

## **GOVERNMENT RESPONSE TO REPORT 31 OF THE STANDING COMMITTEE ON PUBLIC ADMINISTRATION (COMMITTEE) - COMING HOME SAFELY: WORKSAFE AND THE WORKPLACE CULTURE IN WESTERN AUSTRALIA**

The Standing Committee on Public Administration recommends that:

### **Recommendation 1 (Page 25)**

The Parliament of Western Australia, when considering Schedule 2 to the Work Health and Safety Bill 2019, gives consideration to the legislative issues resulting from the lack of clarity as to the use of the designations 'WorkSafe', 'WorkSafe WA' and 'WorkSafe Western Australia', and whether any government department may use these designations in the absence of a formal designation by the Governor pursuant to section 35 of the *Public Sector Management Act 1994*.

#### Response

This recommendation is a matter directed to the Parliament of Western Australia.

### **Recommendation 2 (Page 26)**

The Minister for Industrial Relations clarifies the circumstances in which each of the Commission for Occupational Safety and Health and the WorkSafe Western Australia Commissioner may or should use the designations 'WorkSafe', 'WorkSafe WA' or 'WorkSafe Western Australia'.

#### Response

The Government notes Recommendation 2.

### **Recommendation 3 (Page 32)**

The State Government takes steps, whether through legislative amendment or by proper designation granted to a division of the Department of Mines, Industry Regulation and Safety under the *Public Sector Management Act 1994*, to establish WorkSafe as a public sector body, with its own publicly recognisable identity and comprising all former WorkSafe staff.

#### Response

The Government notes Recommendation 3. The structure of DMIRS, including the WorkSafe Directorates, was determined by Government as part of the 2017 Machinery of Government changes, which aimed to implement a more effective approach to the provision of services to the community and a reduction of the unnecessary use of public resources. DMIRS has refined and continually seeks to evolve its structure to achieve improved safety and health outcomes in Western Australia.

### **Recommendation 4 (Page 33)**

The Minister for Industrial Relations undertakes a review of the Department of Mines, Industry Regulation and Safety's internal structure, in particular the location of the former WorkSafe staff in three groups within the Department, and the removal of the WorkSafe Western Australia Commissioner from a senior executive position, to assess the impact of the changes on the functions of WorkSafe, its ability to perform its functions under the *Occupational Safety and Health Act 1984* and its ability to respond to developing occupational safety and health issues in a timely manner, the Minister to table the report in the Legislative Council by no later than 30 June 2023.

### Response

The Government notes Recommendation 4 and will consider any necessary action in the future.

### **Recommendation 5 (Page 36)**

**The Minister for Industrial Relations, as part of the review of the Department of Mines, Industry Regulation and Safety internal structure, takes into account the part played by the Commission for Occupational Safety and Health within that structure.**

### Response

The Government notes Recommendation 5.

### **Recommendation 6 (Page 36)**

**The State Government provides an ongoing and adequate advertising and communications budget for WorkSafe (DMIRS) to enable it to raise public awareness about its existence and functions.**

### Response

The Government has allocated \$500,000 to DMIRS to fund an advertising and campaign strategy which will include an awareness campaign to highlight the implications of the new Act.

### **Recommendation 7 (Page 36)**

**Should the Work Health and Safety Bill 2019 be enacted, the State Government provides WorkSafe (DMIRS) with additional funding for an extensive advertising campaign to raise public awareness of both WorkSafe and of the new health and safety laws.**

### Response

As indicated in the answer to Recommendation 6 the Government has allocated \$500,000 to DMIRS to fund an advertising and campaign strategy which will include an awareness campaign to highlight the implications of the new Act.

### **Recommendation 8 (Page 45)**

**The State Government provides WorkSafe (DMIRS) with additional positions, over and above the 27 extra staff announced in 2019, for both the Inspection and Investigations Directorates, so that they may be able to adequately meet community expectations in fulfilling their statutory duties.**

### Response

The Government notes recommendation 8.

The McGowan Labor Government has increased funding by \$12.9 million over the forward estimates. It is committed to providing adequate resources for Worksafe.

### **Recommendation 9 (Page 45)**

**The WorkSafe Western Australia Commissioner and the Director General of the Department of Mines, Industry Regulation and Safety ensure that adequate and appropriate measures are put in place to minimise the cumulative trauma experienced by inspectors, especially those working in the Investigations Directorate, from**

**investigating horrific workplace fatalities and serious injuries, including measures to identify and support inspectors suffering from stress and trauma.**

Response

The Government notes that the recommendation is not seeking a response in accordance with Standing Order 191.

The Commissioner is an independent statutory post holder and the Government cannot answer on their behalf.

**Recommendation 10** (Page 46)

**The WorkSafe Western Australia Commissioner and the Director General of the Department of Mines, Industry Regulation and Safety ensure that measures are put in place to develop greater cohesion between WorkSafe inspection teams, and between the Inspection and Investigations Directorates.**

Response

The Government notes that the recommendation is not seeking a response in accordance with Standing Order 191.

The Commissioner is an independent statutory office holder and the Government cannot answer on their behalf.

**Recommendation 11** (Page 46)

**The WorkSafe Western Australia Commissioner and the Director General of the Department of Mines, Industry Regulation and Safety, no later than three years from the date of this report, commission an inquiry to review whether bringing the Inspections and the Investigations Directorates within the Safety Regulation Group has addressed issues identified, such as the Inspection Directorates being left under resourced due to secondments to the Investigations Directorate, management of stress and trauma of inspectors in the Investigations Directorate and inspectors in the Inspection Directorates gaining sufficient and adequate investigations training, or whether further restructuring is required.**

Response

The Government notes that the recommendation is not seeking a response in accordance with Standing Order 191.

The Commissioner is an independent statutory office holder and the Government cannot answer on their behalf.

**Recommendation 12** (Page 46)

**The Minister for Industrial Relations secures additional funding for WorkSafe (DMIRS) to provide:**

- **leadership training and skills development to directors and managers**
- **training and skills development in all aspects of the inspections function**
- **specialist training and skills development in all aspects of the investigations function.**

Response

The Government notes Recommendation 12.

The Government is committed to ensuring adequate funding for Worksafe.

#### **Recommendation 13 (Page 46)**

**Should the Work Health and Safety Bill 2019 be enacted, the State Government provides WorkSafe (DMIRS) with additional funding to train all WorkSafe staff, in particular inspectors in the Inspections and Investigations Directorates and staff in the Legal Services team, on the new legislative regime, in particular the offence provisions and the evidence needed to successfully prosecute the new offences.**

#### Response

The Government notes Recommendation 13. Consistent with its commitment to workplace health and safety, the Government will provide DMIRS with appropriate funding to implement the Work Health and Safety laws in Western Australia.

