

**GUIDANCE NOTE**  
**FORMAL CONSULTATIVE  
PROCESSES AT THE  
WORKPLACE**

---

2 0 0 6

Safety and health representatives, safety and health committees and resolution of safety and health issues, including consultation on PINs

**commission  
for occupational  
safety and health**

**MIAC**

# FOREWORD

---

This guidance note is issued by the Commission for Occupational Safety and Health (the Commission) and its Mining Industry Advisory Committee (MIAC) under the provisions of the *Occupational Safety and Health Act 1984* (the OSH Act) and the *Mines Safety and Inspection Act 1994* (the MSI Act).

The introduction of the OSH Act enabled the establishment of the tripartite Commission, which comprises of representatives of employers, unions and government, as well as experts. It has the function of developing the legislation and any supporting guidance material and making recommendations to the Minister for Employment Protection for their implementation. To fulfill its functions, the Commission is empowered to establish advisory committees, hold public inquiries, and publish and disseminate information.

The Commission's objective is to promote comprehensive and practical preventive strategies that improve the working environment of Western Australians. This guidance note has been developed through the tripartite consultative process and the views of employers and unions, along with those of government and experts, have been considered.

## Scope of this guidance note

---

This guidance note applies to all workplaces in Western Australia covered by the OSH Act or the MSI Act. It should be used by all people involved in workplace occupational safety and health consultative arrangements established under these acts. It provides explanatory information to employers and employees about their rights and responsibilities on the election and function of safety and health representatives, establishment and function of safety and health committees, Provisional Improvement Notices (PINs) and resolution of safety and health issues at the workplace.

## Application of this guidance note

---

This guidance note covers some of the legislative requirements. However, it is not possible to deal with every situation that may be found at workplaces. Its practical guidance should be considered in conjunction with:

- the OSH Act;
- the Occupational Safety and Health Regulations;
- the Commission's Guidance note – *The general duty of care in Western Australian workplaces*;
- the MSI Act
- the Mines Safety and Inspection Regulations 1995 (the MSI Regulations); and
- Resource Safety's Guideline – *General duty of care in Western Australian mines*.

## Legislative framework for occupational safety and health

---

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

The OSH Act provides for the promotion, co-ordination, administration and enforcement of occupational safety and health in Western Australia. It applies to all industries with the exception of mining and petroleum.

With the objective of preventing occupational injuries and diseases, the OSH Act places certain duties on employers, employees, self-employed people, manufacturers, designers, importers and suppliers.

The broad duties established by the OSH Act are supported by a further tier of legislation, commonly referred to as regulations, together with lower tiers of non-legislative codes of practice and guidance notes.

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

The OSH Regulations have the effect of spelling out specific requirements of the OSH Act. They may prescribe minimum standards and have a general application, or define specific requirements related to a particular hazard or type of work. They may also allow licensing or granting of approvals and certificates etc.

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

The MSI Act sets objectives to promote and improve occupational safety and health at mines and mining operations in Western Australia.

The MSI Act sets out broad duties, and is supported by regulations, together with codes of practice and guidelines.

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

The MSI Act is supported by the MSI Regulations, which provide more specific requirements for a range of activities. Like the MSI Act, regulations are enforceable and breaches may result in prosecution, fines or directions to cease operations and undertake remedial action.

## Guidance notes

---

A guidance note is an explanatory document providing detailed information on the requirements of legislation, regulations, standards, codes of practice or matters relating to occupational safety and health as approved by the Commission and its Mining Industry Advisory Committee.

Disclaimer Information in this publication is provided to assist people in meeting occupational safety and health obligations. Changes in law after this document is published may impact on its accuracy. While it is correct at the time of publication, readers should check and verify any legislation referenced to ensure it is current at the time of use.

The Commission provides this information as a service to the community. It is made available in good faith and is derived from sources believed to be reliable and accurate at the time of publication.

# Contents

Part 1	Formal consultative processes at the workplace. . . . .	1
Part 2	Safety and health representatives . . . . .	3
2.1	Initiating the election process . . . . .	4
2.2	Running the election.. . . .	10
2.3	Functions of elected safety and health representatives . . . . .	14
2.4	Disqualification of safety and health representatives . . . . .	18
2.5	Employers' duties to safety and health representatives . . . . .	19
Part 3	Provisional improvement notices (PINs). . . . .	24
3.1	Issuing PINs . . . . .	25
3.2	Review of PINs . . . . .	27
Part 4	Safety and health committees . . . . .	29
4.1	Setting up a safety and health committee. . . . .	29
4.2	Functions of safety and health committees.. . . .	35
4.3	Safety and health committee procedures and meetings.. . . .	38
Part 5	Discrimination against safety and health representatives and safety and health committees . . . . .	40
Part 6	Resolution of safety and health issues . . . . .	42
6.1	Procedures . . . . .	42
6.2	Unresolved issues . . . . .	45
6.3	Refusal to work . . . . .	46
Appendix 1	Other sources of information . . . . .	49
Appendix 2	Provisional improvement notice (PIN) form . . . . .	51
Appendix 3	Acts and regulations referenced in this guidance note . . . . .	53



## Part 1 Formal consultative processes at the workplace

Consultation is emphasised in the *Occupational Safety and Health Act 1984* (the OSH Act) and the *Mines Safety and Inspection Act 1994* (the MSI Act), with an obligation placed on employers to consult employees and safety and health representatives, where they exist, on safety and health at the workplace. To complement this, employees have a duty to cooperate with their employer on safety and health matters.

Effective consultation involves seeking views on relevant safety and health issues from those at the workplace and engaging in common discussion to achieve accepted outcomes.

This guidance note provides practical information on the more formal processes for consultation at the workplace set out in the OSH Act and MSI Act. These are:

- elected safety and health representatives – employees elected by co-workers to represent them in consultation about safety and health matters with the employer. They must be elected according to a process set out in the OSH Act and MSI Act, which also set out particular functions for them to perform at the workplace, such as liaising with employees on safety and health issues and reporting hazards to the employer;
- safety and health committees – formal safety and health groups that provide a planned forum for discussion on safety and health matters. They must be set up according to requirements in the OSH Act and MSI Act, which also set out particular functions for them to perform at the workplace, such as making recommendations on safety and health matters; and
- issue resolution procedures – the OSH Act and MSI Act set out a specific process for dealing with safety and health issues at the workplace in a consultative manner and resolving them as they arise. These both require the development of an agreed issue resolution procedure. Where one is not developed, a default procedure must be used, as set out in the Occupational Safety and Health Regulations (the OSH Regulations) or the Mines Safety and Inspection Regulations (the MSI Regulations).

Setting up formal processes, involving employers, employees and others at the workplace, is a recognised way of working towards improving safety and health outcomes.

Consideration could also be given to less formal workplace arrangements that may assist in meeting the requirement to consult and cooperate with employees on safety and health. For example:

- making safety and health a standing agenda item at workplace meetings, eg on staff, team and/or employee representatives' committee meetings;
- ensuring safety is discussed at toolbox meetings; and
- implementing email safety bulletins or newsletters to encourage discussion and feedback on issues.

See Sections 19(1)(c), 20(3) and 40 of the OSH Act and Sections 9(1)(c), 10(3) and 63 of the MSI Act.

See Sections 24 and 25 of the OSH Act and Regulation 2.6 of the OSH Regulations or Sections 70 and 71 of the MSI Act and Regulation 2.5 of the MSI Regulations.

### ***Separate roles of representatives and committees***

Safety and health representatives and safety and health committees have separate but complementary roles at the workplace. Where both are set up, one of the functions of the safety and health representative is to refer unresolved safety and health issues and/or matters of policy or procedures to the safety and health committee so they can be discussed in a forum.

### ***Setting up representatives and committees***

Safety and health representatives and safety and health committees must be set up where an employee gives notice to the employer or, in the case of safety and health committees, when the WorkSafe Western Australia Commissioner, State Mining Engineer or a regulation requires them to be established. They may also be set up when an employer chooses to do so.

### ***Benefits of representatives and committees***

Safety and health representatives and safety and health committees may:

- assist employers to meet their obligations to consult employees on safety and health matters, and employees in their duty to co-operate with the employer on these matters;
- provide planned opportunities for exchange of knowledge, experience and ideas about safety and health between employees, employers or their representatives and other workers;
- assist in identifying hazards before injury, illness or incident occur and elimination or reduction of their risks;
- assist in dealing with safety and health matters in an efficient and co-operative manner, ie provide ways of gaining agreement and achieving outcomes generally accepted by all;
- provide a way of identifying individual safety and health roles and practical safe work procedures;
- assist with developing an involvement with and commitment to improving safety and health practice;
- assist in identifying necessary training, supervision, information and instruction; and
- with safety and health committees, assist in the resolution of safety and health issues.

The overall benefit of safety and health representatives and safety and health committees is that they may provide proactive, systematic ways for dealing with issues, rather than a reactive approach dealing with them as they arise.

## Part 2 Safety and health representatives

Safety and health representatives are elected by co-workers to represent them in safety and health matters. Under the OSH Act, they have specific functions to carry out at the workplace, such as inspections and reporting on hazards.

Safety and health representatives can be an effective part of a consultation system at the workplace due to their important role in increasing participation and constructive discussion about safety and health. However, they are not the same as safety and health officers or coordinators and are not responsible for solving safety and health matters at the workplace.

Employees can be 'best placed' to know about specific hazards and risks in their work area and the benefit of having a trained safety and health representative is that they can listen to concerns and present them to the employer or management.

In some cases, employees may also be more comfortable talking to their safety and health representative, who can in turn help employers by communicating viewpoints and opinions about specific matters, allowing them to gather information and make appropriate decisions.

The roles of safety and health representatives and safety and health committees are complementary, and elected safety and health representatives are expected to work constructively with the committee where one exists. The role of the safety and health committee is essentially that of a workplace advisory group to review safety and health issues and make recommendations; whereas the role of the safety and health representative essentially involves inspecting, investigating, reporting and liaising on safety and health matters.

*See Sections 33 and 40 of the OSH Act and Sections 53 and 63 of the MSI Act.*

### **Establishing safety and health representatives**

The process to establish safety and health representatives at the workplace can be initiated by either the employer or employee(s). When an employee makes a request for them, the employer must undertake the steps set out in the OSH Act or the MSI Act, as applicable, to establish them at the workplace.

*See Sections 29, 30 and 31 of the OSH Act and Sections 54 and 55 of the MSI Act.*

Before establishing safety and health representatives at the workplace, a process of consultation for an election must be carried out between the employer and an employee delegate/employee delegates to obtain agreement on certain issues.

It is important that safety and health representatives are elected according to the procedures set out in this guidance note, which reflect the requirements in the OSH Act and MSI Act. This is to ensure that:

- the election process is valid and does not have to be repeated;
- safety and health representatives can receive recognition at the workplace as 'official safety and health representatives'; and
- safety and health representatives have a level of protection from civil liability under the legislation.

*See Section 33(3) of the OSH Act and Section 53(3) of the MSI Act.*

See Section 32 of the OSH Act and Section 57 of the MSI Act.

### Terms of office

Safety and health representatives are elected for a term of two years to represent employees in an area, workplace or group determined during a consultation process prior to the election.

A safety and health representative ceases to hold their position if he or she:

- leaves their job;
- resigns from the position;
- is not re-elected;
- transfers from the area they were elected to represent; or
- is disqualified by the Occupational Safety and Health Tribunal (OSH Tribunal).

See Section 34 of the OSH Act and Section 59 of the MSI Act.

## 2.1 Initiating the election process

The following stages (steps) of consultation (shown in Figure 1) must be followed for the election of safety and health representatives.

### Step one: employee(s) give notice or employer makes an invitation

The election process is initiated by:

- an employee/employees giving notice (a request) to the employer, requesting the election of one or more safety and health representatives for the workplace. They can give notice either on their own initiative or on behalf of a group of employees. Preferably, it should be in writing so a date is on record; or
- an employer inviting employees to appoint a delegate or delegates to consult on the election process, where they require election of a safety and health representative/representatives.

Where either of the above occur, a consultative process, set out below, must be undertaken.

### Step two: employer responds within 21 days

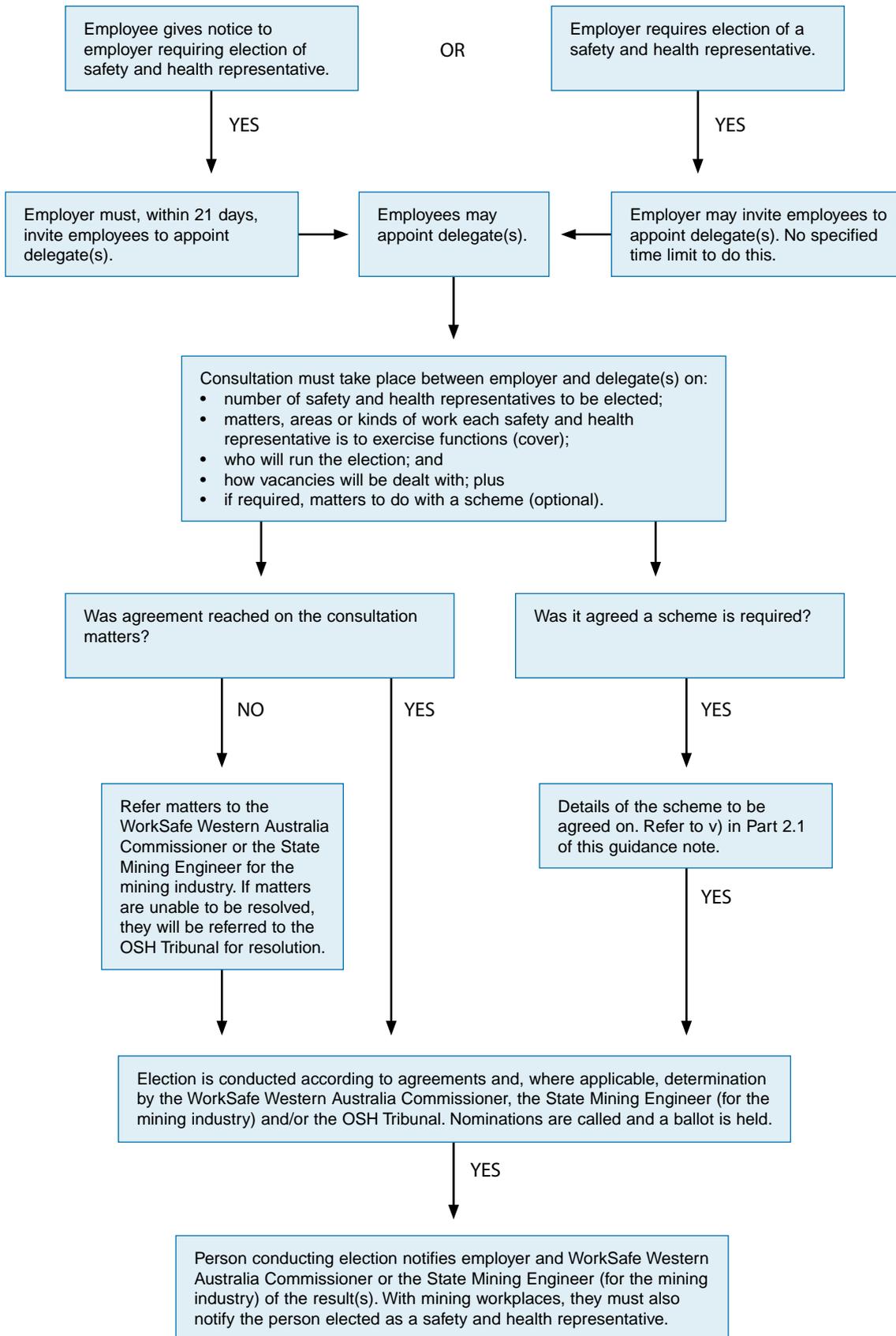
When an employee has started the process by giving notice, the employer must respond within 21 days by inviting employees to appoint one or more delegates to represent them in consultations.

This does not mean that the election must be held within 21 days, just that the employer must acknowledge their intention to commence discussions on the election of safety and health representatives. Elections should be held within a reasonable period of receiving the notice.

See Sections 29 and 30(2) of the OSH Act and Sections 54(1) and 55(2) of the MSI Act.

See Section 30 (1) of the OSH Act and Section 55(1) and (2) of the MSI Act.

