



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

Introductory Safety and health representative training

Module 1:

Occupational Safety and Health Legislation

Facilitator's Manual

Preamble

This legislative module includes changes to occupational safety and health (OSH) legislation introduced into Western Australia in 2004 as a result of the 2002 Laing statutory review of the *Occupational Safety and Health Act* and *Mine Safety and Inspection Act*, and in particular introduces safety and health representatives to their responsibilities where they use provisional improvements notices (PINs) in their workplaces.

The focus of this module is on the **application** of the legislation. Feedback from safety and health representatives and training providers has identified that training in OSH legislation, as part of a five module introductory course, needs to be practical, applied to real life situations and interactive. Consequently, the principal objective of the Module in OSH legislation is to enable safety and health representatives to carry out their workplace functions by accessing and applying OSH legislation and any other useful information, and to do this through participating in practical and interactive activities.

Links to subsequent modules

The training facilitator should introduce the overall structure of the safety and health representative training (the course) and show how Module 1: Apply Knowledge of Legislation, will link through all of the subsequent four modules (see table outlining structure of legislative training):

- Conduct workplace inspections and investigations as a safety and health representative
- Conduct hazard identification and risk management associated with role of safety and health representative
- Communicate on safety and health matters and represent employers
- Resolve conflict and issue Provisional Improvement Notices (PINs) in the role of a safety and health representative

The safety and health representatives will continuously re-apply their knowledge of the legislation throughout the other four modules of the course and this will help them develop the skills required.

How to use this manual for safety and health representatives elected under the *Mine Safety and Inspection Act 1994*.

While this manual has been designed to reflect the parallel OSH legislation which operates for the mining industry in WA, the case studies, activities and some detail is designed for the broader range of workplaces covered by the *Occupational Safety and Health Act 1984*.

Training providers who deliver this legislative module for safety and health representatives elected under the *Mines Safety and Inspection Act 1994* may want to develop some activities and resources which are specific to mining industry situations and workplaces, while maintaining the overall content provided by this manual.

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
BREAK		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
LUNCH		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
BREAK		10 mins	355
14.	Tools available to help safety and health representative	15 mins	370
15.	Review/Where to from here?	20 mins	390
TOTAL		6 hours and 30 mins	

About the icons in this manual

These icons are found throughout the facilitators manual and indicate that the facilitator requires an action. The action may include such tasks as displaying Power Point, showing a video etc.



Timing

This icon indicates the timing required for the exercise.



Case study

This icon indicates to the facilitator that the case study will be used for an activity.



Power Point

This icon indicates to the facilitator the appropriate Power Point slide to display.



Group discussion

This icon indicates to the facilitator that butcher's paper and a flip board are required.



Focus point

This icon provides the facilitator with focus points to guide the group discussion.

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1. Introduction and expectations

Greet the group and introduce yourself to the group.

Invite the group to also introduce themselves providing a brief background to their safety and health representative experience and what they hope to take away about OSH legislation. Take note of the expectations, issues or any other issue raised by the group, and if possible ensure they are integrated into the program. If this cannot be achieved, direct them to where they can go to get their identified needs met.



Slide 1 & 2



10 mins

2. Icebreaker: What is OSH?

Display Power Point slide of consideration points for training participants.

- Ask training participants to talk about their experience of safety and health representatives in their workplace, and spend a little time examining some of the challenges/issues that they think may be faced by a safety and health representative in carrying out their functions.
- Discuss the role of legislation in managing OSH, considering both the strengths and weaknesses of relying on a legislative approach to safety and health problems.
- Talk about what sources of support and information are available to safety and health representatives.



15 mins



Slides 3-4



Discuss the sorts of challenges/issues that a safety and health representative can encounter in carrying out their role in the workplace e.g.

- Unsupportive or uninterested senior management/employer;
- Unrealistic expectations of other employees or employer about the extent of role of safety and health representative e.g.: it is not their main job and they are not responsible for solving OSH problems in their workplace;
- Difficulty in accessing legislation, information and support.

Make the following statement to the training participants:

“Your experience as a safety and health representative can be positive and effective if you understand your functions, know how to access information and support and apply the legislation, have good tools to help you, such as good inspection checklists, and have sound communication skills.

Ask them to keep this point in mind and reflect back on it at the end of the legislative training.