#### **Recommendation 14 (Page 64)**

**The WorkSafe Western Australia Commissioner, together with the Director General of the Department of Mines, Industry Regulation and Safety, immediately reviews WorkSafe's and the Department's processes and procedures for communicating with bereaved families, with a view to providing timely information regarding the incident, the investigation and the prosecution.**

#### Response

The Government notes that the recommendation is not seeking a response in accordance with Standing Order 191.

The Commissioner is an independent statutory office holder and the Government cannot answer on their behalf.

The Government is deeply concerned about engagement with bereaved families.

Therefore prior to the Committee reporting a specialist Family Liaison Officer was in the process of being engaged, and in conjunction with decisions of the Commissioner the practices of engaging with bereaved families has been changed significantly.

#### **Recommendation 15 (Page 64)**

**During and after all WorkSafe investigations and prosecutions into workplace fatalities, the WorkSafe Western Australia Commissioner retains personal responsibility for all communication with bereaved families. The Committee further recommends that the Commissioner keeps bereaved families fully and regularly informed. Only information independently assessed as posing a real likelihood of jeopardising any future prosecution if released should be withheld from bereaved families.**

#### Response

The Government notes that the recommendation is not seeking a response in accordance with Standing Order 191.

The Commissioner is an independent statutory office holder and the Government cannot answer on their behalf.

The Government is deeply concerned about engagement with bereaved families.

Therefore prior to the Committee reporting a specialist Family Liaison Officer was in the process of being engaged, and in conjunction with decisions of the Commissioner the practices of engaging with bereaved families has been changed significantly.

### **Recommendation 16 (Page 65)**

**WorkSafe immediately ceases its practice of informing bereaved families of workers who have lost their lives in a workplace incident to lodge an access application under the *Freedom of Information Act 1994* to obtain information about the incident and the investigation.**

#### Response

The Government notes Recommendation 16. DMIRS regards the provision of timely information to bereaved families to be of utmost importance and also considers that providing this information should not impede the primary goal of keeping Western Australians safe at work – a goal which relies upon the successful prosecution of individuals and companies that cause death or serious injury as a result of non-compliance with the OSH Act.

The newly appointed Family Support Liaison Officer will have a specific role in liaising with next of kin and affected families, as well as maintaining this important communication.

### **Recommendation 17 (Page 65)**

**If a bereaved family member of a worker who has lost his or her life in a workplace incident lodges an access application under the *Freedom of Information Act 1994*, the officer of WorkSafe (DMIRS) responsible for processing freedom of information applications should inform the WorkSafe Western Australia Commissioner of the application, and the Commissioner should speak with the family member to ascertain what information is being sought and, if appropriate, provide the information outside of the freedom of information process. If the release of the information is likely to jeopardise any future prosecution, the Commissioner should explain this, and that proceeding with the application at this time is unlikely to be successful. Further, if the Commissioner considers it appropriate, that there may be a greater likelihood of accessing the information at the conclusion of the prosecution (and any appeal).**

#### Response

The Government notes Recommendation 17. Noting that part of the recommendation is directed at the Worksafe Commissioner, the Government notes that the Committee is not seeking a response in accordance with Standing Order 191.

### **Recommendation 18 (Page 65)**

**Generally, where a freedom of information application is made by a bereaved family member, a more positive approach be adopted by the WorkSafe staff responsible for dealing with such requests, in line with the spirit of the legislation and the guidance of the Office of the Information Commissioner.**

#### Response

The Government notes Recommendation 18. DMIRS will review its current practices with a view to sharing information where reasonable to do so, in alignment with the provisions of the FOI Act, OSH Act and other relevant legislative requirements. Consideration will include legal professional privilege and ensuring that the success of current and future investigations or prosecutions is not undermined.

The newly appointed Family Support Liaison Officer will have a specific role in liaising with next of kin and affected families, as well as maintaining this important communication.

**Recommendation 19** (Page 65)

**The family liaison officer appointed by WorkSafe reports directly to the WorkSafe Western Australia Commissioner.**

Response

The Government notes Recommendation 19.

**Recommendation 20** (Page 66)

**The WorkSafe Western Australia Commissioner, together with the Director General of the Department of Mines, Industry Regulation and Safety, develops clear guidelines for the notification of a workplace death, with a focus on timeliness and the manner in which the notification is made.**

Response

The Government notes that the recommendation is not seeking a response in accordance with Standing Order 191.

The Commissioner is an independent statutory office holder and the Government cannot answer on their behalf.

**Recommendation 21** (Page 66)

**The WorkSafe Western Australia Commissioner, together with the Director General of the Department of Mines, Industry Regulation and Safety, looks to establish a forum for families and colleague workers to submit and publish impact statements and talk about their experiences in the processes that follow a workplace death.**

Response

The Government notes that the recommendation is not seeking a response in accordance with Standing Order 191.

The Commissioner is an independent statutory office holder and the Government cannot answer on their behalf.

The Government is deeply concerned about engagement with bereaved families and supports the ongoing steps being taken by the Worksafe Commissioner to establish a forum that allows family members to provide advice to Government in relation to their experiences of the management by Worksafe of workplace bereavements.

**Recommendation 22** (Page 66)

**The WorkSafe Western Australia Commissioner establishes an advisory committee to advise him or her of the information and support needs of persons who have been impacted by a workplace incident that involves a death or serious injury.**

Response

The Government notes that the recommendation is not seeking a response in accordance with Standing Order 191.

The Commissioner is an independent statutory office holder and the Government cannot answer on their behalf.

The Government is deeply concerned about engagement with bereaved families and supports the ongoing steps being taken by the Worksafe Commissioner to establish a forum that allows family members to provide advice to Government in relation to their experiences of the management by Worksafe of bereavements.

### **Recommendation 23 (Page 66)**

**The WorkSafe Western Australia Commissioner, together with the Director General of the Department of Mines, Industry Regulation and Safety, identifies and formalises family outreach mechanisms to ensure that all impacted families receive information about the formal processes that follow a workplace death and the associated support that is available to them.**

#### Response

The Government notes that the recommendation is not seeking a response in accordance with Standing Order 191.

The Commissioner is an Independent statutory office holder and the Government cannot answer on their behalf.

The Government is deeply concerned about engagement with bereaved families.

Therefore prior to the Committee reporting a specialist Family Liaison Officer has already been engaged, and in conjunction with decisions of the Commissioner the practices of engaging with bereaved families has been changed significantly.

### **Recommendation 24 (Page 66)**

**The WorkSafe Western Australia Commissioner, together with the Director General of the Department of Mines, Industry Regulation and Safety, creates and maintains a centralised web portal which links to all relevant resources that impacted families and work colleagues may need in the aftermath of a workplace death or serious injury.**

#### Response

The Government notes that the recommendation is not seeking a response in accordance with Standing Order 191.