Figure 1: Election of safety and health representatives



See Section 30(3) of the OSH Act and Section 55(3) of the MSI Act.

### Step three: employees appoint delegates

Employees may select delegates for the consultation process with the employer to set up an election of safety and health representatives.

Delegates must be employees from the workplace. They are not considered to be safety and health representatives; instead they are 'delegates', selected by employees to enter into consultations and represent their interests in discussions with the employer on a range of issues relating to the election and roles of safety and health representatives.

#### How to select employee delegates

The way to select delegates is not specified in the OSH Act or MSI Act. Generally, the best method for employees to appoint a delegate is to hold a meeting and conduct a ballot of all those concerned. This need not be formal, rather it can be a show of hands, or another method the employees concerned agree on. However, it is important that the people who become delegates can demonstrate that their selection was supported by their co-workers.

Employees and delegates may seek assistance or guidance from union officers. However, only delegates from within the workplace may participate in the consultation with the employer. Similarly, employers may seek advice from their employer organisations. However, these organisations cannot participate in the consultations.

See Sections 30, 30A, 30B and 30C of the OSH Act and Sections 55, 55A, 55B and 55C of the MSI Act.

### Step four: consult on safety and health representatives and the election process

Once the employee delegates are appointed, the next stage is for consultation to begin between the employer and the employee delegates and agreement obtained on certain matters relating to the safety and health representatives and their election. Failure to consult with appointed delegates could result in an invalid election.

#### Safety and health representative matters to be agreed – an overview

During the consultative discussions, the employee delegates and the employer must discuss and agree on:

- i) the number of safety and health representatives to be elected;
- ii) the functions each safety and health representative will carry out, ie the matters, areas or kinds of work they will cover;
- iii) the running of the election, ie who will run it and how;
- iv) what will happen if a vacancy arises during the term of office; and
- v) if a scheme is required, additional matters relating to it, such as coverage of various shifts and periods of absence, eg annual leave and long service leave. Note schemes are not compulsory.

Once the above matters have been agreed, the election may be held according to requirements under the OSH Act or MSI Act, as relevant.

Unresolved matters may be referred to the WorkSafe Western Australia Commissioner or, for mines, the State Mining Engineer.

- i) Determine the number of safety and health representatives and ii) determine their functions

Although the parties in the consultative discussions must determine the number of safety and health representatives to have at a workplace and the matters, areas or kinds of work in which each will carry out functions, the OSH Act and MSI Act do not specify how to do this.

The parties may consider there should be different safety and health representatives elected to carry out functions in relation to separate matters or different kinds of work. For example, it may be agreed that the workplace needs:

- a safety and health representative to cover matters relating to new employees entering the workplace and additional safety and health representatives to cover other matters; and/or
- a safety and health representative to cover hazardous work; and/or
- a safety and health representative to cover specific work requiring particular expertise.

In agreeing on the number and the function of each safety and health representative, factors to consider include:

- the size of the workplace(s) and number of employees;
- the location(s) of the workplace(s);
- the boundaries of the workplace – the areas of the workplace must be determined. For example, the parties may decide that the workplace constitutes:
  - the whole organisation;
  - a separate functional area, such as the administration, stores or workshop; or
  - a separate geographical unit, such as the head office or a branch office;
- the coverage of all work areas by a safety and health representative;
- the type of work being done;
- the shift work arrangements, if applicable;
- the types of hazards that exist;
- the time needed for safety and health representatives to perform their functions;
- the safety and health representatives' access to the workplace(s);
- the accessibility of employees to a safety and health representative;
- the means by which safety and health representatives can communicate with the employees when they are in remote areas; and
- the training requirements for proposed safety and health representatives.

Giving each safety and health representative position a different title that reflects their particular function and/or a clear description of the boundaries may assist during the election, so everyone knows which matters, areas or kinds of work they will cover.

It is important the matters, areas or kinds of work each safety and health representative will represent are clearly defined, before nominations are called, to ensure all eligible people have the opportunity to nominate for a position.

- iii) Determine the running of the election

The parties must agree on who is to conduct the election. For example, they may choose that it be:

- an employee at the workplace who does not wish to be a candidate. People wishing to nominate as a safety and health representative should not conduct the election. To avoid this occurring, a person should not be chosen to conduct the election, without their agreement being obtained first;

*See Sections 30(4) and (5) of the OSH Act and Sections 55(4)(c) and (5) of the MSI Act.*

- a person acceptable to both parties;
- the Electoral Commissioner or their delegated officer;
- a union; or
- an employer organisation.

The OSH Act and MSI Act specifically mention that the 'Electoral Commissioner' and 'an organisation registered under Part II Division 4 of the *Industrial Relations Act 1979*', eg a union or an employer organisation, can be requested to conduct an election. However, this does not mean the parties must select one of them. They are examples only. The parties may agree upon another internal or external person or organisation. Any dispute over this matter can be referred in writing to the WorkSafe Western Australia Commissioner or, for mines, the State Mining Engineer, for resolution.

During the consultation period, the parties should consider:

- communication issues – how to notify all employees of their right to nominate;
- access issues – how to ensure all employees are given the opportunity to vote; and
- practical election issues – these are usually overseen by the returning officer and include checking eligibility of candidates and developing an election timetable, eg closing time for nominations and the date of the ballot, which must be secret.

iv) Determine what will happen when vacancies occur

Agreement will have to be reached on what will happen if vacancies arise during the safety and health representative's term of office, as there will be instances when they leave the position before their term has finished, eg when they cease employment.

The parties may not wish to undergo a full election to replace a safety and health representative, so they have to consider during the consultation period what will happen with vacancies. In a workplace where a number of safety and health representatives are elected, the filling of a vacancy for the balance of the term might be desirable to ensure all terms expire at the same time and enable new elections to occur simultaneously.

To enable this to occur, the parties will need to agree on all the details 'up front', before the original election is conducted. For example, it may be agreed that to deal with casual vacancies:

- a 'mini election' will be held, confined to a particular group of employees; or
- the candidate who received the next highest number of votes at the original election, but did not secure a position, will become the safety and health representative.

Whichever process is chosen, the parties should consider and agree on all the details that will happen should vacancies occur, before the election is conducted.

v) Determine a scheme (optional)

If the parties require more flexibility in the election of safety and health representatives, then a 'scheme' may be considered and agreed on. Schemes are optional and allow the parties at the workplace to implement arrangements for safety and health representatives not possible under the procedures discussed above.

During the consultative discussions, the parties may agree, for example that they will have a scheme that allows:

- one or more safety and health representatives to be elected to represent a group of mobile workers or specific occupations or workers covered by a particular union, award or agreement;
- one or more safety and health representatives to be elected to cover more than one workplace or a distinct unit. An example might be where the employer runs two similar businesses out of two workplaces, and the safety and health issues are similar, and the parties want the safety and health representative(s) to cover both workplaces;

See Section 30(4)(ba) of the OSH Act and Section 55(4)(bb) of the MSI Act.

See Sections 30(4a), 30A and 30B of the OSH Act and Sections 55(4)(a), 55A and 55B of the MSI Act.

- one or more safety and health representatives to be elected to cover both a group of workers and more than one workplace. For example, the parties may agree that a safety and health representative is to cover all the plumbers who work for the employer at all their workplaces; or
- contractors and their employees to be treated as an employee for purposes relating to safety and health representatives. This means that these people can vote in safety and health representative elections and be nominated for election.

If the additional flexibility provided by a scheme is sought, then it must be discussed as part of the consultation discussions on the other election matters (outlined in the steps on the previous pages), before the election is held.

Schemes are not compulsory and may not suit all workplaces.

### Issues to agree on for a scheme

If the parties agree to have a scheme, they need to:

- identify and clearly define the workplaces or group the safety and health representative(s) will represent. The parties must then:
  - identify all the workplaces where there are employees who will be represented by the safety and health representative(s). It should be ensured every part of the workplace will have access to a safety and health representative should the need arise; and
  - invite employees from all the identified workplaces to appoint delegates to consult about the election and take part in the decision making process. The parties cannot decide that a safety and health representative will represent employees at a workplace when they did not have the opportunity to have employee delegates involved in the consulting process;
- determine whether a contractor and their employees can participate and stand for election as safety and health representative(s). From time to time, schemes may be reconsidered to allow for changes to the workforce;
- decide how matters relating to the scheme can be changed after it is set up. Review may be required at certain times to reflect changed circumstances at the workplace;
- consider practical issues in relation to the scheme. These may include:
  - ensuring the accessibility of elected safety and health representatives to the workforce and developing an understanding that they will be able to visit the workplace(s) and perform their functions as a safety and health representative; and
  - the employer's obligation, outlined in Part 2.5, to provide facilities and assistance to safety and health representatives to carry out their functions;
- agree on future elections – before a scheme is finalised, the parties including any additional delegates must decide whether it will apply to future elections or just the election about to be held. If it is to apply to future ones, then the parties should also consider how they could change or review it in the future if needed; and
- put the details of the scheme in writing. All agreements relating to a scheme must be made in writing. The document should be kept somewhere safe so details of agreements can be checked if required.

*See Section 30B(2) of the OSH Act and Sections 55B(2) and (3) of the MSI Act.*

*See Section 30C of the OSH Act and Section 55C of the MSI Act.*

*See Section 30B(4) of the OSH Act and Section 55B(4) of the MSI Act .*

Decisions in relation to a scheme are in addition to, and not instead of, the decisions reached through consultation on the matters outlined in i) to iv), relating to number of safety and health representatives, their matters, areas and kinds of work, elections and vacancies.

See Section 30A(3) and (4) of the OSH Act and Sections 55A(3) and (4) of the MSI Act.

Where the parties are unable to reach agreement on a matter relating to a scheme, there is a process for resolving unresolved matters – see vii).

If a scheme is not sought, then there is no need for consultations on it to take place.

vi) Consider other issues

A number of issues, additional to those already mentioned, should also be considered during the consultative discussions. These include:

- the structure of a safety and health committee. If there is likely to be one, attention should also be paid to this;
- the requirement for employers to provide elected safety and health representatives with facilities to support them in their roles; and
- the requirement for regular inspections by safety and health representatives.

The consultation phase is not the time to decide on these issues, but there should be some consideration of their implications for future planning, when determining the number of safety and health representatives to be elected.

vii) Refer unresolved matters

Every effort should be made by the employee delegates and employer to resolve all issues relating to the election process. Where the parties are unable to reach agreement on any matter, they may seek assistance from the WorkSafe Western Australia Commissioner or, for mines, the State Mining Engineer, to resolve it. Referrals should be made in writing.

If a matter remains unresolved after consultation between the parties, the WorkSafe Western Australia Commissioner or the State Mining Engineer will refer it to the OSH Tribunal for determination. A determination by the OSH Tribunal is binding on all parties.

See Section 30A(3) and (4) of the OSH Act and Sections 55A(3) and (4) of the MSI Act.

## 2.2 Running the election

An overview of the requirements under the legislation

Under Section 31 of the OSH Act and Section 56 of the MSI Act:

- the conduct of the election must be in accordance with the employer and employee delegates' agreements made during the consultation stage and, if there is one, the scheme;
- there must be a secret ballot; however, one is not required if there is only one eligible nomination or the number of eligible nominations matches the number of positions;
- all employees who will be represented by a safety and health representative are entitled to vote; and
- a safety and health representative is elected for a term of two years, unless they cease employment, transfer from the area they were elected to represent or are disqualified.

### Step one: refer to the agreements made during the consultation process

The election must be conducted according to the arrangements agreed on during the consultation stage, ie according to the agreements made on:

- the number of safety and health representatives;
- the matters, areas and kinds of work that the safety and health representatives will cover;
- how casual vacancies are dealt with;

- who will conduct the election and how it will be conducted; and
- where applicable, if a scheme has been agreed on, then the election must also be held in accordance with its agreements. If there are any inconsistencies between the scheme and other agreements reached during the consultation stage, the scheme prevails.

### Step two: contact the person/organisation running the election

Agreement on who is to conduct the election must be made during the consultation stage.

The person (the returning officer) conducting the election should establish a clear set of rules and procedures, before starting its process. These rules should be worked out in consultation with appropriate people at the workplace, taking into account individual workplace needs.

Election rules: issues for the returning officer to consult on

Before running the election process, issues to consult with the workplace include but are not limited to:

- a timetable for the election process, including a closing date for nominations and the election date;
- the provision of adequate notice of the election to employees;
- who will be eligible to nominate and vote in the election – see Sections 31(1), (8) and (8a) of the OSH Act and Sections 56(1), (8a) and (8b) of the MSI Act;
- the means of ensuring the distribution of nomination and ballot papers to all employees;
- the system of voting, eg postal or on site and how returned ballot papers will be kept confidential;
- how, where and by what time nomination forms or ballot papers are to be lodged to have effect;
- how the order in which candidates names will appear on the ballot paper will be determined;
- the method to be used in counting votes;
- the method to be used to decide the result in the event of a tied vote; and
- the assistance required by the returning officer to conduct the election.

### Step three: call for nominations

Only employees who work at the workplace or within the group the safety and health representative is to be elected to cover can be nominated for election for a position. This is to ensure elected safety and health representatives will be familiar with the safety and health issues for the workplace or group. Where a person is to be elected to represent underground miners, they must have worked for at least 12 months in underground mining operations.

If a scheme has been agreed on and it provides for contractors and their employees to be treated as employees in relation to safety and health representatives, then these people will be eligible for nomination as a safety and health representative.

*See Sections 31(1) and (8a) of the OSH Act and Sections 56(1), (8a) and 8(b) of the MSI Act.*

Nominations: issues for the returning officer to consider beforehand

Issues the returning officer should consider beforehand include but are not limited to:

- providing relevant information in the notice calling for nominations, including a brief description of the role required of the safety and health representative and the areas within the workplace they will cover and carry out duties;
- the conditions under which a nomination may be withdrawn;
- whether a nominee will be required to provide an undertaking to accept the office if elected;
- whether nominations should be witnessed (countersigned) by somebody eligible to vote at the election; and
- a process for validating nominations submitted by any person other than a candidate for election.

#### Step four: check the eligibility of nominations

After receipt of nominations, the returning officer should:

- verify the eligibility of the nominees to be elected according to the agreements made in the consultation stage, eg that they work in the right area for the position;

Where only one eligible candidate has nominated, there is no requirement for an election to be held. The candidate is considered, under the OSH Act and the MSI Act, to be elected unopposed. Where the number of eligible candidates is equal to or less than the number of positions, the people nominating should be declared elected.

As outlined under step seven, the returning officer must forward a written notice to the WorkSafe Western Australia Commissioner or, for mining, the State Mining Engineer and the employer notifying them of the election result(s). With mining, the person elected must also be notified. In instances of only one eligible candidate, the notice should declare the safety and health representative was elected unopposed as per Section 31(9)(b) of the OSH Act or Section 56(9) of the MSI Act;

- advise the appropriate person at the workplace of the result of the call for nominations;
- where more than one person has nominated for safety and health representative, prepare the election ballot (see below), ideally according to the election timetable worked out in step two; and
- where there is not already an election timetable, prepare one and advise the employer and employees.

#### Step five: conduct the election

The election must be conducted according to agreements made during the consultation stage. It must be by secret ballot. However, one is not required if there is only one nomination (see above).

Every employee who works at the workplace or within the group the safety and health representative is to be elected to cover is entitled to vote. If a scheme has been agreed upon and it provides for contractors and their employees to be treated as employees in relation to safety and health representatives, then they are also entitled.

*Sections 31(1) and (8a) of the OSH Act and Sections 56(1), (8a) and 8(b) of the MSI Act.*

*See Section 31(8) of the OSH Act and Sections 56(8a) and (8b) of the MSI Act.*

### Ballot matters

Where it is necessary to hold a ballot, consider addressing beforehand:

- the format the ballot paper will take and how it will be issued to voters;
- the type of instructions necessary to enable workers to vote correctly;
- the provision of an electoral roll from the employer containing the names of the employees eligible to vote at the election – see Sections 31(1) and 31(8a) of the OSH Act and Sections 56(1), (8a) and (8b) of the MSI Act;
- the date and time the electoral roll will close;
- other actions necessary to protect the integrity of the ballot, eg a certificate from the printer stating the number of ballot papers printed; and
- where required, allowing candidates to nominate a scrutineer to be present when the ballot box is opened and votes are counted.

