# MGC ATTACHMENT BOOKLET FOR

# ORDINARY COUNCIL MEETING

19 November 2025 at 5:00pm

INDEX

## 13. MANAGER GOVERNANCE & COMMUNITY

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TERMS OF REFERENCE
Audit, Risk and Improvement Committee 1.0.1

| | |
|---|---|
| Title: | 1.0.1 – AUDIT, RISK AND IMPROVEMENT COMMITTEE TERMS OF REFERENCE |
| Adopted: | 19 December 2018 |
| Last Reviewed: | 19 November 2025 |
| Associated Legislation: | Sections 7.1A, of the Local Government Act A1995.<br>Regulations 16 of the Local Government (Audit) Regulations 1996 |
| Associated Documents: | Shire of Mingenew Standing Orders Local Law 2017<br>1.2.2 Risk Management Policy<br>1.2.2 Risk Management Framework & Procedures<br>1.2.8 Code of Conduct |
| Review Responsibility: | Audit & Risk Committee |
| Delegation: | N/A |

## OBJECTIVES

The primary objective of the Audit, Risk and Improvement Committee (ARIC) is to accept responsibility for the annual external audit and liaise with the local government's auditor so that Council can be satisfied with the performance of the local government in managing its statutory and fiscal affairs.

Reports from the ARIC will assist Council in discharging its legislative responsibilities of controlling the local government's affairs, determining the local government's policies and overseeing the allocation of the local government's finances and resources. The Committee will ensure transparency in the Local Government's reporting and will liaise with the CEO to ensure the effective and efficient management of the local government's systems and processes.

The Committee is to facilitate –

- the enhancement of the credibility and objectivity of internal and external financial reporting;
- effective management of financial and other risks and the protection of Council assets;
- compliance with laws and regulations as well as use of best practice guidelines relative to audit, risk management, internal control and legislative compliance;
- the coordination of the internal audit function with the external audit; and
- the provision of an effective means of communication between the external auditor, any internal auditor/s, the CEO and the Council.

## POWERS OF THE AUDIT, RISK AND IMPROVEMENT COMMITTEE

The Audit, Risk and Improvement Committee is to report to Council and provide appropriate advice and recommendations on matters relevant to its term of reference. This is in order to facilitate informed decision-making by Council in relation to the legislative functions and duties of the local government that have not been delegated to the CEO.

The Committee is a formally appointed Committee of Council and is responsible to that body. The Committee does not have executive powers or authority to implement actions in areas over which the

CEO has legislative responsibility and does not have any delegated financial responsibility. The Committee does not have any management functions and cannot involve itself in management processes or procedures.

MEMBERSHIP

- The Committee will consist of at least four members including one external member, with a recommended four elected members and two external, independent members. All Council-appointed members shall have full voting rights.
- The CEO and employees are not members of the Committee.
- The CEO or his/her nominee is to be available to attend meetings to provide advice and guidance to the Committee.
- The local government shall provide secretarial and administrative support to the Committee.
- It is recommended that the Independent Members are appointed as Presiding Member and Deputy Member

QUORUM

A quorum shall consist of at least 50% of the number of offices of Committee members, unless a reduction is approved by the local government under s5.15 of the *Local Government Act 1995*.

INDEPENDENT MEMBERS

Appointments of external independent persons will be made following a public advertisement / expression of interest process or as otherwise determined by Council and be for a maximum term of three years. An independent member is eligible to reapply and be appointed for an additional term but is subject to the requirements of the recruitment / expressions of interest process each term expiry.

The following selection criteria is desirable to assist in appointing an Independent Member to the Committee:

- Financial literacy and, ideally with qualifications or extensive experience in business management and/or accounting;
- Knowledge of local government operations and the environment within which councils operate;
- Strong communication skills;
- High level of personal and professional integrity and ethics; and
- Demonstrated knowledge of risk management principles and practices.