The Commissioner is an independent statutory office holder and the Government cannot answer on their behalf.

The newly appointed Family Support Liaison Officer will also be a dedicated resource to assess existing resources/information to ensure they meet the support needs of families.

### **Recommendation 25 (Page 66)**

**The State Government funds a support group or service that is experienced in working with people bereaved by a fatal workplace incident, to support impacted families through all formal processes following a workplace death.**

#### Response

The Government notes Recommendation 25. The Government has taken steps, in conjunction with the Commissioner, prior to the publication of the Report to ensure that the way that Worksafe interacts with bereaved families continues to be improved.

### **Recommendation 26 (Page 66)**

**The State Government provides funding to WorkSafe (DMIRS) to ensure that all staff who have access to bereaved families are given appropriate training in working with grieving family members.**

#### Response

The Government notes Recommendation 26. The Government is committed to ensuring that Worksafe staff are provided with appropriate training.

#### **Recommendation 27 (Page 67)**

**The Minister for Industrial Relations inquiries (sic?) into the options for establishing a fund for the purposes of providing urgent financial assistance to families of workers who have died in a workplace incident, without them needing to await the outcome of court or coronial proceedings.**

#### Response

WorkCover WA administers the Workers Compensation and Injury Management Act 1981. It is the Workers Compensation and Injury Management Act 1981 that deals with financial support in relation to a workplace fatality.

WorkCover WA does not need to wait for coronial inquiry outcomes before acting.

Worksafe and DMIRS are not equipped nor tasked with responding to the financial needs of the families of the bereaved.

#### **Recommendation 28 (Page 79)**

**The Minister for Industrial Relations and the Attorney General introduce a Bill into the Parliament of Western Australia, with appropriate safeguards as are considered necessary, to provide the Coroner with timely access to WorkSafe's investigation reports and all documents and evidence. The legislative amendments should make clear that provision of this information to the Coroner does not constitute a waiver of legal professional privilege or public interest immunity.**

#### Response

The Government notes Recommendation 28, noting that the WHS Bill 2019 was introduced to the Western Australian Parliament in 2019 and is now subject to parliamentary process.

#### **Recommendation 29 (Page 80)**

**The Minister for Industrial Relations and the Attorney General introduce a Bill into the Parliament of Western Australia, with appropriate safeguards as are considered necessary, to either provide for joint interviews of witnesses by WorkSafe inspectors and Coroner's investigators, or for WorkSafe to provide compelled witness statements to the Coroner. The legislative amendments should make clear that provision of this information to the Coroner does not constitute a waiver of legal professional privilege or public interest immunity.**

#### Response

The Government does not support Recommendation 29, noting that the WHS Bill 2019 was introduced to the Western Australian Parliament in 2019 and is now subject to parliamentary process.

Other agencies also investigate criminal matters. Accordingly, such an approach would set a precedent for a general application across the public service.

#### **Recommendation 30 (Page 82)**

**The WorkSafe Western Australia Commissioner, together with the Director General of the Department of Mines, Industry Regulation and Safety, determines what information it is appropriate for WorkSafe to provide to unions as feedback on their complaints, and establishes procedural guidelines to ensure that this information is consistently provided in a timely manner. Further, WorkSafe (DMIRS) should cease informing unions that they must lodge access applications under the *Freedom of Information Act 1994* in**



**order to access information that the Commissioner and the Director General have determined may be released.**

Response

The Government notes that the recommendation is not seeking a response in accordance with Standing Order 191.

The Commissioner is an independent statutory office holder and the Government cannot answer on their behalf.

**Recommendation 31 (Page 82)**

**Generally, where a freedom of information application is made by a union, a more positive approach be adopted by the WorkSafe and Department of Mines, Industry Regulation and Safety staff responsible for dealing with such requests, in line with the spirit of the legislation and the guidance of the Office of the Information Commissioner.**

**Recommendation 32 (Page 83)**

**The WorkSafe Western Australia Commissioner, together with the Director General of the Department of Mines, Industry Regulation and Safety, reviews WorkSafe's culture of non-disclosure and its communications policies, procedures and processes with all stakeholders, with a view to providing greater transparency, and that WorkSafe staff be provided with appropriate training, advice and guidance.**

Response

The Government notes the recommendation.

The Government is committed to providing a consistent, equal and legally compliant response to all freedom of information applications.

The Government regards the provision of timely information to stakeholders to be of high importance, it also considers that providing this information should not impede the primary goal of keeping Western Australians safe at work – a goal which relies upon the successful prosecution of individuals and companies that cause death or serious injury as a result of non-compliance with the OSH Act.

**Recommendation 33 (Page 95)**

**Notwithstanding the development of any national Work Health and Safety sentencing guidelines by Safe Work Australia, the Minister for Industrial Relations establishes State-based sentencing guidelines for workplace health and safety offences, to facilitate the courts imposing higher penalties in accordance with the higher penalties approved by the Parliament with the passage of the *Occupational Safety and Health Amendment Act 2018*, and that meet public expectations and serve as a deterrent to other employers.**

Response

The Government notes Recommendation 33 but advises that sentencing guidelines are matters for the judiciary based on the penalties provided by Parliament.

**Recommendation 34 (Page 98)**

**The Minister for Industrial Relations introduces legislation to the Parliament of Western Australia making it unlawful to purchase or supply protection against liability under occupational safety and health laws through a policy of insurance or grant of an indemnity.**

### Response

The Government supports Recommendation 34, noting that the WHS Bill 2019 was introduced to the Western Australian Parliament in 2019 and is now subject to parliamentary process.

The measure recommended by the Committee is already included in the WHS Bill 2019, which will replace the OSH Act when enacted. Part 14, Division 1, Clause 272A *No insurance or other indemnities against fines* of the WHS Bill 2019 prevents an insurance policy from indemnifying a person's liability to pay a fine for an offence under the WHS Act.

### **Recommendation 35** (Page 100)

**The Minister for Industrial Relations brings to the Parliament of Western Australia an amendment to the *Occupational Safety and Health Act 1984* introducing a power for WorkSafe inspectors to issue infringement notices.**

### Response

The Government has introduced the Work Health and Safety (WHS) Bill 2019 which will repeal the Occupational Safety and Health Act 1984 in its entirety.

### **Recommendation 36** (Page 103)

**Information on occupational health and safety prosecutions should be given more prominence on the WorkSafe (DMIRS) website, and be included in Safety Alerts and newsletters.**

### Response

The Government notes Recommendation 36. DMIRS already publishes information about occupational health and safety prosecutions on its website, including a prosecution database which is publicly available through the following link: <https://prosecutions.commerce.wa.gov.au/>.

