

Occupational Safety and Health Amendment Bill 2010

CONTENTS

Part 1 — Preliminary		
1.	Short title	2
Part 2 — <i>Occupational Safety and Health Act 1984</i> amended		
2.	Act amended	3
3.	Section 3 amended	3
4.	Section 3A amended	3
5.	Section 18AB inserted	5
	18AB. Contravention of certain provisions of this Part where employees exposed to a substantial risk of death or serious bodily harm	5
6.	Section 20A amended	6
7.	Section 23IA inserted	7
	23IA. Terms used	7
8.	Section 23I amended	8
9.	Section 23JA inserted	8
	23JA. Notification of dangerous incidents	8
10.	Section 23J amended	9
11.	Section 23KA inserted	9
	23KA. Duty to preserve incident sites	9
12.	Section 52 amended	10
13.	Sections 53A and 53B inserted	11
	53A. Procedure if prosecution is not brought	11
	53B. Limitation period for prosecutions	14
14.	Section 54 amended	15
15.	Part VII Division 2A inserted	15

Contents

	Division 2A — Sentencing for offences	
	55BA. Application of this Division	15
	55BB. Orders generally	15
	55BC. Adverse publicity orders	16
	55BD. Orders for restoration	17
	55BE. Occupational safety and health project orders	17
	55BF. Release on the giving of a court-ordered OSH undertaking	18
	55BG. Injunctions	19
	55BH. Training orders	19
	55BI. Offence to fail to comply with order	19
16.	Part VIIA inserted	19
	Part VIIA — Enforceable undertakings	
	55S. Commissioner may accept OSH undertakings	19
	55T. Notice of decision and reasons for decision	20
	55U. When OSH undertaking is enforceable	20
	55V. Compliance with OSH undertaking	20
	55W. Contravention of OSH undertaking	20
	55X. Withdrawal or variation of OSH undertaking	21
	55Y. Proceeding for alleged contravention	22
17.	Section 60 amended	22
	Part 3 — The Criminal Code amended	
18.	Act amended	23
19.	Chapter XXIXA inserted	23
	Chapter XXIXA — Industrial manslaughter	
	292A. Terms used	23
	292B. Omissions of employers and senior officers	24
	292C. Industrial manslaughter — employer offence	25
	292D. Industrial manslaughter — senior officer offence	26
	292E. Court may order corporation to take certain actions	27

Western Australia

LEGISLATIVE COUNCIL

(Introduced by Hon. Alison Xamon MLC)

Occupational Safety and Health Amendment Bill 2010

A Bill for

An Act to —

- **amend the *Occupational Safety and Health Act 1984* to impose additional compliance and notification obligations and provide for increased penalties for breaches of duties imposed by the Act;**
- **prescribe new offences under *The Criminal Code* relating to breaches of duty of care owed to workers, and for related purposes.**

The Parliament of Western Australia enacts as follows:

1

Part 1 — Preliminary

2

1. Short title

3

This is the *Occupational Safety and Health Amendment Act 2010*.

4

5

Note: Under the *Interpretation Act 1984* section 20(2), this Act comes into operation on the 28th day after the day on which it receives the Royal Assent.

6

7

**Part 2 — Occupational Safety and Health
Act 1984 amended**

2. Act amended

This Part amends the *Occupational Safety and Health Act 1984*.

3. Section 3 amended

In section 3(1) insert in alphabetical order:

circumstances of gross negligence, in relation to an offence, has the meaning given in section 18A;

consult means to meaningfully share information so that the person or persons being consulted can contribute to and shape decisions about health and safety and in particular, the person or persons being consulted —

- (a) must be given a reasonable opportunity to contribute information and express views; and
- (b) must have their views considered before a decision is made that affects work safety;

OSH undertaking means an undertaking given under Part VIIA;

4. Section 3A amended

Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 3A(1)(a)(i)	\$5 000	\$25 000
s. 3A(1)(a)(ii)	\$6 250	\$31 250