### Tied votes

In situations where there is a tied vote for a position, an equitable way of determining the successful candidate should be agreed on through consultation at the workplace by the returning officer. A common method is when the returning officer, with witnesses, draws a name from a hat.

### Questions about discrepancies in the election process

Questions about discrepancies in the election process from the employer, a candidate or anybody entitled to vote may be directed to the WorkSafe Western Australia Commissioner or, for the mining industry, the State Mining Engineer. These should be submitted in writing. Where issues are not able to be resolved, they will be referred to the OSH Tribunal for a determination.

*Section 31(11) of the OSH Act and Section 56(11) of the MSI Act.*

### Step six: count the ballot papers

After the receipt and counting of ballot papers, the returning officer may declare the result of the election in the presence of scrutineers and candidates, if it was agreed earlier they be present.

#### Certificate or written advice on election results

The returning officer should prepare a certificate or written advice that states the:

- number of ballot papers issued;
- number of ballot papers admitted as formal votes;
- number of ballot papers admitted as informal votes;
- number of unused ballot papers;
- number of ballot papers printed; and
- number of votes admitted in favour of each candidate.

These details should be forwarded to the organisation for which the election was held.

All documents prepared in connection with the election should be held for a period of at least three months, after which the returning officer may authorise their destruction.

### Step seven: notify people of the election results

With non-mining workplaces, the returning officer must notify the employer and WorkSafe Western Australia Commissioner of the election results. A form available at [www.worksafe.wa.gov.au](http://www.worksafe.wa.gov.au) may be used to do this.

With the mining industry:

- the returning officer must notify the employer, the State Mining Engineer and the person elected. The specified notification form (available at [www.resourcessafety.wa.gov.au](http://www.resourcessafety.wa.gov.au)) must be used to notify the State Mining Engineer;
- notification to the elected safety and health representative and the employer must be given in writing within seven days of the election, specifying the day on which the election was held; and
- the two year term of office for a safety and health representative in the mining industry commences on the tenth day after the day on which the election was completed.

In all workplaces, arrangements should also be made to notify all relevant employees at the workplace of the results, together with the contact details of the successful candidates.

*Section 32 and 57(1) of the MSI Act.*

*See Section 33 of the OSH Act and Section 53 of the MSI Act.*

## 2.3 Functions of elected safety and health representatives

Representatives' functions set out in the legislation: an overview

Section 33 of the OSH Act and Section 53(1) of the MSI Act set out functions for safety and health representatives to carry out with respect to the safety and health for the workplace or group for which they are elected. The functions are:

- inspecting the workplace at appropriate times agreed with the employer or, where they have not inspected the workplace or part of it in the preceding 30 days, at any time after giving reasonable notice to the employer;
- investigating dangerous occurrences or risks of imminent and serious injury or harm to health;
- keeping informed on safety and health;
- reporting hazards to the employer;
- referring matters to the safety and health committee, where one exists;
- consulting and cooperating with the employer on safety and health matters; and
- liaising with employees and, for mines, with employers and employer's inspectors on safety and health matters.

There are important issues to note about safety and health representatives' functions. These include:

- the power to carry out their functions – the OSH Act and MSI Act provide such powers as are necessary to the safety and health representative to carry out their functions. This includes accompanying a WorkSafe or Resources Safety inspector during a workplace inspection when requested;
- legal liability – safety and health representatives are protected from civil liability arising from the performance of their functions. This means they cannot be sued for damages for anything arising from them having performed or failed to perform any function related to their position as a safety and health representative.

This provides an important and necessary protection for safety and health representatives while they carry out their functions in good faith to protect the safety and health of co-workers. However, as an employee, a safety and health representative has, like other employees, a general 'duty of care' to ensure their own safety and health and that of others who may be affected by their work. In instances where they have breached this, they could face prosecution;

*See Sections 33(2) of the OSH Act and Section 53(2) of the MSI Act.*

*See Sections 33(3) of the OSH Act and Section 53(3) of the MSI Act.*

- specific areas of responsibility at the workplace – representatives have specific areas of responsibility at the workplace and can only carry out their functions within the workplace or group for which they were elected. This is an important consideration in the consultation phase before elections take place, as the workplace or group is determined then. Where there is one, a safety and health committee provides a forum for consultation on issues relating to a broader range of matters and groups; and
- visits by WorkSafe or Resources Safety inspectors – a safety and health representative can accompany a WorkSafe or Resource Safety inspector only when requested by an inspector. If such a request is made, the employer needs to release the safety and health representative from their normal work duties.

Employers must, when notified of the presence of an inspector at the workplace, inform the relevant safety and health representative(s) as soon as practicable;

i) Inspecting the workplace

Elected safety and health representatives can inspect the workplace or any part of it at agreed times with the employer or, where they have not done so in the preceding 30 days, at any time after giving reasonable notice to the employer. What is 'reasonable notice' for an inspection depends on the circumstances at the workplace.

#### Types of inspections

These can include:

- regular general inspections of the workplace; and
- regular inspections of particular activities, processes or areas.

Other inspections, other than those at agreed intervals or every 30 days as per above, include:

- specific inspections arising from complaints by employees;
- inspections following substantial changes to the workplace; and
- inspections when an accident or dangerous occurrence occurs (see below).

Developing inspection checklists may assist. See the WorkSafe publication, *The first step: Managing safety and health hazards in your workplace*.

Where possible, the safety and health representative(s) and the employer should agree on the type and frequency of inspections considering the nature and circumstances of the workplace.

In general, establishing a programme of inspections will help reduce the potential for disruption from unscheduled or irregular inspections. It could include various kinds of inspections; for example, independent ones by the safety and health representative(s) and joint inspections by them and their employer.

Where safety and health issues are identified following an inspection, the safety and health representative should:

- bring the issues to the employer's notice, as soon as practicable, following the workplace issue resolution procedure if one is established, and keep a record for later reference if required;
- where practicable, report the issues in writing, although hazards or potential hazards requiring prompt remedial action should be verbally reported immediately;
- inform the employees they represent of the issues; and
- when, in their opinion, there is risk of serious injury, liaise as soon as possible with the employer and employees regarding appropriate action.

See Section 33(2) of the OSH Act and Sections 53(2) and (4) of the MSI Act.

See Section 33(1)(a) of the OSH Act and Section 53(1)(a) of the MSI Act.

See Section 33(1)(b) of the OSH Act and Section 53(1)(b) of the MSI Act.

See Section 81 of the MSI Act.

ii) Investigating dangerous occurrences and risks of imminent and serious injury/harm

Following an accident or dangerous occurrence, the employer should take immediate steps to safeguard against the incident happening again. They must also ensure the safety and health representative for the workplace or group is notified immediately.

In the event of an accident, dangerous occurrence or risk of imminent and serious injury or harm, one of the functions of safety and health representatives is to carry out appropriate investigations into the matter. Note that where an accident at a mine has caused death or serious injury, the site of the accident is off limits until permission is given by an inspector or, for a fatality, the coroner. To enable notification of safety and health representatives, development of formal procedures for it at the workplace may be required.

The purpose of a safety and health representative's investigation in an emergency situation should be to examine the cause of the accident or dangerous occurrence to ensure action is taken to prevent a recurrence. Safety and health issues identified should be raised with the employer according to the steps agreed upon.

The safety and health representative may carry out his or her own investigation, or they and their employer may develop agreed arrangements for joint investigations.

A 'dangerous occurrence' is not defined in the OSH Act so the normal meaning of the words must be used. It can be an uncontrolled or unintended incident or event where somebody is exposed to the risk of injury or harm. For example:

- an incident that might have caused fatal or serious injuries;
- a falling object;
- failure of a sling or lifting device;
- the uncontrolled release of a hazardous chemical or substance;
- a spillage resulting from a failed valve, connection or hose;
- the failure of plant or equipment;
- the collapse of a building or structure;
- electric shock;
- use of unguarded plant; or
- failure to use appropriate isolation or tag out systems.

See Sections 78(3) and 79 of the MSI Act.

With mines, note that occurrences that must be immediately reported by the mine manager to the district mines inspector are listed in the MSI Act. A potentially serious occurrence is defined as any occurrence that, in the manager's opinion, had the potential to cause serious injury or harm to health.

iii) Keeping informed on safety and health

See Section 33(1)(c) of the OSH Act and Section 53(1)(c) of the MSI Act.

One of the functions of the safety and health representative is to keep up to date on relevant safety and health topics. The employer has a duty to make safety and health information available to the safety and health representative.

The safety and health representative can liaise directly with WorkSafe or, for the mining industry, Resources Safety and other organisations to obtain information or advice.

In cases where safety and health representatives approach WorkSafe or Resources Safety directly for assistance with the resolution of an issue, they will check whether the relevant workplace issue resolution procedures, where they exist, have been followed. These usually require the employer to be notified before any further action is taken. Depending on the circumstances, WorkSafe or

Resources Safety may provide some information.

Safety and health representatives working in workplaces covered by the OSH Act should consider registering with WorkSafe to receive safety and health information. Refer to the WorkSafe website at [www.worksafe.wa.gov.au](http://www.worksafe.wa.gov.au)

For safety and health representatives working in workplaces covered by the MSI Act, Resources Safety places all of them on its mailing list to receive information, after the notification of election form (see Appendix 2) is received by the State Mining Engineer.

iv) Reporting hazards to the employer

A safety and health representative should, wherever practicable, immediately report any hazard or potential hazard to the employer or their representative. This complements the requirement for the employer to notify the safety and health representative of any accident or dangerous occurrence.

This function of the safety and health representatives covers the possibility that the first contact about a hazardous situation may be with them. It also acknowledges the possibility that the safety and health representative, having received specific training, may recognise that a hazard exists before management becomes aware of it.

All employees should be informed of the correct procedures for reporting hazardous situations. Depending on the size and structure of the organisation, the line of reporting may be through the immediate supervisor to more senior levels of management.

For mine sites, under Section 11 of the MSI Act, every person working at a mine site must immediately report any hazard or potential hazard to their immediate superior.

For workplaces covered by the OSH Act, under Section 20(2)(d)(i), it is an offence if an employee fails to report forthwith to their employer any situation at the workplace that they have reason to believe could constitute a hazard that they cannot correct.

*See Section 33(1)(d) and 35(1)(f) of the OSH Act and Sections 53(1)(d) and 60(6) of the MSI Act.*

v) Referring matters to the safety and health committee

Where there is a safety and health committee, another function of the safety and health representative is to refer matters they believe it should consider. This function supports their important role at the workplace in identifying matters that should be considered by the safety and health committee.

Types of matters that may be referred

A safety and health representative can, for example, refer to their safety and health committee:

- matters they have been unable to resolve;
- information obtained while keeping informed about safety and health issues; and
- identified issues that may impact upon the workplace to enable consideration of a resolution for the whole workplace or facilitate development of a safety and health policy or safe working procedure.

*See SubSection 33(1)(e) of the OSH Act and Section 53(1)(e) of the MSI Act.*

vi) Consulting and co-operating with the employer on safety and health

Safety and health representatives are required to consult and cooperate with the employer on all safety and health matters relevant to the work area and the employees they represent. A duty is also placed on employers to consult and cooperate with them. Both these functions can assist in finding practicable solutions for the employer's duty to provide and maintain a safe working environment and safe systems of work.

Cooperation is most likely to produce workable results that draw on the knowledge of those performing the tasks to ensure practicability.

*See Sections 33(1)(f) and 35(1)(c) of the OSH Act and Section 53(1)(f) of the MSI Act.*

## vii) Liaising on safety and health matters

Safety and health representatives have a responsibility to advise the employer of the views of the employees they represent on safety and health matters. To do this effectively, they are required to seek them, before meeting with the employer.

Safety and health representatives can play an important role at the workplace by passing on and discussing relevant information on safety and health matters to workers. However, this is not intended to be in lieu of the employer's obligation to provide safety and health training to all employees.

Safety and health representatives should ensure they report regularly on their activities to the employees they represent.

For those safety and health representatives on mine sites, the MSI Act also requires them to liaise with an employer's inspector for their region about safety and health matters concerning the employees they represent. An employee's inspector is appointed after election by employees at mines in the region.

See Section 33(1)(g) of the OSH Act and Section 53(1)(g) of the MSI Act.

See Section 53(g) and Section 25 of the MSI Act.

See Section 34(1) of the OSH Act and Section 59(1) of the MSI Act.

## 2.4 Disqualification of safety and health representatives

A safety and health representative can be disqualified on several grounds identified in the OSH Act and MSI Act. The question of a possible disqualification must be referred to the OSH Tribunal.

The grounds for disqualification of a safety and health representative are where:

- their actions were intended only to cause harm to their employer or their employer's commercial or business activities. An employer who is seeking disqualification for this will be required to show that the person did the action and intended only to harm them or their commercial or business activities, and not to genuinely address a safety and health issue;
- they have used or disclosed information acquired from the employer in their role as a safety and health representative for a purpose not related to their position, with the intent of causing harm to their employer or their commercial or business activities. This is related to the requirement for the employer to provide the safety and health representative with information relating to hazards and potential hazards at the workplace. It is meant to deal with situations where an employee has received information only through being a safety and health representative and they have disclosed it to a business competitor with a view to damaging the trade or business of their employer.

An employer who considers that information provided to the safety and health representative has been misused must show the information was obtained from them and used for purposes not related to safety and health with the intention of harming them or their business; and/or

- they have failed to adequately perform the functions of a safety and health representative. Note that misuse of a provisional improvement notice (PIN) may meet one or more of the above criteria.

### Referrals for possible disqualification

Referrals can be made by:

- the safety and health representative's employer;
- an employee who works at the workplace that the safety and health representative was elected to represent;
- if there is a scheme that covers a number of workplace, an employee who works anywhere the safety and health representatives was elected to cover;
- if there is a scheme that covers a group of employees, any employee who is represented by the safety and health representative; or

- the WorkSafe Western Australia Commissioner or, for the mining industry, the State Mining Engineer.

The OSH Tribunal will satisfy itself whether grounds for the disqualification of a safety and health representative exist. If so, it may disqualify them from holding their office temporarily for a specified period or permanently.

In deciding the period of disqualification (if any), the OSH Tribunal will take into account:

- the harm caused;
- the safety and health representative's past record in performing their functions;
- whether the safety and health action was contrary to the public interest; and
- any other matter it considers relevant, such as the training the safety and health representative received following their election.

*See Section 34(3) of the OSH Act and Section 59(3) of the MSI Act .*

## 2.5 Employers' duties to safety and health representatives

An overview of the duties set out in the legislation

Employers have duties towards their safety and health representatives under Section 35 the OSH Act and Section 60 of the MSI Act. These duties include:

- providing information to safety and health representatives on the hazards at the workplace and the safety and health of employees;
- where an employee requests it, permitting safety and health representatives to be present at any interview between them and their employer on a safety and health matter;
- consulting safety and health representatives on changes that may impact on safety and health;
- notifying safety and health representatives about relevant accidents and dangerous occurrences;
- providing necessary facilities and assistance so safety and health representatives can perform their functions;
- permitting safety and health representatives' attendance at an accredited prescribed safety and health representatives' training course and paying the associated costs; and
- for mines, requiring the manager of a mine site assign a suitably experienced person to ensure safety and health representatives' safe conduct when carrying out an inspection of a mine site (Section 58 of the MSI Act).

If a scheme has been agreed on, where the safety and health representative is to represent a group of employees, these obligations also apply in relation to any workplace at which relevant employees work.

- Providing information on hazards and safety and health of employees

The employer has specific obligations to ensure their safety and health representatives are provided with the information and support necessary to carry out their functions. The employer must provide each safety and health representative with information relating to the hazards or potential hazards and the safety and health of employees they represent at the workplace.

*See Section 35(1)(a) of the OSH Act and Section 60(2) of the MSI Act.*

### Types of information

In considering the requirement to provide information, the standard of 'reasonableness' applies, ie employers are required to make available to safety and health representatives all information they have or could reasonably be expected to have relating to:

- actual or potential hazards that arise at the workplace;
- hazards related to plant and substances used and systems of work at the workplace; and
- the safety and health of employees at the workplace.

