



Government of **Western Australia**  
Department of **Commerce**

# Introductory Safety and health representative training

Module 1:

## Occupational Safety and Health Legislation

**Trainee's  
Workbook**

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## Introduction:

- This workbook has been provided as a resource for you, the safety and health representative, to take back with you to your workplace.
- The material presented in this workbook is not intended to be delivered in the training course exactly as it is written. It is a resource for you.
- In addition, it sets out the activities and exercises you will be doing throughout the legislative module.
- Some of the information in this workbook may not be covered or not in the same way, but it is provided for your ongoing reference. The training facilitator will direct the training to help you, the safety and health representative, get the most out of the course; and to help you access and apply occupational safety and health legislation knowledge and skills that you need to effectively carry out your role.
- The legislative skills you achieve will help you over the rest of the introductory training for safety and health representatives, and you will re-apply your knowledge and skills many times over the course and in your workplace.

## Facilitator running time: 6 hours 30 mins

Total mins

1.	Introduction and expectations	10 mins	10
2.	Icebreaker	15 mins	25
3.	Introduction to case study:	5 mins	30
4.	What is consultation?	10 mins	40
5.	What is the legislative framework?	40 mins	80
<b>BREAK</b>		10 mins	90
6.	What is “duty of care”?	45 mins	135
7.	Recent amendments to the Acts	10 mins	145
8.	Roles & responsibilities of key duty holders	30 mins	175
	Contractors/labour hire	30 mins	205
9.	Election of safety and health representatives and Committees	20 mins	225
10.	Resolution of Issues	20 mins	245
11.	Role of inspectors & enforcement	10 mins	255
<b>LUNCH</b>		45 mins	300
12.	What are the functions of a safety and health representative?	30 mins	330
13.	Provisional Improvement Notices (PINs)	15 mins	345
<b>BREAK</b>		10 mins	355
14.	Tools available to help safety and health representative	15 mins	370
15.	Review/Where to from here?	20 mins	390
<b>TOTAL</b>		6 hours and 30 mins	

# Accessing and applying occupational safety and health (OSH) legislation in Western Australia (WA)

## 1. Introduction and expectations

**Question (Q):** What are your expectations for this legislative module?

(your notes)

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## 2. Icebreaker:

**Q: What do you think are the functions of a safety and health representative?**

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**Q: Who do you think is responsible for OSH in your workplace?**

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**Q: Do you think OSH legislation provides all the answers to your workplace's OSH problems?**

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**Q: Where would you go to get answers to OSH problems you may have in your workplace?**

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## **Points to consider:**

- Talk about your experience of safety and health representatives in your workplace, and spend a little time examining some of the challenges/issues that you think may be faced by a safety and health representative in carrying out their functions.
- Discuss the role of legislation in managing OSH. Think about both the strengths and weaknesses of relying mainly on legislation to fix all safety and health problems.
- Talk about what sources of support and information are available to safety and health representatives.

### 3. Introduction to case study

This case study will be used throughout the day for activities. This will allow you to apply the knowledge and information you gain and to develop the practical skills you need to be an effective safety and health representative.

The case study is based on a real incident that occurred in a WA workplace, but has been adapted for the purposes of this training in OSH legislation.

In reading through the case study for five minutes, imagine you are the safety and health representative. Some of the factors involved in the case study which will come up through the activities and which you should think about as you work through them include:

- contract labour hire workers;
- responsibilities/duty of care of the employer at the workplace **and** the labour hire company;
- induction and supervision;
- safe systems of work;
- guarding of machinery ;
- isolation of plant;
- investigations;
- safely carrying out functions of safety and health representative; and
- the interrelationship of the Acts, regulations, codes of practice and guidance notes and application of these in the workplace.



## Case study

A labour hire worker was hired by a large food manufacturing organisation to cover a temporary shortage of labour needed to operate a conveyor and roller system. There had been some unexpected orders and maintenance work on machinery has slowed production. As a result of the above there was an urgent need to resume normal production. The labour hire worker was given a brief instruction on his job on the conveyor and roller system, and no general induction.

On the worker's second shift he caught his hand in an unguarded nip point between the conveyor and roller system. The labour hire worker received crush injuries which resulted in him being unable to work for over a month. The conveyor system was immediately turned off and unplugged so that it would not be used until an investigation had been conducted

The safety and health representative for the work area in which the labour hire worker had been placed started work at the commencement of the next shift. At that time he was informed of the injury. He discussed the incident with the supervisor. She said she had a number of other urgent tasks to do first, but would meet the safety and health representative in an hour so they could go and investigate it together and in the meantime the safety and health representative should gather any information that might be useful.

So the safety and health representative decided to have a preliminary examination of the machinery. He went to the conveyor/roller system involved in the incident, plugged it back in and turned it on in an attempt to find out why the incident occurred. In doing so, he put a finger on the conveyor a short distance away from the nip point and the moving conveyor pulled his hand into the nip point. The safety and health representative sustained similar injuries to those sustained by the labour hire worker. The safety and health representative had only recently been elected and had not yet undertaken an accredited introductory training course for safety and health representatives.



## Additional resource for case study

### Machine guarding –

#### Adapted from Guarding of Hydraulic Press Brakes – Legal Requirements

Australian Standard AS 4024.1-1996 Safeguarding of Machinery Part 1: General Principles has been approved by the Minister responsible for the *Occupational Safety and Health Act 1984* as a code of practice under section 57 of that Act.

In addition to Section 19 duties, the principal legislation relating to machine guarding in Western Australia is Section 23 of the *Occupational Safety and Health Act 1984* (the Act).

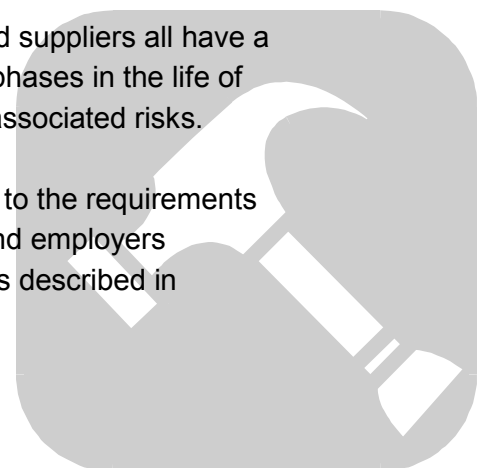
Section 23 of the Act requires designers, manufacturers, importers or suppliers (Section 23 parties) to ensure plant they supply is safe for persons who properly install, maintain or use it. This must be established by testing and examination.

These Section 23 parties must (under Section 23(1)(c) of the Act) provide adequate information in respect of any dangers associated with the plant they supply and the conditions necessary to ensure persons properly using the plant are not exposed to hazards. Section 23 parties must also provide the specifications of the plant and details of the proper maintenance procedures for the plant. Test and examination results, and all of the information referred to above must be provided when the plant is supplied and thereafter whenever requested.

In late 1996, new regulations, the *Occupational Safety and Health Regulations 1996*, ("the regulations") were introduced, which changed the approach to machine guarding from that taken in the previous regulations.