Occupational Safety and Health Amendment Bill 2010

Part 2

Occupational Safety and Health Act 1984 amended

s. 4

Provision	Delete	Insert
s. 3A(1)(b)(i)(I)	\$25 000	\$50 000
s. 3A(1)(b)(i)(II)	\$31 250	\$62 500
s. 3A(1)(b)(ii)(I)	\$50 000	\$250 000
s. 3A(1)(b)(ii)(II)	\$62 500	\$312 500
s. 3A(2)(b)(i)	\$200 000	\$500 000
s. 3A(2)(b)(ii)	\$250 000	\$625 000
s. 3A(3)(a)(i)	\$200 000	\$300 000
s. 3A(3)(a)(ii)	\$250 000	\$375 000
s. 3A(3)(b)(i)	\$400 000	\$1 500 000
s. 3A(3)(b)(ii)	\$500 000	\$1 875 000
s. 3A(4)(a)(i)	\$250 000 and imprisonment for 2 years	\$600 000 and imprisonment for 5 years
s. 3A(4)(a)(ii)	\$312 500 and imprisonment for 2 years	\$750 000 and imprisonment for 5 years
s. 3A(4)(b)(i)	\$500 000	\$3 000 000
s. 3A(4)(b)(ii)	\$625 000	\$3 750 000

1 **5. Section 18AB inserted**

2 After section 18A insert:

3

4 **18AB. Contravention of certain provisions of this Part**
5 **where employees exposed to a substantial risk of**
6 **death or serious bodily harm**

7 (1) This section applies to a contravention of section 19(1),
8 20(1) or (3), 21(1) or (2), 21B(2), 22(1), 23(1), (2), (3)
9 or (3a), 23A or 23G(2).

10 (2) If a person —

11 (a) contravenes a provision mentioned in
12 subsection (1); and

13 (b) by the contravention exposes an employee to a
14 substantial risk of death or serious bodily harm;
15 and

16 (c) in contravening the provision was —

17 (i) negligent as to whether that
18 contravention would expose an
19 employee to a substantial risk of death
20 or serious bodily harm; or

21 (ii) reckless as to whether that
22 contravention would expose an
23 employee to a substantial risk of death
24 or serious bodily harm.

25 (3) A person who contravenes a provision mentioned in
26 subsection (1) in circumstances described in
27 subsection (2) commits an offence and is liable —

28 (a) if the offence was committed by the person as
29 an employee, to a fine of \$150 000; and

s. 6

- 1 (b) if paragraph (a) does not apply —
- 2 (i) in the case of an individual, to a fine of
- 3 \$400 000 and imprisonment for 2 years;
- 4 or
- 5 (ii) in the case of a body corporate,
- 6 \$2 000 000.
- 7 (4) A person charged with —
- 8 (a) an offence under section 19A, 20A, 21A, 21C,
- 9 22A, 23AA, 23B or 23H may, instead of being
- 10 convicted of that offence, be convicted of an
- 11 offence under this section; and
- 12 (b) an offence under this section may, instead of
- 13 being convicted of that offence, be convicted of
- 14 an offence under a section mentioned in
- 15 paragraph (a).
- 16

17 **6. Section 20A amended**

18 Amend the provisions listed in the Table as set out in the Table.

19 **Table**

Provision	Delete	Insert
s. 20A(1)(a)	\$25 000	\$300 000
s. 20A(1)(b)	\$31 250	\$375 000
s. 20A(2)(c)	\$20 000	\$150 000
s. 20A(2)(d)	\$25 000	\$187 500
s. 20A(3)(c)	\$10 000	\$ 50 000
s. 20A(3)(d)	\$12 500	\$ 62 500

1 **7. Section 23IA inserted**

2 At the beginning of Part III Division 5 insert:

3

4 **23IA. Terms used**

5 In this Division —

6 ***business of a self-employed person*** means —

- 7 (a) the conduct of the undertaking or operations of
8 a self-employed person; and
9 (b) work undertaken by that person;

10 ***business of an employer*** means —

- 11 (a) the conduct of the undertaking or operations of
12 an employer; and
13 (b) work undertaken by an employer or any
14 employee of an employer;

15 ***dangerous incident*** means an incident in relation to a
16 workplace that exposes an employee or any other
17 person to a serious risk to a person's safety or health
18 emanating from an immediate or imminent exposure
19 to —