Information covered by this requirement may include:

- safe working procedures that have been agreed upon;
- manufacturers' instructions on the safe use of plant;
- Material Safety Data Sheets (MSDS) on the safe use of hazardous substances – see the Commission's *Guidance note: Provision of information on hazardous substances at workplaces – MSDS*;
- if prepared, job safety analysis (JSA) forms or safe work method statements;
- reports from competent people on hazards and control measures that can eliminate the risks;
- results of atmospheric or noise monitoring or testing for hazardous substances;
- statistical information from safety and health surveys;
- details of notices issued by WorkSafe or Resources Safety inspectors;
- research and technical information;
- relevant Australian and Australian/New Zealand standards and other reference documents, including other standards and Commission codes of practice and guidance notes relating to hazards at the workplace.

For non-mining workplaces, under Regulation 3.2 of the OSH Regulations, the employer must ensure that, when anybody at the workplace requests them, copies of the OSH Act, the OSH Regulations, Australian Standards, Australian/New Zealand Standards and Commission codes of practice are made available;

- accident investigation reports and statistics; and
- sick leave and lost time injury and disease statistics.

An employer must not provide safety and health representatives with access to an employee's personal medical information, unless that person has consented. However, access to data that does not identify individuals, such as statistical information on the health of all employees, is permitted.

Employers making available information on hazards, substances, plant and equipment are not required to disclose information of a business, commercial or financial nature that would be likely to expose their organisation to a competitive disadvantage.

#### ii) Permitting safety and health representatives be present at interviews

The employer must permit a safety and health representative to be present at an interview between them or their representative and an employee on an occupational safety or health matter, if the employee requests it. Before such interviews, the employer should advise employees they have this right.

This is a further factor that should be considered during the consultation phase, prior to the elections for safety and health representatives, when the workplaces to be represented are being defined. An issue to consider, particularly where employees are spread over a wide geographical area, is how these interviews would be facilitated.

See Section 35(1)(b) of the OSH Act and Section 60(3) of the MSI Act.

iii) Consulting on changes at the workplace that may impact on safety and health

Where changes at the workplace are proposed that may reasonably be expected to affect the safety or health of employees, the employer is required to consult the safety and health representative before implementing them.

The purpose of consultation on changes at the workplace is to give employees the opportunity to review intended changes so they can apply their experience and expertise to identify any unintended safety or health problems.

Even if the proposed changes are to improve the working environment and conditions, it is still essential that there be consultation and, wherever practicable, agreement before their introduction. Ideally, planning should allow for a consultative period as soon as practicable after decisions have been made on the proposed changes.

Issues such as the introduction of new or replacement plant, equipment, substances or materials and safe working procedures for these should be part of this consultation. It should be informed by the various types of information described under i).

iv) Notifying on relevant accidents and dangerous occurrences

The employer is required to notify the safety and health representative immediately after an accident or dangerous occurrence to enable them to investigate the incident, which is one of their functions.

v) Providing necessary facilities and assistance

Although the OSH Act and MSI Act require provision of facilities and assistance to enable safety and health representatives to carry out their functions, there are no strict guidelines setting out what these should be. The employer and the safety and health representative(s) need to consult and decide on which facilities are necessary for the circumstances.

Where practicable, facilities could include:

- access to clerical equipment and support and stationary eg a room, desk, typing and photocopying;
- facilities for filing eg filing cabinets, book shelves and means for storage of confidential information;
- access to a telephone and fax, if available;
- access to meeting rooms, if available, for safety and health representatives' meetings, where it is necessary for them to coordinate their functions; and
- use of notice boards.

vi) Permitting attendance at introductory training courses and paying the associated costs (including pay entitlements)

Safety and health training courses are available to improve skills and knowledge of occupational safety and health. Employers must allow a properly elected safety and health representative to take time off work to attend an accredited 'prescribed course' of introductory training for safety and health representatives. The employer is also required to pay the tuition fee for the course and any other reasonable costs incurred by the safety and health representative in connection with attendance.

See Section 35(1)(c) of the OSH Act and Section 60(4) of the MSI Act.

See Section 35(1)(f) of the OSH Act and Section 60(6) of the MSI Act.

See Section 35(1)(g) of the OSH Act and Section 60(7) of the MSI Act .

See Section 35(1b), (3) and (3a) of the OSH Act and Regulation 2.2 of the OSH Regulations or Sections 60(5), (7) and (7a) of the MSI Act and Regulation 2.6 of the MSI Regulations.

### Accredited 'prescribed course' of introductory training

This is a course set out in the OSH Regulations and MSI Regulations, which is designed for safety and health representatives' attendance when first elected and is usually a five day course. To be a valid course, it must have been accredited by the Commission – see the list of training providers on the web sites for WorkSafe and Resource Safety.

Issues to note about safety and health representatives' attendance at accredited prescribed introductory courses include:

- enrolment in training – the OSH Regulations and MSI Regulations require safety and health representatives 'to endeavour' to attend an accredited introductory course within the first 12 months of being elected. However, training should be undertaken as soon as possible after election. Once elected, a safety and health representative should enrol in a course and attend as soon as possible. Ideally, training should be completed within six months after election;

- notice to employer about attendance at a course – safety and health representatives must give at least 21 days' notice to their employer that they wish to attend an accredited introductory course. Once the employer receives this notice, they must permit the safety and health representative to take time off work with pay for attendance. A shorter timeframe for notice may be agreed between the employer and the safety and health representative.

An employer who has been given notice can, after consultation with the safety and health representative and/or the relevant union, decline to release the safety and health representative to attend the course. However, if this happens, there is an obligation on the employer to permit attendance at the next available course the safety and health representative wishes to attend;

- choice of course provider – safety and health representatives should be free to choose, within reasonable limits, which training course they attend. This choice should be made in consultation with the employer and any other relevant parties at the workplace, for example, the safety and health committee or a relevant union;
- pay entitlements – safety and health representatives are entitled to take time off work to attend a course and be paid at their ordinary rate of pay. This is to be calculated on the time ordinarily worked and includes such things as regular over award payments for ordinary hours of work and industry allowances etc. It does not include things such as overtime payments, when these do not form part of the contract of service, or camping or car allowances.

Safety and health representatives should not be disadvantaged by virtue of attending a prescribed training course. The legislation makes it clear that nothing in the regulations excludes an entitlement to additional payments that may be set out in an agreement or an award;

- attendance on rostered days off or other non work time – when a safety and health representative attends an accredited training course on a day that would ordinarily be rostered as a day off, they are entitled to time in lieu or other recompense for the attendance. No safety and health representative should be forced to attend a course in their own time; and
- travel costs, meals and accommodation – while traveling, car and meal allowances are not paid during the actual time the safety and health representative attends a course, it is open to the parties to agree on additional payments or arrangements relating to travel time and costs incurred in getting to and from it. This again reflects the principle that safety and health representatives should not be disadvantaged by their attendance at a course.

Any issues arising out of arrangements for paid time off work to attend training or perform the safety and health representative's functions, or payments for attendance at a training course in the safety and health representative's own time, should be referred to the OSH Tribunal.

See Regulation 2.2(3) of the OSH Regulations and Regulation 2.6(3) of the MSI Regulations.

See Regulation 2.2(4) of the OSH Regulations and Regulation 2.6(4), (4a), (5) and (6) of the MSI Regulations.

See Regulation 2.2(8) of the OSH Regulations and Regulation 2.6 of the MSI Regulations.

### Additional post-introductory training

A safety and health representative and his or her employer may agree that the representative may take additional time away from work, with or without pay as agreed, in order to attend a post-introductory training course during their second and subsequent term of election. Consideration should be given to the nature of the safety and health representative's role at the workplace and the benefits of this additional training.

Sometimes it may be desirable to the safety and health representative and their employer for this attendance to occur in their own time, rather than work time. The OSH Regulations and MSI Regulations do not currently prescribe a safety and health representative's entitlement to payment for this and the employer and safety and health representative will need to agree on appropriate payment.

Employers should pay the tuition fee for post-introductory training courses and reasonable costs, such as travel costs, incurred by the safety and health representative's attendance at the course. The OSH Regulations and MSI Regulations also do not prescribe a limit to the employer's liability to pay these costs; however, the employer should pay all reasonable costs.

### Time away from regular duties to perform safety and health representative functions

Safety and health representatives will need time away from their regular duties to perform their functions as a safety and health representative.

There are no regulations to prescribe the amount of time a safety and health representative may have off during work to perform these functions. Questions related to time allocation, away from regular duties can be addressed in a 'relevant procedure'.

The amount of time necessary for elected safety and health representatives to perform their functions will vary according to the circumstances at the workplace. It is suggested arrangements have some flexibility, as it is unlikely a safety and health representative's workload will remain constant.

#### Determining the time allocation

Matters to consider may include:

- the type of work performed in the workplace(s) or group;
- the nature and degree of risks involved in the workplace(s) or group;
- the size and complexity of the workplace(s) or group;
- the nature of the workforce;
- the special needs of employees in the workplace(s) or group, eg workers with a non-English speaking background or a disability;
- the number of safety and health representatives at the workplace(s) or group;
- responsibilities for investigating accidents and dangerous occurrences; and
- coverage of safety and health representatives' normal work duties while they are undertaking their functions as a safety and health representative.

### Disadvantaging safety and health representatives

Safety and health representatives can play an important role at the workplace. It is important people feel free to become a safety and health representative and carry out their functions, without being afraid they will be disadvantaged because of their position and duties.

Employers are specifically prohibited from causing a safety and health representative to suffer a disadvantage just because of their role, whether they are an employee or contractor. In addition, any safety and health representative who has suffered a disadvantage can apply for re-instatement and/or compensation.

Part 5 discusses this matter in more detail.

See Regulation 2.3 of the OSH Regulations and Regulation 2.6 of the MSI Regulations.

## Part 3 Provisional improvement notices (PINs)

Introduced in 2005, a provisional improvement notice (PIN) is a notice issued by a qualified safety and health representative to somebody to require them to address a safety and health concern at the workplace.

PINs can only be issued for breaches of the OSH Act and OSH Regulations or the MSI Act and MSI Regulations. They are intended to be a tool to help safety and health representatives deal with a safety and health concern. However, if there appears to be risk of imminent danger requiring immediate action, it may be more appropriate to follow the workplace issue resolution procedure (see Part 6.1), rather than issue a PIN.

Only safety and health representatives who have completed the required training relating to PINs and have become (what is referred to in the OSH Act and MSI Act as) a 'qualified representative' can issue PINs. The required training involves completing an accredited introductory safety and health representative course. All those completed since 1 March 2005 enable a safety and health representative to be a 'qualified representative' and issue PINs. A list of accredited training courses is available from the WorkSafe and Resources Safety web sites.

*See Sections 51AB and 51AC of the OSH Act and Section 31BF and 31BG of the MSI Act.*

### PINs

#### Note that:

- qualified representatives can only issue a PIN relating to the workplace(s) or group they were elected to represent and not to other ones;
- before issuing a PIN, the qualified representatives must consult with the person they intend issuing it to and another safety and health representative for the workplace concerned (if there is one), as far as reasonably practicable;
- there are certain details that must be included in the PIN;
- once a PIN has been received, the breach identified in the notice must be fixed by the time given in the notice. It is an offence not to comply with a PIN; however, a review of it can be sought;
- a copy of a PIN issued to an employee should be given to the employer as soon as practicable; and
- qualified representatives do not have to issue PINs, if they do not want to.

Where there are qualified representatives at the workplace, the employer may consider:

- setting up a procedure for handling and resolving PINs in a cooperative manner and informing employees, managers and supervisors about it;
- setting up a means to record and review resolutions to PINs. Where one exists, the safety and health committee could be involved; and
- informing employees that, if they receive a PIN, they should advise their manager or employer as soon as practicable.

## 3.1 Issuing PINs

### Step one: form an opinion that there is a breach of the legislation

PINs can only be used if the particular safety and health concern involves a breach of the OSH Act or OSH Regulations or the MSI Act or MSI Regulations. Before issuing a PIN, the qualified representative must have formed the opinion that:

- somebody is breaching a particular provision of the OSH Act or OSH Regulations or the MSI Act or MSI Regulations; or
- somebody has in the past breached a particular provision of the OSH Act or OSH Regulations, or the MSI Act or MSI Regulations and the circumstances make it likely that the breach will continue or be repeated.

### Step two: identify the provision of the legislation

The qualified representative has to identify exactly which provision of the OSH Act or OSH Regulations or the MSI Act or MSI Regulations the breach relates to and state it on the PIN so that the person issued with it knows which one it is believed they have breached.

This identified breach is the subject of the notice that the employer will have to deal with and respond to. PINs can only be issued against provisions of the OSH Act or OSH Regulations or the MSI Act or MSI Regulations for which a penalty applies.

### Step three: consult with the person who is to receive the PIN

Before a qualified representative can issue a PIN, they must have consulted with the person they are thinking of issuing the PIN to about the matters or activities it relates to.

This ensures that the safety and health concern is raised with the relevant person and reinforces the consultative approach the OSH Act and MSI Act require workers and employers to undertake with safety and health matters. In many cases, once the issues have been discussed in the consultation, the matter will be sorted without any need to issue a PIN.

If there are other safety and health representatives elected for the workplace or a group at the workplace concerned, then the qualified representative must consult with them if they reasonably can.

*See Section 51AD of the OSH Act and Section 31BH of the MSI Act.*

### Step four: consider a timeframe in which the breach must be fixed

If no resolution is reached during consultation (step three), the qualified representative must consider the timeframe in which the breach must be fixed. This must be more than seven days after the day the notice is issued.

### Step five: issue the PIN

If a matter has not been resolved by the consultation process (step three), then the qualified representative may issue a PIN.

A PIN can be issued to anyone with an obligation under the OSH Act or MSI Act, ie depending on the particular provision of the legislation being breached, it may be issued to an employer, an employee, main contractor, somebody in control of a workplace, a company or a body corporate.

A PIN cannot be issued to a business or trading name. PINs can be issued to the person, usually an individual or a company, who runs the business.

See Section 51AE of the OSH Act and Section 31BI of the MSI Act.

#### PIN form

There is no specific form that a PIN must be written on. However, WorkSafe and Resources Safety have produced a pro formas, which could be used, as they contain all the elements to include. See Appendix 2 or WorkSafe and Resource Safety's websites for a copy.

Whichever form a 'qualified representative' uses to write a PIN, there are some details that must be on it. That is, the PIN must state:

- that the 'qualified representative' believes that the person they are giving the PIN to:
  - (a) is breaching a provision of the OSH Act or OSH Regulations or the MSI Act or MSI Regulations; or
  - (b) has breached a provision of the OSH Act or OSH Regulations, MSI Act or the MSI Regulations, in circumstances that make it likely that the breach will continue or be repeated;
- the grounds for forming the opinion about the breach, ie a statement on why the 'qualified representative' has formed the opinion. There must be reasonable grounds for this opinion;
- the specific provision of the OSH Act or OSH Regulations or the MSI Act or MSI Regulations that the 'qualified representative' believes the person is or has breached;
- the date before which the breach is to be fixed. This must be more than seven days from the date the PIN is issued; and
- a summary of the person who has been issued with the notice's right to have the notice reviewed, as applicable, by a WorkSafe inspector under Section 51AH of the OSH Act or a Resources Safety inspector under Section 31BN of the MSI Act respectively.

A PIN can, but does not have to, include:

- some directions as to how to fix the breach, offering a choice if there appears to be more than one way; and
- reference to a code of practice, Australian or Australian/New Zealand standard or other material that may assist in fixing the breach.

For workplaces covered by the OSH Act, see also further information in *Extra notes for safety and health representative: Provisional improvement notices*, available at [www.worksafe.wa.gov.au](http://www.worksafe.wa.gov.au)

#### Managing PINs

It is suggested that where a qualified representative is considering issuing a PIN, he or she:

- refers to the workplace procedure for the handling and resolution of PINs (if one exists); and
- establishes a system for numbering and recording them. This should be done in consultation with other safety and health representatives (where they exist).

#### PINs system

This could include:

- making and storing a copy of each PIN;
- recording relevant details such as what was considered in forming the opinion about the breach; and
- demonstrating consultation took place by recording the details of who was spoken to. For example, the person issued with the notice, another safety and health representative and others at the workplace) and the dates and times.

For mines, note that the manager of a mine site who receives a PIN must display it and any modifications to it by a Resources Safety inspector on a notice board for employees to see. The mine manager must also securely fix a copy of any PIN issued for the mine site, and a copy of the notice of the result of a review by a Resources Safety inspector, to the mine record book.