The evaluation of potential members will be administered by the CEO and appointments will be approved by Council.

Council may terminate the appointment of any member prior to the expiry of his/her term, if:

- The Committee considers that the member is not making a positive contribution to the Committee; or
- The member is found to be in breach of the Shire of Mingenew Code of Conduct or a serious contravention of the Local Government Act 1995; or
- A member's conduct, action or comments brings the Shire of Mingenew into disrepute.

The terms of the appointment should be arranged to ensure an orderly rotation and continuity of membership, despite changes to Council's elected representatives.

By approval of the CEO and within budgetary constraints, reimbursement of reasonable out of pocket expenses, such as travel costs, will be paid to each external person who is a member of the Committee upon application within the relevant financial year.

PRESIDING MEMBER AND DEPUTY

The position of Chairperson shall be appointed by a majority vote of the Committee following a call for nominations for the position at the next meeting following an Ordinary Local Government Election and after which Committee delegates have been formally appointed by Council or following the resignation of the Chairperson. A Chairperson may be reappointed.

MEETINGS

The Committee shall meet as circumstances require in order to meet its internal and external auditing requirements (commonly 3-4 times per year) .

Additional meetings shall be convened at the discretion of the Chairperson or by request from a majority of voting members, in consultation with the CEO to ensure the timely preparation of meeting notices, agendas and any other information required for the meeting.

REPORTING

Reports and recommendations of each Committee meeting shall be presented to the next ordinary meeting of the Council.

DUTIES AND RESPONSIBILITIES

The duties and responsibilities of the Committee will be -

a. Provide guidance and assistance to Council as to carrying out the functions of the local government in relation to audits;
b. Meet with the auditor once in each year and provide a report to Council on the matters discussed and outcome of those discussions;
c. Liaise with the CEO to ensure that the local government does everything in its power to –
    - assist the auditor to conduct the audit and carry out his or her other duties under the *Local Government Act 1995*; and
    - ensure that audits are conducted successfully and expeditiously;
d. Examine the reports of the auditor after receiving a report from the CEO on the matters to –
    - determine if any matters raised require action to be taken by the local government; and
    - ensure that appropriate action is taken in respect of those matters;
e. Review the report prepared by the CEO on any actions taken in respect of any matters raised in the report of the auditor and presenting the report to Council for adoption prior to the end of the next financial year or 6 months after the last report prepared by the auditor is received, whichever is the latest in time;
f. Review the scope of the audit plan and program and its effectiveness;
g. Review the appropriateness of special internal audit assignments undertaken by an external auditor at the request of Council or Chief Executive Officer;
h. Review allocation of risk and audit resources in conjunction with the Shire's Risk Profile;
i. Review the level of resources allocated to internal audit and the scope of its authority;
j. Review risk management policies, procedures and guidelines;

k. Review reports of internal audits, external audits and control assurance reviews, monitor the implementation of recommendations made by the audit and review the extent to which Council and management reacts to matters raised;
l. Facilitate liaison between the internal and external auditor to promote compatibility, to the extent appropriate, between their audit programs;
m. Review the local government's annual financial report prior to Council receiving the final report for adoption, focusing on –
    - accounting policies and practices;
    - changes to accounting policies and practices;
    - the process used in making significant accounting estimates;
    - significant adjustments to the financial report (if any) arising from the audit process;
    - compliance with accounting standards and other reporting requirements; and
    - significant variances from prior years;
n. Consider and recommend adoption of the annual financial report to Council. Review any significant changes that may arise subsequent to any such recommendation but before the annual financial report is signed;
o. Address issues brought to the attention of the Committee, including responding to requests from Council for advice that are within the parameters of the Committee's terms of reference;
p. Seek information or obtain expert advice through the CEO on matters of concern within the scope of the Committee's terms of reference following authorisation from the Council;
q. Review the annual Compliance Audit Return and report to Council the results of that review, and
r. Consider the CEO's reviews of the appropriateness and effectiveness of the local government's systems and procedures in regard to risk management, internal control and legislative compliance, required to be provided to the Committee, and report to Council the results of those reviews.