- 20 (a) an uncontrolled escape, spillage or leakage of a
21 substance; or
22 (b) an uncontrolled implosion, explosion or fire; or
23 (c) an uncontrolled escape of gas or steam; or
24 (d) an uncontrolled escape of a pressurised
25 substance; or
26 (e) electric shock; or
27 (f) the fall or release from a height of any plant,
28 substance or thing; or

s. 8

- 1 (g) the collapse, overturning, failure or malfunction
2 of, or damage to, any plant that is required to be
3 authorised for use in accordance with the
4 regulations; or
- 5 (h) the collapse or partial collapse of a structure; or
- 6 (i) the collapse or failure of an excavation or of
7 any shoring supporting an excavation; or
- 8 (j) engulfment, including but not limited to, the
9 inrush of water, mud or gas in an underground
10 excavation or tunnel; or
- 11 (k) the interruption of the main system of
12 ventilation in an underground excavation or
13 tunnel; or
- 14 (l) any other event prescribed by the regulations,
15 but does not include an incident of a prescribed kind.
16

17 **8. Section 23I amended**

18 Delete section 23I(1).

19 **9. Section 23JA inserted**

20 After section 23I insert:
21

22 **23JA. Notification of dangerous incidents**

- 23 (1) This section applies where at a workplace, or at
24 residential premises to which section 23G(2) applies, a
25 dangerous incident occurs in connection with the
26 business of the employer or the business of the
27 self-employed person.
- 28 (2) The relevant person must —
29 (a) immediately; or

- 1 (b) as otherwise provided by the regulations,
2 notify the Commissioner in the prescribed form of the
3 dangerous incident giving such particulars as may be
4 prescribed.
- 5 (3) The relevant person is —
- 6 (a) the employer concerned, where the dangerous
7 incident occurs in connection with the business
8 of the employer; or
- 9 (b) the self-employed person concerned, where the
10 dangerous incident occurs in connection with
11 the business of the self-employed person.
- 12 (4) An employer or a self-employed person must keep a
13 record of each dangerous incident for at least 5 years
14 from the day that notice of the incident is given to the
15 Commissioner under this section.
- 16 (5) If an employer or a self-employed person contravenes
17 subsection (4), the employer or self-employed person
18 commits an offence.
- 19

20 **10. Section 23J amended**

21 In section 23J(1) delete “section 23I(3),” and insert:

22

23 section 23I(3) or 23JA(2),

24

25 **11. Section 23KA inserted**

26 After section 23J insert:

27

28 **23KA. Duty to preserve incident sites**

- 29 (1) An employer or a self-employed person who has given
30 notice, or is under a duty to give notice, under

s. 12

- 1 section 23I or 23JA, must ensure so far as is reasonably
2 practicable, that the site where the incident occurred, or
3 where the person incurred the injury, or was affected
4 by the disease, is not disturbed until an inspector
5 arrives at the site or any earlier time that an inspector
6 directs.
- 7 (2) If an employer or a self-employed person contravenes
8 subsection (1), the employer or self-employed person
9 commits an offence.
- 10 (3) In subsection (1) a reference to a site includes any
11 plant, substance, structure or thing associated with the
12 incident or occurrence.
- 13 (4) Subsection (1) does not prevent any action —
14 (a) to assist an injured person; or
15 (b) to remove a deceased person; or
16 (c) that is essential to make the site safe or to
17 minimise the risk of a further dangerous
18 incident or death, injury or disease; or
19 (d) that is associated with a police investigation; or
20 (e) for which an inspector or the Commissioner has
21 given permission.
22

23 **12. Section 52 amended**

- 24 (1) Delete section 52(1) and insert:
25
- 26 (1) Proceedings for an offence against this Act may be
27 instituted only —
28 (a) by any person authorised in that behalf by the
29 Commissioner; or
30 (b) by an inspector; or

1 (c) subject to subsection (2A), by a person who is
2 an interested person, within the meaning of
3 section 53A(1), in relation to the alleged
4 offence.

