

## Guidance note

# 'Covert operations' and 'dangerous operations' in the Western Australia Police Service

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# Foreword

The introduction of the *Occupational Safety and Health Act 1984* enabled the establishment of the tripartite Commission for Occupational Safety and Health. The Commission, which comprises representatives of employers, unions, government and experts, has the function of developing the legislation and any supporting guidance material and making recommendations to the Minister for implementation. To fulfil its functions, the Commission is empowered to establish advisory committees, hold public inquiries and publish and disseminate information.

This guidance note has been developed through the tripartite consultative process and the views of the employers and unions along with those of government and experts have been considered.

The Commission's objective is to promote comprehensive and practical preventive strategies that improve the working environment of Western Australians.

## The Act

The *Occupational Safety and Health Act 1984* (the Act) provides for the promotion, co-ordination, administration and enforcement of occupational safety and health in Western Australia.

The Act places certain duties on employers, employees, self-employed people, manufacturers, designers, importers and suppliers.

It also places emphasis on the prevention of accidents and injury.

In addition to the broad duties established by the Act, the legislation is supported by a further tier of statute, commonly referred to as regulations, together with a lower tier of non-statutory codes of practice and guidance notes.

## Regulations

Regulations have the effect of spelling out the specific requirements of the legislation.

Regulations may prescribe minimum standards and have a general application or they may define specific requirements related to a particular hazard or particular type of work. They may also allow the licensing or granting of approvals and certificates etc.

## Codes of practice

A code of practice is defined in the Act as a document prepared for the purpose of providing:

- \* practical advice on preventive strategies; and
- \* a practical means of achieving any code, standard, rule, provision or specification relating to occupational safety and health in Western Australia.

A code of practice may contain explanatory information.

The preventive strategies outlined in a code of practice do not represent the only acceptable means of achieving the standard to which the code refers. A code of practice does not have the same legal force as a regulation and is not sufficient reason, of itself, for prosecution under the Act.

## Guidance notes

The next tier in this process comes in the form of guidance notes prepared by the Commission for Occupational Safety and Health.

A guidance note is an explanatory document providing detailed information on the requirements of legislation, regulations, standards, codes of practice or matters relating to occupational safety and health as approved by the Commission for Occupational Safety and Health.

## Authority

This guidance note is authorised under Section 14 of the *Occupational Safety and Health Act 1984* by the Commission for Occupational Safety and Health.

## Scope

This guidance note is an explanatory document for the Western Australia Police Service (the Police Service) and others on the application of the *Occupational Safety and Health Act 1984* as it specifically applies to 'covert operations' and 'dangerous operations'.

## Application

This guidance note is to be read in conjunction with the *Occupational Safety and Health Act 1984*, *Occupational Safety and Health Amendment Act 2002*, the Occupational Safety and Health Regulations 1996 and the Commission for Occupational Safety and Health's *Guidance Note: Election of Safety and Health Representatives, Representatives and Committees and Resolution of Issues*.

## Who should use this guidance note

Members of the Western Australia Police Service, contractors and other persons (for example, consultants) who have responsibilities in relation to the occupational safety and health of police officers or unsworn employees of the Police Service. It is available on the Safetyline website ([www.safetyline.wa.gov.au](http://www.safetyline.wa.gov.au)) and also available to all Police Service employees on the Police Service's Corporate Knowledge Database.

## Definitions

For the purpose of this guidance note:

**‘accoutrement’** refers to equipment carried by a police officer, for example, police issue firearm with holster, handcuffs with pouch, oleoresin capsicum (OC) spray, extendable baton and holder, long baton (used in riot situations), baton ring, torch ring and magazine pouches (containing the firearm’s magazine) worn on the belt.

**‘the Act’** refers to the *Occupational Safety and Health Act 1984*.

**‘Australian/New Zealand Standard’** or **‘AS/NZS’** refers to standards developed and published by Standards Australia.

**‘control measures’** refers to the means by which a risk is eliminated or reduced.

**‘covert’** — the use of the word ‘covert’ is indicative of some sort of concealment or secrecy.

**‘covert operation’** refers to the legislative definition in the *Occupational Safety and Health Act 1984* (as amended by the *Occupational Safety and Health Amendment Act 2002*). Full definition is provided on Page 8.

**‘dangerous operation’** refers to the legislative definition in the *Occupational Safety and Health Act 1984* (as amended by the *Occupational Safety and Health Amendment Act 2002*). Full definition is provided on Page 11.

**‘hazard’**, in relation to a person, means anything that may result in:

(a) injury to the person; or

(b) harm to the health of the person.

**‘operation’** refers to the act, process, or manner of operating. It is important to note a distinction between the common usage of the term ‘operation’ by police officers, and the reference to ‘covert operation’ and ‘dangerous operation’ in the Act. While police officers generally consider an operation to be a set plan of action in such formats as SMEAC (Situation Mission Execution Administration Communication), there is no requirement for this in the Act.

**‘plant’** refers to machinery, equipment, appliance, implement or tool and any components or fittings of the plant.

**‘police officer’** — under Section 3(1) of the *Occupational Safety and Health Act 1984* a ‘police officer’ is defined as a person appointed:

- under Part I of the *Police Act 1892* to be a member of the Police Force of Western Australia, i.e. commissioned officers and non-commissioned officers and constables ;
- under Part III of the *Police Act 1892* to be a special constable; or
- under Part IIIA of the *Police Act 1892* to be an aboriginal aide.

**'practicable'** means reasonably practicable having regard, where the context permits, to:

- (a) the severity of any potential injury or harm to health that may be involved, and the degree of risk of it occurring;
- (b) the state of knowledge about:
  - (i) the injury or harm to health referred to in paragraph (a);
  - (ii) the risk of that injury or harm to health occurring; and
  - (iii) means of removing or mitigating the risk or mitigating the potential injury or harm to health;and
- (c) the availability, suitability, and cost of the means referred to in paragraph (b)(iii).