Under the regulations, designers, manufacturers, importers and suppliers all have a responsibility to consider the hazards associated with various phases in the life of plant and take the necessary, practicable steps to reduce the associated risks.

Regulations 4.23, 4.24, 4.25, 4.26, 4.27 and 4.28, which relate to the requirements for designers, manufacturers, importers, suppliers, installers and employers respectively, require this approach, and consideration of means described in regulation 4.29 to minimise any residual risk.



Regulation 4.29(i) introduces a hierarchy of safeguards in respect of plant guarding; requiring consideration of a permanently fixed physical barrier where practicable, followed by an interlocked physical barrier where access to the dangerous area is a necessity. Where neither a permanently fixed physical barrier nor an interlocked physical barrier is practicable, a physical barrier securely fixed by fasteners that require a tool to remove them, must be considered. Only where none of the physical barrier options are practicable can a "presence sensing" safeguard system be used. In many cases physical barriers **will** be practicable.

Australian Standard AS 4024.1 - 1996 Safe guarding of machinery - General principles ("AS 4024.1 - 1996") is an approved code of practice (under Section 57 of the Act), and provides good information on the selection and use of machinery safeguards.



**Your notes on the case study:**

A series of horizontal dotted lines for taking notes.



#### 4. What is 'consultation'?

**Q: What are the main objects (objectives) of the *Occupational Safety and Health Act 1984* and/or the *Mines Safety and Inspection Act 1994*?**

(your notes)

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**Q: Why do you think so much focus is given to participation and consultation between employers and employees?**

(your notes)

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## Consultation

To achieve a safe and healthy as well as a productive workplace you need everybody involved. It makes sense that employers and employees cooperate at work to identify hazards and discuss solutions to safety problems.

A fundamental part of OSH legislation is the involvement of everybody at the workplace, and the legislation provides for consultation between employers and employees.

OSH legislation recognises such factors as:

- no two workplaces are completely alike;
- workplaces themselves are changing from moment to moment (e.g.: with shift changes, maintenance work, deliveries, unexpected events such as weather or plant break downs); and
- we live in a world of complex and often rapidly changing technology.

As a result OSH legislation has to be flexible enough to allow for these factors while providing clear standards and guidance. This is why modern legislation has a focus on problem solving and processes rather than relying totally on compulsory detail which may not suit all workplaces or situations and may be out of date very quickly.

Consultation is critical for workplace safety and health – because the people involved in doing the work are a vital source of information and can offer great ideas on how to manage hazards.

In addition, employees are more likely to be influenced by action taken in their workplace to improve safety and health if they understand and have contributed to the decisions that have led to such action.

Detail on the consultation provisions of the Acts will be examined later.

Briefly, the framework for consultation set out in the Acts has four levels:

- a tripartite Commission (the Commission for Occupational Safety and Health) to advise the Minister(s) on OSH policy for WA;
- safety and health representatives;
- safety and health committees; and
- ongoing involvement and participation of all persons in the workplace.

As a result of recent amendments to the Acts, a new important feature of the consultation provisions is:

- **the flexibility given to workplaces to work out a system of consultation and representation which suits their situation best. Again, we will look at this in more detail later.**

**NOTE: 2004 Amendments to OSH Act and MSI Act**

More information will be provided in Section 7 on amendments to the Act(s) introduced in 2004.



## 5. What is the legislative framework for OSH in WA?

In Western Australia there are two sets of similar legislation covering safety and health in workplaces:

- The *Mines Safety and Inspection Act 1994* (and supporting legislation) covers safety and health for mines and mining operations; and
- The *Occupational Safety and Health Act 1984* (and supporting legislation) covers most other workplaces except those in the petroleum industry or Commonwealth Government employees.

Both sets of legislation are based on the same duty of care principles and have the same framework.

**Q: What do you think is the OSH legislative framework in WA?**

(your notes)

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## The legislative framework

### ***Occupational Safety and Health Act 1984***

### ***Mines Safety and Inspection Act 1994***

- the general duties
- resolution of issues
- safety and health representatives
- safety and health committees
- enforcement of Act and regulations
- sets out penalties for offences

Supported by

### ***Occupational Safety and Health Regulations 1996***

### ***Mines Safety and Inspection Regulations 1995***

- Regulations spell out specific requirements and have the force of law. They may:
- have a general application;
  - set minimum requirements for specific hazards or work practices;
  - set requirements for registration of plant, licensing or granting of approvals or certificates
  - also have penalties for offences.

and

### **Codes of practice**

A code provides practical advice on how to achieve safe workplaces and on how to meet a standard (eg: set by regulations and referred to in the code).

However, the solutions or advice in a code are not the only acceptable means of achieving the standard. A code does not have the same legal force as a regulation and does not by itself provide sufficient reason for prosecution.

and

### **Guidance notes**

A guidance note is an explanatory document not a means of meeting a standard.

## How the legislative framework works

You have already identified that one of the key objectives of the OSH Act and the MSI Act (the Acts) is the involvement of everybody in the workplace.

**Under the Acts**, all parties involved with work have **responsibilities or duties** for safety and health at work.

This includes employers, employees, self-employed persons and others, such as people who control workplaces, design and construct buildings or manufacture and supply plant.

The Acts set out broad duties for safety and health for example:

- an employer must, as far as practicable, provide a work environment in which employees are not exposed to hazards;
- employees must take reasonable care for their own safety and health, and avoid doing anything that might harm the safety or health of others; and
- self-employed persons must, as far as practicable, ensure the work - or any hazard that arises or is increased by the work or system of work - does not adversely affect the safety and health of others. (This reflects recent amendments to the Act).

The Act has the force of law and carries significant penalties for parties in the workplace who fail to meet their duties or responsibilities.

## Making regulations under the Act

The Act also provides for what can be covered in regulations. Regulations must give effect to the purposes of the Act - they must deal with the purposes of the Act and cannot go beyond those purposes.

**Regulations** set out detailed requirements and also have the force of law.

Regulations may cover matters such as notification of commencement of certain activities, approvals, inspections and certificates, and general requirements for e.g.: personal protection clothing, confined spaces, safety signs.

They also cover specific hazards and work practices, for example:

- noise
- falls
- electricity
- plant
- hazardous substances
- abrasive blasting
- spray painting
- excavation
- demolition

## Codes of practice

A **code of practice** can be approved under the Act by the Minister to give:

- practical advice on ways (strategies) to prevent people being exposed to harm in the workplace; and
- practical means of achieving some of the requirements of the OSH legislation.

It is not compulsory to follow what is in a **code of practice**.

The directions in a code on how to achieve a safety/health standard are not the only acceptable way of achieving that standard. People cannot be prosecuted directly for failure to do what a code says. However, they must meet the standard set by the Act or regulations.