3. Introduction to case study

The case study will be used throughout the legislative training module for activities. The activities are designed to allow the safety and health representative to apply the knowledge and information they gain and to develop the practical skills they 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.



5 mins

In reading through the case study for five minutes, **ask** the training participants to imagine they are the safety and health representative.

Listed below are some of the factors which will come up through the activities over the course of the legislative module. **Direct** the safety and health representatives to think about these factors as they read through the case study :

- contract labour hire workers
- shared responsibilities/duty of care between 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
- the interrelationship of the Acts, regulations, codes of practice and guidance notes and application of these in the workplace.



4. What is “consultation”?

Resource requirements:

- flip chart or white board
- butchers paper
- coloured pens
- copies of *Occupational Safety and Health Act 1984* and *Mine Safety and Inspection Act 1994* (incorporating amendments made in 2004) or photocopies of sections of Act setting out objects – Sections 5 and 3 respectively.



10 mins

Invite training participants to use copies of the Acts (or photocopies of relevant sections) to identify the objects of the Acts.

Ask the training participants to join in a brainstorm activity. Why do you think so much emphasis is given to participation and consultation?

This discussion will begin to introduce the style of modern OSH legislation – with its focus on problem solving and processes and less of a reliance on prescriptive detail. This is a difficult and sometimes controversial concept. Ensure the discussion does not get stuck in a debate about the relative merits of prescription versus open ended processes. Instead, clearly highlight the reasons why modern legislation emphasizes consultation and involvement, and note that mandatory minimum requirements for specific hazards and work practices still have a clear role in OSH legislation.



Record the outcomes in the training participant’s notebooks.

Display Power Point slide. The emphasis on consultation...

Explain that the detail on the consultation provisions of the Acts will be examined later.



Slide 5

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

- tripartite Commission recommending OSH policy for WA;
- ongoing involvement and participation of all persons in the workplace;
- safety and health representatives; and
- safety and health committees.

Display Power Point slide – framework...

And that as a result of amendments to the Acts in 2004, 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.

Explain that they will look at this in more detail later.



Slide 6

5. What is the OSH legislative framework?

Resource requirements

- butcher's paper and pens
- flip board
- copies of "Making the workplace safe"
- copies of Guidance note: "General duty of care in Western Australian workplaces"
- copies of OSH Act &/or MSI Act
- copies of plant regulations (Part 4 of OSH Regulations 1996 &/or Part 6 of MSI Regulations 1995)
- copies of front cover of Guidance note: Isolation of plant (Commission for Occupational Safety and Health)
- refer training participants to case study and additional resource on machine guarding



40 mins

(20 mins discussion and 20 mins Activity 1)

Ask the training participants as a group what they think is the OSH legislative framework in WA?

Explain that there are two sets of similar legislation covering OSH in WA – for mines and mining operations and for general workplaces. The basic principles and framework are the same for both.

Note: Petroleum industry is regulated separately.

Display Power Point slide of the legislative framework

Explain how the legislative framework operates in WA – status of Act, regs, codes, guidance notes.

Draw a flowchart on the whiteboard/butcher's paper - if that helps the group to understand it.

Emphasize that the Act is the overriding legislative power and regulations have to meet the purposes of the Act.



Slide 7



Ask the training participants:

- what do you understand to be the status of the Act?
- what do you understand to be the status of the regulations?
- what role do codes of practice play in the legislative framework?

Write their answers on butcher's paper and discuss/clarify any points.

Ask training participants to read the material provided under Section 5, Legislative framework, of their workbook.

Refer training participants to the case study outlined in their workbooks.

Divide training participants into small groups for the purposes of Activity 1.

Go through the instructions provided to training participants for Activity 1.



Activity 1
(using case study)

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



45 mins

Ask training participants:

What do you think is meant by a ‘duty of care’?

(30 mins discussion
15 mins Activity 2)

Write answers on butcher’s paper/white board



Explain that ‘duty of care’ or general duties describe broad responsibilities for a wide range of people associated with the work environment.



Slide 8

Provide example of employer’s broad duties.

Ask training participants:

- Who else do you think has a duty of care for health and safety associated with the working environment?



Slide 9

Write answers on butcher’s paper/white board.



Explain what is meant by **statute law** and **common law**

Explain how ‘duty of care’ has been taken from common law and written down in the OSH and MSI Acts (and in UK and across Australia).



