



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**

Submission templates - Work Health and Safety Regulations for Western Australia

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WHS Regulations submission coversheet

Section 1: Submission details

Full name	[REDACTED]	
Organisation and position (if applicable)	N/A	
Email	[REDACTED]	
Telephone		
Employment status (if applicable)	<input type="checkbox"/> Worker	<input type="checkbox"/> Principal contractor
	<input type="checkbox"/> Employer	<input type="checkbox"/> Contractor
	<input type="checkbox"/> Self-employed	<input checked="" type="checkbox"/> OSH professional
	<input type="checkbox"/> Other (enter details)	
Size of workplace	<input type="checkbox"/> Small (0-9)	<input type="checkbox"/> Medium (20-199) <input checked="" type="checkbox"/> Large (200+)
Please indicate in what capacity you are making this submission (select one of the following categories)	<input checked="" type="checkbox"/> Individual	<input type="checkbox"/> Industry representative
	<input type="checkbox"/> Business	<input checked="" type="checkbox"/> Academic
	<input type="checkbox"/> Community organisation	<input type="checkbox"/> Government representative
	<input type="checkbox"/> Employer organisation	<input checked="" type="checkbox"/> Professional
	<input type="checkbox"/> Other (enter details)	
Which industry sector do you operate in?	Higher Education and Law	
Your type of job or business (if applicable)	Higher Education and Law	

Section 1: Permission details

Internet publication

Public submissions may be published in full on the website, including any personal information of authors and/or other third parties **contained in the submission**.

Please tick this box if you wish for your input to remain confidential (that is, you **do not consent** to having your input published on the internet)

Anonymity

Please tick this box if you wish for your input to be treated as anonymous (that is, you **do not consent** to having your name, or the name of your organisation, published on the internet with your input)

Third party personal information

Please tick this box **if your input contains personal information of third party individuals**, and strike out the statement that is not applicable in the following sentence:

The third party **consents / does not consent** to the publication of their information.

WHS Regulations submission comments

Enter your comments on specific regulations in the table below. You may add new rows at the end of the table if you wish to include comments on other aspects of the national model WHS regulations.

When making your submission, please consider providing specific responses to the following issue:

1. What is the benefit to workplace participants of a proposal?
2. What is the likely cost for you, your business and the Regulator to implement a specific proposal?
3. Is a specific recommendation likely to be effective in achieving healthier and safer workplaces?
4. Are there any unintended consequences of adopting individual regulations in the model WHS regulations?
5. If a new requirement is proposed by the model WHS regulations, what are the costs and benefits?

This template can be used for providing your views concerning:

- National Model Work Health and Safety Regulations
- Demolition licensing under the OSH regulations
- Commercial driver fatigue under the OSH regulations
- Protection from tobacco smoke under the OSH regulations
- Proposed deletions in Western Australia to remove overlap with the *Dangerous Goods Safety Act 2004*

Section 2: Feedback

Track-changed document submission

- Which consultation document(s) are you providing feedback on?
- Differences between the national model WHS regulations and the OSH regulations 1996
 - Consultation document WHS (Mines) Regulations for WA
 - Consultation document WHS (Petroleum and Geothermal Energy Operations) Regulations for WA
 - Proposed deletions in WA to remove overlap with the Dangerous Goods Safety Act 2004*
 - Commercial vehicle drivers: Hours of work – Work Health and Safety Regulations for WA
 - Protection from tobacco smoke – Work Health and Safety Regulations for WA
 - Demolition work: Licence – Work Health and Safety Regulations for WA

Number of pages in your submission 3

Does this submission contain a **track-changed version** of the draft proposal?

Yes

No

If yes, submit as a Microsoft Word compatible document (.docx)*

General comments

This submission is mainly focussed on the election process of Safety and Health Representatives. Please see discussion and specific commentary below.

Detailed comments

If commenting on specific content, you may wish to use the table below.

Reference to specific model WHS / OSH reg no.	Comment
15. Health and Safety Representatives	<p>The following extracts provide context to the specific and general comments provided in this submission:</p> <p><u>Model Work Health and Safety Bill 2016 (WA) s 61(2) ('WHS Bill')</u> provides:</p> <p>However, an election must comply with the procedures (if any) prescribed by the regulations.</p> <p><u>The Work Health and Safety Regulations (WA) r 18 ('WHS Regs')</u> provides:</p> <p>This regulation sets out minimum procedural requirements for the election of a health and safety representative for a work group for the purposes of section 61(2) of the Act.</p> <p>The person conducting the election must take all reasonable steps to ensure that the following procedures are complied with:</p> <ol style="list-style-type: none"> 1. (a) each person conducting a business or undertaking in which a worker in the work group works is informed of the date on which the election is to be held as soon as practicable after the date is determined; 2. (b) all workers in the work group are given an opportunity to: <ol style="list-style-type: none"> (i) nominate for the position of health and safety representative; and (ii) vote in the election; 3. (c) all workers in the work group and all relevant persons conducting a business or undertaking are informed of the outcome of the election. <p><u>The current Occupational Health and Safety Act 1984 (WA) s 31 ('OSH Act')</u> provides:</p> <p>In this section —</p> <p>election means an election required for the purpose of electing a safety and health representative following —</p> <ol style="list-style-type: none"> 1. (a) the giving of a notice under section 29 in relation to a workplace; or

2. (b) a decision of an employer under section 30(2);

relevant employee, in relation to an election, means —

1. (a) an employee who works at the workplace to which the election relates; or
2. (b) if a scheme has been established under section 30A for the election, an employee who —
 1. (i) works at a workplace; or
 2. (ii) is a member of a group of employees, to which the scheme applies.

[(2)-(5) deleted]

Subject to this section, an election shall be conducted and safety and health representatives shall be elected in accordance with —

1. (a) any determination under section 30; and
2. (b) if applicable, a scheme established under section 30A.

If there is any inconsistency between a determination under section 30 and a scheme established under section 30A, the latter prevails.

An election shall be by secret ballot.

Every relevant employee is entitled to vote at an election.

Only a relevant employee is eligible to be elected as a safety and health representative at an election.

If, after the relevant steps provided for by or under this Division have been taken, only one eligible candidate is nominated for election to an office of safety and health representative —

1. (a) a ballot need not to be held; and
2. (b) that candidate shall be deemed to have been duly elected.

The person conducting an election shall notify the Commissioner and the employer concerned of the results of the election.

Specific Comment:

When evaluating the OSH Act compared to the new WHS Bill and WHS Regs, it is evident that at the time of the drafting of the OSH Act, the regulator intended to postulate as much clarity and detail to the process of electing Safety and Health Representatives. By providing further sufficient and particular detail to the specific above-mentioned sections/regulations, could act as a shield to vague

and ambiguous election procedures or acts that may affect the integrity of the process as intended by the regulator.

Section 61(2) of the WHS Bill and r 18 of the WHS Regs; however, do not provide similar sufficient clarity on the above-mentioned election process. It is recommended that consideration be given to more detail to safeguard the integrity through the election process of Health and Safety Representatives. This in turn could prevent unnecessary consequences of intimidation, bullying and related behaviour during the election process. Ultimately, the main purpose of Health and Safety legislation in general, is to, as far as reasonably practicable, create a working environment free and safe from unnecessary risks to an employee's health (in this regard the Health and Safety Representatives).

It is further recommended that the definition of 'election' (as originally defined in the OSH Act) be included in either the new WHS Bill or WHS Regs under 'defined terms' for consistency purposes.