### Examples of codes

Examples of codes of practice developed in WA by the Commission for Occupational Safety and Health and approved by the Minister under the OSH Act are:

- Code of Practice: Manual Handling (Dec 2003)
- Code of Practice: First Aid, Workplace Amenities and Personal Protection Equipment (Dec 2002)
- Code of Practice: Managing Noise at Workplaces (Mar 2002)
- Code of Practice: Abrasive Blasting (July 2000)
- Code of Practice: Prevention of Falls at Workplaces (2004)

And an example of an **Australian Standard approved as a code of practice** under section 57 of the OSH Act:

- AS 4024.1-1996 Safeguarding of Machinery Part 1: General Principles (Standards Australia)

**It is important to note, only a limited number of Australian Standards are approved as codes or called up in regulations.**

### Guidance notes

**Guidance Notes** provide guidance and information only. An example is:

Guidance Note on the **Isolation of plant** - provides guidance to assist people at work and in control of workplaces to develop safe isolation procedures to minimise the risk of injury while workplace plant is being inspected, repaired, maintained, assessed, adjusted or cleaned.

## Activity 1 – Applying legislative framework

### Refer to case study – section 3, pages 7-9

**Note:** Training participants – you will be divided into small groups for this activity. You will be provided with copies of the Act(s) and relevant regulations, codes of practice and guidance notes, as well as butcher's paper and pens.

#### Instructions:

1. The case study involves a large manufacturing workplace and involves an injury suffered by a worker, and subsequently a safety and health representative, on a conveyor and roller system.
2. For the purposes of this Activity 1, which is to help you understand and apply the legislative framework, we are looking at only one aspect of the case study:
  - the hazard presented by the conveyor and roller system.
3. Each group will take the role of the safety and health representative. Assume that prior to conducting the joint investigation of the incident with the supervisor, the safety and health representative decides to undertake a review of the legislation to identify any particular requirements.
4. Each group should now undertake this legislative review. This will enable you to have some of the relevant legislative information before accompanying the supervisor in the investigation of the conveyor and roller system.

**Note** that this does not take away from the duty of the employer to have the relevant knowledge and information, and to oversee the investigation.

5. See if you can identify the relevant sections of the Act and regulations that would apply to:
  - plant hazards – look at guarding and isolation.
6. In addition to the Act and regulations, the details of any relevant codes of practice (including Australian Standards called up as codes) or guidance notes will have been provided to you, so you can also refer to those.

## Outcome from activity 1

In conducting this activity you should begin to get a picture of how the OSH legislation works with:

- the Act sitting at the top providing the broadest duties/responsibilities (and carrying the heaviest penalties for failure to comply);
- the regulations underneath providing more specific and detailed requirements but more limited in scope; and
- Codes of practice and guidance notes providing more practical information on how to meet the duties and requirements set out in the Act and regulations.

### Your notes on the legislative framework:

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**6. What is “duty of care” and how is it applied in a practical way in the workplace?**

**Note: Details on the responsibilities of key people associated with the work environment will be covered under Section 9.**

**This section introduces you to the concept of ‘duty of care’.**

**Q: What do you think is meant by a duty of care?**

(your notes)

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The terms “**duty of care**” or “**general duties**” describe broad responsibilities for a wide range of parties associated with the work environment in the:

- *Occupational Safety and Health Act 1984* (the OSH Act); and
- *Mines Safety and Inspection Act 1994* (the MSI Act).

**The duties are fairly broad**, for example:

- an employer must, as far as practicable, provide and maintain a work environment in which employees are not exposed to hazards;
- employees must take reasonable care for their own safety and health, and that of others, at work; and
- self-employed persons must, as far as practicable, ensure the work - or any hazard that arises or is increased by the work or system of work - does not adversely affect the safety and health of others. (This reflects recent amendments to the Act).

Parties who have general duties under OSH legislation include:

- employers
- principals
- labour hire agencies and clients
- employees
- self-employed people
- people with control of the workplace or access to the workplace
- designers
- manufacturers
- importers
- suppliers
- erectors and installers.



## Statute law and common law

When we talk about OSH legislation we are talking about **statute** law

OSH ACT 1984 & MSI ACT 1994 are **STATUTE LAW**

Statute law is developed through the process of Government and written down.

It includes Acts and regulations, and is enforceable.  
Failure to meet the requirements of statute law can result in prosecution.

There is another body of law called **common** law which has been built up over time through decisions made by a court of law as a result of civil actions.

**Civil actions** are when a person believes that he or she has been wronged by another party and takes that party to court to seek justice

## Meaning of 'duty of care' under common law

The courts have determined what 'duty of care' means under common law – and that is that all employers must take reasonable care for the safety of their employees.

## Meaning of 'duty of care' under statute law (e.g.: under OSH Act and MSI Act)

The “general duties” (or duty of care) in OSH legislation are based on the common law principles but written down and made, through the process of Government, into statute law.

Although statute law is based on common law principles, there are some significant differences between the two. To understand and apply the duty of care owed under OSH legislation you must understand the words of the OSH Act 1984 or the MSI Act 1994 themselves.

### A major difference is:

- Under **common law** there must be some damage to a person or property before action can be taken. Only then can an employee claim damages through a civil court for loss where an employer has failed to take reasonable care (e.g.: negligence claims).

Where the actions of an employee may have contributed to an injury the Courts may reduce the size of a damages payout to that employee because of “contributory negligence”.

### HOWEVER

Under **statute law**, such as the OSH and MSI Acts, there is no payment of damages. Instead, enforcement action can be taken to have an unsafe situation fixed **before** it results in damage or loss. Therefore the focus is on preventing unsafe situations – not waiting until an injury or worse has happened.

## KEY POINT about general duties under OSH legislation

The focus of the OSH and MSI Acts is on preventing unsafe situations.

The general duties can be enforced - to get action taken to fix an unsafe situation.

You do not have to wait until an injury is suffered by somebody to take action.

## PRACTICABILITY in OSH legislation

Many of the general duty provisions in the OSH AND MSI Acts and some of the regulations say that something only has to be done "...as far as is practicable".

**Q: What do you think "so far as is practicable" means?**

(your notes)

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## Meaning of practicable

If something is practicable it means:

- it can be done; and
- it is reasonable to do it.

Both the MSI and OSH Acts define what needs to be taken into account when deciding what is practicable to do.

To work out what to do to fix an unsafe situation the Acts require the duty holder to take into account:

- the severity (or seriousness) of any injury or harm to health that may occur;
- the likelihood (degree of risk) of that injury or harm occurring;
- how much is known about the hazard and the ways of reducing, eliminating or controlling it; and
- the availability, suitability and cost of the safeguards.

### **Q: How are general duties applied in a practical way in the workplace?**

(your notes)

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**In practice**, the duty to provide a safe work environment so far as is practicable involves a process of:

- hazard identification;
- risk assessment; and
- risk control.

You will look at the process of hazard identification and risk management fully in Module 3 of the introductory training for safety and health representatives.

## **KEY POINT**

### **Deciding what to do to fix a safety problem**

In deciding what to do to fix an unsafe or unhealthy work environment duty holders (employers etc.) need to balance:

- the cost and feasibility of any safeguards or solutions
- against
- the likelihood and severity (degree of risk) of any injury.

**However, while cost is a factor in deciding what to do, it is not an excuse for failing to provide appropriate safeguards – especially if the risk is high.**

## Activity 2 – Applying general duties

**Refer to case study – Section 3, page 7 and additional resources on machine guarding on pages 8&9.**

**Note:** Training participants – you will be divided into small groups for this activity. You will be provided with copies of the Act(s) and butcher's paper and pens.