Slides 10-12

Explain the key differences in how ‘duty of care’ works under statute law as opposed to under common law.

Make the following statement to the group:

“Many of the general duty provisions say that something only has to be done ‘.... As far as is practicable’.”

Ask the group their opinion about what ‘practicable’ means.



Slides 13-15

Discuss their answers and explain what the legislation requires.

Explain that in practical terms, the application of the duty ‘...to provide a safe work environment so far as is practicable’ involves



Slide 16

- hazard identification
- risk assessment
- risk control

Explain that hazard identification and risk management is covered in detail in Module 3 of the course, and is a key skill area.

Make the following statement:

“The focus of the OSH Act and MSI Act is duties, processes and prevention.”

Ask the group their opinion of the statement.

Write their responses on butcher’s paper/white board.



Ask training participants to read the material provided under Section 6, Duty of care, of their workbook.

Refer training participants to the case study outlined in their workbooks.



Activity 2

(using case study)

Divide training participants into small groups for the purposes of Activity 2.

Go through the instructions provided to training participants for Activity 2.

7. Amendments to the Acts

Explain that recent amendments to both the OSH and MSI Acts have significant implications for safety and health representatives – and in particular the provision for safety and health representatives to issue PINs.



10 mins

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 Provisional Improvement Notices (PINs) in the introductory safety and health representative course.

Provide a brief overview of the amendments to the OSH Act (and/or the MSI Act depending on the group being trained) resulting from the 2002 review of the Acts by former Australian Industrial Relations Commissioner Robert Laing.

Overview of changes to OSH Act which are also reflected in changes to the MSI Act:

More detail on some of these changes will be covered throughout the legislative module and in subsequent modules.



Slides 17-21

Full details of the legislative amendments for both the OSH Act and the MSI Act should be available on:

www.safetyline.wa.gov.au or on

www.doir.wa.gov.au or

by contacting either the WorkSafe Division of Department of Consumer and Employment Protection or the Department of Industry Resources.

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

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

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
- Copies of OSH and MSI Acts
- Case study from Section 3 of this module.

Explain :

- You are looking briefly at key sections of the Act(s) and duties that safety and health representatives need to be familiar with and know how to access and apply.
- There is not time to cover all duties in the Act and therefore it is important training participants know how to find information and assistance. This has been and will be emphasized throughout their 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 and employee's duties



30 mins

Outline the **employer's** and the **employee's** duties under the Act.



Slides 22-25

Clarify the relationship between an employer and a manager or supervisor.

You may need to **draw a flowchart** on the white board or butcher's paper to show how the relationship works in practice e.g.: how an employer can be an individual or a body corporate, and how the employer may or may not be the same person as the manager or supervisor.



You will also need to **clarify** the responsibilities of the manager or supervisor where they are not the employer.

Go through the instructions for Exercise (8) 1 for with training participants – uses case study



Exercise (8) 1

Contractors, labour hire and other employment arrangements

Ask training participants to identify as many alternative employment arrangements as they can?

Write the answers on the board, and **discuss** why changes were needed to the OSH Act 1984 and MSI Act 1994 to deal with these situations.

Point out that this is one of the problems of relying on legislation alone to fix OSH problems – i.e. the legislation sometimes lags behind what is going on in the real world. This is because of the time needed to get legislation drafted, agreed to and passed through Government. There are, and must be, other drivers for OSH!

Explain the provisions applying to principals and contractors.

Display Power Point slides – contractors.

Explain the concept of “.... Capacity to exercise control”.

Display Power Point slides – control...

Go through and discuss the **example** provided of an electrical sub-contractor doing maintenance work on the roller-conveyor system described in the case study.

Ask them if they can think of another example of a situation where a party may have control over some aspects of the work and not over others. An example could be where a delivery driver is out on the public roads as part of his or her work duties.

Explain the coverage provided to labour hire companies and the workers they place.

Display Power Point slide – labour hire...



30 Mins



Slide 26



Slide 27



Slide 28....

Go through the instructions for Exercise (8) 2 with training participants – uses the case study.



Exercise (8) 2

Other duty holders

Direct training participants to where to go to get detailed information on other duty holders such as designers, manufacturers.....