*See Sections 31BK and 31BO of the MSI Act.*

#### Misuse of PINs

A qualified safety and health representative must not misuse their power to issue a PIN. For example, a PIN must not be issued to harm someone. There must be a legitimate safety and health concern relating to the workplace or group for a PIN to be issued.

The OSH Act and the MSI Act provide for disqualification of a safety and health representative on the grounds that they have done something, under the legislation, with the intention only of causing harm to their employer or their commercial or business activities.

*See Section 34 of the OSH Act and Section 59 of the MSI Act.*

#### Non-compliance with a PIN

Where an employer had not complied with a PIN and they did not seek a review of it (see below), the matter should be referred to WorkSafe or, for mines, Resources Safety, as soon as possible – see contact details in Appendix 1.

## 3.2 Review of PINs

Anybody issued with a PIN may make a request in writing by post, fax or email to WorkSafe or, for the mining industry, Resources Safety, for it to be reviewed by a departmental inspector. This might happen when:

*See Section 51AH of the OSH Act and Section 31BN of the MSI Act.*

- they do not agree with it;
- they think they should not have to comply with it;
- they need more time to fix the breach;
- they consider they are unable to comply with its directions; or
- for another reason.

If a PIN has been issued to an employee, either the employee or their employer may request it be reviewed.

Requests for review (referred to as a 'review notice' in the OSH Act and MSI Act) must be received by WorkSafe or Resources Safety before the date stated on the PIN that the breach must be fixed. This is important because, if a request is made after that date, there is no power for a WorkSafe or Resources Safety inspector to review the PIN.

When a request for review of a PIN has been made to WorkSafe or Resources Safety, it is suspended until an inspector has reviewed it. This means that, while it is suspended, the PIN has no effect and the person to whom it was issued does not have to comply with it.

Once a review notice has been received by WorkSafe or Resources Safety, an inspector will be allocated to attend the relevant workplace(s). The inspector must attend as soon as reasonably practicable and inquire into the circumstances relating to the PIN.

Having looked at the PIN and all the circumstances, the inspector may:

- affirm (uphold) it;
- affirm (uphold) it but make some minor modifications to it, such as extending the date it must be complied with or changing the directions on how the breach must be fixed; or
- cancel it. If an inspector cancels a PIN it has no more effect and the person who was issued with it does not have to comply with it.

The inspector will notify the person issued with the PIN and the qualified representative who issued it of the outcome of their review, using an 'outcome review provisional improvement notice form'. For the mining industry, the Resources Safety inspector will give notice in writing of the review and any modification to the notice to the person who requested the review and the mine manager, if they are not the applicant.

When a PIN is affirmed by a WorkSafe or Resources Safety inspector either with or without modifications:

- it is no longer suspended and the individual, company or body corporate who received it again has an obligation to comply with it and fix the outlined breach;
- it has the same effect as an improvement notice issued by an inspector and there is a right to have a further review of it by the WorkSafe Western Australia Commissioner or, for the mining industry, the State Mining Engineer (see below); and
- it is an offence not to comply with its requirements within the specified time and notify the WorkSafe Western Australia Commissioner or the State Mining Engineer of compliance.

#### Further review

If a PIN has been affirmed (upheld), with or without modifications, by a WorkSafe or Resources Safety inspector, it becomes the same as if it were an improvement notice issued by them. This means that the individual, company or body corporate issued with the PIN (or if it was issued to an employee, either the employer or themselves) can make a further request for review to the WorkSafe Western Australia Commissioner or, for mining, the State Mining Engineer. This is similar to requests for review of improvement and prohibition notices issued by a WorkSafe or Resources Safety inspectors.

This subsequent request for review by the WorkSafe Western Australia Commissioner or the State Mining Engineer must be made within the time for compliance specified on the PIN, ie before the date the breach is to be fixed and on the correct form – see Form 4 in the OSH Regulations or the form on the Resources Safety website. The notice is suspended while it is being reviewed.

The WorkSafe Western Australia Commissioner or the State Mining Engineer can affirm (uphold), affirm with modifications or cancel the notice. If the person who referred the notice is not satisfied with the decision, the matter may be referred within seven days to the OSH Tribunal.

*See Section 51A of the OSH Act and Sections 31AY, 31AZ, 31BA and 31BB of the MSI Act.*

## Part 4 Safety and health committees

Safety and health committees can be an effective part of a safety and health consultation system at the workplace because they provide a forum for employers and representatives of employees to regularly discuss and make recommendations on safety and health issues. They may assist the employer to meet their obligation to consult employees on safety and health matters.

*See Section 19(1)(c) of the OSH Act and Section 9(1)(c) of MSI Act.*

The benefit of safety and health committees is that they can bring management and employee representatives together in a planned, structured and focussed way, providing a means for developing policies and procedures of significance to the whole organisation.

A range of functions for safety and health committees are set out in the OSH Act and MSI Act, eg they may make recommendations to the employer on programmes, measures and procedures and hazards and incidents. However, the committee is an advisory group and it remains the employer's responsibility to make decisions about safety and health issues.

*See Section 40 of the OSH Act and Section 63 of MSI Act.*

Workplaces can agree on the best safety and health committee structure to suit their operation. For example, there might be one safety and health committee across several worksites, or one main safety and health committee with several sub-committees for different work areas.

Not all safety and health issues need to be dealt with by the safety and health committee, particularly where prompt resolution is required. In other words, day to day safety and health issues should be dealt with as they arise by the appropriate people, eg depending on the circumstances, the employer, safety and health officer or safety and health representative.

The roles of the safety and health committee and the safety and health representatives are separate, but complementary, and elected safety and health representatives are expected to work constructively with the safety and health committee where they exist.

The role of the safety and health representative essentially involves reporting and liaising on safety and health matters; whereas the role of the safety and health committee essentially involves reviewing and making recommendations on these matters at a higher level and making recommendations to the employer on policies and procedures to apply across the workplace.

The development of an issue resolution procedure (see Part 6.1) will assist in ensuring a safety and health committee functions effectively and deals with appropriate matters.

### 4.1 Setting up a safety and health committee

**Step one: an employee makes a request, an employer receives a notice or an employer decides to set one up**

A safety and health committee must be established when:

- an employee who works at the workplace requests the employer establish one, unless the WorkSafe Western Australia Commissioner or State Mining Engineer has already made a decision that one is not required. However, the employer may, where they consider it unnecessary, refer the matter to the WorkSafe Western Australia Commissioner or State Mining Engineer, as applicable;
- there is a regulation requiring one be established; or
- the employer receives a notice from the WorkSafe Western Australia Commissioner or State Mining Engineer requiring them to establish one.

*See Sections 38 and 39 of the OSH Act and Sections 67A, 67B and 67F of the MSI Act.*

Alternatively, an employer may on their own initiative decide to establish a safety and health committee, without there being a legal requirement for them to do so; many are set up this way.

*See Sections 39A, 39C, 39D and 39G of the OSH Act and Sections 67A, 67B and 67F of the MSI Act.*

The safety and health committee must be established in the way agreed between the employer, the employee representatives and any safety and health representatives for the workplace – see step three below. Or, where they could not agree, in the way determined by the WorkSafe Western Australia Commissioner or State Mining Engineer, or where necessary by subsequent review by the OSH Tribunal.

*See Section 36(1) and 38(1) of the OSH Act and Sections 62A(1) and 65(1) of the MSI Act .*

The safety and health committee must be established within three months, except if the WorkSafe Western Australia Commissioner or State Mining Engineer allows a longer period.

Figure 2 shows the process for establishing a safety and health committee.

### Step two: notify employee and safety and health representatives (where they exist) or refer the matter

When an employee makes a request to the employer to establish a safety and health committee, the employer must within 21 days:

- notify the employee and any safety and health representatives that they agree to the request; or
- where they consider it unnecessary, refer the matter to the WorkSafe Western Australia Commissioner or State Mining Engineer. The employee and any safety and health representatives must be notified of this referral.

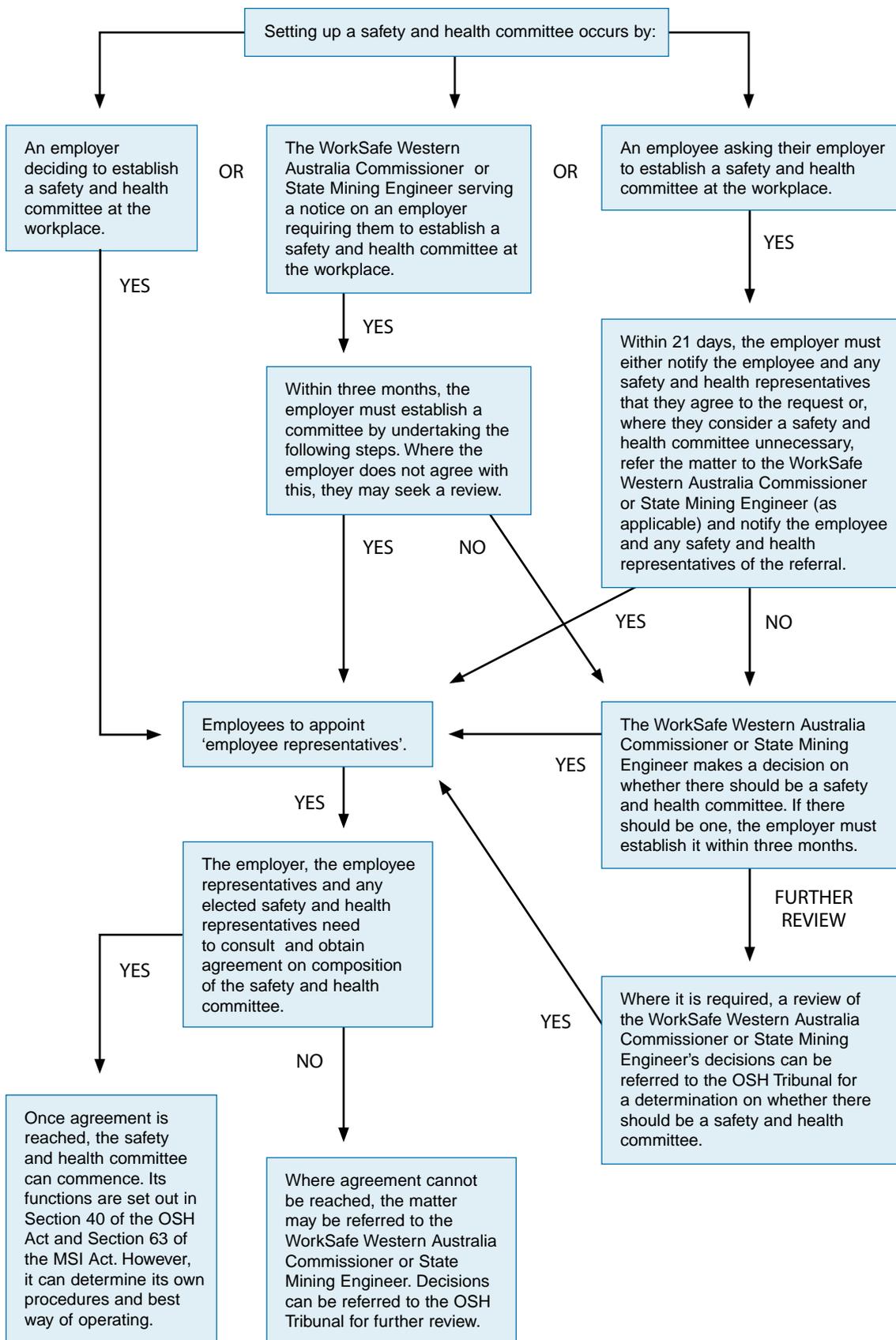
When the WorkSafe Western Australia Commissioner or State Mining Engineer has made a decision, the employer and employee will be notified.

### Step three: employees appoint 'employee representatives'

In situations where an employee requests a safety and health committee or an employer decides to establish one, the employees must appoint one or more 'employee representatives' from the workplace to take part in consultation with the employer and any safety and health representatives on matters relating to the safety and health committee.

*See Section 37 of the OSH Act and Section 64 of MSI Act.*

Figure 2: Establishment of a safety and health committee



*See Section 39C of the OSH Act and Section 67B of the MSI Act.*

#### Step four: consult and obtain agreement on the composition of the safety and health committee

The employer, appointed employee representatives and any elected safety and health representatives (referred to as ‘the consulting parties’) need to discuss and agree on:

- the composition of the safety and health committee; and
- how people will become members of it.

##### Membership of the safety and health committee

At least half of the committee must be representatives of employees. The consulting parties may agree these members can be either safety and health representatives or other workplace employee representatives, or any combination of these two. There is no restriction on the remaining members of the committee. They can be made up of the employer(s) and/or their representative(s).

Consideration should be given to including on the committee:

- members familiar with the various workplace activities and hazard identification for them;
- members with an understanding of the safety and health legislation;
- members who are able to facilitate implementation of amended workplace safety and health policies and procedures when recommendations are developed; and
- safety and health representatives, given their complementary role at the workplace and training in safety and health where they have completed an accredited introductory training course and, in some instances, a post-introductory training course.

Once these matters have been decided, the agreement must be put into writing. It should be kept somewhere safe so it can be referred to clarify agreements when necessary.

##### Coverage of more than one workplace

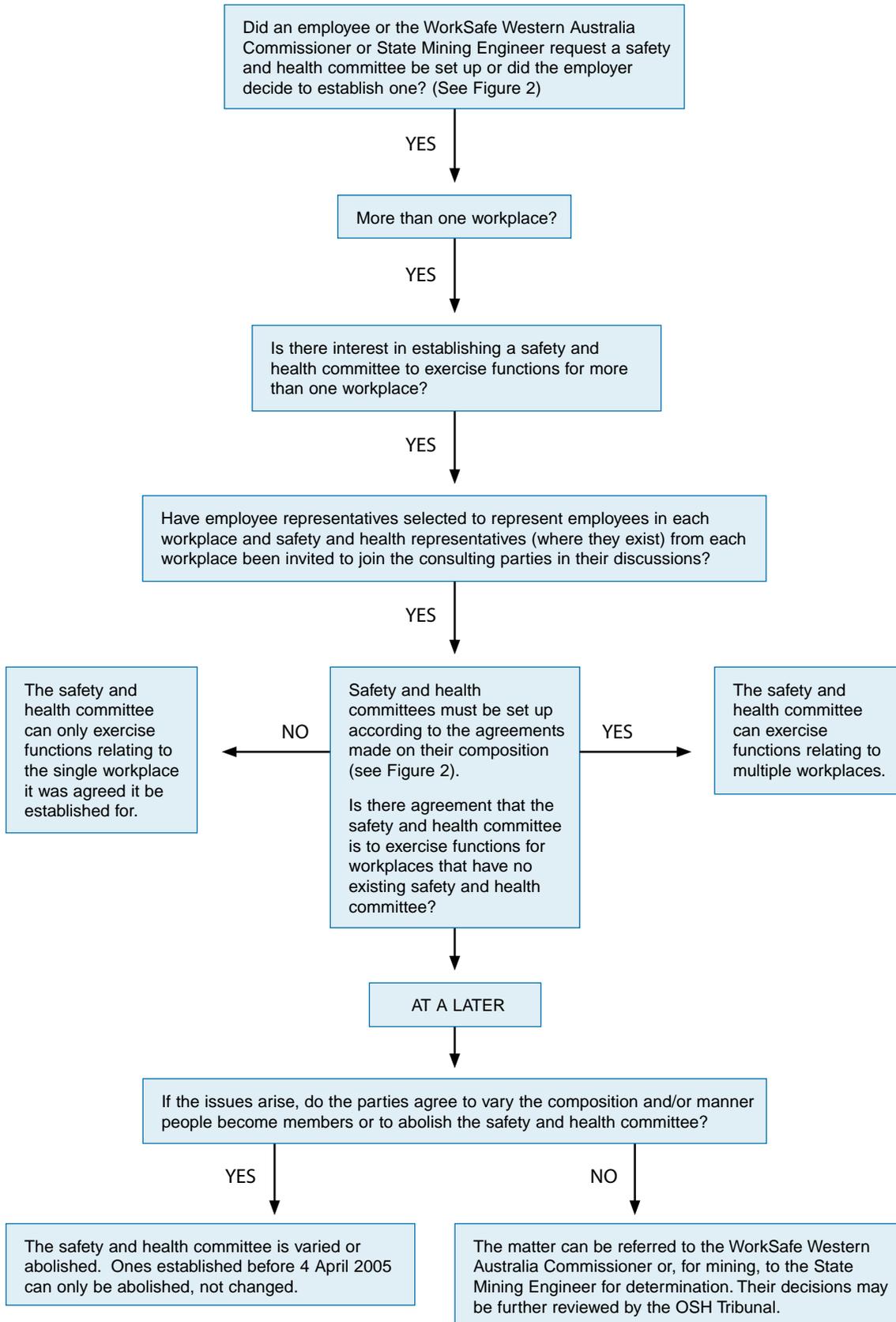
*See Section 39E of the OSH Act and Section 67D of the MSI Act.*

The consulting parties may agree they want a safety and health committee to carry out its roles for more than one of the employer’s workplaces. For example, it could cover workplaces where there are not already safety and health committees.