**'the Regulations' or 'Regulation'** refers to regulations in the Occupational Safety and Health Regulations 1996.

**'risk'**, in relation to any injury or harm, means the probability of that injury or harm occurring.

**'risk management'** refers to the three step process for the management of safety and health at the workplace set out in Regulation 3.1 of the Occupational Safety and Health Regulations 1996 i.e.:

- identification of hazards;
- assessment of the risks; and
- implementation of control measures.

**'workplace'** means a place, whether or not in an aircraft, ship, vehicle, building, or other structure, where employees or self-employed persons work or are likely to be in the course of their work.

# 1. Introduction

The *Occupational Safety and Health Amendment Act 2002* extends the *Occupational Safety and Health Act 1984*<sup>1</sup> (the Act) to include police officers.

The Act:

- provides for police officers to be treated as employees of the Crown for the purposes of coverage under the Act;
- covers police officers whenever they exercise their functions, regardless of whether the police officer is rostered on or off duty;
- requires the Commissioner of Police to ensure that the Crown's functions as an employer under the Act are fulfilled; and
- recognises the special nature of police work and prevents police operations that are covert or dangerous being adversely affected .

With the exception of exclusions relating to 'covert operations' or 'dangerous operations', police officers are covered by the full provisions of the Act from 3 January 2004. (Refer to the previous section for a definition of a 'police officer' under the Act.)

This guidance note explains the general requirements of the occupational safety and health legislation as they apply to 'covert operations' and 'dangerous operations'. It also explains exclusions in the legislation in relation to 'covert operations' and 'dangerous operations'.

<sup>1</sup> Reference to the Act from here onwards refers to the *Occupational Safety and Health Act 1984*, as amended by the *Occupational Safety and Health Amendment Act 2002*.

## 2. 'Covert operations'

### 2.1 Legislative definition

Section 4A(1) of the Act defines a 'covert operation' as follows:

“‘covert operation’ means the performance of a function of a police officer in circumstances where:

- (a) a covert operation is undertaken by WA Police for the purpose of obtaining information about criminal activity;
- (b) performance of the function is not practicable without exposing a police officer to a risk of imminent and serious injury or imminent and serious harm to the police officer’s health; and
- (c) unless the performance of the function is secret or confidential, it would be likely that:
  - i. the effectiveness of the performance of the function is reduced; or
  - ii. a person is exposed to the danger of physical harm arising from the actions of another person.”

### 2.2 What is a 'covert operation'?

A 'covert operation' is any performance of a function of a police officer where *all three* elements of the definition in the Act are present, i.e. (a), (b) and (c) of the above legislative definition.

Meeting the three elements of the legislative definition of a 'covert operation'	
<b>To meet paragraph (a):</b>	the operation must be for the purpose of obtaining information about a criminal activity, for example, drug trafficking, burglary and gang-related criminal activity.
<b>To meet paragraph (b):</b>	the performance of the function is not practicable without exposing the police officer to a risk of imminent and serious injury or harm to health. The risk of injury or harm must be both imminent and serious.  Where there are practicable alternative ways to perform the function, without exposing the police officer to a risk of imminent <u>and</u> serious injury or harm to health, the operation would not be a 'covert operation' as defined by the Act.
<b>To meet paragraph (c):</b>	the performance of the function to obtain information about a criminal activity must be secret or confidential. If it were not, it would be likely that its effectiveness would be reduced or a person would be exposed to the danger of physical harm arising from the actions of another person.  Where it is not necessary to have secrecy and confidentiality, the function would not be a 'covert operation' as defined by the Act.
<b>All three elements must be met</b>	



The fact that some police officers work in plain clothes and gather information about criminal activity does not automatically mean that they are involved in 'covert operations' as defined by the Act. All three elements of the legislative definition of a 'covert operation' must be satisfied before the definition can be applied to police work.

For example, a 'door-knock' by plain-clothes officers gathering information in relation to an investigation would not be a 'covert operation' because the officers may not be exposed to the risk of imminent and serious injury and the operation would not be secret or confidential.

### 2.3 Examples of a 'covert operation'

Within the Police Service, 'covert operations' are generally restricted to suitably qualified and authorised staff who maintain and use covert identities, as recognised within the Police Service's Covert Management Manual. Traditionally, these areas within the Police Service are limited to the Internal Affairs Unit (Covert Services) and State Intelligence Services (Undercover Police Unit and Covert Operations Unit).

Nevertheless, it may be necessary for other police operational or support units to engage in operations that fall within the meaning of a 'covert operation' as defined by the Act.

#### ***Example 1: Operation approved by the State Intelligence Services, Covert Operations Tasking and Co-ordination Group***

An example of a 'covert operation' is an operation approved by the State Intelligence Services Covert Operations Tasking and Co-ordination Group to infiltrate an organised crime syndicate in order to obtain information about drug trafficking.

In this case, an undercover officer, who could be supported by physical and electronic surveillance, would be placed within the syndicate in order to achieve this outcome. This operation would be for the purpose of obtaining information about criminal activity. It would also include the risk of imminent and serious injury or harm to the undercover officer, due to the type of people likely to be involved in the criminal activity and the criminal activity itself.

If the performance of the function is not conducted in a secret or confidential manner, it would be likely that the effectiveness of the performance of the function would be reduced or a person would be exposed to the danger of physical harm arising from the actions of another person.

#### ***Example 2: Infiltration of groups***

An example of a 'covert operation' in a district policing environment is an operation that attempts to obtain information on criminal activity by introducing undercover police officers to infiltrate suspected groups associated with the commission of burglary offences.