DMIRS will continue to make this information available, and review its methods to ensure appropriate prominence of this information, consistent with the Office of Digital Government's Digital Services Policy Framework and Content Standard (September 2019).

### **Recommendation 37** (Page 103)

**The Minister for Industrial Relations brings to the Parliament of Western Australia an amendment to the *Occupational Safety and Health Act 1984* introducing a power to make adverse publicity orders.**

### Response

The Government has introduced the Work Health and Safety (WHS) Bill 2019 which will repeal the Occupational Safety and Health Act 1984 in its entirety.

The measure recommended by the Committee is already contained in the WHS Bill 2019.

### **Recommendation 38** (Page 108)

**The Minister for Industrial Relations brings to the Parliament of Western Australia an amendment to the *Occupational Safety and Health Act 1984* providing for the entering into of enforceable undertakings. Further, this authority should clearly prohibit the entering into of enforceable undertakings for offences involving gross negligence, or where the 'act' or 'omission' causes the death of, or serious injury to, another person.**

### Response

The Government has introduced the Work Health and Safety (WHS) Bill 2019 which will repeal the Occupational Safety and Health Act 1984 in its entirety.

The measure recommended by the Committee is already contained in the WHS Bill 2019.

### **Recommendation 39 (Page 109)**

**Should WorkSafe be granted the power to accept enforceable undertakings under the Occupational Safety and Health Act 1984, WorkSafe (DMIRS) should be required to issue on its website:**

- **general guidelines in relation to the acceptance of enforceable undertakings**
- **notice of a decision to accept an enforceable undertaking, and the reasons for that decision.**

### Response

The Government has introduced the Work Health and Safety Bill (WHS) 2019 which will repeal the Occupational Safety and Health Act 1984 in its entirety.

The measure recommended by the Committee in relation to enforceable undertakings is already contained in the WHS Bill 2019.

Guidelines in relation to the acceptance of undertakings have not yet been developed, but will likely model other jurisdictions such as Queensland and New South Wales. Once approved, these guidelines will be published on the DMIRS website.

### **Recommendation 40 (Page 123)**

**The Minister for Industrial Relations brings to the Parliament of Western Australia amendments to regulation 2.4(e) of the Occupational Safety and Health Regulations 1996 to make clear that the requirement of ‘being able to work within 10 days of the day on which the injury occurred’ refers to returning to work on usual contracted duties, not other light duties.**

### Response

The Government has introduced the Work Health and Safety Bill 2019 which will repeal the Occupational Safety and Health Act 1984 in its entirety.

The measure recommended by the Committee is already contained in the WHS Bill 2019.

### **Recommendation 41 (Page 123)**

**Noting that improved reporting between WorkCover and WorkSafe on workplace injuries and diseases is required, WorkSafe enters into a Memorandum of Understanding with WorkCover to require WorkCover to notify WorkSafe within seven days of all claims for compensation received resulting from a workplace injury or disease. Further, on receipt of this information, the WorkSafe Western Australia Commissioner must determine whether WorkSafe will investigate the incidents.**

### Response

The Government notes Recommendation 41. WorkCover WA and DMIRS will investigate the merits and feasibility of sustainable delivery of this recommendation, considering that the capacity of WorkCover WA to disclose information and data is limited under Section 100B of

the *Workers Compensation and Injury Management Act 1981* to the chief executive officer of the department (DMIRS) principally assisting the Minister in the administration of the OSH Act.

WorkCover WA, the Worksafe Commissioner and DMIRS all have a strong commitment to a close and collaborative working relationship. Supporting this is an existing agreement between WorkCover WA and DMIRS for the provision of claim summary data to DMIRS on a quarterly and annual basis.

#### **Recommendation 42 (Page 123)**

**WorkSafe engages in an education campaign to raise employers understanding of their obligations under the *Occupational Safety and Health Act 1984* and the *Occupational Safety and Health Regulations 1996*, and the *Work Health and Safety Act and Regulations 2020*, should they be enacted, to report workplace injuries and diseases directly to WorkSafe.**

#### Response

The Government notes Recommendation 42.

The Government has introduced the Work Health and Safety Bill 2019 which will repeal the Occupational Safety and Health Act 1984 in its entirety.

The Government has allocated \$500,000 to DMIRS to fund educational campaigns in relation to work health and safety issues.

#### **Recommendation 43 (Page 132)**

**WorkSafe (DMIRS) and the Western Australia Police enter into a Memorandum of Understanding requiring police officers, when investigating road traffic fatalities, to consider whether the incident may be work-related and, if so, to immediately report the incident to WorkSafe. Further, that WorkSafe investigates these incidents.**

#### Response

The Government notes that the recommendation is not seeking a response in accordance with Standing Order 191.

The Commissioner is an Independent statutory office holder and the Government cannot answer on their behalf.

The Government congratulates the Worksafe Commissioner on his increased engagement with WA Police.

#### **Recommendation 44 (Page 139)**

**The Minister for Industrial Relations brings a Bill to the Parliament of Western Australia clarifying the duty of employers to ensure that accommodation provided for fly-in fly-out workers is properly maintained, so as to ensure the health and safety of those workers.**

#### Response

The Government supports Recommendation 44, noting that the WHS Bill 2019 was introduced to the Western Australian Parliament in 2019 and is now subject to the parliamentary process.

Part 2, Division 2, Clause 19(4) of the Work Health and Safety (WHS) Bill 2019 includes a duty for a person conducting a business or undertaking (PCBU) to maintain worker accommodation so that the worker occupying the PCBU owned or operated premises, is not exposed to risk to health and safety. The WHS Bill 2019 proposes that WorkSafe has the

authority to investigate incidents at an accommodation that meets the circumstances prescribed in Section 19(4) of the WHS Bill 2019. The WHS Bill 2019 will replace the OSH Act when enacted and the provisions in the WHS Bill 2019 will apply generally to workplaces including those related to mining and petroleum and geothermal energy.

#### **Recommendation 45 (Page 139)**

**The Minister for Industrial Relations brings a Bill to the Parliament of Western Australia to amend the *Occupational Safety and Health Act 1984* to provide that any death or injury, including a suicide or attempted suicide which occurs in work-related premises or accommodation, should be investigated by WorkSafe.**

#### Response

The Government has introduced the Work Health and Safety Bill 2019 which will repeal the Occupational Safety and Health Act 1984 in its entirety.

#### **Recommendation 46 (Page 144)**

**The Minister for Industrial Relations instructs the Department of Mines, Industry Regulation and Safety to amend regulation 2.2(3) of the *Occupational Safety and Health Regulations 1996* to require Safety and Health Representatives to attend a training course within six months of their election.**

#### Response

The Government has introduced the Work Health and Safety (WHS) Bill 2019 which will repeal the Occupational Safety and Health Act 1984 in its entirety.