If it is planned the safety and health committee is to carry out functions for more than one workplace, then there is a process to follow outlined in Figure 3. The following people must be invited to join the consulting parties in their discussions:

- employee representatives selected to represent employees in each workplace; and
- safety and health representatives (where they exist) from each workplace.

Figure 3: Establishing safety and health committees for more than one workplace



Matters to agree on when it is proposed the committee cover more than one workplace

The consulting parties will have to reach agreement on:

- whether the safety and health committee covers all the workplaces and, if so, how this will be done;
- its composition. At least half of the committee must be employee representatives (either safety and health representatives or other workplace employee representatives or any combination of these two), with no restriction on the other half. They can be the employer(s) and their representatives;
- how people become members;
- how the arrangements can be changed in the future; and
- if considered necessary, how to provide for sub-committees.

*See Section 39C(2) of the OSH Act and Section 67B(3) and 67D(3) of the MSI Act.*

The agreements in relation to all these matters must be in writing and copies should be kept.

Failure to reach agreement on makeup, members and coverage

Most issues relating to the establishment of safety and health committees are decided at the workplace. Where agreement cannot be reached on the composition and manner in which people become members, the matters may be referred to the WorkSafe Western Australia Commissioner or State Mining Engineer to assess the situation and decide on a solution.

*See Section 39D of the OSH Act and Section 67C of the MSI Act.*

If the consulting parties cannot agree that the safety and health committee is to cover more than one workplace, with or without sub-committees, the issue cannot be referred to the WorkSafe Western Australia Commissioner or State Mining Engineer. A failure to agree on this issue simply means the safety and health committee can only cover and carry out functions for the one workplace.

Varying or abolishing the committee

Safety and health committees can be varied (ie changes made to the composition and/or how people become members) or abolished if they no longer suit the needs of the workplace. This can occur by written agreement between the employer and members of the safety and health committee. However, safety and health committees established before 4 April 2005 can only be abolished not changed.

*See Section 39F of the OSH Act and Section 67E of the MSI Act.*

Where it cannot be agreed if the safety and health committee should be varied or abolished, the issue can be referred to the WorkSafe Western Australia Commissioner or State Mining Engineer who will decide the matter and notify relevant people.

Review of decisions made by the WorkSafe Western Australia Commissioner or State Mining Engineer on the establishment, amendment or abolition of a safety and health committee can be referred to the OSH Tribunal for final determination.

*See Section 39G of the OSH Act and Section 67F of the MSI Act.*

#### Step five: start the safety and health committee

Once agreement is reached on the safety and health committee's composition, how people become members and in some instances its coverage, it can begin to operate.

Specific functions of the safety and health committee are set out in the OSH Act and MSI Act. However, the committee may determine the best way to serve the workplace and develop its procedures – see Part 4.3.

## 4.2 Functions of safety and health committees

Functions (roles) of safety and health committees: an overview

The OSH Act (Section 40) and the MSI Act (Section 63) set out functions for the safety and health committee to carry out with respect to safety and health at the workplace(s) for which it was formed. These are to:

- i) enable and assist consultation and cooperation between the employer and employees in initiating, developing and implementing safety and health measures;
- ii) keep itself informed on safety and health standards, including those at similar workplaces, and make recommendations to the employer;
- iii) make recommendations to the employer and employees on safety and health programmes, measures and procedures;
- iv) ensure information relating to relevant hazards is kept in a readily accessible form and place for employees at the workplace;
- v) consider and make recommendations on changes (or intended ones) that may affect the safety and health of employees;
- vi) consider matters referred to it by safety and health representatives; and
- vii) perform other functions prescribed in the OSH Regulations or the MSI Regulations or given to it, with its consent, by the employer.

The specific functions are not designed to limit the operation of a safety and health committee, as it can be agreed its functions extend to other areas to better suit the needs of the workplace. However, any additional functions do not amend the safety and health committee's various responsibilities under the OSH Act and MSI Act, as applicable.

### i) Enabling consultation and cooperation on safety and health measures

Safety and health committee members representing the employer and employees should consult and cooperate to initiate, develop and carry out measures to ensure the safety and health of employees.

Procedures should be developed to enable safety and health matters to be raised with the safety and health committee to complement those developed for the resolution of safety and health issues.

*See Section 40(2)(a) of the OSH Act and Section 63(2)(a) of the MSI Act.*

### ii) Keeping informed on safety and health standards

Safety and health committee members should also take steps to keep themselves informed of current and new safety and health standards, including those at similar workplaces. Where necessary, the safety and health committee should review work procedures in the context of that information and make recommendations for improvements.

*See Section 40(2)(b) of the OSH Act and Section 63(2)(b) of the MSI Act.*

Information could be gathered from a number of sources. Where there is a safety and health representative on the safety and health committee, they should be a source of new information gained from attendance at training courses and discussion with safety and health representatives in other organisations.

Organisations that engage safety and health specialists can expect they will provide advice gained from professional reading and membership of professional associations.

Management representatives on the safety and health committee should be aware of their responsibility to bring the latest information, technical references and technological and management developments to its attention to ensure safety and health committee members are fully informed.

*See Section 40(2)(c) of the OSH Act and Section 63(2)(c) of the MSI Act.*

iii) Making recommendations to the employer and employees on safety and health

Safety and health committees can make recommendations to the employer on a wide range of programmes, measures and procedures, such as:

- programmes to set priorities for the elimination of hazards from the workplace;
- programmes to reduce the number of particular accidents which occur in the workplace;
- procedures for the frequency and type of regular inspections of the workplace or parts of it;
- procedures for the employer, managers, safety and health representative (where they exist) and the employer's safety and health officer (where they exist) to be notified immediately of accidents and dangerous occurrences;
- procedures for emergency evacuations and fires;
- a regular and systematic process for the identification of hazards and referral to the employer for assessment and control of risk;
- monitoring and review of accidents and injuries and recommendations for control measures to eliminate or reduce the risks;
- long term monitoring of employees who work with hazardous substances;
- developing systems to ensure safety and health issues are considered during the selection of new plant, equipment and substances;
- planning for important changes in the work environment to ensure safety and health issues are considered and included in the planning of work processes;
- identification of necessary training to be provided to employees;
- developing ways of ensuring all employees are kept informed of the committee's decisions; and
- advising on the availability and selection of suitable personal protective clothing and equipment for workers potentially exposed to hazards.

iv) Ensuring information on relevant hazards is kept accessible for employees

Information provided by the employer on the hazards at the workplace must be kept in a readily available form and place for use by employees. The OSH Regulations and the MSI Act also specify particular documents that must be made available to employees at the workplace. These include copies of the OSH Act, OSH Regulations, relevant Australian or Australian/New Zealand Standards and relevant guidance material issued under the OSH Act.

Other material gathered by the safety and health committee in the course of its work should also be stored in an organised way so it can be retrieved when needed. It is recommended the safety and health committee reach agreement with the employer about where information on hazards will be kept and which committee member will look after it.

v) Making recommendations on changes that may affect safety and health

Early attention to any safety or health implications of proposed changes is vital and consultation on the proposals should occur at the earliest opportunity during the planning stage. Given the safety and health committee's role in the development of policies and procedures, it is appropriate that, where there are also safety and health representatives, it is the forum for this consultation.

An option, when there are employee representatives on the safety and health committee who have not undertaken any safety and health training, is to consult with safety and health representatives at the workplace who have completed introductory safety and health representative training.

*See Section 40(2)(d) of the OSH Act and Section 105 of the MSI Act.*

*See Section 40(2)(e) of the OSH Act and Section 63(2)(e) of the MSI Act.*

## vi) Considering matters referred by safety and health representatives

The importance of safety and health representative(s) referring matters to the safety and health committee is recognised in the OSH Act and MSI Act, with consideration of these referrals one of the safety and health committee's functions.

*See Section 40(2)(f) of the OSH Act and Section 63(2)(f) of the MSI Act.*

## Referral of matters to committees by safety and health representatives

Matters that might be referred by a safety and health representative include:

- a list of potential hazards such as unguarded machinery, poor lighting, electrical hazards, excessive noise, heat or cold and fumes, vapours or dusts. Where appropriate, these should be recorded at the workplace. However, hazards should be dealt with as they arise, not left until there is a safety and health committee meeting, as there could be some time between meetings. If a safety and health representative considers an issue may apply across the workplace, then a referral to the safety and health committee would be appropriate;
- follow up action on previously reported hazards;
- the provision of personal protective clothing and equipment;
- methods for inspecting the workplace;
- accident reports;
- changes and intended changes; and
- strategies to reduce risks.

## vii) Performing other functions

Other functions may be given to the safety and health committee by the employer, after it has given its consent. These could include:

- policy development;
- monitoring programmes;
- emergency procedures;
- training and supervision;
- trends in accidents and illness reports;
- resolution of safety and health issues;
- health promotion at the workplace; and
- operation of employee assistance programs.

Referral of additional functions to the safety and health committee by the employer, safety and health representatives or employees does not, in any way, reduce their separate obligations for safety and health under the relevant act.

Note that, although not currently available, there is the capacity for other functions for safety and health committees to be set out in the OSH Regulations.

*See Section 41(1) of the OSH Act and Section 68 of the MSI Act.*

### 4.3 Safety and health committee procedures and meetings

Once established, a safety and health committee may develop its own meeting procedures.

The effectiveness of a safety and health committee will depend on a number of factors. Significant among these will be the degree of cooperation it is able to develop and the respect with which the employer and employees view its work.

Activities that could assist the safety and health committee include:

- setting regular meetings, as well as providing for special or urgent meetings as required. Arrange meeting dates well in advance, as far as practicable, preferably on a regular day suitable to all concerned. By doing this, meetings can easily be planned months in advance;
- placing notices of meeting dates in places where all workers can see them;
- making every effort to ensure scheduled meetings take place. Where postponement is necessary, an agreed alternative meeting date should be made and announced as soon as possible
- sending a copy of the agenda, accompanying papers and a notice of the time and place of the meeting to committee members in sufficient time for them to consider;
- selecting an effective way of publicising decisions and recommendations;
- ensuring all employees are informed of the committee and its functions;
- ensuring speedy decisions by management on its recommendations and, where necessary, prompt action with effective communication to workers;
- implementing ways for workers to input into the committee processes; and
- setting priorities for the committee and monitoring the results.

### Conduct of meetings

Although the legislation does not contain specifications for meetings, the following considerations may assist safety and health committees establish procedures for their conduct.

#### Who will chair the meeting?

If the parties have difficulty in agreeing on a chairperson, the position could be rotated between employer nominees and employee representatives at each meeting or for a specified period.

#### Will there be a quorum?

The fixed number of members who must be present to make a meeting valid should be decided. All parties need to be represented and, when setting the quorum, absences should be allowed for.

#### Who will take the notes or minutes?

The proceedings of all meetings should be recorded. This could be done by a committee member or a minute taker provided for the purpose. Typing and photocopying facilities need to be available.

#### Who will circulate the notes or minutes?

Somebody should be made responsible for this task.

#### Who will draw up and issue the agenda?

A committee member should be made responsible for drawing up the agenda. Adequate notice of items to be discussed should be given to them to ensure timely distribution of the agenda.

#### How will decisions be made?

Safety and health committees need to determine whether decisions are to be made by consensus or a vote.

#### Who sees the minutes?

A copy of the minutes should be provided to each committee member as soon as possible after the meeting. Copies of the minutes should be displayed, or made available by other means, for employees' information. A committee member should be responsible for providing the employer with recommendations from meetings.

#### How often will there be meetings?

Frequency of meetings needs to be determined. When working out a way of setting meetings, considerations may include:

- the need for the committee to meet to resolve an issue as per Section 24 of the OSH Act and Section 70 of the MSI Act;
- the question of calling a meeting when a serious accident has occurred;
- the presence and severity of particular hazards at the workplace; and
- the timing of meetings to allow employees' access to the committee, for example, where they are shift workers on afternoon or night shift.

## Part 5 Discrimination against safety and health representatives and safety and health committees

See Sections 35A, 35B, 35C and 35D and 56(1) of the OSH Act and Sections 68A, 68B, 68C, 68D, 69(1) of the MSI Act.

Protections against discrimination on the basis of something somebody has done at the workplace in the interests of occupational safety and health are included in the OSH Act and MSI Act. In particular:

- employers are specifically prohibited from causing a safety and health representative or safety and health committee member disadvantage because they have performed the necessary functions of their positions. Both current and former representatives and committee members have legal protections. This is in recognition of their crucial role in workplace safety and the protections are provided to free people of any concern that taking on the roles may result in disadvantage at work;
- employees who have made complaints about safety or health, or provided assistance to a WorkSafe or Resources Safety inspector, safety and health representative or safety and health committee member are protected; and
- safety and health representatives and safety and health committee members are also protected from being treated less favourably by a union.

See Section 56(2) of the OSH Act and Section 69(2) of the MSI Act.

### Safety and health representatives

An employer cannot sack, demote or refuse to give a safety and health representative a promotion they otherwise would have got, or change their employment position, pay or other employment conditions for the worse for the main or substantial reason that they are or were a safety and health representative, or they are or had been performing a function of that position.

Similarly, a prospective employer cannot refuse to give somebody a job for the main or substantial reason that they are or have been a safety and health representative or because they perform or have performed any function of the position.

An offence is committed if an employer or prospective employer causes a safety and health representative disadvantage in any of these ways and could be subject to prosecution.

If any of these discriminations happen to a safety and health representative, then they or their agent or legal practitioner can refer the matter to the OSH Tribunal.

If the safety and health representative has been sacked from their job, the OSH Tribunal can order their employer give them their job back. Alternatively, it can order the employer pay compensation for loss of employment or earnings. If appropriate, it can order both these things to happen.

If the discrimination did not involve a sacking, or was a matter of not getting a new job because of being a safety and health representative or performing the functions of the position, the OSH Tribunal may order the employer or prospective employer pay compensation.

### Contractors

It is possible for contractors to be safety and health representatives for a workplace(s) or group if a scheme is in place, and they need the same protection as an employee safety and health representative in order to be able to properly carry out the functions of the position.

Where there is a scheme in place allowing contractors to be treated as employees for safety and health representative purposes, the person who engages the contractor (referred to as 'the principal') is, for the purposes of safety and health representative matters, treated as the employer of the contractor.

See Section 35A of the OSH Act and Section 68A of the MSI Act.

See Section 35C of the OSH Act and Section 68C of the MSI Act.

See Section 35D of the OSH Act and Section 68D of the MSI Act.

See Section 35B of the OSH Act and Section 68B of the MSI Act.

Similar to an employer, a principal cannot discriminate against a contractor who is a safety and health representative for the main or substantial reason that the contractor is or was a safety and health representative or because they are or were performing any function of the position.

This means the principal cannot put an end to the contractor's engagement or make them suffer any detriment because they are or were a safety and health representative or performing functions of this position.

The principal commits an offence and could be subject to prosecution, if they cause a contractor safety and health representative disadvantage in any of these ways.

If any of these discriminations happen to a contractor who is a safety and health representative, they can refer the matter to the OSH Tribunal, similar to employee safety and health representatives.

Because the contractor is not an employee, the OSH Tribunal cannot order re-instatement. However, it can order the principal pay the safety and health representative compensation.

### ***Safety and health committee members and other employees***

Safety and health committee members and other employees who have raised safety and health matters must not be unfavorably treated by their employer or prospective employer. It is an offence for these people to discriminate against an employee or prospective employee on the grounds of their past or present involvement with a safety and health committee.