This operation would also be for the purpose of obtaining information about criminal activity. Depending on the type of people associated with the group being infiltrated, it could also include the risk of imminent and serious injury and harm to the undercover officer. If the performance of the function was not conducted in a secret or confidential manner, the officer could be exposed to danger of physical harm, or the effectiveness of the performance of the function would be reduced.

## **2.4 Managing risk as part of operations**

While an operation may meet the definition of a 'covert operation', there is a requirement under the Act to provide, as far as practicable, a workplace where employees are not exposed to hazards.

This requirement means that the employer must identify hazards, assess the risks of injury or harm and, as far as practicable, eliminate or reduce the risks for all officers involved in a 'covert operation'.

Refer to Section 10 for information on the risk management process, which consists of hazard identification, risk assessment and risk control.

## **2.5 Communication of safety and health information associated with a 'covert operation'**

Where an operation is a 'covert operation', within the meaning of the Act, this is to be acknowledged and communicated to persons involved in the 'covert operation' by the officer completing the operation plan and/or the officer in charge of the operation.

As far as practicable, officers must be provided with relevant safety and health information, instruction, training and supervision to enable them to work in such a manner that they are not exposed to hazards. This is a requirement under Section 19(1)(b) of the Act.

Before the operation starts, officers should be made aware of the risk of imminent and serious injury associated with the 'covert operation' and the control measures in place to minimise the risks, whenever this is possible.

### 3. 'Dangerous operations'

#### 3.1 Legislative definition

Section 4A(1) of the Act defines a 'dangerous operation' as follows:

“dangerous operation” means the performance of a function of a police officer in circumstances where performance of that function:

- (a) is reasonably necessary; and,
- (b) is not practicable without exposing a police officer to a risk of imminent and serious injury or imminent and serious harm to the police officer’s health.”

#### 3.2 What is a 'dangerous operation'?

A 'dangerous operation' is any performance of a function of a police officer where both the elements of the definition in the Act are met, i.e. (a) and (b) of the above legislative definition.

<b>Meeting the two elements of the legislative definition of a 'dangerous operation'</b>	
<b>To meet paragraph (a):</b>	<p>the performance of the function must be reasonably necessary to carry out to maintain law and order and protect life and property.</p> <p>This oath of office does not mean that police officers have to perform duties in a manner that will place their lives in jeopardy or at risk of imminent and serious injury or harm to their health.</p>
<b>To meet paragraph (b):</b>	<p>the performance of the function is not practicable without exposing the police officer to a risk of imminent and serious injury or harm to health. The risk of serious injury or harm must be both imminent <u>and</u> serious.</p> <p>Where there are practicable alternative ways to perform the function, without exposing the police officer to a risk of imminent and serious injury or harm to health, the operation would not be a 'dangerous operation' as defined by the Act.</p>
<b>Both elements must be met</b>	

#### 3.3 Examples of 'dangerous operations'

A function carried out by a police officer could become a 'dangerous operation' at any given time, depending on the circumstances surrounding a particular incident.

In general terms, a 'dangerous operation' takes place when it is reasonably necessary to perform this function and it is not practicable without exposing the officer to the risk of imminent and serious injury or harm to health.

In some situations, it may be practicable to take alternative action and eliminate or reduce the risk, rather than to expose the officers immediately to a risk of imminent and serious injury or harm to health. If alternative strategies are practicable, and it is therefore not 'reasonably necessary' to expose the officers to the risk of imminent and serious injury or harm to health, the operation would not be a 'dangerous operation'.

### ***Example 1: Domestic situations***

Attendance at a domestic situation is not, in itself, automatically a 'dangerous operation'. However, if a police officer attends a domestic disturbance and one person is threatening another with a weapon, then the police officer has a duty to protect life and property.

If the performance of that duty is reasonably necessary (for example, if the police officer does not intervene, a person may be injured or killed) and it is not practicable without exposing the police officer to a risk of imminent and serious injury or harm to health (for example, the only way to protect the life of the person being threatened is for the police officer to physically intervene, in which case the weapon may be used against them), then this is a 'dangerous operation'.

The principle underlying this example is to note that a situation may not begin as a 'dangerous operation' but can escalate to become one in a very short period of time due to unforeseen factors that are not in the officer's immediate control.

### ***Example 2: Out-of-control parties***

Where two officers are confronted by a large number of unruly people at an out-of-control party, it may not be 'reasonably necessary' to immediately engage in an operation that would expose the officers to a risk of imminent and serious injury or harm to health.

The officers should assess the risk on site and consider, so far as is practicable, alternative strategies. The outcome could be to temporarily withdraw until appropriate support and/or equipment is available.

### ***Example 3: Armed hold-ups***

In the example of police officer(s) being called to respond to an armed hold-up, this operation would be seen as a 'reasonably necessary' performance of a duty of a police officer for the protection of life and property and the apprehension of the offender(s). In this situation, it may not be practicable to perform the duty without exposing the police officer(s) to a risk of imminent and serious injury or harm to health.

### ***Example 4: Unexpected events***

Where unexpected events arise, for example, when officers performing patrol duties in the Hay Street Mall come across an incident that escalates and becomes a 'dangerous operation', a risk assessment must be immediately carried out and control measures considered to ensure that the incident is managed in a manner that eliminates or reduces the risk as far as practicable. This may include using the accoutrements and skills gained from training to resolve the incident or tactically withdrawing from the immediate vicinity and requesting assistance.

### 3.4 Managing risk as part of operations

While an operation may meet the definition of a 'dangerous operation', there is a requirement under the Act to provide, as far as is practicable, a workplace where employees are not exposed to hazards.

This requirement means that the employer must identify hazards, assess the risks of injury or harm and, as far as practicable, eliminate or reduce the risks for all officers involved in a 'dangerous operation'.

Where a 'dangerous operation' is planned, the hazard identification, risk assessment and risk control (i.e. the risk management process) must be part of the planning process.