### Instructions:

1. The case study involves a large manufacturing workplace and involves an injury suffered by a labour hire worker, and subsequently a newly elected safety and health representative, on a conveyor and roller system.
2. Activity 2 requires you, in your groups, to identify the various duty holders under the Act covered by the case study. You can use the Act(s) and additional resource on machine guarding to assist you.
3. You are not required to go into any detail on what the duties are as these are covered later under Section 8.
4. Discuss in your group how the concept of '... so far as is practicable' would apply when deciding what to do to fix the hazard presented by the roller and conveyor system.



Your notes:

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## 7. Brief overview of recent amendments to the OSH Act 1984 and the MSI Act 1994

**Note:** You will work through the detail of most of the amendments to the Acts throughout this module and subsequently you will examine and apply your understanding of the amendments through the whole of the safety and health representative introductory course (five modules).

This section only provides a brief overview.

**Recent amendments** to both the OSH and MSI Acts (resulting from the 2002 review of the Acts by former Australian Industrial Relations Commissioner Robert Laing) have significant implications for safety and health representatives – and in particular the provision for safety and health representatives to issue Provisional Improvement Notices (PINS) in their workplaces.

**The introductory course for safety and health representatives has been substantially revised as a result of the changes, particularly in regard to PINS- which now form a central part of Module 5: Conflict resolution and PINS in the introductory safety and health representative course.**

The Laing Review found that while much has been achieved since the introduction of the OSH Act in 1984, there are areas in which improvements can and should be made.

For the most part, the proposed changes to the OSH Act and MSI Act represent a strengthening or improvement of existing provisions. Nevertheless the proposed changes are significant, expanding the potential application of the Act to close some identified gaps in coverage, and broadening some of the existing duties.



**Overview of key changes** to the OSH Act in 2004 which are also reflected in amendments to the MSI Act (note there are specific amendments unique to the MSI Act):

- expansion of general duties of care - to make sure those who have control at a workplace are responsible for the safety and health of those in their care. Covers new ways of working, such as labour hire arrangements;
- substantial increases in penalties, particularly for corporations and introduction of circumstances of gross negligence including imprisonment;
- new provisions enabling prosecution when offences relate to government agencies or the State of WA itself;
- more flexible processes for electing safety and health representatives and establishing safety and health committees – including provision for parties at the workplace to agree on representational arrangements that are most suitable for the workplace concerned – includes establishment of a ‘scheme’ which may allow safety and health representatives to be elected to represent employees at one or more workplaces or one or more representatives may be elected for any group of employees of the employer concerned if it makes up a distinct unit of the employer’s workforce;

In addition, provision is made for contractors or employees of a contractor to participate in an election for safety and health representatives - allowing for industries and workplaces where there is a significant reliance on contract labour.

- in addition, parties may agree on the matter of casual vacancies for safety and health representatives.
- provision for safety and health representatives to issue PINs in their workplaces;
- clarification of entitlements for safety and health representatives – in addition to the payment of course fees, representatives will also be entitled to other associated costs (e.g.: travel, accommodation) to the extent prescribed by the legislation. And safety and health representatives are entitled to pay when attending a prescribed course during his or her own time, or time off work with pay when attending the course during work time;
- establishment of a Safety and Health Tribunal under the Western Australian Industrial Relations Commission, to hear appeals and related matters (including questions of entitlement to pay and conditions under the Occupational and Safety Health Act 1984 issue resolution provisions); and

- establishment of a Mining Industry Advisory Committee, to advise and make recommendations to the Minister responsible for the *Mines Safety and Inspection Act*, and the Minister responsible for the *Occupational Safety and Health Act 1984*, as well as to the Commission for Occupational Safety and Health. This committee will replace the existing Mines Occupational Safety and Health Advisory Board.

**Note:** This is not a comprehensive list of the 2004 changes. Other changes include but are not limited to:

- changes to inspector's powers;
- introduction of new duty to maintain residential premises – in certain limited situations;
- new duty of employers and self-employed persons to report hazards to persons in control of workplace;
- new offence where visitors refuse without lawful excuse, to obey safety and health direction from authorised person; and
- introduction of restricted inspectors.

**Short exercise for Section 7 – Amendments to OSH and MSI Acts**

**Briefly outline five of the changes made to the OSH and MSI Acts in 2004.**

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## 8. What are the roles and responsibilities of the key duty holders? eg: employers (managers, supervisors), employees etc.

**Note:** The role of inspector is covered later in Section 11.

### Essential resources

- Guidance note: General duty of care in Western Australian workplaces. Commission for Occupational Safety and Health
- Guidelines: General duty of care in Western Australian mines

**Note:** You will briefly look at the sections of the Act(s) and key duties that you need to be familiar with and know how to access and apply these.

There is not time to cover all duties in the Act and therefore it is important you know how to find information and assistance. This has been emphasized throughout the training.

You have already looked at the broad concept of 'duty of care', identified the main duty holders under the Act and used this information for Activity 2.

## Employer's duties

Under **Section 19 of the OSH Act 1984** and **Section 9 of the MSI Act 1994**:

Employers must **so far as is practicable** provide and maintain a workplace where employees are not exposed to hazards. While not limiting this broad duty, employers must in particular:

- provide and maintain safe workplaces, plant and systems of work;
- provide information, instructions, training and supervision so that employees can carry out their work in a safe way;
- consult and cooperate with safety and health representatives and other employees on safety and health matters;
- provide adequate personal protective clothing - where it is not possible to get rid of a hazard;
- provide for the safe use, handling, processing, storage, transportation and disposal of plant and substances (chemicals etc.)

## Reporting injuries, diseases and deaths

- There are also requirements for reporting injuries, diseases and deaths to the WorkSafe Commissioner under section 23I of the OSH Act or under section 76 of the MSI Act in the case of mines, to the district inspector for the region. The MSI Act also requires reporting of "potentially serious occurrences" (Section 79 of MSI Act)

## Employer's duty for reporting hazards

- Where an employee has reported an unsafe situation, the employer must investigate and report back to that employee on what action the employer intends to take (if any) to fix the problem.

## **Employer’s duty to non-employees e.g.: the public, clients, work-experience students.**

**Section 21 (2) of the OSH Act 1984** and **Section 12 (2) of the MSI Act 1994** provides for employers (and self-employed persons) to make sure non-employees are not put at risk by work including:

- work that has been or is being undertaken; and
- any hazard that arises from or is increased by the work or the system of work.

## **Where no there is no “employer or self-employed person”**

A similar duty to the above is imposed by Section 21B on a body corporate. Where a corporation engages labour solely through labour hire or contract for services, it is not an employer or a self-employed person. Workers in this situation are covered by other provisions, but members of the public, visitors or work experience students are protected by Section 21B which is similar to Section 21 (2).

## **Accommodation – limited duty**

- There is also a duty to maintain safe residential premises e.g.: for accommodation provided in certain work situations. However, there are some important conditions that limit this duty under both the OSH Act 1984 and under the MSI Act 1994.

## **Managers/supervisors**

In some small workplaces covered by the OSH Act 1984, the manager or supervisor will also be the employer – for example, they may own the business. However, in larger workplaces the manager or supervisor is generally not the employer and they are employees themselves.