Similarly, safety and health representatives, safety and health committee members and other people are not to be unfavourably treated by a union because of their activities in carrying out their responsibilities.

*See Section 35C of the OSH Act and Section 68C of the MSI Act.*

*See Section 35D of the OSH Act and Section 68D of MSI Act.*

*See Section 56 of the OSH Act and Section 69 of the MSI Act.*

*See Section 56(2) of the OSH Act and Section 69(2) of the MSI Act.*

## Part 6 Resolution of safety and health issues

The OSH Act and MSI Act emphasise consultation and set out how to establish consultative processes at the workplace, ie safety and health representatives and safety and health committees. These enable safety and health matters to be dealt with efficiently and cooperatively.

The OSH Act, OSH Regulations, MSI Act and MSI Regulations also set out a specific process for dealing with safety and health issues in a consultative manner and resolving them by following what is referred to in the legislation as a 'relevant procedure', ie an issue resolution procedure, outlined in Figure 4. If the issues remain unresolved, the legislation sets out further steps to resolve them.

*See Section 24 of the OSH Act and Section 70 of the MSI Act.*

The best way to resolve safety and health issues is for all the parties to agree on issue resolution procedures that suit the workplace.

### 6.1 Procedures

Employers have an obligation to attempt to resolve safety and health issues arising at the workplace, under Section 24 of the OSH Act and Section 70 of the MSI Act. Wherever possible, these should be resolved between them and their safety and health representative or safety and health committee (where they exist) or employees, according to an issue resolution procedure developed in consultation with employees at the workplace.

Workplaces, and their appropriate employer and employee representatives, are encouraged to develop their own issue resolution procedures for dealing with safety and health issues. Appropriate representatives include nominated employer representatives and safety and health representatives and/or safety and health committee members or, where these do not exist, nominated employee representatives.

If no issue resolution procedure has been developed, the procedure set out in Regulation 2.6 of the OSH Regulations or Regulation 2.5 of the MSI Regulations must be followed.

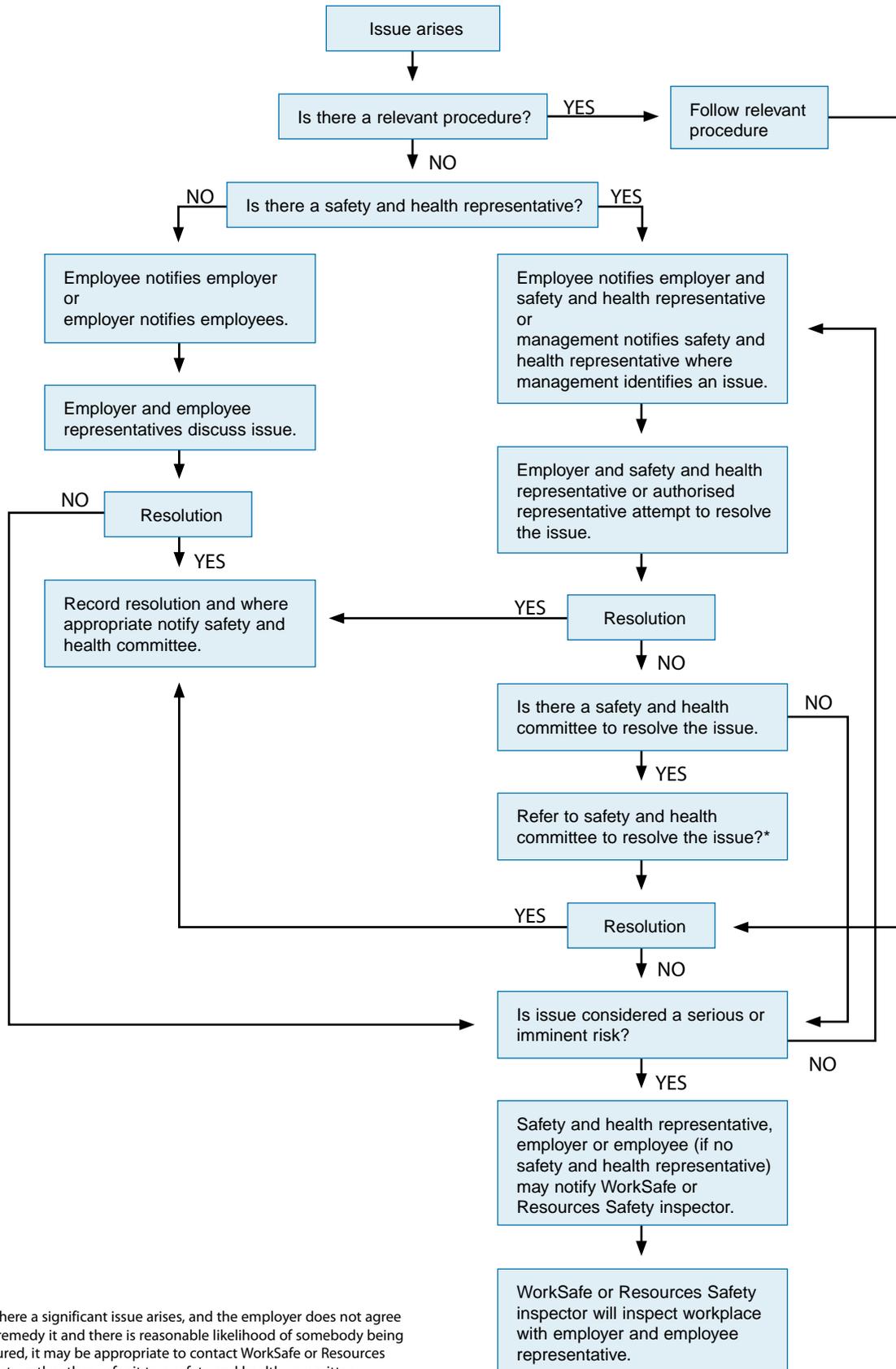
The aim of issue resolution procedures is to ensure safety and health issues are resolved in a quick and effective way before they become a dispute.

The term 'issue' is not defined in the OSH Act or MSI Act, so it must be interpreted using the normal meaning of the word. A safety and health issue exists where there is a difference of opinion between the employer and one or more employees relating to safety or health at the workplace. It does not mean that there has to be a dispute. It is enough that a question has arisen on what should happen or has been done in a particular situation.

A safety and health issue may include any item under the general 'duty of care' Sections of the OSH Act or MSI Act, hazard or potential hazard or any procedural issue relating to safety and health. As far as possible, issues should be resolved as and when they arise.

*See Sections 19 and 24(1) of the OSH Act and Sections 9 and 70 of the MSI Act.*

Figure 4: Process for resolution of safety and health issues at the workplace



\*Where a significant issue arises, and the employer does not agree to remedy it and there is reasonable likelihood of somebody being injured, it may be appropriate to contact WorkSafe or Resources Safety, rather than refer it to a safety and health committee.

#### Matters to address in the issue resolution procedures

The requirements in the OSH Act, OSH Regulations, MSI Act and MSI Regulations for issue resolution procedures are very broad to allow parties to develop their own procedures that suit their workplace. However, the agreed issue resolution procedure should:

- provide a step-by-step approach to issue resolution; with
- identification of the roles of various people for raising and resolving issues immediately, or referring them to a nominated employer representative for immediate resolution. This should include the roles of managers, supervisors, safety and health representatives (where they exist) and employees; and
- where there are safety and health representatives, it should provide the ability for all employees to raise safety and health issues with them.

An agreed issue resolution procedure can also:

- take into account particular circumstances at a workplace, eg how particular hazards might be addressed and to whom specific safety and health issues might be referred;
- streamline the process by specifying the levels of management responsible for dealing with particular issues;
- identify the means by which an issue can be resolved effectively;
- assist safety and health representatives and employees in resolving safety and health issues by setting down a procedure where each party knows in advance the method for dealing with them as they arise;
- provide for regular progress reports to the employee(s) affected, particularly where a safety and health issue cannot be resolved immediately;
- facilitate access to agreed sources of information and expertise;
- provide access to someone with decision making authority; and
- cover the steps to be taken if agreement cannot be reached between the parties.

The agreed procedure should be detailed in writing and made available to all employees. It may, for example, be posted on a notice board at the workplace.

Where there are workers of non-English speaking background at the workplace, it is appropriate for details of the procedure to be available in relevant languages.

Issue resolution procedures need to be monitored for their effectiveness and updated as appropriate.

The management representative and the safety and health representative should take all necessary steps to resolve an issue promptly. If it cannot be resolved, or is beyond the authority of the management representative, it may need to be referred immediately to more senior management. Where possible, they should be involved as part of the procedure.

#### Default procedure for resolution of issues

Where no relevant procedure (ie issue resolution procedure) exists at a workplace, the employer, when attempting to resolve an issue, must follow the one set out in Regulation 2.6 of the OSH Regulations or Regulation 2.5 of the MSI Regulations, as applicable.

According to these regulations, the employer must arrange to meet as soon after the issue arises, as mutually convenient, with:

- the employees and the safety and health representatives (where they exist); or
- where there is no safety and health representative, the employees or a person authorised by them to be their representative.

Where there are safety and health representatives for the workplace concerned but it is not practical for the employer to meet with them and employees within reasonable time, the employer must verbally communicate with them as soon after the issue arises as is mutually convenient.

## 6.2 Unresolved issues

Safety and health representatives must refer unresolved issues to their safety and health committee, where one exists, as per Section 24(3) of the OSH Act and Section 70(3) of the MSI Act. This means that, in some circumstances, committees may need to meet urgently. In developing issue resolution procedures, consideration should be given to allowing this flexibility.

Where attempts to resolve an issue according to an issue resolution procedure have failed, and there is a risk of imminent and serious injury or harm to the health of anybody, the employer or a safety and health representative or, where they do not exist, an employee may notify WorkSafe or Resources Safety.

*See Section 25(1) of the OSH Act and Section 71(1) of the MSI Act.*

#### Referring matters to WorkSafe or Resources Safety

The option of referring matters to WorkSafe or Resources Safety relates to situations arising during the resolution of issues according to an issue resolution procedure. It includes those resulting in a refusal to work.

The option to refer unresolved matters may include situations, for example, where:

- it is not practicable to have an urgent meeting of the safety and health committee;
- the safety and health committee has met and is unable to resolve the issue;
- there is no safety and health committee at the workplace; or
- employees have met with the employer and have been unable to resolve the issue.

If contacting WorkSafe or Resources Safety:

- it is important to provide as much information as possible to assist an inspector to deal with the issue; and
- it should be stated that consultation has occurred at the workplace and no agreement was reached, requiring attendance of an inspector.

The general contact number for WorkSafe is 1300 307 877. When contacting Resources Safety, select the relevant district contact number from the Resources Safety website at [www.docep.wa.gov.au/resourcessafety](http://www.docep.wa.gov.au/resourcessafety)

See Section 25(2) of the OSH Act and Section 71(2) of the MSI Act.

### **Attendance by a WorkSafe or Resources Safety inspector**

Upon being notified of an unresolved safety and health issue by an employer, safety and health representative or an employee, a WorkSafe inspector will attend the workplace 'forthwith'. WorkSafe's aim is to respond in the metropolitan area within two hours and for the remainder of the state within 24 hours. With unresolved issues at mines, a Resources Safety inspector shall attend a mine site 'without delay'.

The inspector, on being requested to attend a workplace, will enquire whether the parties have consulted each other according to the steps set out in the workplace 'relevant procedure'. Where there is not one, consultation must take place according to the procedure set out in Regulation 2.6 of the OSH Regulations or Regulation 2.5 of the MSI Regulations.

In reviewing the unresolved safety and health issue, an inspector:

- can take such action as they consider appropriate to resolve the issue. This may take the form of issuing a prohibition or improvement notice; or
- may take no action indicating that, in his or her opinion, the matter does not involve a contravention of the OSH Act, OSH Regulations, MSI Act or MSI Regulations.

See Section 25(2) of the OSH Act and Section 71(2) of the MSI Act.

## **6.3 Refusal to work**

Under the OSH Act and MSI Act, employees may refuse to undertake some work where they have 'reasonable grounds' to believe there is a risk of imminent and serious injury or harm to health.

This ability, under the legislation, to refuse to undertake some work provides a means for a worker to remove themselves from an immediate risk of serious injury or harm. However, the employee must have reasonable grounds for believing the work is unsafe.

It is not always possible to be specific about what may constitute an immediate threat. Realistically, it relates to situations where there are concerns about the real probability of an accident, injury or harm occurring.

### **Factors to take into account when considering a refusal to work**

Under Section 26(1a) of the OSH Act and Section 72(1a) of the MSI Act, there are certain factors that should be taken into account when considering whether or not reasonable grounds exist to support a belief that continuing to work would result in exposure to the risk of imminent and serious injury or harm to health. These factors include:

- whether a WorkSafe or Resources Safety inspector has attended the workplace as per Section 25(1) of the OSH Act or Section 71(1) of the MSI Act;
- what measures, if any, the WorkSafe or Resources Safety inspector required be taken to remove the risk;
- whether the measures specified by the WorkSafe or Resources Safety inspector have been implemented to remove the cause of the risk; or
- whether the WorkSafe or Resources Safety inspector has determined that no action is required under the legislation.

See Section 26 of the OSH Act and Section 72 of the MSI Act.

### ***Once a risk of an immediate injury or harm to health has been identified, the steps to follow are:***

#### **Step one: notify the employer and safety and health representative (if there is one)**

An employee who refuses to perform work must immediately notify their employer or mine manager and safety and health representative, where one exists.

The employer can give the employee other work to do, away from the danger – see the following step.

The employee is not to leave the workplace without the employer's approval, excepting where they have 'reasonable grounds' to believe that to remain there would result in exposure to a risk of imminent and serious injury or harm. In these situations, they are not required to wait for the employer's approval to leave the workplace.

#### **Step two: resolve the issue according to the relevant procedure**

Once the employer has been notified, the reason for the refusal to work automatically becomes an 'issue' to be resolved according to the 'relevant procedure' ie the issue resolution procedure.

Prompt consultation should take place. This may result in immediate resolution of the issue, or a confirmation of the action to cease work in the area.

*See Sections 26(2) of the OSH Act and Section 72(2) of the MSI Act.*

*See Sections 26(2a) and 26(2b) of the OSH Act and Section 72(2a) and 72(2b) of the MSI Act.*

*See Section 24 of the OSH Act and Section 70 of the MSI Act.*

### ***Alternative work***

An employee who refuses work:

- is not required to do it while the employer and the safety and health representative or, where there is not one, the employees attempt to resolve the issue;
- may be given 'reasonable' alternative work. This work must be away from the immediate risk. Additionally, the employee must be competent and capable of performing the alternative work for it to be considered reasonable. The factors that should be considered in determining whether alternative work is reasonable include:
  - the type of work available;
  - where the work is available;
  - the level of expertise required to perform the work; and
  - the instruction and training necessary prior to undertaking the work;
- may be required to remain in a safe place in the vicinity of the workplace while the issue is either resolved or reasonable alternative work is found;
- cannot be forced to do alternative work where there are reasonable grounds to believe that to do so would create an unsafe situation; and
- should be paid the same pay and other benefits they would normally receive where they perform alternative work. While the matter of payment should not affect the issue resolution process, the parties should be aware of the requirements of the OSH Act in regard to continuity of pay and benefits.

Before an employee commences any alternative work, where relevant, there should be consultation between the employer and the safety and health representative or, where there is not one, the employees to avoid or minimise the possibility of any disputes.

*See Section 27 of the OSH Act and Section 73 of the MSI Act.*

See Section 28 of the OSH Act and Section 74 of the MSI Act.

See Sections 28(1a), 26(2a) and 27 of the OSH Act and Sections 74(1a), 72(2a) and 73 of the MSI Act.

See Sections 28A and 26 of the OSH Act and Sections 74A and 72 of the MSI Act.

### **Pay and entitlements**

An employee who refuses to work under Section 26(1) of the OSH Act or Section 72(1) of the MSI Act (ie because they have reasonable grounds to believe they would be exposed to a risk of imminent and serious injury or harm) is entitled to the same pay or benefits he or she would have received had the work continued.

An employee who leaves the workplace without the employer's approval (as required under the OSH Act and MSI Act) or who refuses alternate work (as also provided under the OSH Act and MSI Act) is not entitled to pay and other benefits for the period of that absence.