Where a situation suddenly escalates and becomes a 'dangerous operation', the officers involved must go through the risk management process by making a mental appreciation of the situation to ensure the situation is managed in a manner that eliminates or reduces the risk as far as practicable.

Refer to Section 10 of this document for information on the risk management process, which consists of hazard identification, risk assessment and risk control.

### 3.5 'Dangerous operation' as it applies to the TRG

Tactical Response Group (TRG) operations are subject to a risk assessment process based on Australian/New Zealand Standard, *AS/NZS 4360/1999: Risk Management*.

A trained tactical commander conducts this assessment process, which includes consideration of the likelihood of injury or harm occurring to police officers or other persons as a result of the operation and whether alternative methods can be adopted to resolve the incident.

TRG operations are assessed under the following risk management categories:

- H: High Risk;
- S: Significant Risk;
- M: Moderate Risk; and
- L: Low Risk.

A TRG operation assessed and formally approved as 'High Risk' by a commissioned officer of the rank of commander or above in conformity with TRG Standard Operating Procedures is very likely to be considered a 'dangerous operation' as defined by the Act.

For all other TRG risk assessment categories (i.e. not 'High Risk'), the definition of a 'dangerous operation' applies only to those situations arising where the performance of a police officer's function is 'reasonably necessary' and is not practicable (able to be performed in any other manner) without exposing the police officer to a risk of imminent and serious injury or harm to their health.

The 'dangerous operation' definition could also apply to incidents where circumstances change or more information becomes available, escalating the risk/consequences to a level that would meet both elements of the definition.

Not all of the functions performed by the TRG are dangerous in themselves such as, for example, conducting general patrol duties.

### **3.6 Communication of safety and health information associated with a 'dangerous operation'**

Where an operation is a 'dangerous operation', within the meaning of the Act, this is to be acknowledged and communicated to those persons involved in the 'dangerous operation' by the officer completing the operation plan and/or the officer in charge of the operation.

As far as practicable, officers must be provided with relevant safety and health information, instruction, training and supervision to enable them to work in such a manner that they are not exposed to hazards. This is a requirement under Section 19(1)(b) of the Act.

Where a 'dangerous operation' is planned, police officers must be provided with information on the hazards, the risks and the control measures to be implemented to minimise the risks associated with the 'dangerous operation' before the operation starts.

As part of their training, officers should be made aware of the risk of imminent and serious injury associated with 'dangerous operations' and the risk control measures that could be implemented to eliminate or reduce the risks.

Training should also include the factors to consider when making a mental appreciation of a sudden or unexpected (i.e. unplanned) operation.

## **4. Issue resolution**

In general terms, the provisions in the Act for the resolution of issues are the same for 'covert operations' and 'dangerous operations' as those for all other functions and duties undertaken by police officers. However, the resolution of issues may be affected by the exclusion in the Act that applies to the right to refuse to work (refer to Section 5 of this document for further information).

Occupational safety and health issues related to 'covert operations' and 'dangerous operations' are to be resolved in accordance with relevant procedures developed by the Police Service.

Where attempts to resolve the issue by the relevant procedures have not been successful and there is a risk of imminent and serious injury or harm to the health of any person, the employer, safety and health representative or an employee may notify a WorkSafe inspector. The WorkSafe inspector will then attend and conduct an investigation.

The general effect of these provisions is that employers and employees involved in 'covert operations' and 'dangerous operations' must attempt to resolve an issue through the Police Service issue resolution process prior to a WorkSafe inspector being notified of the issue.

## 5. Exclusions relating to ‘covert operations’ and ‘dangerous operations’

### 5.1 The right to refuse work

Section 26(1) of the Act allows employees to refuse to undertake work when they believe, on reasonable grounds, that to continue to work would expose them or any other person to a risk of imminent and serious injury or harm to their health.

However, Section 4A(2) of the Act excludes a police officer from refusing to work under Section 26(1) where that refusal could adversely affect, or could reasonably be expected to affect adversely, a ‘covert operation’ or a ‘dangerous operation’. Section 4A(2) states:

*“A police officer cannot refuse to work as mentioned in section 26(1) if the refusal to work would adversely affect, or could reasonably be expected to affect adversely, a covert operation or a dangerous operation.”*

Section 4A(2) only applies to police officers, special constables and aboriginal aides as defined in Section 3(1) of the Act. It does not apply to any other employee or contractor of the Police Service.

Even though police officers are not able to refuse to work in these circumstances, there is nothing in the Act that affects police officers’ rights to raise occupational safety and health issues and have them resolved in accordance with appropriate issue resolution processes.

In situations where it is accepted by the parties to an unresolved occupational safety and health issue that the operation is a ‘covert operation’ or a ‘dangerous operation’ as defined by the Act, the police officers affected may not refuse to work while the issue resolution process is in progress or while the matter is dealt with by a WorkSafe inspector.

This exclusion does not preclude the Police Service from liability for any breach of the employer’s ‘duty of care’ (Section 19 of the Act) that may occur in relation to a ‘covert operation’ or a ‘dangerous operation’. It still remains the employer’s duty to provide and maintain, as far as is practicable, a safe working environment in these operations.

Similarly, a police officer’s duties as an employee under Section 20 of the Act continue to apply in relation to a ‘covert operation’ or a ‘dangerous operation’. Employees have a duty to take reasonable care of their own safety and health and that of others.

In the ordinary course of police work, should an immediate situation arise<sup>2</sup> and the officer is thereby in a ‘dangerous operation’, the officer *cannot refuse to work*.

However, if the operation is not a ‘covert operation’ or a ‘dangerous operation’, the officer has the right to refuse work.

For example, where an officer is conducting random breath testing from a Booze Bus operation and a reflective safety vest is unavailable, the officer could refuse to work. The performance of the function could be reasonably necessary; however, it would be practicable to reduce the risk of imminent and serious injury or harm to health by providing a reflective safety vest.