5 (2A) If the alleged offence is an offence referred to in
6 section 53A(2), an interested person must give notice
7 to the Commissioner under section 53A(4) before
8 instituting proceedings for the offence.
9

10 (2) Delete section 52(3) and insert:
11

12 (3) This section does not limit the functions of the Director
13 of Public Prosecutions under the *Director of Public*
14 *Prosecutions Act 1991*.
15

16 **13. Sections 53A and 53B inserted**

17 After section 52 insert:
18

19 **53A. Procedure if prosecution is not brought**

20 (1) In this section —

21 *close relative*, in relation to a person, means —

22 (a) a parent, child, grandparent, grandchild, brother
23 or sister of the person; or

24 (b) the spouse or a de facto partner of the
25 first-mentioned person or of a person referred
26 to in paragraph (a);

27 *interested person*, in relation to an alleged offence,
28 means any of the following persons —

29 (a) a person who has incurred an injury, or is
30 affected by a disease, as a result of the alleged
31 offence;

s. 13

- 1 (b) a person who is a close relative of a person —
2 (i) referred to in paragraph (a); or
3 (ii) who has died as a result of the alleged
4 offence;
- 5 (c) the secretary of a trade union, if —
6 (i) a person who has incurred an injury, or
7 is affected by a disease, as a result of the
8 alleged offence is a member of that
9 union; or
10 (ii) a person who has died as a result of the
11 alleged offence was a member of that
12 union immediately before his or her
13 death.
- 14 (2) If —
15 (a) an interested person reasonably considers that
16 the occurrence of an act, matter or thing
17 constitutes an offence that is due to a
18 contravention of (the *alleged offence*) —
19 (i) a provision referred to in section 18A(1)
20 committed in circumstances of gross
21 negligence; or
22 (ii) section 18AB;
23 and
24 (b) no prosecution has been brought in respect of
25 the occurrence of the act, matter or thing after
26 6 months but not later than 12 months after that
27 occurrence,
- 28 the person may make a written request to the
29 Commissioner that a prosecution be brought.

- 1 (3) Within 3 months after the Commissioner receives a
2 request the Commissioner must, by notice in writing —
3 (a) advise the interested person —
4 (i) whether the investigation is complete;
5 and
6 (ii) if the investigation is complete, whether
7 a prosecution has been or will be
8 brought or give reasons why the
9 Commissioner is of the opinion that a
10 prosecution should not be brought;
11 and
12 (b) advise the person, whom the interested person
13 believes committed the alleged offence, of the
14 request and of the matters set out in
15 paragraph (a).
- 16 (4) If the Commissioner advises the interested person
17 under subsection (3)(a)(ii) that the Commissioner is of
18 the opinion that a prosecution should not be brought,
19 the interested person may, within one month of
20 receiving the advice, advise, by notice in writing to —
21 (a) the Commissioner; and
22 (b) the person whom the interested person believes
23 committed the alleged offence,
24 that the interested person is of the opinion that a
25 prosecution should be brought and give reasons why
26 the interested person is of that opinion.
- 27 (5) In this section a reference to the occurrence of an act,
28 matter or thing includes a reference to a failure in
29 relation to an act, matter or thing.

s. 13

- 1 **53B. Limitation period for prosecutions**
- 2 (1) Proceedings for an offence against this Act may be
- 3 brought within the latest of the following periods to
- 4 occur —
- 5 (a) within 3 years after the offence first comes to
- 6 the notice of the Commissioner;
- 7 (b) within 2 years after a finding in an inquest or
- 8 other coronial investigation or an official
- 9 inquiry that the offence has occurred;
- 10 (c) if an OSH undertaking has been given in
- 11 relation to the offence, within 6 months after —
- 12 (i) the undertaking is contravened; or
- 13 (ii) it comes to the notice of the
- 14 Commissioner that the undertaking has
- 15 been contravened; or
- 16 (iii) the Commissioner has agreed under
- 17 section 55X to the withdrawal of the
- 18 undertaking.
- 19 (2) A proceeding for an offence that is due to a
- 20 contravention of —
- 21 (a) a provision referred to in section 18A(1)
- 22 committed in circumstances of gross
- 23 negligence; or
- 24 (b) section 18AB,
- 25 may be brought after the end of the applicable
- 26 limitation period in subsection (1) if fresh evidence
- 27 relevant to the offence is discovered and the court is
- 28 satisfied that the evidence could not reasonably have
- 29 been discovered within the relevant limitation period.
- 30

1 **14. Section 54 amended**

2 Amend the provisions listed in the Table as set out in the Table.

3 **Table**

Provision	Delete	Insert
s. 54A(2)(a)	\$200	\$1 000
s. 54A(2)(b)	\$1 000	\$2 000
s. 54A(2)(c)	\$2 000	\$10 000

4 **15. Part VII Division 2A inserted**

5 After Part VII Division 1 insert:

6

7 **Division 2A — Sentencing for offences**

8 **55BA. Application of this Division**

9 This Division applies if a court convicts a person, or
10 finds a person guilty (the *offender*), of an offence
11 against this Act.

