



# Changes to the *Occupational Safety and Health Act 1984* - December 2009 and July 2010

In November 2009, the *Occupational Safety and Health Legislation Amendment Act 2009* ('Amendment Act 2009') passed through Parliament. When it was assented to in December 2009, the Amendment Act made changes to the OSH Act and the *Industrial Relations Act 1979*. Additional changes were made to the OSH Act on 13 July 2010, when the proclamation of certain sections of the Amendment Act 2009 and certain sections of the *Occupational Safety and Health Legislation Amendment and Repeal Act 2004* ('Amendment Act 2004') were published in the *Government Gazette*. Consequential regulation amendments were required in relation to the Amendment Act 2009 and these were contained in the *Occupational Safety and Health Amendment Regulations (No. 2) 2010* ('Amendment Regulations'), published in the *Government Gazette* on 9 July 2010.

The details of the changes are that:

- (i) Under **Section 3 Interpretation**, Section 3(4) has been amended to insert a reference to the Crown being the employer of police officers so that it is explicit who is the employer of police officers.
- (ii) Under **Section 23D Contract work arrangements**, Section 23D(2) has been amended to reference the penalty provision, Sections 19A, to make it explicit which penalty provision applies. Section 23D(3) has also been amended to reference Sections 20A, 23H and 23J, to make it clear which are the relevant penalty provisions.
- (iii) Under **Section 23E Labour arrangements**, Section 23E(2) is amended to reference Section 19A, to make it explicit which penalty provision applies. Section 23E(3) has also been amended to reference Sections 20A and 23J, to make it clear which are the relevant penalty provisions.
- (iv) Under **Section 23F Labour hire arrangements**, Section 23F(4) is amended to reference the penalty provision, section 19A, to make it explicit which penalty provision applies. Section 23F(5) has also been amended to reference Sections 20A and 23J, to make it clear which are the relevant penalty provisions.
- (v) Under **Section 33 Functions of safety and health representatives**, Section 33(2) has been amended to change the word "Part" to "Act". This is to make it clear that the rights and responsibilities of representatives extend to the issuance of PINs, as for their other functions.
- (vi) Under **Section 35 Certain duties of employers in relation to safety and health representatives and committees**, Section 35(1)(g) has been amended with the word "Part" changed to "Act". This is to make it clear that the employer's obligation to provide facilities and assistance to representatives to enable them to carry out their functions extends to the issuances of PINs.
- (vii) Under **Section 43 Powers**, Section (1)(k)(i)(II), the reference to Section 39G(2) is changed to Section 23G(2) to fix an error.

- (viii) Under **Section 51A Further review of notices (by the OSH Tribunal)**, the reference to using a prescribed form has been removed. This is to allow the WA Industrial Relations Commission form to apply, as they do for other referrals to the OSH Tribunal. This has meant that regulation 2.8(3) and form 6 of Schedule 2 of the OSH Regulations are no longer required and they have been removed via the above Amendment Regulations.
- (ix) **Review of Commissioner's decisions under the regulations** – a new section, section 61A, is inserted into the OSH Act. This provides for referral of decisions and determinations under the OSH Regulations to the OSH Tribunal for further review, after the WorkSafe Western Australia Commissioner has reviewed them. (Previously, they had to be referred to the safety and health magistrate.) This has meant that regulation 2.16 is no longer needed and it has been repealed under the above-mentioned Amendment Regulations. Section 51(G) is also amended to reference section 61A.
- (x) **Various matters relating to the WA Industrial Relations Commission Commissioner who oversees the OSH Tribunal** – various minor changes are also made in relation to the designation of the Commissioner to exercises jurisdiction. Section 51H is amended plus changes are made to relevant sections under the *Industrial Relations Act 1979*.
- (xi) Now that matters under the OSH Regulations can be referred to the OSH Tribunal, the sections in the OSH Act providing for referral of non-prosecutorial matters to the safety and health magistrate have been repealed. In particular, sections 54B(2), (3) and (4) have been removed from the OSH Act. This was enacted by the above-mentioned proclamation of certain sections of the 2004 Amendment Act.
- (xii) **The consequential regulation amendments** were repeal of regulation 2.8(3), regulation 2.16 and Form 6 of Schedule 2 of the OSH Regulations and repeal of regulation 96(2)(b) of the Industrial Relations Commission Regulations 2005.

For further information please contact WorkSafe Policy Branch on 93278777.

For copies of the relevant legislation go to the [State Law Publisher website](#) or the Parliament web site for a copy of the explanatory memorandum for the Amendment Act 2009 and the Amendment Act 2004.

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