Part 5, Subdivision 6, Clause 72(2) of the WHS Bill 2019 provides that a person conducting a business or undertaking must as soon as practicable within the period of three months after the day on which the request is made, allow health and safety representatives time off to attend a health and safety representative course.

#### **Recommendation 47 (Page 147)**

**The Minister for Industrial Relations brings a Bill to the Parliament of Western Australia to amend the *Occupational Safety and Health Act 1984*, to require safety and health representatives to be notified as soon as is practicable when a WorkSafe inspector enters a workplace, be entitled to accompany the inspector during the visit and be a party to any discussions held between the inspector and the employer.**

#### Response

The Government has introduced the Work Health and Safety (WHS) Bill 2019 which will repeal the Occupational Safety and Health Act 1984 in its entirety.

The WHS Bill 2019 includes a requirement for inspectors to take all reasonable steps to notify of their entry to the workplace as soon as practicable. Inspectors are required to notify the PCBU, relevant manager and relevant health and safety representatives.

The proposal that safety and health representatives have an 'entitlement' to accompany inspectors is inconsistent with the national model Work Health and Safety Act and WHS Bill 2019 which use the term 'may'.

#### **Recommendation 48 (Page 149)**

**The Department of Mines, Industry Regulation and Safety ensures that deficiencies in the WorkSafe Information Systems Environment database that prevent a WorkSafe inspector from finding out both the name and workplace location of a safety and health**

**representative prior to undertaking a visit be rectified, and that it be adequately funded in order to do this.**

Response

The Government supports Recommendation 48 in principle. DMIRS has been requested to develop a business case for the modernisation of the Worksafe Information System Environment (WISE) for future consideration. DMIRS has commenced consultation with the Office of Digital Government and Department of Treasury on the requirements and funding to replace the current WISE system.

The Work Health and Safety Bill 2019 will bring together the Mines Safety Division and Worksafe. The Mine Safety Division has different and more modern information systems currently in place and this may assist in the progress of this matter.

**Recommendation 49** (Page 152)

**The Minister for Industrial Relations inquires into the reluctance of workers to stand for election as a safety and health representative, and whether the inadequacy of the statutory protections from discrimination for performing the role are a factor in this reluctance, and that appropriate measures to address these concerns are implemented.**

**Recommendation 50** (Page 155)

**WorkSafe (DMIRS) actively promotes the role of safety and health representatives in workplaces, through engagement with both employers and workers, and improves upon its formal relationship with those representatives through formalised improvements in communication and information provision.**

Response

The Government Recommendation 49 and 50 in principle. The Government will consider what would be the best way to inquire into this important issue.

**Recommendation 51** (Page 155)

**The WorkSafe Western Australia Commissioner, together with the Director General of the Department of Mines, Industry Regulation and Safety, consult with relevant stakeholders to explore ways in which safety and health representatives might be employed in the process of the verification of the implementation of improvement notices.**

Response

The Government notes The Worksafe Commissioners comments. Government is committed to increasing the effectiveness of HSRs'.

**Recommendation 52** (Page 165)

**WorkSafe (DMIRS) should review its policies and procedures to improve communications with safety and health representatives, so as to allow for proactive and meaningful feedback to all complaints raised by them.**

Response

The Government supports Recommendation 52. DMIRS will continue to monitor and review policies and procedures to improve communication all stakeholders, including safety and health representatives. The modernisation of WISE will greatly assist in generating improved data intelligence and reporting to stakeholders, including safety and health representatives.

**Recommendation 53** (Page 179)

**The Minister for Industrial Relations introduces a Bill into the Parliament of Western Australia to amend the *Occupational Safety and Health Act 1984* to provide for the appointment of a dedicated executive officer and an administrative support officer to the Commission for Occupational Safety and Health.**

Response

The Government has introduced the Work Health and Safety Bill 2019 which will repeal the Occupational Safety and Health Act 1984 in its entirety.

**Recommendation 54** (Page 189)

**WorkSafe (DMIRS) should make better use of Safety Alerts for educative purposes and for raising public awareness of hazards. Safety Alerts should be published by WorkSafe after all fatalities and serious injuries occurring at a workplace, regardless of whether the fatality or injury was as a result of a common occurrence, to avoid a repeat of the incident pending completion of the investigation into its circumstances. Additionally, where appropriate, a further Safety Alert should be issued at the completion of an investigation, or to alert industry of any safety recommendations made by the Coroner as reported in an inquest report.**

Response

The Government notes Recommendation 54. DMIRS, working with WorkSafe Commissioner, will investigate the merits and sustainable delivery of this recommendation and will continue to explore effective mechanisms to improve public awareness and education to achieve improved safety and health outcomes in workplaces.

**Recommendation 55** (Page 190)

**More prominence be given to Safety Alerts on the WorkSafe (DMIRS) website, with at least a hyperlink to the location of the dedicated Safety Alert directory.**

Response

The Government notes Recommendation 55. DMIRS will investigate the merits of this recommendation noting that all existing Safety Alerts can be easily located on the department's website by typing a simple query into the search box. The design philosophy underpinning the DMIRS website precluded the production of 'list' pages. The website was modelled on the gov.uk website, and was intended to be search engine driven rather than requiring users to know where to find things on the site. The gov.uk website is regarded as the international benchmark in government websites.

**Recommendation 56** (Page 191)

**The Minister for Industrial Relations secures additional funding for WorkSafe to publish and distribute safety posters.**

Response

The Government notes Recommendation 56. The McGowan Labor Government has significantly increased funding to WorkSafe.

The Government has allocated \$500,000 to DMIRS to fund educational campaigns in relation to work health and safety matters.

**Recommendation 57** (Page 195)

**Consideration is given to creating a separate, dedicated website for WorkSafe, to increase the online visibility of the regulator, and to allow for easier searching for the important safety information that is available.**

Response

The Government notes Recommendation 57.

**Recommendation 58** (Page 197)

**The regular issuance of newsletters by WorkSafe should be continued, noting the value of the information contained within them, but the newsletters should not replace Safety Alerts, which alert industry and the public to vital occupational safety and health information.**

Response

The Government supports Recommendation 58. The value of WorkSafe newsletters is recognised and there is no intent to discontinue the regular issuance of this newsletter.

**Recommendation 59** (Page 204)

**The State Government adequately resources and funds WorkSafe (DMIRS) to resume the effective ThinkSafe small business program.**

Response

The Government notes Recommendation 59.

Very significant extra funding has been provided to Worksafe. Worksafe is committed to the efficient and effective use of resources allocated by the State Government.