12 **55BB. Orders generally**

- 13 (1) One or more orders may be made under this Division
14 against the offender.
- 15 (2) Orders may be made under this Division in addition to
16 any penalty that may be imposed or any other action
17 that may be taken in relation to the offence.

s. 15

- 1 **55BC. Adverse publicity orders**
- 2 (1) The court may make an order (an *adverse publicity*
- 3 *order*) in relation to the offender requiring the
- 4 offender —
- 5 (a) to take either or both of the following actions
- 6 within the period specified in the order —
- 7 (i) to publicise, in the way specified in the
- 8 order, the offence, its consequences, the
- 9 penalty imposed and any other related
- 10 matter;
- 11 (ii) to notify a specified person or specified
- 12 class of persons, in the way specified in
- 13 the order, of the offence, its
- 14 consequences, the penalty imposed and
- 15 any other related matter;
- 16 and
- 17 (b) to give the Commissioner, within 7 days after
- 18 the end of the period specified in the order,
- 19 evidence that the action or actions were taken
- 20 by the offender in accordance with the order.
- 21 (2) The court may make an adverse publicity order on its
- 22 own initiative or on the application of the person
- 23 prosecuting the offence.
- 24 (3) If the offender fails to give evidence to the
- 25 Commissioner in accordance with subsection (1)(b),
- 26 the Commissioner, or a person authorised in writing by
- 27 the Commissioner, may take the action or actions
- 28 specified in the order.
- 29 (4) However, if —
- 30 (a) the offender gives evidence to the
- 31 Commissioner in accordance with
- 32 subsection (1)(b); and

1 (b) despite that evidence, the Commissioner is not
2 satisfied that the offender has taken the action
3 or actions specified in the order in accordance
4 with the order,

5 the Commissioner may apply to the court for an order
6 authorising the Commissioner, or a person authorised
7 in writing by the Commissioner, to take the action or
8 actions.

9 (5) If the Commissioner or a person authorised in writing
10 by the Commissioner takes an action or actions in
11 accordance with subsection (3) or an order under
12 subsection (4), the Commissioner is entitled to recover
13 from the offender, by action in a court of competent
14 jurisdiction, an amount in respect of the reasonable
15 expenses of taking the action or actions as a debt due to
16 the Commissioner.

17 **55BD. Orders for restoration**

18 (1) The court may order the offender to take such steps as
19 are specified in the order, within the period so
20 specified, to remedy any matter caused by the
21 commission of the offence that appears to the court to
22 be within the offender's power to remedy.

23 (2) The period in which an order under this section must
24 be complied with may be extended, or further
25 extended, by order of the court but only if an
26 application for the extension is made before the end of
27 that period.

28 **55BE. Occupational safety and health project orders**

29 (1) The court may make an order requiring the offender to
30 undertake a specified project for the general
31 improvement of occupational safety and health within
32 the period specified in the order.

s. 15

- 1 (2) The order may specify conditions that must be
2 complied with in undertaking the specified project.
- 3 **55BF. Release on the giving of a court-ordered OSH**
4 **undertaking**
- 5 (1) The court may (with or without recording a conviction)
6 adjourn the proceeding for a period of up to 2 years and
7 make an order for the release of the offender on the
8 offender giving an undertaking with specified
9 conditions (a ***court-ordered OSH undertaking***).
- 10 (2) A court-ordered OSH undertaking must specify the
11 following conditions —
- 12 (a) that the offender appears before the court if
13 called on to do so during the period of the
14 adjournment and, if the court so specifies, at the
15 time to which the further hearing is adjourned;
- 16 (b) that the offender does not commit, during the
17 period of the adjournment, any offence against
18 this Act;
- 19 (c) that the offender observes any special
20 conditions imposed by the court.
- 21 (3) An offender who has given a court-ordered OSH
22 undertaking under this section may be called on to
23 appear before the court by order of the court.
- 24 (4) An order under subsection (3) must be served on the
25 offender not less than 4 days before the time specified
26 in it for the appearance.
- 27 (5) If the court is satisfied at the time to which a further
28 hearing of a proceeding is adjourned that the offender
29 has observed the conditions of the court-ordered OSH
30 undertaking, it must discharge the offender without any
31 further hearing of the proceeding.