<sup>2</sup> Refer to Example 4 in Section 3.3 of this document.

## 5.2 Issuance of prohibition notices

Section 49(1) of the Act provides for the issuance of prohibition notices by WorkSafe inspectors.

A prohibition notice immediately stops any activity where the inspector believes there is a risk of imminent and serious injury or harm to health.

The inspector remains at the workplace until the employer has been informed about the prohibition notice and the activity has been stopped.

Section 4A(3) of the Act states that:

“An inspector cannot issue a prohibition notice under Section 49(1) to prohibit an activity if prohibiting the carrying on of the activity would adversely affect, or could reasonably be expected to affect adversely, a covert operation or a dangerous operation.”

If there is any disagreement between a police officer and a WorkSafe inspector on whether an operation is covert or dangerous, and the prohibiting of the activity would adversely affect the operation, the matter is to be resolved, in the first instance, by the Police Service contact and a WorkSafe inspector. Where resolution is not achieved, the Police Service contact and WorkSafe inspector will refer the matter to superiors according to their departmental procedures.<sup>3</sup>

If a prohibition notice is issued, the police officer must cease the activity referred to in the prohibition notice.

Requests for review of prohibition notices can be lodged with the WorkSafe Western Australia Commissioner within seven days of the issue of the notice, or at a later date if permitted by the WorkSafe Western Australia Commissioner.

The WorkSafe Western Australia Commissioner reviews the prohibition notices and may affirm, modify or cancel a prohibition notice.

Prohibition notices remain in force while they are being reviewed by the WorkSafe Western Australia Commissioner.

Section 4A(3) of the Act does not prevent WorkSafe from investigating a ‘covert operation’ or ‘dangerous operation’ and making recommendations for the conduct of current or future operations in a general way or taking enforcement action where necessary. This includes, but is not limited to, findings that:

- the operation could have been conducted in an alternative manner which would have reduced the risk;
- the officers were inadequately trained;
- inexperienced officers were employed for the operation; or
- inadequate support was provided.

<sup>3</sup> Resolution of procedures is according to Section 2.6 of the Co-Agency Agreement between the WorkSafe Division, Department of Consumer and Employment Protection and the Western Australia Police Service establishing protocols for the enforcement of the *Occupational Safety and Health Act 1984* with respect to its application to police officers. More information on the Co-Agency Agreement is in Appendix 1.



## 6. Duties of employers

### 6.1 General 'duty of care'

Section 19 of the Act places a 'duty of care' obligation on employers in relation to the safety and health of employees at the workplace.

A police officer is to be treated as an employee of the Crown.

The functions that the Crown has under the Act are, as far as they concern a police officer, to be performed by the Commissioner of Police.

The employer's 'duty of care' obligation for safety and health applies to all aspects of police work. However, this guidance note focuses only on the general 'duty of care' as it applies to 'covert operations' and 'dangerous operations'.

The general 'duty of care' for safety and health includes:

- provision and maintenance of workplaces, plant and safe systems of work. For example, through formal review of the operational orders (if they exist), standard operating procedures or the current directives (Commissioner of Police's Orders and Procedures Manual or training manuals);
- provision of information, instruction, training and supervision. For example, training and supervising police officers to ensure that they understand and are able to implement the safety and health risk control measures in operational orders, standard operating procedures and directives, where they exist;
- consultation and cooperation with safety and health representatives;
- provision and use of adequate personal protective clothing and equipment;
- safe use, cleaning, maintenance, transportation and disposal of plant (machinery, equipment, appliance or tool etc.) and safe use, handling, processing, transportation and storage of substances; and
- reporting of fatalities and notifiable injuries and diseases to the WorkSafe Western Australia Commissioner.

### 6.2 Investigation of injuries

Where an employee reports an injury resulting from a 'covert operation' or a 'dangerous operation', the employer must, in any event, undertake an investigation as required by Regulation 3.5 of the Occupational Safety and Health Regulations 1996.

## 7. Duties of employees

Under Section 20 of the Act, employees (including police officers), must take reasonable care to ensure their own safety and health at work and the safety and health of others affected by their work.

Section 20 contains the following obligations for employees (including police officers) to ensure safety and health at the workplace. They include:

- following the employer's safety and health instructions;
- using personal protective clothing and equipment provided by the employer;
- taking good care of equipment;
- reporting hazards that the police officer cannot correct;
- reporting work-related injuries or harm to health; and
- co-operating with the employer.

For example, the safety and health responsibilities for police officers, under the Act, would extend to police officers operating vehicles within the Urgent Duty Driving procedures, training and guidelines.

The Act makes it very clear that employees should follow instructions and use equipment provided and take reasonable care for their own and others safety and health at work.

## 8. Safety and health representatives

Section 35 of the Act outlines certain duties for employers in relation to safety and health representatives at the workplace.

These include:

- making information available to the safety and health representatives on hazards that arise or might arise at the workplace, for example, hazards arising from plant, substances and systems of work, where such information is available or the employer could be reasonably expected to have the information; and
- consulting with safety and health representatives when there are to be changes at the workplace which may reasonably be expected to affect the safety or health of employees, before they are implemented.

When an accident or dangerous occurrence takes place during a 'covert operation' or 'dangerous operation', safety and health representatives must be notified under Section 35(1)(f) of the Act. However, medical information must not be made available, unless the officers concerned have consented and it is in a form that does not identify them.

Refer to the Commission for Occupational Safety and Health's *Guidance Note: Election of Safety and Health Representatives, Representatives and Committees and Resolution of Issues* for more guidance on safety and health representatives.

## 9. Duties of employers to persons who are not employees

Section 21 of the Act requires employers to take reasonable care of themselves and their employees and, as far as practicable, ensure that any person who is not one of their employees<sup>4</sup> is not adversely affected by the work activity.