**Recommendation 60** (Page 217)

**The State Government adequately funds WorkSafe (DMIRS) to bring forward the development of a suitable data management software package to enable WorkSafe to fully and efficiently perform its functions.**

Response

Consistent with its response to Recommendation 48 the Government has requested DMIRS develop a business case for funding to progress the implementation of a WISE replacement system.

**Recommendation 61** (Page 222)

**The Minister for Industrial Relations inquires into alternative funding models for WorkSafe, and reports to the Legislative Council on the inquiry's findings and recommendations by no later than 30 June 2023. The inquiry should evaluate previous submissions and papers, and should commission research from an expert independent body on each of the alternative funding models.**

Response

The Government notes Recommendation 61.

**Recommendation 62** (Page 232)



**Should the Parliament of Western Australia enact legislation adopting the Model Work Health and Safety Act or an industrial manslaughter offence, the State Government should provide additional funding to WorkSafe (DMIRS) for the purposes of further specialist and forensic training for inspectors, to develop the particular knowledge and skills needed to gather evidence and prepare investigation reports and legal briefs in furtherance of successful prosecutions under the new offence provisions.**

Response

The Government notes Recommendation 62. Consistent with its commitment to workplace health and safety, the Government will provide DMIRS with appropriate resources to undertake its compliance and enforcement activities.

DMIRS has recently appointed two specialist and trained forensic officers to perform physical evidence assessments of scenes. Supporting this, DMIRS will also implement training and support for staff aimed at improving investigative quality and expediency.

**Recommendation 63 (Page 235)**

**The WorkSafe Western Australia Commissioner investigates the merits of instituting an improved quality assessment program that reports on meaningful outcomes, and allows the WorkSafe Western Australia Commissioner to ascertain on an independent basis whether WorkSafe’s inspectors are working at the required level of competency, and whether they are working consistently.**

Response

The Government notes that the recommendation is not seeking a response in accordance with Standing Order 191.

The Commissioner is an independent statutory office holder and the Government cannot answer on their behalf.

**Recommendation 64 (Page 236)**

**WorkSafe (DMIRS) be funded and resourced to continue the Accountable and Ethical Decision-Making training course, and the five-yearly refresher course, and that they remain compulsory for inspectors.**

Response

The Government supports Recommendation 64. DMIRS recognises the value of Accountable and Ethical Decision-Making training and advises that there is no intent to discontinue this already compulsory training, including the five-yearly refresher course, for inspectors.

**Recommendation 65 (Page 239)**

**The State Government funds WorkSafe (DMIRS) to develop and deliver a public awareness campaign to inform the public that workplace safety and health hazards should be reported to WorkSafe, and that the identity of complainants is treated confidentially by WorkSafe.**

Response

The Government supports Recommendation 65 in principle consistent with its response to Recommendation 42.

#### **Recommendation 66 (Page 247)**

**The WorkSafe Western Australia Commissioner, together with the Director General of the Department of Mines, Industry Regulation and Safety, establishes a clear and consistent procedure for providing information to complainants who ask to be informed of the outcome of their complaints, and ensure all staff are informed about the procedure and about the information that may be released.**

#### Response

The Government notes that the recommendation is not seeking a response in accordance with Standing Order 191.

The Commissioner is an Independent statutory office holder and the Government cannot answer on their behalf.

#### **Recommendation 67 (Page 248)**

**The WorkSafe Western Australia Commissioner, together with the Director General of the Department of Mines, Industry Regulation and Safety, establishes a clear and consistent procedure requiring team managers and inspectors to record in the WorkSafe Information Systems Environment database all interactions with complainants, including details of information provided to them in relation to the outcome of the complaint.**

#### Response

The Government notes that the recommendation is not seeking a response in accordance with Standing Order 191.

The Commissioner is an independent statutory office holder and the Government cannot answer on their behalf.

#### **Recommendation 68 (Page 249)**

**The WorkSafe Western Australia Commissioner, together with the Director General of the Department of Mines, Industry Regulation and Safety, establishes a formalised complaints handling and review process, and that it be publicised on the WorkSafe (DMIRS) website, in line with best public sector practice, so that unsatisfied complainants are not simply referred to the Ombudsman Western Australia.**

#### Response

The Government notes that the recommendation is not seeking a response in accordance with Standing Order 191.

The Commissioner is an independent statutory office holder and the Government cannot answer on their behalf.

#### **Recommendation 69 (Page 265)**

**The Minister for Industrial Relations provides additional resources to WorkSafe (DMIRS) to allow for inspector workplace visits for the purposes of verification of improvement notice compliance. These visits should take place unannounced.**

#### Response

The Government notes Recommendation 69. Consistent with its commitment to workplace health and safety, the Government has allocated funding to DMIRS for an additional 21 inspectors and investigators to improve workplace safety and health outcomes in Western

Australia. It is expected that the additional funding will increase in verification visits per month. Inspectors already have the power to, and do, conduct unannounced inspections.

#### **Recommendation 70 (Page 267)**

**Where there is a reasonable expectation that the activity giving rise to the issuing of a prohibition notice is continuing, the WorkSafe Western Australia Commissioner requires inspectors to return to the workplace to verify ongoing compliance. These visits should take place unannounced.**

#### Response

The Government notes that the recommendation is not seeking a response in accordance with Standing Order 191.

The Commissioner is an Independent statutory office holder and the Government cannot answer on their behalf.

#### **Recommendation 71 (Page 276)**

**The Minister for Industrial Relations inquires into:**

- **the additional categories of high-risk works that should be notified to the Commissioner upon commencement, so as to enable the presence onsite of WorkSafe inspectors**
- **how many additional inspector positions would be needed to perform increased numbers of inspections**
- **the potential cost of such provision.**

#### Response

The Government notes Recommendation 71, recognising that the WHS Bill 2019 was introduced to the Western Australian Parliament in 2019 and is now subject to the parliamentary process. The WHS Bill 2019, including amendments, have been subject to an extensive consultation process and consideration of stakeholder views.

Marie Boland's independent review of the model Work Health and Safety Laws (Marie Boland Report), included a recommendation for a Review of the model WHS Regulations and model Codes (Recommendation 1).

The Marie Boland Report is currently being considered by Safe Work Australia. The Government will request the Commissioner, a member of the national body, to ensure the Committee's recommendation is included in considerations by Safe Work Australia as appropriate.

#### **Recommendation 72 (Page 282)**

**The Minister for Industrial Relations provides additional funding to WorkSafe (DMIRS) for it to re-establish its north-west offices in Karratha and Broome, or other similar suitable locations, and adequately resource those offices with inspectors.**

#### Response

The Government notes Recommendation 72 and advises that the DMIRS Broome and Karratha offices have not been closed. The Government has allocated funding for an additional 21 inspectors, which includes an additional inspector position at Geraldton and Albany.