1 **55BG. Injunctions**

2 If a court finds a person guilty of an offence against
3 this Act, the court may issue an injunction requiring the
4 person to cease contravening this Act.

5 **55BH. Training orders**

6 The court may make an order requiring a person to
7 undertake or arrange for one or more employees to
8 undertake a specified course of training.

9 **55BI. Offence to fail to comply with order**

- 10 (1) A person who, without reasonable excuse, fails to
11 comply with an order under this Division commits an
12 offence and is liable to a level 2 penalty.
- 13 (2) Subsection (1) places an evidential burden on a person
14 to show a reasonable excuse.
- 15 (3) This section does not apply to an order under
16 section 55BF or 55BG.
- 17

18 **16. Part VIIA inserted**

19 After Part VII insert:
20

21 **Part VIIA — Enforceable undertakings**

22 **55S. Commissioner may accept OSH undertakings**

- 23 (1) The Commissioner may accept a written undertaking
24 (an ***OSH undertaking***) given by a person in connection
25 with a matter relating to a contravention or alleged
26 contravention by the person of this Act.
- 27 (2) An OSH undertaking cannot be accepted for a
28 contravention or alleged contravention for which a

s. 16

1 person would be liable, on conviction, to a level 4
2 penalty.

3 (3) The giving of an OSH undertaking does not constitute
4 an admission of guilt by the person giving it in respect
5 of the contravention or alleged contravention to which
6 the undertaking relates.

7 **55T. Notice of decision and reasons for decision**

8 (1) The Commissioner must give the person seeking to
9 make an OSH undertaking written notice of the
10 Commissioner's decision to accept or reject the OSH
11 undertaking and of the reasons for the decision.

12 (2) The Commissioner must publish, on the
13 Commissioner's website, notice of a decision to accept
14 an OSH undertaking and the reasons for that decision.

15 **55U. When OSH undertaking is enforceable**

16 An OSH undertaking takes effect and becomes
17 enforceable when the Commissioner's decision to
18 accept the undertaking is given to the person who made
19 the undertaking or at any later date specified by the
20 Commissioner.

21 **55V. Compliance with OSH undertaking**

22 A person who contravenes an OSH undertaking made
23 by that person that is in effect commits an offence and
24 is liable to a level 2 penalty.

25 **55W. Contravention of OSH undertaking**

26 (1) The Commissioner may apply to the court for an order
27 if a person contravenes an OSH undertaking.

28 (2) If the court is satisfied that the person who made the
29 OSH undertaking has contravened the undertaking, the

- 1 court, in addition to the imposition of any penalty, may
2 make one or both of the following orders —
- 3 (a) an order directing the person to comply with
4 the undertaking;
- 5 (b) an order discharging the undertaking.
- 6 (3) In addition to the orders referred to in subsection (2),
7 the court may make any other order that the court
8 considers appropriate in the circumstances, including
9 orders directing the person to pay to the State —
- 10 (a) the costs of the proceedings; and
11 (b) the reasonable costs of the Commissioner in
12 monitoring compliance with the OSH
13 undertaking in the future.
- 14 (4) Nothing in this section prevents proceedings being
15 brought for the contravention or alleged contravention
16 of this Act to which the OSH undertaking relates.

17 **55X. Withdrawal or variation of OSH undertaking**

- 18 (1) A person who has made an OSH undertaking may at
19 any time, with the written agreement of the
20 Commissioner —
- 21 (a) withdraw the undertaking; or
22 (b) vary the undertaking.
- 23 (2) However, the provisions of the OSH undertaking
24 cannot be varied to provide for a different alleged
25 contravention of the Act.
- 26 (3) The Commissioner must publish, on the
27 Commissioner's website, notice of the withdrawal or
28 variation of an OSH undertaking.

s. 17

1
2
3
4
5
6
7
8
9
10
11

55Y. Proceeding for alleged contravention

- (1) Subject to this section, no proceedings for a contravention or alleged contravention of this Act may be brought against a person if an OSH undertaking is in effect in relation to that contravention.
- (2) No proceedings may be brought for a contravention or alleged contravention of this Act against a person who has made an OSH undertaking in respect of that contravention and has completely discharged the OSH undertaking.