For example, the requirement to abort a traffic pursuit under the Urgent Duty Driving Guidelines would apply with regard to this section of the Act because the circumstances in which the pursuit is taking place might change, thus making it a danger to members of the public.

## 10. Hazard identification, risk assessment and risk control – the risk management process

The Act places an onus on the employer to provide, so far as is practicable, safe systems of work and information, instruction, training and supervision to employees as is necessary to enable them to perform their work in such a manner that they are not exposed to hazards.

In other words, the employer should ensure, where reasonably practicable, safe operating procedures are provided and officers are adequately trained to perform their duties.

Under Regulation 3.1, there is a specific requirement for the employer to carry out a risk management process to ensure a safe and healthy work environment. This involves a three-step process to:

- identify hazards – this involves recognising things or processes that may cause injury or harm to the health of a police employee (including employees involved in ‘covert operations’ and ‘dangerous operations’);
- assess the risks – this involves looking at the chance or likelihood of injury or harm occurring and, if it did occur, the extent of any harm or injury (i.e. the consequences). It could involve considering the possibility of injury or harm occurring to a police employee if exposed to a hazard and assigning tasks to reduce the risk in conformity with an individual officer’s capabilities; and
- control the risk – the next step is to implement control measures to eliminate or reduce the risk of a person being injured or harmed. It could include using alternative actions/contingency planning to eliminate or reduce the risk of a police employee being exposed to a hazard, for example, considering less lethal force options, such as isolating, containing and resolving an incident by negotiation.

In addition, as part of the risk management process:

- the hazards and control measures should be monitored and reviewed. This is to ensure that the control measures are continuing to prevent or control exposure to hazards or hazardous work practices.

<sup>4</sup> A ‘person who is not an employee’ means a child or adult who may be in the workplace at any time for any reason. It covers a wide range of people and for police work includes offenders, alleged offenders, people such as hostages in a kidnap or siege situation, road users who may be involved in traffic crashes following a high speed pursuit, and other people who may inadvertently become involved in a police operation.

## 10.1 Identifying hazards

Methods of identifying hazards include but are not limited to:

- SMEAC, operational orders and considering the situation/circumstances at an incident;
- developing risk management plans for scenarios and desktop and field exercises;
- reviewing information on equipment from designers or manufacturers;
- consulting with employees and safety and health representatives;
- seeking advice from specialists;
- reviewing experience gained through review of similar operations;
- analysis of past occurrences such as accident and injury data;
- completing a hazard checklist; and
- analysis and review of work processes.

## 10.2 Assessing risks

Risk, in relation to any injury and harm, means the probability of that injury or harm occurring in the course of an employee's duties.

Risk assessment involves looking at the chance or likelihood of injury or harm occurring and, if an injury or harm did occur, the extent of any harm or injury (i.e. the consequences). This is a way of deciding which hazards need to be tackled first (i.e. where there is the highest risk).

In assessing risks, consideration should be given to the state of knowledge about the frequency of injury or disease, the duration of exposure to injury or disease sources and the likely severity of the outcomes. Knowledge gained from similar workplaces or similar processes may be relevant to this risk assessment.

Appropriate assessment of these factors will indicate the probability or likelihood of injury or harm occurring to police employees involved in the performance of their duties, including duties associated with a 'covert operation' or a 'dangerous operation'.

This step should provide information on:

- where, which and how many employees are likely to be at risk of incurring injuries;
- how often this is likely to occur; and
- the potential severity of any injuries.

Risk assessment requires sound judgment and an awareness of the potential risks associated with the duties to be performed. As such, the person undertaking the risk assessment must have, or have access to, information, knowledge and experience of the work practices involved.

In carrying out a risk assessment, it is necessary to break down each activity or process into a series of parts or smaller tasks and assess each one separately.

Risk assessment should include (but is not limited to):