INTERNAL AUDIT

Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

The scope of an internal audit would be determined by the Audit & Risk Committee, with input from the Chief Executive Officer and senior staff, based on the size of the local government's internal operations and the level of compliance to be achieved. The role differs from that of the external auditor who is appointed to report independently on the annual financial statements. The external auditor's primary role is to decide whether the annual financial statements of a local government are free of material misstatement.

There are certain functions of the internal audit that complement the external auditor's role. As the external auditor plans for an effective audit they need to assess and determine whether to include the scope, procedures and outcomes of the internal audit. The CEO must refer all internal audit reports to the Audit & Risk Committee for consideration.

An internal auditor's activities should typically include the following:

a. review of the internal control structure, monitoring the operations of the information system and internal controls and providing recommendations for improvements;
b. review relevant internal systems and processes, providing recommendations for efficiency or productivity gains;
c. a risk assessment with the intention of minimising exposure to all forms of risk on the local government;
d. examination of financial and operating information that includes detailed testing of transactions, balances and procedures;
e. a review of the efficiency and effectiveness of operations and services including non-financial controls of a local government;
f. a review of compliance with management policies and directives and any other internal requirements;
g. review of the annual Compliance Audit Return;
h. assist in the CEO's triennial reviews of the appropriateness and effectiveness of the local government's systems and procedures regarding risk management, internal control and legislative compliance; and
i. specific tasks requested by management.

For local government, an internal auditor should report functionally to the Audit & Risk Committee and administratively to the CEO. It should be remembered that pursuant to section 5.41 of the Act, the CEO is responsible for the day-to-day management of Council activities including the direction of staff and implicitly the internal audit function. The CEO may choose to delegate this responsibility provided always that the delegation does not directly or indirectly interfere with the ability of the Internal Auditor to conduct an internal audit function free from interference.

A clear and properly defined reporting relationship ensures that the internal auditor is empowered to perform their role working with management. The direct reporting line to the Audit & Risk Committee also acts as an adequate safeguard in the event of a serious breakdown in internal controls or internal control culture at senior levels in the organisation.

While it is recognised that smaller Councils may not be able to justify a full-time internal auditor, a small size of operation does not justify forgoing internal audit altogether. If the Audit & Risk Committee or management is of the view that the employment of an independent internal auditor either full-time or part-time is not warranted, it may request the Council to have the internal audit function undertaken as necessary by an external contractor or expand the role of its external auditor.

The internal auditor or his or her professional company should only undertake internal audit functions that complement the internal audit and do not cloud the objectivity and independence of the external audit. An external auditor must not audit information prepared by them or their accounting practice, as this is considered incompatible with the standard of independence.

Local governments that do not establish an internal audit process but require a review of the financial management systems and procedures, may decide to use the services of the external auditor for that purpose. Such reviews are to be undertaken every four years in accordance with regulation 5(2)(c) of the *Local Government (Financial Management) Regulations 1996*.

The review of financial management systems and procedures provides the external auditor with greater assurance of systems and procedures used to prepare the annual financial statements, and whether they provide information free of material misstatement.

GOVERNMENT OF WESTERN AUSTRALIA

Department of **Local Government, Industry Regulation and Safety**

WorkSafe Western Australia

# Statutory Review

## Work Health and Safety Act 2020

Quantum consulting australia

# Acknowledgement of Country

The Department of Local Government, Industry Regulation and Safety and Quantum Consulting Australia respectfully acknowledge Aboriginal peoples as the Traditional Custodians of Western Australia.

We acknowledge the enduring connection Aboriginal people continue to share with the land, sea, and sky through both their ancestral ties and custodianship to Country.

We pay our respect to Elders both past and present, and acknowledge the value brought to our department through the collective contribution of Aboriginal and Torres Strait Islander peoples across Western Australia.