In carrying out their roles, managers or supervisors may give instructions to other employees on behalf of the employer. However, the employer’s duties remain with the employer – the manager or supervisor remains an employee and they must cooperate and follow the employer’s instructions.

## **Corporations**

Having said this, section 55 of the OSH Act and Section 100 of the MSI Act does hold various persons associated with corporations liable for an offence where they have given consent, have connived with or have been in anyway negligent. Such persons may include directors, managers, supervisors, or other officers, or the body corporate secretary.

## **Additional provisions of the MSI Act**

Section 99 of the MSI Act 1994 holds employers, managers and supervisors vicariously responsible for offences committed by another person where the former parties have consented, connived or been in any way negligent in regard to the offence.

The MSI Act also sets out specific duties for different layers of managers in addition to the general duties for employers e.g.: registered mine manager, certificated underground mine manager, certificated quarry manager. However, these managers are also employees.

## **Employee's duty**

Under Section 20 of the OSH Act 1984 and Section 10 of the MSI Act 1994 employees must:

- take reasonable care to look after their own safety and health and not do anything that may harm the safety and health of others;
- cooperate with their employer on work-related safety and health matters;
- follow instructions;
- use protective clothing and equipment (following any instructions) provided by the employer;
- report any injuries or any hazardous situation in the workplace if they cannot fix it themselves.

Employer must also not misuse or damage any equipment put in place for safety and health.



## Exercise (8) 1

### Employer's and employee's duties

#### Instructions:

1. For this exercise you will use the case study on pages 7-9.
2. For the purposes of this exercise we are only focused on the original injury (not the subsequent injury to the safety and health representative), and instead of the person injured being a labour hire worker he is a new employee and is injured on his first week in the job. The rest of the details remain the same.
3. Look at the employer's and employee's duties under the Act and write down how you would apply that duty to the case study, focusing only on the original injury (as above).
4. You are not expected to give detail – just identify the key things that should have been done and by whom to make sure the work environment was safe.
5. For example, you should think about such matters as responsibilities for training and supervision.

(your notes)

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## **Contractors and other employment arrangements**

### **How do the duties work in situations involving contractors and/or other alternative work arrangements?**

Providing clear safety and health coverage to a range of alternative employment arrangements was a significant matter dealt with in the 2004 amendments to the OSH Act 1984 and the MSI Act 1994.

Over the years since the introduction of the OSH Act 1984, the WA workforce and employment arrangements have changed. Labour hire companies, casual work, group apprentice schemes and other employment arrangements are increasingly common and the use of contract labour is widespread.

The 2004 changes to the Act(s) ensured that safety and health coverage was provided for a wide range of employment situations.

### **Contractors**

When a person uses a contractor to carry out some of the work associated with their trade or business that person becomes the **employer** of the contractor, the contractor's employees and any sub-contractors, and is called the **"principal"**.

The duty of the "principal" employer is limited to matters over which they have the capacity to exercise control. The contractor must still meet their duties as an employer, but where they are working for a "principal" the duties are shared.

The "principal" cannot however try to pass on control of matters to the contractor or anyone else if those matters are part of their duty.

## **Respective duties – what is meant by “... under their control”?**

### **Example (using case study):**

An electrical sub-contractor is brought into the food manufacturing organization described in the case study on pages 7-9 to undertake maintenance work on the conveyor – roller systems.

The principal (the food manufacturing company) would have responsibility for such matters as:

- providing on site induction (including relevant on-site rules and procedures);
- identifying and agreeing with sub-contractor on plan of work;
- supervision of work to oversee interaction with rest of the workplace;
- interaction with other work processes – particular isolation and tagging procedures.

The electrical sub-contractor would have responsibility for such matters as:

- requesting and ensuring they receive appropriate induction;
- asking about any other site specific information;
- ensuring effective isolation and tagging procedures;
- consulting with site supervisor to ensure electrical work is planned around other work processes;
- following on-site instructions, rules and procedures;
- the electrical work itself and the maintenance of the electrical sub-contractor’s own equipment.

## Labour hire

In this situation:

- **A worker (employee or contractor) is provided by a labour hire organisation (the agent) to a host workplace (the client) without a contract of employment between the worker and that client (though there may be a contract or agreement between the worker and the agent).**

Although there is not a contract of employment between the worker and the client in relation to the work, the OSH and MSI Acts provide that both the agent and the client both have the equivalent of an employer's duty for matters over which each has the capacity to exercise control. In addition, the worker has the equivalent of an employee's duties.

## Exercise (8) 2

### Contractors, labour hire and meaning of “... Under their control”.

#### Instructions:

1. For this exercise you will use the case study on pages 7-9.
2. For the purposes of this exercise we are only focused on the original injury (not the subsequent injury to the safety and health representative).
3. Identify what you think were the responsibilities of a) the host employer, and b) the labour hire company who provided the worker.
4. You are not expected to give detail – just identify the key things that you think fell under the control of the host employer and the labour hire company.

(your notes)

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## Other duty holders

You have already identified other parties who have general duties under OSH legislation in an earlier section and these include:

- people with control of the workplace to any extent or to the means of entering or leaving the workplace e.g.: owners, lessors, lessees
- designers
- manufacturers
- importers
- suppliers
- erectors and installers.

### KEY POINT: Critical information for the workplace

The sorts of information that may be critical for you to access in your workplace may include for example:

- **operating instructions** from the designer, manufacturer, importer or supplier of plant;
- **Material Safety Data Sheets (MSDS)** providing information on the safe handling, transport, storage or disposal of substances such as chemicals from the manufacturers, importers or suppliers.

## 9. Election of safety and health representatives

### Essential resources for this section:

- Part IV of the OSH Act 1984 and Part V of the MSI Act 1994 set out the procedures for electing safety and health representatives and committees.
- Guidance note: Election of safety and health representatives, representatives and committees and resolution of issues – Commission for Occupational Safety and Health
- Guide to the *Mines Safety and Inspection Act 1994* – Safety and health representatives – Department of Industry and Resources.

### Procedures under the Acts

Both the OSH and MSI Acts outline procedures for electing safety and health representatives. An easier method of understanding the process is to access the Commission's guidance note and/or the Department of Industry and Resource's guide (both listed above).

Formal mechanisms for consultation in workplaces are not compulsory but do provide a good framework for dealing with safety and health matters by involving all people in the work environment.

However, the Act(s) provide that an employee may give notice to an employer requiring the election of a safety and health representative and within 21 days the employer must invite the employees who work in the workplace in respect of which the notice has been given to appoint a delegate or delegates.

### Keeping up to date and familiar

You will all have been through an election process yourselves. However, it is important to keep up to date and familiar with the election requirements and procedures. You can do this by making sure you have notified WorkSafe about your election and ensure you are on the mailing list for SafetyLine magazine. It is also a good idea to regularly access WorkSafe's [www.safetyline.wa.gov.au](http://www.safetyline.wa.gov.au) to check on the latest news and information.

### KEY POINT

**Significant Amendments** were made to the **OSH and MSI Acts in 2004** bringing in far more flexibility in choosing representation and committee arrangements in WA workplaces.