**Recommendation 73** (Page 288)

**If the requirement for a safe work method statement for use on high-risk construction activities is to be retained as part of the adoption of Model Work Health and Safety legislation in Western Australia and their safety intent realised, employers and workers need to be appropriately trained in their use, and that adequate funding should be allocated to WorkSafe (DMIRS) to provide for this training.**

Response

The Government will consider this recommendation as part of the implementation process for the Work Health and Safety Bill 2019 if it is passed by the Parliament.

**Recommendation 74** (Page 299)

**Should legislative amendments to the *Occupational Safety and Health Act 1984* be needed to facilitate WorkSafe and Western Australia Police jointly investigating workplace fatalities and sharing evidence, the Minister for Industrial Relations should introduce a Bill to the Parliament of Western Australia to effect the legislative amendments needed.**

Response

The Government has introduced the Work Health and Safety Bill 2019 which will repeal the Occupational Safety and Health (OSH) Act 1984 in its entirety.

**Recommendation 75** (Page 303)

**The State Government provides WorkSafe (DMIRS) with sufficient additional funding to increase the number of lawyers in its Legal Services team dedicated to WorkSafe matters.**

Response

The Government notes Recommendation 75.

The Government has allocated funding for an additional six support staff (which includes the Legal Services team) to improve workplace safety and health outcomes in Western Australia.

**Recommendation 76** (Page 304)

**The limitation for bringing a prosecution under the *Occupational Safety and Health Act 1984* be reduced from three years to two years, and that the Minister for Industrial Relations brings to the Parliament of Western Australia legislative amendments to give effect to that reduction.**

Response

The Government has introduced the Work Health and Safety Bill 2019 which will repeal the Occupational Safety and Health Act 1984 in its entirety.

**Recommendation 77** (Page 311)

**WorkSafe (DMIRS) adopts, as a matter of priority, the practice of issuing a public report on workplace fatalities and serious injuries, similar to the Resource Safety Division's Significant Incident Reports, to raise public awareness of the incident, the likely cause of the incident and the safety measures required to avoid a similar incident. This public**

**report should be issued as soon as possible after the conclusion of the investigation. The Committee further recommends that WorkSafe considers whether an update report should be released to inform industry of safety recommendations made by the Coroner following a coronial inquest, if appropriate.**

#### Response

The Government notes Recommendation 77. Consistent with the response for Recommendation DMIRS will investigate the merits and sustainable delivery of this recommendation and will continue to explore effective mechanisms to improve timely public awareness and education, to achieve improved safety and health outcomes in workplaces.

#### **Recommendation 78 (Page 316)**

**WorkSafe (DMIRS) adopts a stronger policy of punishment and deterrence where breaches of the *Occupational Safety and Health Regulations 1996* have been identified or reported.**

#### Response

The Government has introduced the Work Health and Safety Bill 2019 which will repeal the Occupational Safety and Health Act 1984 in its entirety.

#### **Recommendation 79 (Page 318)**

**The provisions set out in section 231 of the Model Work Health and Safety Act be adopted by the Parliament of Western Australia, subject to the amendments suggested in Recommendation 24 of the Review of the model Work Health and Safety laws: Final Report, Safe Work Australia, December 2018.**

#### Response

The Government notes Recommendation 79, noting that the WHS Bill 2019 was introduced to the Western Australian Parliament in 2019 and is now subject to the parliamentary process.

#### **Recommendation 80 (Page 320)**

**The Minister for Industrial Relations reports to the Legislative Council, during consideration of the Work Health and Safety Bill 2019, providing the reasons for his decision not to include a provision empowering unions to initiate and conduct prosecutions.**

#### Response

The Government notes Recommendation 80, noting that the WHS Bill 2019 was introduced to the Western Australian Parliament in 2019 and is now subject to the parliamentary process.

The Government determined that the provisions of the Bill were most suited to workplaces in Western Australia at this time.

#### **Recommendation 81 (Page 322)**

**The Minister for Industrial Relations commissions an inquiry to consider the merits of separating the regulatory and prosecutorial functions of WorkSafe, with occupational health and safety prosecutions being conducted by either the Director of Public Prosecutions or the State Solicitor's Office, or at least all prosecutions arising from a workplace fatality being conducted by the Director of Public Prosecutions. As part of**

**this consideration, the inquiry should also consider, as an alternative approach, the establishment of an Office of the Work Health and Safety Prosecutor.**

Response

The Government notes Recommendation 81. The structure of DMIRS was determined by Government as part of the 2017 Machinery of Government changes, which aimed to implement a more effective approach to the provision of services to the community and a reduction of unnecessary use of public resources. DMIRS has refined and continually seeks to evolve its structure to achieve improved safety and health outcomes in Western Australia.

Consistent with current practice, the provisions in the WHS Bill 2019 provide that all offences (except industrial manslaughter) will be prosecuted by the DMIRS Legal Services team or SSO. Industrial Manslaughter, Clause 30A of the Work Health and Safety Bill 2019, will be prosecuted by the DPP.

The DPP does not support being provided with broader obligations with respect of WHS prosecutions at this time.

**Recommendation 82 (Page 334)**

**The Minister for Industrial Relations works with the Federal Government and the relevant Ministers of other Australian jurisdictions to require an urgent review of the ease with which White Cards may be obtained, whether White Cards should be subject to an expiry period requiring retraining prior to re-issue, whether a higher age-limit should be imposed on their availability and the adequacy of online applications for the issue of a White Card.**

Response

The Government notes Recommendation 82. This recommendation aligns with Recommendation 30 of the Marie Boland Report and is currently being considered by Safe Work Australia.

**Recommendation 83 (Page 335)**

**The Minister for Industrial Relations considers the merits of amending the *Occupational Safety and Health Act 1984* or the *Occupational Safety and Health Regulations 1996* to require easy visual recognition of all apprentices, trainees and workers under the age of 21 by others, to signal that these workers are inexperienced and require supervision, similar to probationary drivers being required to display P plates on their vehicles when on the road.**

Response

The Government has introduced the Work Health and Safety Bill 2019 which will repeal the Occupational Safety and Health Act 1984 in its entirety.

The Marie Boland Review, the Standing Committee on Uniform Legislation and Statutes Review and the Standing Committee on Legislation did not make recommendations of this nature. However, the Government will request that the Commissioner arranges for this matter to be considered during the review of the national model WHS Regulations by Safe Work Australia members.

**Recommendation 84 (Page 343)**

**The Minister for Industrial Relations provides additional resources to WorkSafe (DMIRS) to increase staff numbers in its auditing investigations team, so as to enable WorkSafe (DMIRS) to meet its target of annually auditing one third of all registered High Risk Works Licence assessors.**

### Response

The Government notes Recommendation 84.