Explain that there is some critical information that should be in the workplace from these duty holders eg: operating instructions for plant, MSDS for substances such as chemicals.

You may want to **provide examples** of designer/manufacturer instructions and MSDS to hand around.

Point out that the safety and health representative has a right to access this information and the employer has a duty to provide it.



9. Election of safety and health representatives and committees



20 mins

Essential resources – copies required for Activity 3

- butcher's paper and pens
- Part IV of the OSH Act 1984 and Part V of the MSI Act 1994 (including 2004 amendments);
- Guidance note: Election of safety and health representatives, Representatives and committees and Resolution of issues – Commission for Occupational Safety and Health; and/or
- Guide to the *Mines Safety and Inspection Act 1994* – Safety and health representatives— Department of Industry and Resources.

Make the following comments to the training participants:

- The objective of this session is not to go through in great detail the election procedures but to get you to use information available to access and apply those sections of the OSH and MSI Acts.
- You will all have been through an election process yourselves and already be familiar with what is required. However, it is important to keep up to date and familiar with the election requirements and procedures.

Ask the training participants to see if they can remember the legislative amendments briefly looked at earlier that related to safety and health representatives and committees. Get them to jot them down before you go back over the relevant 2004 amendments with them.

Explain the new provisions introduced in 2004 that allow for greater flexibility in the arrangements for representation and committees.

Display Power Point slides - consultation provs...



Slide 29

Refer training participants to the Scenario outlined in their workbooks for Activity 3.

Divide training participants into small groups for the purposes of Activity 3.

Go through the instructions provided to training participants for Activity 3.

Make sure all groups have access to the relevant sections of the OSH and MSI Acts and the Commission's guidance note on the election process.

Provide groups with butcher's paper and pens.

S&H Committees

Explain that safety and health representatives can play a vital role in making safety and health committees work effectively.

Safety and health representatives should represent other employees and provide feedback to the workforce.

Direct the training participants to the relevant sections of the Acts (Section 40 of the OSH Act and Section 63 of the MSI Act) and guidance notes.

Ask training participants:

“What do you think are the key factors that would make a committee effective?”

Write their answers on butcher's paper/white board and add any extra that are important.

Explain provisions that make it an offence to discriminate against safety and health representatives.

Display Power Point slide. Discrimination...

Activity 3

(using Scenario in workbooks)



Slide 30

10. Resolution of issues



20 mins

Resources:

- butcher's paper and pens;
- 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.

10 mins Overview
10 mins Role
Play Exercise
(10) 3

ROLE PLAY EXERCISE:

Explain that at the end of this section training participants will all take part in small role play exercise involving a safety and health issue.

Explain the “issue” that will form the basis of the role play - outlined in training participants workbooks.

Issue resolution

Explain the difference between an “issue” and a “dispute”.

Ask training participants:

“Have you had an experience of an “issue” where there has been disagreement between the employer and employees in your workplace?”

Discuss any experiences raised and what the outcomes were, and write down on white board/butcher's paper.

Ask training participants:

“What do you think are some of the factors that might help issues to be resolved effectively in workplaces?”



Write down answers on white board/butcher's paper.

Outline what the OSH and MSI Acts require.

Display Power Point slides.



Slides 31-33

Emphasise that the focus is on sorting out the problem at the workplace. An inspector is usually only involved as a last resort.

Explain the “right to refuse unsafe work”

in cases of immediate risk of serious injury or harm to employees or other persons at the workplace.

Display Power Point slide....



Slides 34-36

Role play exercise conducted

Divide training participants into groups.

Go through instructions for the Role Play Exercise (10) 3 (in training participant’s workbooks)

Make sure each group has given a role to each person in that group.

Provide each group with butcher’s paper and pens.

At the end of the 10 minute exercise **ask** each group to nominate a representative for the group to report on their experience, the discussions and outcomes.

**ROLE PLAY
Exercise
(10) 3**

11. Role of inspectors and enforcement

Make the following point.

“One of the important relationships you may form as a safety and health representative is with inspectors”

Explain what reasons an inspector is likely to visit a workplace.

Point out where enforcement is covered in the OSH Act and the MSI Act.

Outline the powers of an inspector.

Display Power Point slide. - powers...

Explain what an Improvement Notice is and what a Prohibition Notice is.

Display Power Point slide – notices...