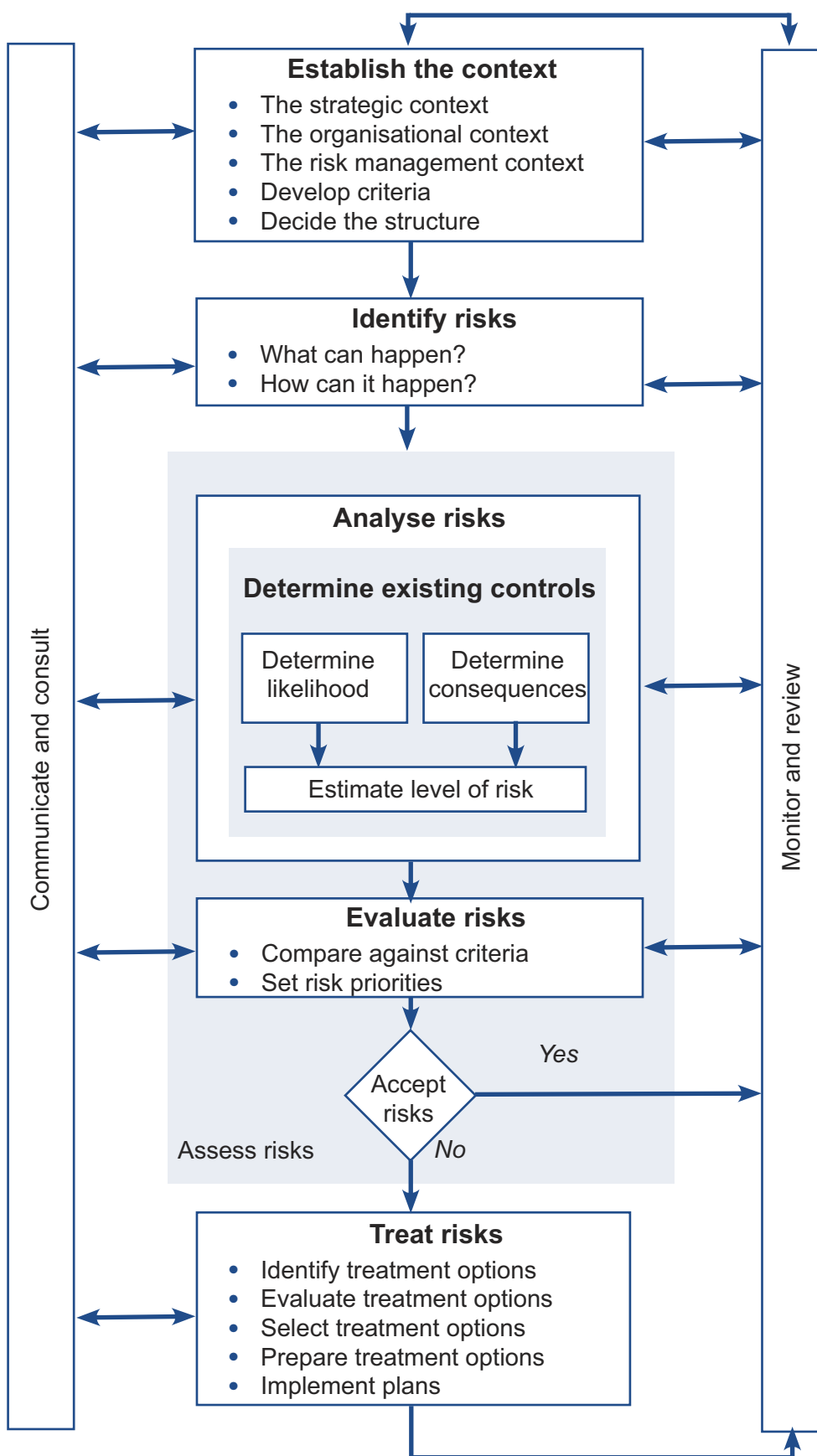
- gathering information about each identified hazard, such as:
  - evaluating the adequacy of training or knowledge required to perform duties;
  - evaluating the way operations are planned, organised, resourced and performed;
  - determining the type of plant to be used, including general equipment, personal protective clothing and equipment, and specialist weapons;
  - ensuring the safe storage and handling of all materials and substances;
  - using information systems and technology in appropriate ways as instruments to predict risk to officers where such systems are available. Examples are the Incident Management System (Victim Offender Management System) and other mainframe systems;
  - conducting debriefings of operations, post-operation assessments, workshops and desktop and field exercises;
  - assessing the likelihood of the hazard occurring and taking into account how many people are likely to be exposed and for how long; and
  - taking into account the different situations/conditions that may exist that could increase risk, such as a change to operations;
- assessing the potential consequences of each hazard that may lead to employees being killed or suffering major or minor injuries requiring first aid; and
- rating the risk in accordance with methods in *AS/NZS 4360:1999* for evaluating the way functions and systems of work are performed (refer to the risk management flowchart on the following page).

An analysis and evaluation that considers the likelihood and consequence of any risk should be conducted to determine the level of risk associated with a 'covert operation' or 'dangerous operation'. Figure 1 and Table 1 (on the following pages) outline the risk management analysis and evaluation process.

As part of the risk assessment, consideration should be given to:

- the use of alternative strategies that would remove the need to obtain the information in a covert manner;
- the use of other methods that do not expose officers to the risk of imminent and serious injury or harm to health;
- the degree to which adequate support could be provided;
- the degree to which the officer(s) involved in the operation/function are appropriately trained and experienced;
- the degree of supervision required for officer(s) involved in the 'covert operation' or 'dangerous operation'; and
- the instructions required to enable the officer(s) to perform the duties so they are, as far as practicable, not exposed to hazards.

Figure 1: Risk management process



Source: This figure is based on a table in the Australian/New Zealand Standard, *AS/NZS 4360: 1999 Risk Management*. While the terms are slightly different to those used in this document, they are consistent with the risk management requirements under the Act.

**Table 1: Risk rating table**


Likelihood	Consequences				
	Insignificant  eg. no injuries, low loss	Minor  eg. first aid treatment, onsite containment, medium loss	Moderate  eg. medical treatment required, onsite containment with external assistance, high loss	Major  eg. extensive injuries, impact on local community/ business, major loss	Catastrophic  eg. impact on local community/ business with detrimental effect, huge loss
<b>Almost certain</b>  expected to occur in most circumstances	<b>Significant</b>	<b>Significant</b>	<b>High</b>	<b>High</b>	<b>High</b>
<b>Likely</b>  will probably occur in most circumstances	<b>Moderate</b>	<b>Significant</b>	<b>Significant</b>	<b>High</b>	<b>High</b>
<b>Possible</b>  might occur at sometime	<b>Low</b>	<b>Moderate</b>	<b>Significant</b>	<b>High</b>	<b>High</b>
<b>Unlikely</b>  could occur at sometime	<b>Low</b>	<b>Low</b>	<b>Moderate</b>	<b>Significant</b>	<b>High</b>
<b>Rare</b>  may occur only in exceptional circumstances	<b>Low</b>	<b>Low</b>	<b>Moderate</b>	<b>Significant</b>	<b>Significant</b>

### 10.3 Controlling risks

The final step in the risk management process is to, as far as practicable, implement control measures to eliminate or reduce the risk of a person being injured or harmed.

There is a hierarchy (preferred order) of control measures, ranging from the most effective to the least effective, which is set out in the following table. In some instances, a combination of control measures may be appropriate.