12
13
14

17. Section 60 amended

Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 60(6)(a)(i)	\$5 000	\$25 000
s. 60(6)(a)(ii)	\$6 250	\$31 250
s. 60(6)(b)(i)	\$25 000	\$50 000
s. 60(6)(b)(ii)	\$31 250	\$62 500
s. 60(6)(c)(i)	\$50 000	\$250 000
s. 60(6)(c)(ii)	\$62 500	\$312 500
s. 60(6)(d)	\$200	\$1 000
s. 60(6)(e)	\$1 000	\$2 000
s. 60(6)(f)	\$2 000	\$10 000

1 **Part 3 — *The Criminal Code* amended**

2 **18. Act amended**

3 This Part amends *The Criminal Code*.

4 **19. Chapter XXIXA inserted**

5 After Chapter XXVIII insert:
6

7 **Chapter XXIXA — Industrial manslaughter**

8 **292A. Terms used**

9 (1) In this Chapter —

10 **cause**, in relation to a death, means to cause or
11 substantially contribute to the death;

12 **conduct** means an act or an omission to do an act;

13 **officer**, of a corporation, has the meaning given by the
14 *Corporations Act 2001* (Commonwealth) section 9;

15 **senior officer**, of an employer, means —

16 (a) for an employer that is a government, or an
17 entity so far as it is a government entity — any
18 of the following —

19 (i) a Minister in relation to the government
20 or government entity;

21 (ii) a person occupying a chief executive
22 officer position (however described) in
23 relation to the government or
24 government entity;

25 (iii) a person occupying an executive
26 position (however described) in relation
27 to the government or government entity
28 who makes, or takes part in making,
29 decisions affecting all, or a substantial

s. 19

- 1 part, of the functions of the government
2 or government entity;
- 3 or
- 4 (b) for an employer that is another corporation
5 (including a corporation so far as it is not a
6 government entity) — an officer of the
7 corporation; or
- 8 (c) for an employer that is another entity — any of
9 the following —
- 10 (i) a person occupying an executive
11 position (however described) in relation
12 to the entity who makes, or takes part in
13 making, decisions affecting all, or a
14 substantial part, of the functions of the
15 entity;
- 16 (ii) a person who would be an officer of the
17 entity if the entity were a corporation;
- 18 ***WorkSafe Western Australia Commissioner*** means the
19 person holding that office under the *Occupational*
20 *Safety and Health Act 1984* section 9.
- 21 (2) A term has the same meaning in this Chapter as it has
22 in the *Occupational Safety and Health Act 1984*, unless
23 the contrary intention appears in this Chapter.
- 24 **292B. Omissions of employers and senior officers**
- 25 (1) An employer's omission to act can be conduct for this
26 Chapter if it is an omission to perform a duty under the
27 *Occupational Safety and Health Act 1984* to avoid or
28 prevent danger to the life, safety or health of an
29 employee of the employer if the danger arises from —
- 30 (a) an act of the employer; or
- 31 (b) anything in the employer's possession or
32 control; or
- 33 (c) any undertaking of the employer.

- 1 (2) An omission of a senior officer of an employer to act
2 can be conduct for this Chapter if it is an omission to
3 perform a duty under the *Occupational Safety and*
4 *Health Act 1984* to avoid or prevent danger to the life,
5 safety or health of an employee of the employer if the
6 danger arises from —
- 7 (a) an act of the senior officer; or
8 (b) anything in the senior officer’s possession or
9 control; or
10 (c) any undertaking of the senior officer.
- 11 (3) For this section, if, apart from an agreement between a
12 person and someone else, something would have been
13 in the person’s control, the agreement must be
14 disregarded and the thing must be taken to be in the
15 person’s control.