Amendments to the OSH and MSI Acts in 2004 introduced a far greater level of flexibility to allow employees and employers to work out what form of representation and committee arrangements are going to suit that working environment best.

Existing mechanisms where the employer consults with employee delegates appointed by the employees for the purposes of electing safety and health representative(s) remain the same. The matters that are to be consulted upon have changed slightly, with the main exception that it can include agreement on how a vacancy will be dealt with. The most significant change for safety and health representatives is the provision for “a scheme”.

### **“A scheme”**

Under Sections 29 (2), 30A, 30B and 30C of the OSH Act 1984 (similar provisions in MSI Act) parties consulting in a workplace may agree to the establishment of a scheme. A scheme allows safety and health representatives to be elected to represent employees at one or more workplaces. Or, one or more safety and health representatives may be elected for any group of employees of the employer concerned as long as they make up a clear and separate unit of the workforce.

In addition, a ‘scheme’ may allow a contractor or employees of a contractor to participate in the election for a safety and health representative – which recognizes the needs of industries and workplaces where there is a significant reliance on contract labour.

Where employers and employees delegates disagree on matters relating to any election, there is a mechanism for referring the disagreement first of all to the WorkSafe Commissioner in the case of the OSH Act or the State Mining Engineer in the case of the MSI Act, and if the Commissioner or State Mining Engineer cannot resolve the matter, then to the safety and health tribunal.



### Activity 3

**Note:** Training participants – you will be divided into small groups for this activity. You will be provided with copies of the Act(s) and butcher's paper and pens.

#### Scenario

An employer with a retail chain of small outlets located in over 15 metropolitan and 10 regional areas (not involving a franchise arrangement) has been given notice by an employee in one of the outlets requiring the election of a safety and health representative. The employer has invited within the required 21 days all employees to appoint a number of delegates to represent them. The delegates will consult with the employer to agree on the representational arrangements that would suit the working situation best.

#### Instructions

1. You will need to access and use the Essential Resources provided by the training provider and listed at the beginning of this Section.
2. In your groups identify and list the steps you, as the employees of the retail chain in the Scenario, will need to follow in the election of safety and health representatives. Write them on butcher's paper in your group. You could do it as a basic flow chart.
3. You are not expected to provide detail – just outline the important steps including identifying the need to decide whether a 'scheme' may be appropriate and what that would require.

#### Safety and health committee – Key role for safety and health representative

You need to be familiar with the procedures for safety and health committees. If a committee is established at a workplace, then at least half of the committee must be made up of safety and health representatives or employees who work at the workplace, representing other employees. Otherwise, the employer and employees may reach their own agreement on the structure of their committee.

Clearly you have a key role to play in representing other employees and raising safety and health matters at the safety and health committee (if there is one). You should be familiar with the legislative functions of the committee. Section 40 of the OSH Act 1984 and Section 63 of the MSI Act 1994 set out the functions and you will find a clear explanation in the Commission's guidance note.

**Q: What do you think are some of the factors that can help committees to be effective?**

(your notes)

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Some key factors that can help committees be effective include:

- involvement of senior management – so decisions can be made at the meeting not referred somewhere else;
- clear, well developed objectives for the committee;
- members having a good understanding of the safety and health issues and relevant legislation;
- regular meetings with realistic agendas;
- willingness for a two-way flow of information – with safety and health representatives being supported to raise issues and have them considered and action agreed and taken (which may be that no action is required); and
- active safety and health representatives who genuinely represent other employees by referring safety and health matters raised by them to the committee and providing feedback to the workforce.

### **Discrimination against safety and health representatives**

It is an offence (Section 35A & B of OSH Act) for an employer or prospective employer to disadvantage any person for the dominant or substantial reason that the person:

- is or was a safety and health representative; or
- is performing or has performed any function as a safety and health representative.

Similarly, a “principal” (*eg: when a person uses a contractor to carry out some of the work associated with their trade or business that person becomes the **employer** of the contractor, the contractor’s employees and any sub-contractors, and is called the “**principal**”*) must not terminate the engagement of a contractor or subject the contractor to any other disadvantage for the dominant or substantial reason that the contractor or a person employed by the contractor:

- is or was a safety and health representative; or
- is performing or has performed any function as a safety and health representative.

Changes to the legislation in 2004 also allow a safety and health representative who has been disadvantaged the right to go to the safety and health tribunal and the tribunal is able to order re-instatement, compensation or both.

## 10. Resolution of issues and refusal to work

### Essential resource:

- Guidance Note: Election of safety and health representatives, representatives and committees and resolution of issues – Commission for Occupational Safety and Health
- Guide to the *Mines Safety and Inspection Act 1994* – Safety and health representatives – Department of Industry and Resources.

ROLE PLAY EXERCISE: At the end of this section you are all going to do a role play exercise involving a safety and health issue.

**Instructions on the role play will be provided at the end of this section.**

**The issue** that will be used in the role play is:

- A large employer has a number of work units operating outdoors. The employer has issued personal protective clothing for the summer – long sleeve shirts and full brimmed hats.
- However a number of employees have claimed the shirts result in them becoming too heated and one employee claims the long sleeve shirts are causing him to develop skin rashes in the heat. Instead of the long sleeve shirts issued by the employer, the employees want new light weight short sleeved shirts and sun screen provided.
- The employer has rejected the request. The matter has been discussed by the safety and health representative and employer without immediate resolution. It has now been referred to the safety and health committee.

### Issue resolution

#### What do the OSH and MSI Acts require?

Sections 24 to 27 of the OSH Act and Part VI of the MSI Act set out:

- a process for dealing with safety and health “issues” where there is disagreement between the employer and employee(s); and
- situations where work is stopped because there is a serious and immediate risk to a person or people.

#### “Issue”

An “issue” is taken to mean situations where there is a difference of opinion between the employer and one or more employees on a safety and health matter.

It does not mean that there has to be a “dispute” – it is enough that the employer and employee(s) have a question as to what should or should not be done (or about what has been done) in a particular situation.

## **Employers to try and resolve issues at the workplace**

The OSH and MSI Acts require employers to attempt to resolve safety and health issues that arise at the workplace with the safety and health representative and committee (if any) or the employees, following the agreed procedure.

## **Workplaces encouraged to agree on their own procedure to resolve issues**

The Acts encourage each workplace to consult and agree on a procedure to deal with safety and health “issues” that is suitable for that workplace.

The procedure may be very simple or may have different layers which allow different people to be involved depending on exactly what the issue is.

The procedure will depend on the variety and complexity of issues likely to arise and size and nature of the workplace.

Where there is no procedure agreed at the workplace, the regulations set out a **default procedure** which requires the employer to meet with:

- the employees and the safety and health representative, where there is one; or
  - the employees or a person authorized by them to meet with the employer, in cases where there no safety and health representative
- at a time that is as soon after the issue arises as is mutually convenient.

## **Unresolved issues and involving an inspector**

Where no agreement has been reached on an issue:

- The safety and health representative must refer the problem to the safety and health committee (if both exist).
- When this does not resolve the issue and there is risk of imminent and serious injury or harm to health to a person, then the safety and health representative or employer may then notify a WorkSafe inspector.
- Where there is no safety and health representative any employee may refer a serious and imminent issue to an inspector.