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**Disclaimer:** The information contained within this discussion paper has been compiled from a variety of external sources and has not been subject to internal independent verification. Although every care has been taken to ensure that the information and opinions are correct, Quantum Consulting Australia specifically disclaim any responsibility for the use or interpretation of this paper.

# Message from the Minister for Industrial Relations

The Cook Government is committed to ensuring that effective work health and safety laws are in place to protect workers, promote safe work environments and ensure employers meet their responsibilities. I am therefore pleased to release the *Work Health and Safety Act 2020* (WHS Act) Statutory Review Discussion Paper.

As the Minister for work health and safety, I am responsible for reviewing the operation and effectiveness of the WHS Act every five years. A report based on the review must also be tabled in Parliament, once the consultation phase is completed.

The WHS Act has provided for a balanced and nationally harmonised work health and safety framework in Western Australia (WA) since it commenced in March 2022. Although the WHS Act has only been operational for a few years, overall, it has been well-received by workplaces and industry alike.

Western Australia's WHS Act is substantially harmonised with the corresponding Acts of New South Wales, Queensland, South Australia, Tasmania, Australian Capital Territory, Northern Territory and the Commonwealth. However, certain model work health and safety provisions were varied to be WA-specific, some of which are discussed herein.

Please consider the questions posed throughout the discussion paper, as they are intended to stimulate discussion and gather valuable feedback on the operation and effectiveness of the WHS Act. The feedback provided will help to inform the review report to Parliament.

Thank you for participating.

Hon. Simone McGurk
Minister for Industrial Relations

# Message from the WorkSafe Commissioner

The WHS Act Statutory Review provides a unique opportunity to understand how the WHS Act has been operating since its commencement.

This paper is intended to provide the community with questions to guide input on this issue. However, input on other aspects of the operation of the WHS Act are most welcome.

WorkSafe is committed to continually evolving and improving its regulatory approach in the administration of the WHS Act.

I urge all interested parties to lodge a submission, towards helping to maintain healthy, safe and respectful workplaces in Western Australia within a harmonised framework.

Sally North
WorkSafe Commissioner

# Abbreviations

| Abbreviation | Description |
|---|---|
| COAG | Council of Australian Governments |
| IGA | Inter-Governmental Agreement |
| Model WHS Act | The model Work Health and Safety Act |
| Model WHS Regulations | The model Work Health and Safety Regulations |
| OHS | Occupational Health and Safety |
| PCBU | Person Conducting a Business or Undertaking |
| PwC | PricewaterhouseCoopers |
| QIRC | Queensland Industrial Relations Commission |
| SWA | Safe Work Australia |
| Tribunal | Work Health and Safety Tribunal |
| WHS | Work health and safety |
| WHS Act | *Work Health and Safety Act 2020* |

# Background

## Overview of Australia's harmonised work health and safety laws

In 2008, the Council of Australian Governments (COAG) signed the Inter-Governmental Agreement (IGA) for Regulatory and Operational Reform in Occupational Health and Safety. The IGA committed the participating Governments to work together to harmonise work health and safety (WHS) legislation and established Safe Work Australia (SWA) as an independent statutory body.

SWA subsequently developed the model WHS laws in 2011 for implementation across Australia, as agreed by the Ministers responsible for WHS representing the Commonwealth, states and territories.

Each harmonised jurisdiction in Australia (except Victoria) has since implemented their own respective versions of the WHS laws.

## Western Australia's work health and safety laws

On 10 November 2020, Western Australia's *Work Health and Safety Act 2020* (WHS Act) was passed by the Western Australian Parliament.

The WHS Act covers all workplaces within Western Australia's jurisdiction, including mines, petroleum and geothermal energy operations with the exception of major hazard facilities and dangerous goods storage and handling, which are regulated separately under the *Dangerous Goods Safety Act 2004*.