A dispute on the entitlements to pay and/or other benefits may be referred to the OSH Tribunal. However, this only applies where an employee has refused to work where they had reasonable grounds to believe there was an imminent or serious threat of injury or harm.

### **'Disentitled employees' not to receive pay**

Under the OSH Act and MSI Act, there are two circumstances where an employee may be viewed as a 'disentitled employee' and not be entitled to pay or other benefits when they have refused to work, that is:

- where they do not have reasonable grounds to believe that to continue working would expose themselves or any other people to a risk of imminent and serious injury or harm, which is required under Section 26(1) of the OSH Act and Section 72(1) of the MSI Act, as applicable; or
- where they refuse to work on the grounds that another employee has done so, ie where they do not have grounds under Section 26(1) of the OSH Act or Section 72(1) of the MSI Act to stop work but do so in support of another employee who refuses to work.

An employee who meets the requirements of Section 26 of the OSH Act or Section 72 of the MSI Act, (ie does have reasonable grounds for believing there is a risk of imminent and serious injury) and is entitled to payment under Section 28(1) of the OSH Act or Section 74(1) of the MSI Act, has fulfilled the stop work provisions and is therefore not a disentitled employee.

An employee who is deemed to be a disentitled employee in accordance with Section 28A(1) of the OSH Act or Section 74A(1) of the MSI Act, and accepts pay or other benefits for any period not worked while so classified, commits an offence.

An employer who pays or provides other benefits for any period not worked by an employee while they are deemed to be a disentitled employee in accordance with Section 28A(1) of the OSH Act or Section 74A(1) of the MSI Act also commits an offence.

The above information is provided as a general guide only. Any dispute about these matters will be determined by the OSH Tribunal.

## Appendix 1 Other sources of information

### Legislation

*Occupational Safety and Health Act 1984*  
Occupational Safety and Health Regulations 1996  
*Mines Safety and Inspection Act 1994*  
Mines Safety and Inspection Regulations 1995

### Publications

Commission for Occupational Safety and Health  
*Guidance note: General duty of care in Western Australian workplaces*

WorkSafe  
*Safety and health representatives handbook*  
*WorkSafe bulletins*

Resources Safety  
*MineSafe magazine*

*Mining safety and health guidelines:*

- *Accident and incident reporting*
- *General duty of care in Western Australian mines*

*Mines Safety and Inspection Act brochures – what employees and employers need to know*

## Appendix 1 continued

### Contacts for further information

Your relevant employer association or union.

Chamber of Commerce and Industry of Western Australia  
180 Hay Street  
EAST PERTH WA 6004  
Tel: (08) 9365 7415  
Fax: (08) 9365 7550  
Email: [osh@cciwa.com](mailto:osh@cciwa.com)  
Internet site: [www.cciwa.com](http://www.cciwa.com)

Chamber of Minerals and Energy of Western Australia Inc  
Level 7, 12 St Georges Terrace  
PERTH WA 6000  
Tel: (08) 9325 2955  
Fax: (08) 9221 3701  
Email: [chamber@cmewa.com](mailto:chamber@cmewa.com)  
Internet site: [www.cmewa.com](http://www.cmewa.com)

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

Department of Consumer and Employment Protection  
WorkSafe Division  
Level 5, 1260 Hay Street  
WEST PERTH WA 6005  
Tel: 1300 307 877  
Fax: (08) 9321 8973  
Email: [safety@docep.wa.gov.au](mailto:safety@docep.wa.gov.au)  
Internet site: [www.worksafe.wa.gov.au](http://www.worksafe.wa.gov.au)  
TTY: (08) 9327 8838

Resources Safety Division  
Mineral House, 100 Plain Street  
EAST PERTH WA 6004  
Tel: (08) 9222 3595  
Fax: (08) 9222 3525  
Email: [resourcessafety@docep.wa.gov.au](mailto:resourcessafety@docep.wa.gov.au)  
Internet site: [www.docep.wa.gov.au/resourcessafety](http://www.docep.wa.gov.au/resourcessafety)

# Appendix 2 Provisional improvement notice (PIN) form

Form for non-mining workplaces.



Department of Consumer and Employment Protection  
Government of Western Australia



**WorkSafe**

**WorkSafe**  
 POST: PO Box 294 West Perth 6872  
 FAX: 08 - 9321 8973  
 EMAIL: [safety@worksafe.wa.gov.au](mailto:safety@worksafe.wa.gov.au)  
 HAND DELIVERY: L5 WestCentre 1260 Hay St West Perth  
 ENQUIRY: 1300 307 877

## Provisional Improvement Notice (PIN)

This provisional improvement notice is issued in accordance with section 51AC of the *Occupational Safety and Health Act 1984 (Act)*.  
**Failure to comply with this provisional improvement notice is an offence under section 51AG of the Act.**

Issued to: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

If this notice is issued to an employee then they must provide a copy to their employer forthwith.

**Right of Review (section 51AH)**  
 The person to whom this notice is issued may, in writing, seek to have the notice reviewed by a WorkSafe inspector. If this notice has been issued to an employee then their employer also has the right of review. The Department must receive the request to review this notice before the remedy date indicated below. Otherwise the right of review is forfeited.  
 In the case of review an inspector may affirm the notice; affirm and modify the notice; or cancel the notice. The written review request may be delivered by hand, posted, emailed or faxed to the contacts above.

In relation to: \_\_\_\_\_  
 at: \_\_\_\_\_ issued on: \_\_\_\_ / \_\_\_\_ /20

I, (insert name) \_\_\_\_\_ am the elected safety and health representative (SHR) for this **workplace / group** (cross one out). I am qualified under section 51AB to issue this notice. I have formed the opinion that **you are contravening OR in circumstances that make it likely that the contravention will be continued or be repeated** (cross one out), either

Section \_\_\_\_\_ of the *Occupational Safety and Health Act 1984*  
**OR**  
 Regulation \_\_\_\_\_ of the *Occupational Safety and Health Regulations 1996*.

The reasonable grounds for my opinion are as follows:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

SHR Signature: \_\_\_\_\_

I have consulted with the person this PIN is issued to     I have consulted with another SHR (if one is elected for the workplace or group)     2 copies retained

**Remedy date: The above matter must be remedied by no later than** \_\_\_\_ / \_\_\_\_ / \_\_\_\_ **(date), at** \_\_\_\_ **(24 hr time)**  
This date must be more than seven days from the issuance of this notice.

**Instructions for correcting the contravention/s:**  
 Note: This section is to be used by the SHR to suggest measures to resolve the matter. It is not mandatory. Codes of practice may be referred to.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**INSPECTOR'S USE ONLY - Review**

Affirm this notice  
 Affirm and modify this notice or  
 Cancel this notice

**Corresponding WorkSafe identifications, eg:**  
 file numbers \_\_\_\_\_  
 notice numbers \_\_\_\_\_  
 investigation numbers \_\_\_\_\_

ABN, ACN, ABR \_\_\_\_\_  
 Inspector's name \_\_\_\_\_ Date \_\_\_\_\_  
 Signature: \_\_\_\_\_

Name of person who received this notice \_\_\_\_\_  
 Signature: \_\_\_\_\_

Position \_\_\_\_\_  
 Date and time: \_\_\_\_\_

This proforma is subject to change. Further information about PINs can be obtained from WorkSafe. March 2005

Form for mining workplaces.

## Appendix 2 Provisional improvement notice (PIN) form

<p>Mines Safety and Inspection Act 1994 (Sections 31BG, 31BH &amp; 31BI)</p>	 <p>Department of Consumer and Employment Protection Government of Western Australia</p> <p>Resources Safety </p>
<h3>Provisional improvement notice for use by safety and health representatives</h3>	
<p><b>Before issuing a provisional improvement notice, a qualified safety and health representative must consult with the person who is to be issued with the notice, and if there is any other safety and health representative for the mine concerned, consult with a another representative for that mine so far as it is reasonably practicable to do so (section 31BH of the Mines Safety and Inspection Act 1994).</b></p>	
<p><small>This provisional improvement notice is issued by a qualified safety and health representative in accordance with section 31BG of the Mines Safety and Inspection Act 1994. Failure to comply with this provisional improvement notice, subject to any review by an inspector, is an offence under section 31BL of the Act.</small></p>	
<p><b>1. Issued to</b> [name, company, address]</p> <div style="border: 1px solid black; height: 40px; width: 100%;"></div>	<p><b>2. In relation to the following matter or activity</b></p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> <p>Location <input style="width: 80%;" type="text"/></p> <p>Date <input type="text"/>/ <input type="text"/>/ <input type="text"/> Time (24hr) <input type="text"/>: <input type="text"/>: <input type="text"/></p>
<p><b>3. I</b> (insert name) <input style="width: 80%;" type="text"/></p> <p>am the elected safety and health representative for this mine or mines or a group of employees pursuant to a scheme under section 55A of the Act. I am qualified under section 31BF to issue this notice.</p>	
<p><b>4. I have formed the opinion that you</b> (a) are contravening, or (b) have contravened, in circumstances that make it likely that the contravention will continue or be repeated</p> <p><b>Section</b> <input type="text"/> and/or <b>Regulation</b> <input type="text"/> of the <i>Mines Safety and Inspection Act 1994/Regulations 1995</i></p>	
<p><b>5. The grounds for this opinion are</b></p> <div style="border: 1px solid black; height: 60px; width: 100%;"></div>	
<p><b>6. You are required to remedy the contravention or the matters or activities occasioning the contravention or likely contravention by no later than</b></p> <p>Date <input type="text"/>/ <input type="text"/>/ <input type="text"/> <b>7. Note:</b> This remedial period must be more than 7 days from the date of issuance of this notice.</p>	
<p><b>8. I have consulted with another safety and health representative</b> (if there is another safety and health representative for the mine or the group concerned so far as reasonably practicable)</p> <p>No <input type="checkbox"/> Yes <input type="checkbox"/> If yes, name of safety and health representative consulted <input style="width: 80%;" type="text"/></p>	
<p><b>9. [Optional] Under section 31BJ of the Act I direct you as follows</b></p> <div style="border: 1px solid black; height: 60px; width: 100%;"></div>	
<p><b>10. Failure to comply with this notice is an offence</b></p> <hr/> <p>Safety and health representative's signature <input style="width: 80%;" type="text"/></p>	
<p><b>This notice, or a copy of it, must be displayed on notice boards so as to be accessible for perusal by employees, and a copy attached to the mine record book</b></p>	
<p><b>REFER TO FOLLOWING PAGE FOR NOTES</b></p>	

RSS/Doc105\_143

## Appendix 3 Acts and regulations referenced in this guidance note

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

#### Part III – General provisions relating to occupational safety and health

- Section 19 Duties of employers
- Section 19A Breaches of Section 19(1)
- Section 20 Duties of employees
- Section 20A Breaches of Section 20(1) or (3)
- Section 24 Resolution of issues at the workplace
- Section 25 Inspector may be notified where issues unresolved
- Section 26 Refusal by employees to work in certain cases
- Section 27 Assignment of other work
- Section 28 Entitlements to continue
- Section 28A Offences – refusal to work

#### Part IV – Safety and health representatives and committees

##### Division 1 – Safety and health representatives

- Section 29 Notices requiring election of safety and health representatives
- Section 30 Consultation on matters relevant to elections
- Section 30A Election scheme may be established
- Section 30B What may be included in a scheme
- Section 30C Appointment of further delegates may be required
- Section 31 Election of safety and health representatives
- Section 32 Terms of office
- Section 33 Functions of safety and health representatives
- Section 34 Disqualification of safety and health representatives
- Section 35 Certain duties of employers in relation to safety and health representatives
- Section 35A Discrimination against safety and health representative in relation to employment
- Section 35B Discrimination against safety and health representative in relation to contract for services
- Section 35C Claim may be referred to the Tribunal
- Section 35D Remedies that may be granted

##### Division 2 – Safety and health committees

- Section 36 Interpretation
- Section 37 Employees to appoint representatives
- Section 38 Obligation of employer to establish a safety and health committee
- Section 39 Request for establishment of safety and health committee
- Section 39A Referral of question to Commissioner
- Section 39B Employer may establish a safety and health committee
- Section 39C How safety and health committee to be constituted
- Section 39D Commissioner may make determination in certain cases
- Section 39E Functions of committee may cover more than one workplace
- Section 39F Amendment of agreement and abolition of committee
- Section 39G Review of Commissioner's decision
- Section 40 Functions of safety and health committees
- Section 41 Meetings
- Section 48 Inspectors may issue improvement notices
- Section 51AB Definition

- Section 51AC Issue of provisional improvement notices
- Section 51AD Consultation required before issue
- Section 51AE Contents of notice
- Section 51AF Provisional notices may include directions
- Section 51AG Failure to comply with notice
- Section 51AH Review of notice by an inspector

#### Part VIII – Miscellaneous

- Section 56 Discrimination

### Occupational Safety and Health Regulations 1996

- Regulation 2.2 Introductory and top-up courses for, and entitlements under Section 35(3) of, safety and health representatives
- Regulation 2.3 Subsequent courses for, and entitlements under Section 35(3) of, safety and health representatives
- Regulation 2.6 Default procedure for resolution of issues
- Regulation 3.2 Persons at workplaces to have access to Act etc.

### *Mines Safety and Inspection Act 1994*

#### Part 2 – General duties relating to occupational safety and health

- Section 9 Duties of employers
- Section 9A Breaches of Section 9(1)
- Section 10 Duties of employees
- Section 10A Breaches of Section 10(1) or (3)

#### Part 3 – Administration of Act

- Section 30 Issue of improvement notice
- Section 31 Contents of improvement notice
- Section 31A Failure to comply with improvement notice
- Section 31AY Notice may be referred for review
- Section 31AZ Review by State mining engineer
- Section 31BA Decision may referred to Tribunal
- Section 31BB Determination by Tribunal
- Section 31BF Definition
- Section 31BG Issue of provisional improvement notices
- Section 31BH Consultation required before issue
- Section 31BI Contents of notice
- Section 31BJ Provisional improvement notices may include directions
- Section 31BK Display of provisional improvement notices
- Section 31BL Failure to comply with notice
- Section 31BN Review of notice by an inspector
- Section 31BO Entries in mines record book

#### Part 5 – Safety and health representatives and committees

- Section 53 Functions of safety and health representative
- Section 54 Notice requiring election of safety and health representatives
- Section 55 Consultation on election matters
- Section 55A Election schemes may be established
- Section 55B What may be included in a scheme
- Section 55C Appointment of further delegates may be required
- Section 56 Election of safety and health representatives
- Section 57 Terms of office
- Section 58 Manager to ensure safety of safety and health representative
- Section 59 Disqualification of safety and health representative

- Section 60 Duties of employers and manager regarding safety and health representatives
- Section 61 Duties of employers regarding safety and health representatives
- Section 62A Interpretation
- Section 63 Functions of safety and health committees
- Section 64 Employees to appoint representatives
- Section 65 Obligation of employer to establish a safety and health committee
- Section 66 Request for establishment of safety and health committee
- Section 67 Referral of question to State mining engineer
- Section 67A Employer may establish a safety and health committee
- Section 67B How safety and health committee to be constituted
- Section 67C State mining engineer may make determination in certain cases
- Section 67D Functions of committee may cover more than one mine
- Section 67E Amendment of agreement and abolition of committee
- Section 67F Review of State mining engineer's decision
- Section 68 Procedure of safety and health committees
- Section 68A Discrimination against safety and health representative in relation to employment
- Section 68B Discrimination against safety and health representative in relation to contract for services
- Section 68C Claim may be referred to the Tribunal
- Section 68D Remedies that may be granted
- Section 69 Other discriminatory treatment of employees or prospective employees

Part 6 – Resolution of safety and health issues

- Section 70 Resolution of issues at the mine
- Section 71 Inspector may be notified where issue unresolved
- Section 72 Refusal by employee to work in certain cases
- Section 73 Assignment of other work
- Section 74 Entitlements to continue
- Section 74A Offences – refusal to work

Part 10 – Final provisions

- Section 105 Publication of regulations at mine

### Mines Safety and Inspection Regulations 1995

- Regulation 2.5 Prescribed procedure for resolution of disputes
- Regulation 2.6 Introductory courses for safety and health representatives
- Regulation 2.6A Training courses for 'qualified representative' under Section 31BF
- Regulation 2.6B Form of notification of election result