The McGowan Labor Government has provided a very significant increase in resources to WorkSafe after the Committee began its Inquiry.

### **Recommendation 85 (Page 351)**

**The Minister for Industrial Relations introduces a Bill into the Parliament of Western Australia amending the *Occupational Safety and Health Act 1984* to include a provision similar to section 205A of the *National Vocational Education and Training Regulator Act 2011 (Cth)*, to specifically permit WorkSafe (DMIRS) to share information with the Australian Skills Quality Authority and the Training Accreditation Council of Western Australia, with safeguards as determined necessary.**

### Response

The Government notes Recommendation 85, recognising that the WHS Bill 2019 was introduced to the Western Australian Parliament in 2019 and is now subject to the parliamentary process.

Part 14, Division 1, Clause 271(3)(c)(ii) of the WHS Bill 2019 enables disclosure of information in prescribed circumstances, including where it is necessary for the administration or enforcement of another Act prescribed in supporting regulations.

### **Recommendation 86 (page 361)**

**WorkSafe (DMIRS) reviews all coronial inquest reports into workplace fatalities and communicates any workplace safety learnings from those reports to industry, through the issue of a report, alert or other written means, and implement recommendations made by the Coroner with respect to workplace health and safety matters. The Committee recommends further that WorkSafe (DMIRS) be appropriately resourced to perform these functions.**

### Response

The Government notes Recommendation 86. The Government recognises that a mechanism is required for Coroner's reports to be shared with DMIRS for this purpose.

### **Recommendation 87 (page 378)**

**The Minister for Industrial Relations introduces a Bill to Parliament to amend the *Occupational Safety and Health Act 1984* to incorporate the provisions of the Model Work Health and Safety Act.**

### Response

The Government introduced its WHS Bill 2019 to Parliament in November 2019 which will repeal the OSH Act.

### **Recommendation 88 (Page 380)**

**The Minister for Industrial Relations introduces a Bill to the Parliament of Western Australia to amend the *Occupational Safety and Health Act 1984*, to provide for workers in the ever-growing gig-economy to be captured within occupational safety and health legislation in Western Australia.**

## Response

The Government has introduced the Work Health and Safety Bill 2019 which will repeal the Occupational Safety and Health Act 1984 in its entirety.

The WHS Bill 2019 assigns the primary duty of care to the PCBU. The phrase 'business or undertaking' is intended to be read broadly and covers businesses or undertakings conducted by persons including employers, principal contractors, head contractors, franchisors and the Crown. While it has not yet been settled in law, in jurisdictions that have adopted the concept of PCBU, it is anticipated that the primary duty of care will apply to PCBUs in the gig economy, depending on the unique facts and circumstances of each arrangement.

The WHS Bill will apply to all "workers:" and not just "employees".

## **Recommendation 89 (Page 425)**

**The review of the Memorandum of Understanding between WorkSafe and the Australian Maritime Safety Authority regarding its respective jurisdictional responsibilities be settled as a matter of urgency.**

## **Recommendation 90 (Page 425)**

**The Minister for Industrial Relations works with the relevant Minister in the Federal Government to resolve the jurisdictional issues in relation to workers loading and unloading non-domestic vessels to which the *Navigation Act 2012 (Cth)* applies to ensure all maritime workers are protected by occupational health and safety laws in the performance of their work.**

## Response

The Government notes Recommendation 89 and 90. There has been an ongoing strong relationship between DMIRS and Australian Maritime Safety Authority (AMSA). Supporting this is an existing MOU between DMIRS and AMSA for domestic commercial vessels, which is under continual review.

*The Australian Constitution*, Chapter V, Section 109, provides that, when a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid. DMIRS has engaged in extensive consultation and consideration with AMSA and SSO, and note that the jurisdictional issues may be resolved by the Federal Parliament, by way of amendment to the Navigation Act. The Minister for Industrial Relations is committed to working with the relevant Minister in Federal Government to resolve this jurisdictional issue.

AMSA Marine Order 32 also provides that foreign-flagged vessels fall within the purview of AMSA in their administration of the Navigation Act while conducting loading and unloading operations. Accordingly, if any member of the vessel's crew goes on shore and perform work, they are within the jurisdiction of the OSH Act.

## **Recommendation 91 (Page 428)**

**The establishment of a single occupational health and safety regulator in Western Australia with separate divisions for different industries.**

## Response

The Government notes Recommendation 91. The structure of DMIRS was determined by Government as part of the 2017 Machinery of Government changes, which aimed to implement a more effective approach to the provision of services to the community and a reduction of unnecessary use of public resources. DMIRS has refined and continually seeks to evolve its structure to achieve improved safety and health outcomes in Western Australia.



The Government has also introduced the WHS Bill 2019 to Parliament, which brings together a number of workplace safety laws under a single Act that will apply to all industries.

**Recommendation 92** (Page 440)

**WorkSafe (DMIRS) provide all complainants of workplace bullying complaints to WorkSafe with a pamphlet outlining WorkSafe's limited capacity in examining such complaints, and informing the complainants of the role of the Western Australia Industrial Relations Commission and the Equal Opportunity Commission in dealing with workplace bullying so that complainants are fully informed of the options available to them.**

Response

The Government notes Recommendation 92. DMIRS has a robust streamlined process in place for workers to report workplace bullying complaints. This process is subject to regular review and is supported by specialised training delivered annually to DMIRS Call Centre Officers, on how to triage workplace bullying enquiries.

All complainants are provided with the Employee Guide: *Dealing with Inappropriate Workplace Behaviour* (the Guide) which provides a detailed overview of this process and are also directed to the DMIRS website. The Government has asked that the suggested information be provided in DMIRS publications.

**Recommendation 93** (Page 446)

**Clear directions should be given to inspectors on the issuance of health surveillance notices and that, where confusion remains in the interpretation of the relevant parts of the *Occupational Safety and Health Act 1984* and the *Occupational Safety and Health Regulations 1996*, the Minister for Industrial Relations introduces a Bill into the Parliament of Western Australia to make the necessary amendments to provide the clarity needed.**

Response

The Government has introduced the Work Health and Safety Bill 2019 which will repeal the Occupational Safety and Health Act 1984 in its entirety.

**Recommendation 94** (Page 447)

**A program of regional health surveillance workshops for medical practitioners should be undertaken and, thereafter, those practitioners appointed by WorkSafe (DMIRS) to carry out health surveillance supervision should be listed on WorkSafe's website for ease of reference.**

Response

The Government notes Recommendation 94 and advises that Appointed Medical Practitioners are appointed by the employer, not by DMIRS. DMIRS will undertake a promotion to encourage medical practitioners to make themselves available as Appointed Medical Practitioners 5