The WHS Act is supported by the following regulations:

- Work Health and Safety (General) Regulations 2022 – applies to all workplaces except those covered by the other two sets of regulations
- Work Health and Safety (Mines) Regulations 2022 – applies to mining and mineral exploration operations
- Work Health and Safety (Petroleum and Geothermal Energy Operations) Regulations 2022 – applies to onshore and offshore petroleum, pipeline and geothermal energy operations.

## Concurrent SWA Best Practice Review

At the same time that WA is undertaking a statutory review of our WHS Act, Safe Work Australia (SWA) is undertaking a Best Practice Review of the model WHS Act and model WHS regulations to identify opportunities to strengthen and maintain harmonisation of WHS laws and ensure the laws reflect contemporary best practice.

The consultation for the SWA Best Practice Review is from 1 September 2025 to 3 November 2025, which will likely overlap with the Western Australia's WHS Act Statutory Review consultation.

The Terms of Reference and other information regarding the SWA Best Practice Review is available at SWA's Consultation Hub.

WorkSafe remains committed to maintaining harmonised WHS laws where appropriate and will consider the discussion paper and outcomes of the SWA Best Practice Review and any implications for this Statutory Review.

# Statutory review of the WHS Act

Section 277 of the WHS Act requires the Minister responsible for the Act (the Minister for Industrial Relations) to undertake a statutory review (Review) of the operation and effectiveness of the Act and prepare a report on the Review.

The Review must be conducted as soon as practicable after the fifth anniversary of the commencement of section 277, being 11 November 2025.

The Review report must be tabled before Parliament as soon as practicable after its preparation, but no later than 12 months after the fifth anniversary.

Once the Review report is tabled in Parliament, the Government will consider the report before making decisions on recommendations.

## Terms of Reference

The focus of the Review is to examine the operation and effectiveness of the WHS Act. The terms of reference and scope for the Review are as follows:

- identify areas for improvement to ensure the WHS Act remains relevant and aligned to evolving workplace practices in Western Australia;
- consider the review of the national model WHS Act to ensure harmonisation;
- consider whether the legislation provides a framework to effectively address ongoing and emerging workplace hazards;
- consider the burden faced by industry and others in complying with the laws;
- ensure effective compliance and enforcement of the WHS Act; and
- ensure effective internal, external, and tripartite consultation.

It is important to note that the review is focussed on the operation and effectiveness of the WHS Act.  Although the three sets of regulations and codes of practice under the WHS Act do not form part of the review, if there is a compelling reason to make a submission regarding a regulation or code your feedback will be considered. The reason there is not a focus on the regulations is that there are other processes available to consider and progress regulatory amendments.

Having regard for the Terms of Reference will assist contributors to frame feedback within the context of the review.

## The role of the regulator

The WorkSafe Commissioner is the regulator under the WHS Act. The WorkSafe Commissioner is responsible for the administration of the WHS Act, and any other WHS laws within the Minister's portfolio. The regulator's functions include:

- monitoring and enforcing compliance with the WHS Act and its regulations;
- providing advice and information on WHS to duty holders and the community;
- collecting, analysing and publishing statistics relating to WHS;
- fostering a cooperative, consultative relationship between duty holders and the people to whom they owe WHS duties, and their representatives;
- promoting and supporting education and training on matters relating to WHS;
- engaging in, promoting and coordinating the sharing of information to achieve the object of the WHS Act, including the sharing of information with other WHS regulators; and
- conducting and defending legal proceedings under the WHS Act.

WorkSafe assists the regulator in the administration of the WHS Act and the *Dangerous Goods Safety Act 2004*. WorkSafe drives workplace change through:

- compliance and enforcement;
- education and guidance;
- inspections and investigations; and
- support for employers and workers.

The WorkSafe Commissioner (including as the regulator) is subject to the Minister's direction and control.

WorkSafe has the role of providing advice to the Minister to assist with the WHS Act statutory review.