**The inspector should be involved only when everything has been done to try and sort the issue out.**

When notified, the inspector will attend as soon as possible and take whatever action he or she thinks appropriate.

## **Right to refuse unsafe work**

- **Immediate risk of serious injury or harm**

Both the OSH Act and the MSI Act allow employees to refuse to work if they have reasonable grounds to believe the work is dangerous and there is an immediate risk of serious injury or harm to themselves or others in the workplace.

- **Employees must notify the employer and safety and health representative**

The employer and the safety and health representative must be notified immediately.

- **Issue resolution and attendance at workplace by an inspector**

The matter must be resolved just the same as any other safety and health issue. If the employer, safety and health representative and committee or employees cannot resolve the issue then an inspector may be asked to attend the workplace.

### **EXERCISE (10) 3 – Role play**

**Note:** Training participants – you will be divided into small groups for this activity. You will have been provided with butcher’s paper and pens.

#### **Instructions:**

1. Re-read the “Issue” described at the beginning of this Section involving the provision of work clothing and sunscreen for outdoor workers.
2. In your groups, allocate the role of employer, safety and health representative and employees so that each member of your group has a role.
3. Your group now forms the safety and health committee for the workplace covered by the “Issue”. The safety and health representative has asked the committee to try and sort out the issue.
4. As the safety and health committee, and playing the role you have been given of employer, safety and health representative or employee, try and reach agreement on a solution.
5. You can identify any factors, possible alternatives, or anything that may help sort out the issue in a way that everybody can agree with.
6. Nominate somebody from the group to report to the rest of the training participants on what was discussed and whether agreement was reached.

## 11. Role of inspectors and enforcement

One of the important relationships you may form as a safety and health representative is with inspectors appointed under the OSH Act 1984 for most workplaces or under the MSI Act 1994 for mines or mining operations.

### **For what reasons will inspectors visit your workplace?**

Inspectors may visit your workplace for the following reasons:

- in the normal course of their work for example as part of a targeted inspection program or investigating a complaint;
- they may be involved in a resolution of issues; or
- they may have been asked to review a provisional improvement notice (PIN) issued by a safety and health representative.

### **What part of the OSH and MSI Acts covers inspectors and actions available to inspectors to enforce the Acts?**

Inspectors and improvement and prohibition notices are covered under:

- Part V and VI of the OSH Act 1984; and
- Part 3 of the MSI Act 1994

In addition, both Acts allow for **prosecution** in the event of an offence being committed. Part VII of the OSH Act covers “Legal Proceedings and Part 9 of the MSI Act covers “Offences, Penalties and Legal Proceedings”.

### **What are the powers of inspectors?**

The powers are wide ranging and include (but are not limited to) the power to:

- enter, inspect and examine workplaces;
- conduct examinations and enquiries;
- provide information to any person that may help achieve compliance with the Act;
- take and remove samples of any substance or thing take possession of plant and materials for further examination or testing or as evidence;
- take photos and measurements, make sketches and recordings;
- examine and take copies of any document;
- require that any part or all of the workplace be left undisturbed; and



- interview people at the workplace (or any person who the inspector has reasonable grounds for believing is or was working at that workplace at any time during the previous 3 years) – in private where inspector believes it is appropriate or the person being interviewed requests. The inspector can also interview anyone else who they have reasonable grounds for believing may be able to provide relevant information.

Inspectors may not unreasonably interfere with any work or work process in carrying out their functions.

## **Improvement and Prohibition Notices**

Both the OSH Act and the MSI Act allow inspectors to issue improvement and prohibition notices.

**An improvement notice** is a written direction requiring a person to remedy a breach of the legislation.

The notice will state the reasons why the inspector has formed the opinion that a breach of the legislation is occurring and it will refer to either a provision of the Act or to specific regulations.

The notice may provide directions on how the breach may be fixed.

**A Prohibition Notice** is a written direction prohibiting the carrying on of any activity that the inspector believes involves or will involve a risk of imminent and serious risk to the safety and health of any person.

When an inspector issues a prohibition notice he or she will stay at that workplace until the employer is advised and the work in question has stopped.

The notice will say exactly what work activity has to stop and outline why it is unsafe.

## **Right for review by Commissioner or State Mining Engineer**

Both improvement notices and prohibition notices may be referred to either the WorkSafe Commissioner (in the case of the OSH Act) or the State Mining Engineer (in the case of the MSI Act) for Review. In some circumstances the Commissioner or State Mining Engineer may decide to cancel a Notice. If not, and the person to whom the notice was issued disagrees with the decision, the matter can be referred to the safety and health tribunal.

## Activity 4 – Improvement and Prohibition Notices

**Note:** Training participants – you will be divided into small groups for this activity. You will be provided with copies of the Act(s) and butcher’s paper and pens.

### Instructions:

1. The training facilitator will provide you with copies of an Improvement and a Prohibition Notice.
2. Using the case study, decide in your groups on whether, if you were an inspector under the OSH or MSI Acts, you would issue an improvement or a prohibition notice?
3. In your groups, give your reasons for why you made that decision.



## 12. What are the functions of a safety and health representative?

### Exercise (12) 4

**Note:** Training participants – you will be divided into small groups for this activity. You will be provided with butcher’s paper and pens.

#### Instructions:

1. This exercise is supposed to be done without any reference to resources, notes or any other materials.
2. In your groups discuss the following questions:  
**Q: What do you think are the functions of a safety and health representative?**  
**Q: Do you have any particular comments or questions about each function you identify?**
3. Write down your responses as a group on the butcher’s paper provided.
4. Each group will select one function (each one a different one) to report to the rest of the training participants on.

#### Your notes on Exercise ( 12) 4

(you may want to make a note of anything that comes up in the discussions that is of particular interest or relevance for you).

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## Essential resources for Section 12:

- **Handbook for safety and health representatives**
- **Guidance Note: Election of safety and health representatives, representatives and committees and resolution of issues – Commission for Occupational Safety and Health**
- **Guide to the Mines Safety and Inspection Act 1994 – Safety and health representatives – Department of Industry and Resources.**

## Functions of safety and health representatives – Section 33 of OSH Act 1984 and Section 53 of MSI Act 1994

Have a look at the table in the “Handbook for safety and health representatives” which outlines the functions of safety and health representatives.:

Briefly they are:

To regularly inspect the workplace areas you were elected to represent at agreed times and frequency.	Covered in detail in Module 2 of this Course – Inspections and investigations
To immediately investigate the scene and details of any accident, dangerous incident or risk of serious injury or harm to any person.	Covered in detail in Module 2 of this Course – Inspections and investigations.
To keep up to date with workplace safety and health information provided by the employer and liaise with government and other bodies.	Covered in detail in Module 4 of this Course– Communication and representation
To report hazards in the workplace to the employer.	Covered in detail in Module 3 of this Course – Hazard identification and risk management.
Where there is a S&H committee for the workplace, to refer any matters that you think should be considered by the Committee.	Covered in Module 4 of this Course – Communication and representation
To consult and cooperate with the employer on safety and health matters.	Covered in all safety and health representative introductory training modules.
To liaise with employees about safety and health matters.	Covered in all safety and health representative introductory training modules.