Provide training participants with examples of:
Both types of notices

Available from WorkSafe’s Policy Unit

- Review forms

Available from www.safetyline.wa.gov **under the section headed “laws” for OSH Act or from offices of Mines’ inspectors for MSI Act.**

Go through instructions for Activity 4 with training participants (uses case study)



10 mins



Slide 37



Slides 38-40



Activity 4

12. What are the functions of safety and health representatives?



30 mins

What are the duties of employers in working with safety and health representatives?

Make the following comment:

“This section is really what the introductory training for safety and health representatives is all about. The knowledge and skills you have been working on so far, and will continue to work on for the rest of the course, are all about helping you carry out your functions as a safety and health representative – so that you can be effective in your workplace.”

Divide training participants into small groups for this activity. **Provide** butcher’s paper and pens.

Exercise (12) 4

Note: This exercise should be done without any reference to resources, notes or any other materials. It is designed to get training participants to identify what they think their role is and what some of the questions/issues are for them in carrying out their role.

Go through instructions for Exercise (12) 4 with training participants.

Facilitate a discussion with the whole class.



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.

Direct training participant to the table outlining the functions of a safety and health representative in the Handbook for safety and health representatives.



Slides 41-48

Explain how safety and health representative functions will be covered in detail throughout the subsequent 4 Modules for the safety and health representative introductory training course.

Go through what an employer has to do to assist the safety and health representative carry out their functions.



Slide 49-50

Emphasise that the Act encourages cooperation and consultation - and that all parties have a duty to each other and to work together to find solutions.

Divide training participants into small groups for this activity. **Provide** butcher's paper and pens.



**Exercise
(12) 5**

Go through instructions for Exercise (12) 5 with training participants – uses case study

Facilitate a discussion with the whole class.

13. How do I use Provisional Improvement Notices?



15 mins

Note: This is an introduction to the new legislative provisions for safety and health representatives to issue PINs in their workplace. Module 5: Conflict Resolution and Provisional Improvement Notices (PINs) will develop safety and health representatives practical knowledge and skills in this area.

Ask the training participants the following question:

“What do you think a provisional improvement notice or PIN is and do you think they could be misused?”

Facilitate discussion and write answers on white board or butcher’s paper.



Explain that PINs were only introduced in 2004 and are intended to provide safety and health representatives with some authority given their important role in bringing employees safety and health concerns to the attention of the employer.

Emphasise the point that only safety and health representatives who have been trained to do so can issue PINs.



Display Power Point slide.



Explain that this is because **PINs** are a powerful tool and **must be used appropriately**.

Slides 51-54.

Show where in the OSH Act and MSI Act PINs are dealt with.

Go through the provisions that control the use of PINs.

Display Power Point slides (controls...)



Slides 52

Make the following key points:

- 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 has occurred in circumstances that make it likely it will continue to be repeated.
- 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 evidence you need and provide you with “reasonable grounds” for forming your opinion.



Explain that in Module 5 of this introductory training course training participants will develop more detailed knowledge and skills in such areas as:

- how to fill out a PIN;
- how to gather your evidence eg: 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.



Slides 54

What training participants should know now is:

- what a PIN is;
- in what situations they can issue PINs eg: the things they must do before they issue a PIN – or “the controls”;
- that failure to do these things could result in sanctions or their disqualification; and
- where to look in the Act(s).

Divide training participants into small groups for this activity, and provide butcher’s paper and pens.

Go through instructions for Activity 4 which uses the case study.



Activity 4

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



15 mins

If possible, **provide** an interactive session using Safetyline or the Department of Industry Resources website.

Guide training participants through the “Link” service provided by www.safetyline.wa.gov.au to other useful OSH and related sites for WA, National and International.

Show the relevant entry points to the website eg: law (access to statutory forms online as well as the Act and regs), significant incident reports, prosecutions, bulletins, publications etc.

Safety and health representatives online

A news and information website dedicated to safety and health representatives has been created at

www.safetyline.wa.gov.au/safetyrep

15. Review

Invite the group to re-look at what they identified at the beginning of the legislative module as their expectations for the course; and to consider whether those expectations for this module have been met.



20 mins

For the expectations that were beyond the scope of the legislative module, **direct** training participants again to where they can go to get their identified needs met.

Invite questions.

Provide a brief overview of the next four modules – which have already been considered throughout the day.