## How to make a submission

Submissions are welcome from all stakeholders, including duty holders, regulators, government agencies, unions, workers, legal professionals, researchers, members of the public and other parties who may be affected by topics discussed in the paper.

If you would like to provide general feedback on the operation and effectiveness of the WHS Act, unrelated to the specific questions posed in this paper, that feedback will also be considered.

Submissions can be sent to WHS_Act_Statutory_Review@lgirs.wa.gov.au by using the feedback form provided on the WorkSafe consultation hub web page.

Submissions close 28 November at 5 pm (Australian Western Standard Time).

**Important:** A summary of the consolidated feedback may be published. If you would like your feedback excluded from the summary, please note that as part of your submission.

# Topics and questions for consideration

The questions posed throughout this paper have been written to elicit information that relates to Western Australia's WHS Act and the terms of reference for the Review.

The topics that follow present a brief summary of the relevant legislation, a 'background' section for context, a 'for consideration' section and accompanying questions.

You are encouraged to provide written submissions that address the scope of this review, based on your experiences while working within this legislation.

Please note you are only expected to answer questions relevant to your situation or experience. Where possible, you should include any evidence and examples to explain your answer. If you would like to submit comments that fall outside of the questions posed, please do so, as they will be considered.

Please note that general enquiries, WHS hazard reports in relation to a particular workplace, or grievances will not be considered as part of the WHS Act Statutory Review feedback. For general assistance, please contact WorkSafe by phone on 1300 307 877, or email wscallcentre@lgirs.wa.gov.au.

## TOPIC 1: WHS Act, Part 2 – Health and safety duties

Part 2 of the WHS Act provides the health and safety duties for Persons Conducting a Business or Undertaking (PCBUs), officers, WHS service providers, unincorporated associations, government departments and public corporations including local governments, workers and other people at a workplace.

It is possible for more than one person to share the same duty, and duties cannot be transferred.

**Question:**

1. Do you consider the health and safety duties in Part 2 to be operating effectively?

**Please provide your reasoning and any evidence to support your answer.**

**Section 26A** – Duty of persons conducting businesses or undertakings that provide services relating to work health and safety.

**Background**

Section 26A is not present in the model WHS Act but was introduced in Western Australia based on recommendations 37 and 38 of Report 1 of the National review into Model Occupational Health and Safety laws 2008/2009, as follows:

37. *The model Act should place a duty of care on any person providing OHS advice, services or products that are relied upon by other duty holders to comply with their obligations under the model Act.*
38. *The model Act should include a definition of a 'relevant service' and a 'service provider' to make it clear what activities fall within the duty and who owes the duty. The definition will be discussed in our second report.*

Under section 26A, WHS service providers must ensure, as far as is reasonably practicable, that the services they provide in relation to a workplace will not put the health and safety of people at that workplace at risk.

The duty applies only to services that could potentially pose a risk in the workplace and applies to WHS services provided to a PCBU and tailored to the circumstances of a particular workplace.

If the WHS service is incorrectly used or not used for its intended purpose by the recipient of the services, the WHS service provider cannot be held responsible.

The provision of a WHS service does not relieve a PCBU of their duties under the WHS Act. In order to provide guidance on this new duty, WorkSafe published the *Duty of persons conducting business or undertakings that provide services relating to work health and safety: Interpretative guideline*.

**For consideration**

Stakeholder feedback provided anecdotal reports of companies and industry associations dismissing their WHS service providers to avoid any unforeseen legal issues, in regard to the introduced duty under section 26A.

**Question:**

2. In your view, is section 26A achieving its intended outcome or causing unintended consequences for WHS providers and others (e.g. consultants)?

Please provide your reasoning and any evidence to support your answer.

## TOPIC 2: WHS Act, Part 3 – Incident notification

Part 3 of the WHS Act outlines how a person who conducts a business or undertaking must notify their WHS regulator of certain serious incidents at work, referred to as 'notifiable incidents'. This is a mandatory requirement.