## **What the employer has to do for safety and health representatives**

### **(Section 35 of OSH Act 1984 and Section 60 of MSI Act 1994)**

To help you, the safety and health representative carry out your functions, the employer has to do certain things.

These include:

- Make safety and health information at the workplace available (e.g.: including Material Safety Data Sheets (MSDS) on chemicals and other substances, testing results for such things as noise or air monitoring, statistics...);
- Allow you to be present at any interview on safety and health matters between the employer (or employer's representative such as a manager or supervisor) and the employee if the employee wants you to be there;
- Consult with you on any changes in the workplace that may affect employees' safety and health;
- Notify you of any safety and health incidents;
- Provide assistance and access to facilities so you can carry out your functions e.g.: telephone, computer, photocopying, storage, meeting room and use of notice boards;
- Notify you if a WorkSafe or Mines inspector visits your workplace; and
- Allow you to take time out of your normal work with pay to carry out your safety and health representative functions (and attend accredited training under the OSH or MSI Act).

## **Exercise (12) 5**

**Note:** Training participants – you will be divided into small groups for this activity. You will be provided with butcher’s paper and pens.

### **Instructions:**

1. Consider the safety and health representative in the case study on pages 7-9.
2. In your groups consider and discuss:
  - What were the responsibilities of the supervisor to the safety and health representative?
  - What should the safety and health representative have done in the situation described?

### 13. How do I use Provisional Improvement Notices or PINs?

Under the OSH Act 1984 and MSI Act 1994, safety and health representatives play a key role in identifying hazards in their workplace and in helping bring safety and health concerns to their employer's attention.

In order to do this effectively, safety and health representatives need to have some authority or means of getting things done.

This is provided through the use of provisional improvement notices or PINs. However, only safety and health representatives who have been trained (qualified) to do so can issue PINs.

#### **A PIN CAN ONLY BE ISSUED WHERE:**

- **The “qualified” safety and health representative is of the opinion that a breach of the Act or regulations is occurring or has occurred and it is likely that it will be repeated or continue to occur;**

**AND**

- **The required consultation has taken place.**

The requirement to undertake consultation is because PINs are a powerful tool and must be used appropriately.

## **Where in the Acts are PINs dealt with?**

PINs are covered by:

- Part VI Division 2 under the OSH Act 1984; and
- Part 3 Division 4 under the MSI Act 1994.

PINs can be issued for:

- the workplace/workplaces for which the safety and health representative was elected; or
- where the safety and health representative was elected for a group of employees, a workplace where a member of the group works.

It is important to remember that only “qualified” safety and health representatives who have completed the prescribed course of training can issue PINs.



## What are the other provisions that control the use of PINs?

- A safety and health representative may only issue a PIN where he or she has consulted with the person that is to be issued with the PIN on the matter which they believe is a breach of the Act or regulations.
- The safety and health representative must, where practicable, consult with another safety and health representative at the workplace concerned before issuing a PIN; or
- With a safety and health representative in another workplace but elected under a “scheme” arrangement and where a member of the group works at the workplace concerned.
- If a person on whom a PIN is issued disagrees with it, he or she has a right of review by a WorkSafe inspector or mines inspector;
- Misuse of the power to issue a PIN can result in disqualification from being a safety and health representative.
- The compliance date for fixing the safety and health problem identified in the PIN must be more than 7 days after the date on which the PIN is issued. So, **situations which provide an immediate and serious risk of harm to the safety and health of any person are not suitable for PINS** and should be pursued through the resolution of issues process.

You must be totally familiar with these controls on the power to issue PINs.

Before you issue a PIN you will also need to be able to form an opinion that there is a breach occurring at your workplace or that has occurred and is likely to occur again.

To do this you will need to be able to access and apply the Act and regulations.

Being familiar with key areas of the Act and regulations, and knowing where to go to find additional information and advice, will help you gather the information you need and provide you with “reasonable grounds” for forming your opinion.

## **Additional Provisions for consulting with WorkSafe or Mines Inspectorate**

There is an additional provision that allows regulations to be made requiring a qualified safety and health representative, in specified situations, to consult with a person who holds a prescribed office in the department (eg: Department of Consumer and Employment Protection – WorkSafe Division) before issuing a PIN.

## **Module 5: Conflict resolution and Provisional Improvement Notices**

In Module 5 of this introductory training course you will develop more detailed knowledge and skills in such areas as:

- how to fill out a PIN;
- how to gather your evidence e.g.: forming your opinion;
- who you can issue the PIN to;
- rights for review of a PIN;
- procedures to follow where a PIN has not been complied with.

### **At this stage you should know:**

- what a PIN is;
- in what situations you can issue PINs e.g.: the things you must do before you issue a PIN – the controls; and
- that improperly issuing a PIN (failure to do all the things required by the legislation before you issue a PIN) could result in your disqualification.

## Activity 5

**Note:** Training participants – you will be divided into small groups for this activity. You will be provided with copies of the Act(s) and butcher's paper and pens.

### Instructions:

1. In the case study involving the food manufacturing company and the conveyor/roller systems there were a number of breaches of the OSH Act 1984 by the host employer, and some by the labour hire company.
2. An example of a breach would be the failure of the employer to provide a safe system of work under the employer's general duty of care (Section 19 (1) (a) of the OSH Act 1984).
3. In your groups, select what you think was a breach of the Act by the host employer.
4. As the safety and health representative you believe that a breach of the Act has occurred and that the host employer has not immediately fixed the breach.
5. In your group, identify all of the things you must do before you can issue a PIN.



## 14. Resources and tools to help safety and health representatives carry out their functions?

Research in the United Kingdom suggests representatives are more successful if there is:

- positive support from stakeholders
- training and accessible information
- a supportive legislative framework
- **occupational safety and health resources**

(see <http://www.hse.gov.uk/workers/involvement/evidence.pdf> for more information).

### Safety and health resources

#### Safety and health representatives online

A news and information website dedicated to safety and health representatives: [www.safetyline.wa.gov.au/safetyrep](http://www.safetyline.wa.gov.au/safetyrep)

and/or

Go to [www.doir.wa.gov.au](http://www.doir.wa.gov.au) for resources covering the mining industry and safety and health in WA.

#### WorkSafe library

The library offers a wide range of books, reference materials, journals, videos, online databases and CDs dedicated to occupational safety and health.

The library is open weekdays until 4pm, and is located at the WestCentre, Level 5, 1260 Hay Street, West Perth

#### Publications

There is a wealth of information on the application of OSH legislation available in WorkSafe and Commission publications. Most are available free-of-charge from the WorkSafe Publications Officer on 9327 8775.

## 15. Review

Research shows that occupational safety and health is managed more effectively in the workplace if a safety and health representative is involved. A study carried out in Canada suggests that lost time injury and disease rates were significantly lower in workplaces with representatives.

Have another look at what you identified at the beginning of the legislative module as your expectations for the course.

Now consider whether those expectations for this module have been met, and whether you know where to go to get any additional information or training this course did not provide.

Your training facilitator will lead a group review discussion.

### Your questions and notes:

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