**Table 2: Hierarchy of control measures to eliminate or reduce the risks**

<p><b>Hierarchy (preferred order) of control measures to eliminate or reduce the risks</b></p> <p><b>1. elimination</b> — removing the hazard or hazardous work practice from the workplace. For example, the removal of uniform 'battle jackets' with folds, which an offender could grab hold of to resist an officer;</p> <p><b>2. substitution</b> — substituting or replacing a hazard or hazardous work practice with a less hazardous one. For example, replacing long batons for every day use with more practical extendable batons;</p> <p><b>3. isolation</b> — isolating or separating the hazard or hazardous work practice from people involved in the work or people in the general work areas. For example, the containment of an incident scene with the introduction of an inner and outer cordon;</p> <p><b>4. engineering control</b> — if the hazard cannot be eliminated, substituted or isolated, an engineering control is the next preferred measure. For example, dilution ventilation in the indoor firearm ranges lowers the risk of lead exposure. Another example is the use of the Police Service's Remote Positioning Vehicle, which can observe, dismantle, collect and render safe suspicious objects/packages;</p> <p><b>5. administrative control</b> — this includes introducing work practices that reduce the risk. This could include limiting the amount of time a person is exposed to a particular hazard. Other examples are the speed limitations and restrictions on continuing pursuits set out in the COPs Manual; and</p> <p><b>6. personal protective equipment</b> – this should be considered only when other control measures are not practicable or to increase protection. An example is the provision of ballistic vests, reflectorised vests and special purpose gloves to prevent needle stick injury.</p> <p><b>In some instances, a combination of control measures may be appropriate.</b></p>	<p><b>Most effective control measure</b></p>  <p><b>Least effective control measure</b></p>
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## 10.4 Monitoring and reviewing control measures

Deciding on and implementing a risk control measure is not the end of the risk management process. It is important to constantly monitor and review control measures to ensure that they continue to prevent or control exposure to hazards or hazardous work practices.

A risk management process should be conducted as an ongoing process because workplaces are usually constantly changing environments with new hazards being introduced; for example, when new equipment or plant are introduced or the work environment or standards are changed.

In determining the frequency of the monitoring and review processes, consideration should be given to:

- the level of risk (high-risk hazards need more frequent assessments); and
- the type of work practice or plant involved (there may be particular stages in the life of a piece of equipment where more frequent assessments are appropriate).

Each workplace should:

- have a planned program of inspections and maintenance;
- undertake a review each time the work environment changes where the changes may affect the safety and health of police officers; and
- regularly review the process for hazard identification, risk assessment and control to ensure it is effective.

## Acknowledgement

This guidance note has been developed in consultation with representatives from the Western Australia Police Service, the Western Australian Police Union of Workers and the WorkSafe Division of the Department of Consumer and Employment Protection. The commitment of these parties towards improving safety and health standards in the Western Australia Police Service is acknowledged.

## Appendix 1: Further information

### WorkSafe/Police Service Co-Agency Agreement

The Western Australia Police Service and the WorkSafe Division of the Department of Consumer and Employment Protection have signed a Co-Agency Agreement that outlines protocols for the enforcement of the *Occupational Safety and Health Act 1984* and the Occupational Safety and Health Regulations 1996 with respect to police officers.

This Co-Agency Agreement has been developed to facilitate the interaction between:

- the WorkSafe Division of the Department of Consumer and Employment Protection as an enforcement agency; and
- the Western Australia Police Service as an employer

with respect to the application of the *Occupational Safety and Health Act 1984* and associated regulations to police officers.

The Co-Agency Agreement outlines procedures for WorkSafe inspectors to notify the Police Service prior to entering a workplace.

The Co-Agency Agreement addresses the actions that WorkSafe inspectors will take when the matter that they are investigating involves or appears likely that it may involve a 'covert operation' or 'dangerous operation'.

The Co-Agency Agreement is also designed to ensure the security of police officers and the operation while maximising the safety of WorkSafe inspectors.

The Co-Agency Agreement will include a review process that will allow an employee involved in a 'dangerous operation' or a WorkSafe inspector to request a review where there are concerns about the operation being defined as a 'dangerous operation'.

### Legislation

*Occupational Safety and Health Act 1984*

Occupational Safety and Health Regulations 1996

### Commission for Occupational Safety and Health documents

*Guidance Note: Election of Safety and Health Representatives, Representatives and Committees and Resolution of Issues*

*Guidance Note: General Duty of Care in Western Australian Workplaces.*

These are available on the Internet at: [www.safetyline.wa.gov.au](http://www.safetyline.wa.gov.au)

### Standards

Australian/New Zealand Standard, *AS/NZS 4360: 1999 Risk Management.*

## Organisations

WorkSafe  
Department of Consumer and Employment  
Protection  
5th Floor, 1260 Hay Street  
WEST PERTH WA 6005  
Tel: (08) 9327 8777  
Internet: [www.safetyline.wa.gov.au](http://www.safetyline.wa.gov.au)

UnionsWA  
Level 4,  
79 Stirling Street  
PERTH WA 6000  
Tel.: (08) 9328 7877 Fax: (08) 9328 8132  
Email: [unionswa@tlcwa.org.au](mailto:unionswa@tlcwa.org.au)

Western Australian Police Union of Workers  
639 Murray Street  
WEST PERTH WA 6005  
Tel.: (08) 9321 2155 Fax: (08) 9321 2177  
Internet: [www.wapolun.org.au](http://www.wapolun.org.au)

Western Australia Police Service  
Police Headquarters  
2 Adelaide Terrace  
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Tel: (08) 9222 1111  
Internet: [www.police.wa.gov.au](http://www.police.wa.gov.au)

Chamber of Commerce and Industry  
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180 Hay Street  
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Tel.: (08) 9365 7415 Fax: (08) 9365 7550  
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Comprehensive work safety and health information  
can be found at:

**[www.safetyline.wa.gov.au](http://www.safetyline.wa.gov.au)**

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**[www.docep.wa.gov.au](http://www.docep.wa.gov.au)**