capable of applying, to extend to the exercise of the jurisdiction of a safety and health magistrate in such matters and proceedings accordingly.

(2) A decision of a safety and health magistrate on a matter referred under this Act has effect according to its substance.

”





(3) The provisions of the principal Act listed in the Table to this subsection are amended by deleting “health, safety or welfare” wherever it occurs in those provisions and substituting the following —

“ safety or health ”.

TABLE

s. 10 (2) (c)	s. 69 (1) (d)
s. 53 (1) (f) and (g)	s. 70 (1)
s. 60 (3) and (4)	s. 93 (2)
s. 63 (e)	

(4) The provisions of the principal Act listed in the Table to this subsection are amended by deleting “health and safety” wherever it occurs in those provisions and substituting the following —

“ safety and health ”.

TABLE

s. 3 (d)	s. 60 (1), (2), (3), (4), (5), (6) and (7)
s. 9 (1) (c)	s. 61 (1) (a)
s. 10 (1) (a)	s. 62
s. 12 (1) (a)	s. 63
s. 21 (5)	s. 64 (2)
s. 23 (1) (b) and (3)	s. 65 (1) and (3)
s. 25 (1)	s. 66 (1), (4) and (5)
s. 45 (1) (a)	s. 67
s. 53 (1) and (3)	s. 68 (1) and (2)
s. 54	s. 69 (1) (a), (b), (c) and (d) and (2)
s. 55 (4) (a)	s. 70 (1) (a) and (b) and (3)
s. 56 (1), (6), (8) and (9)	s. 71 (1)
s. 57 (1) and (2)	s. 72 (2) (c)
s. 58 (1)	s. 104 (2) (a) (v)
s. 59 (1), (2), (3) and (4) (b) and (c)	

**SCHEDULE 1**  
**MINOR AMENDMENTS**

[Section 76]

*Column 1*

*Column 2*

- s. 4 (1) In the definition of "Mines Occupational Health and Safety Advisory Board" delete "Health and Safety" and substitute the following —  
" Safety and Health ".
- Heading to Part 2 Delete "**HEALTH, SAFETY AND WELFARE**" and substitute the following —  
" **SAFETY AND HEALTH** ".
- s. 10 (1) (b) and (2) (a) Delete "health or safety" in each place where it occurs and substitute in each case the following —  
" safety or health ".
- s. 12 (1) (b) Delete "health or safety" and substitute the following —  
" safety or health ".
- Heading to Part 5 Delete "**HEALTH AND SAFETY**" and substitute the following —  
" **SAFETY AND HEALTH** ".
- Heading to Division 1 of Part 5 Delete "*Health and safety*" and substitute the following —  
" *Safety and health* ".
- s. 60 (5) (b) Delete "health, safety and welfare accredited under section 14 (1) (h) of the *Occupational Health, Safety and Welfare Act 1984*" and substitute the following —  
" safety and health accredited under section 14 (1) (h) of the *Occupational Safety and Health Act 1984* ".

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- s. 62 (b) Delete "health, safety and welfare accredited under section 14 (1) (h) of the *Occupational Health, Safety and Welfare Act 1984*" and substitute the following —
- " safety and health accredited under section 14 (1) (h) of the *Occupational Safety and Health Act 1984* ".
- Heading to Part 7 Delete "**HEALTH AND SAFETY**" and substitute the following —
- " **SAFETY AND HEALTH** ".
- Heading to Part 8 Delete "**HEALTH AND SAFETY**" and substitute the following —
- " **SAFETY AND HEALTH** ".
- s. 90 (1), (3) and (4) Delete "Health and Safety" and substitute the following —
- " Safety and Health ".
- s. 90 (3) (g) Delete "Occupational Health, Safety and Welfare Commission established by the *Occupational Health, Safety and Welfare Act 1984*" and substitute the following —
- " WorkSafe Western Australia Commission established by the *Occupational Safety and Health Act 1984* ".
- s. 93 (1) Delete "Health and Safety" and substitute the following —
- " Safety and Health ".
- s. 103 Delete "Health and Safety" and substitute the following —
- " Safety and Health ".
- s. 110 (1) (b) Delete "Health and Safety" and substitute the following —
- " Safety and Health ".

Schedule 2

In paragraph (b) of the consequential amendment to the *Constitution Acts Amendment Act 1899*, delete "Health and Safety" and substitute the following —

" Safety and Health ".

In the consequential amendment to the *Parliamentary Commissioner Act 1971*, delete "Health and Safety" and substitute the following —

" Safety and Health ".

**PART 4 — INDUSTRIAL RELATIONS ACT 1979**

**Section 7 amended**

77. Section 7 of the *Industrial Relations Act 1979\** is amended by inserting after subsection (2) the following subsections —

“

(3) A matter that is within the jurisdiction of a safety and health magistrate under the *Occupational Safety and Health Act 1984* or the *Mines Safety and Inspection Act 1994* —

- (a) is not an industrial matter for the purposes of either of the definitions of “industrial matter” in subsection (1);
- (b) is not capable of being determined under section 24 (1) to be an industrial matter; and
- (c) cannot be referred to the Commission under section 80ZE.

(4) Subsections (3) and (4) of section 34 do not apply to a determination that is made contrary to subsection (3) (b) or to any proceeding based on that determination, and in the determination of any application for a prerogative writ or declaratory judgment no regard shall be had to the existence of any right of appeal under this Act.

”

[\* *Reprinted as at 11 May 1994.*  
*For subsequent amendments see Act No. 32 of 1994.*]