16 **292C. Industrial manslaughter — employer offence**

- 17 (1) An employer is guilty of a crime and is liable to the
18 penalty in subsection (2) if —
- 19 (a) an employee of the employer —
- 20 (i) dies in the course of employment by, or
21 providing services to, or in relation to,
22 the employer; or
- 23 (ii) is injured in the course of employment
24 by, or providing services to, or in
25 relation to, the employer and later dies;
- 26 and
- 27 (b) the employer’s conduct causes the death of the
28 employee; and
- 29 (c) the employer is —
- 30 (i) reckless about causing serious harm to
31 the employee, or any other employee of
32 the employer, by the conduct; or

s. 19

- 1 (ii) negligent about causing the death of the
2 employee, or any other employee of the
3 employer, by the conduct.
- 4 (2) A person convicted on indictment of an offence against
5 this section is liable —
- 6 (a) if the offender is an individual, to imprisonment
7 for 20 years; or
- 8 (b) if the offender is a corporation, to a penalty of
9 \$3 000 000.
- 10 **292D. Industrial manslaughter — senior officer offence**
- 11 A senior officer of an employer is guilty of a crime and
12 is liable to imprisonment for 20 years if —
- 13 (a) an employee of the employer —
- 14 (i) dies in the course of employment by, or
15 providing services to, or in relation to,
16 the employer; or
- 17 (ii) is injured in the course of employment
18 by, or providing services to, or in
19 relation to, the employer and later dies;
- 20 and
- 21 (b) the senior officer's conduct causes the death of
22 the employee; and
- 23 (c) the senior officer is —
- 24 (i) reckless about causing serious harm to
25 the employee, or any other employee of
26 the employer, by the conduct; or
- 27 (ii) negligent about causing the death of the
28 employee, or any other employee of the
29 employer, by the conduct.

- 1 **292E. Court may order corporation to take certain actions**
- 2 (1) This section applies if a court finds a corporation guilty
- 3 of an offence against section 292C.
- 4 (2) In addition to any other penalty the court may impose
- 5 on the corporation, the court may order the corporation
- 6 to do one or more of the following —
- 7 (a) take any action stated by the court to
- 8 publicise —
- 9 (i) the offence; and
- 10 (ii) the deaths or serious injuries or other
- 11 consequences resulting from or related
- 12 to the conduct from which the offence
- 13 arose; and
- 14 (iii) any penalties imposed, or other orders
- 15 made, because of the offence;
- 16 (b) take any action stated by the court to notify one
- 17 or more stated persons of the matters stated in
- 18 paragraph (a);
- 19 (c) undertake a specified project for the general
- 20 improvement of occupational safety and health
- 21 within the period specified in the order.
- 22 (3) In making an order under subsection (2), the court —
- 23 (a) may state a period within which the corporation
- 24 must comply with the order; and
- 25 (b) may impose any other requirement that it
- 26 considers necessary or desirable for
- 27 enforcement of the order or to make the order
- 28 effective.
- 29 (4) The total cost to the corporation, in relation to a single
- 30 offence, of —
- 31 (a) any fine imposed for the offence; and

s. 19

- 1 (b) compliance with any order or orders under this
2 section in relation to the offence must not be in
3 excess of \$5 000 000.
- 4 (5) If the court decides to make an order under
5 subsection (2), it must, in determining the kind of
6 order, take into account, so far as practicable, the
7 financial circumstances of the corporation and the
8 nature of the burden that compliance with the order
9 will impose.
- 10 (6) The court is not prevented from making an order under
11 subsection (2) only because it has been unable to find
12 out the financial circumstances of the corporation.
- 13 (7) If a corporation fails, without reasonable excuse, to
14 comply with an order made under subsection (2)(a)
15 or (b) within the stated period (if any) the court may,
16 on application by the WorkSafe Western Australia
17 Commissioner, by order authorise the
18 Commissioner —
- 19 (a) to do anything that is necessary or convenient
20 to carry out any action that remains to be done
21 under the order and that it is still practicable to
22 carry out; and
- 23 (b) to publicise the failure of the corporation to
24 comply with the order.
- 25 (8) The WorkSafe Western Australia Commissioner must
26 comply with an order made under subsection (7).
- 27 (9) Subsection (7) does not prevent contempt of court
28 proceedings from being commenced or continued
29 against a corporation that has failed to comply with an
30 order under this section.

- 1 (10) The reasonable cost of complying with an order under
2 subsection (7) is a debt owing to the State by the
3 corporation against which the order was made.
4

5

=====