A notifiable incident is the death of a person; a 'serious injury or illness'; or a 'dangerous incident' arising out of the conduct of a business or undertaking at a workplace. Notifiable incidents may relate to any person, including an employee, contractor, visitor, member of the public or volunteer.

Notifying the regulator can help identify causes of incidents and prevent work-related deaths, injuries, illnesses, damage and loss at other workplaces.

In order to provide guidance on this requirement, WorkSafe published an *Incident notification: Interpretive guideline*.

**Background**

As part of its current Best Practice Review of the model WHS laws, SWA recently completed a review into incident notifications.

If the model amendments are agreed upon by the WHS Ministers, further local consultation and feedback will be sought from the Work Health Safety Commission and the Mining and Petroleum Advisory Committee. Both committees will then provide their views to the Minister for consideration.

It is worthwhile noting that any changes to incident notifications will not take effect in a jurisdiction until implemented in the WHS laws of that jurisdiction.

To provide an overview the following text has been extracted from the SWA website, regarding its proposed incident notifications changes.

**Overview of the proposed changes** (SWA website extract)

*The changes are intended to provide PCBUs with more clarity and a better understanding of:*

- *the types of incidents to be notified are those 'arising out of the conduct of the business or undertaking'*
- *the objective test for deciding whether a serious injury or illness must be notified*
- *duties of PCBUs at a workplace to notify each other of incidents*
- *who may be providing medical treatment for exposure to a substance, and*
- *preserving evidence and incident sites.*

*Other changes aim to address key gaps and provide greater certainty to PCBUs on:*

- *Notifying dangerous incidents involving the fall of a person, electrical hazards and mobile plant.*
- *Notifying all serious injuries and illnesses including serious head injuries, serious crush injuries and serious bone fractures.*
- *Capturing violent incidents, including sexual assault, arising out of the conduct of the business or undertaking that may not result in a serious physical injury or illness triggering notification, but that exposes a worker or other person to a serious risk to a person's physical or psychological health and safety.*
- *Requiring the immediate notification of a work-related (or suspected work-related) suicide or attempted suicide of a worker, and the suicide or attempted suicide of other persons in specific settings. Rather than notification being triggered by an incident 'arising out of the conduct of the business or undertaking', notification of the suicide or attempted suicide of a worker would be required where there are indicators that suggest a potential link to work or the work environment.*
- *Capturing serious work-related injuries and illnesses that are not already notifiable through the timely notification of a worker's absence period (or likely absence period) of 15 or more consecutive calendar days due to psychological or physical injury, illness or harm arising out of conduct of the business or undertaking.*

SWA is developing detailed guidance to help duty holders understand what is and is not notifiable once the new requirements have been implemented.

**For consideration**

Your feedback is sought on the proposed incident notification changes that SWA is planning to introduce for the model WHS laws.

**Note:** Western Australia is not bound to accept all changes SWA introduces for incident notifications. However, WHS harmonisation will be a key factor during the consideration of the changes.

**Question:**

3. Based on your understanding of the SWA overview of the proposed changes to incident notifications, do you support the intended changes?

Please provide your reasoning and any evidence to support your answer.

## TOPIC 3: WHS Act, Part 5 – Consultation, representation and participation

Part 5 of the WHS Act outlines how PCBUs must, as far as is reasonably practicable, consult with workers who are likely to be directly affected by health and safety matters. This includes giving workers a reasonable opportunity to express their views or raise issues about WHS at the workplace.

While a PCBU is responsible for making decisions regarding health and safety, they may not understand the challenges or subtleties of the work performed, or the working conditions. To help improve this understanding, it is important that PCBUs engage in regular consultation with workers.

Consultation is a collaborative process between PCBUs and workers. It involves sharing information about WHS and ensuring that the views of workers are considered when making decisions about health and safety in the workplace.

**Question:**

4. Do you consider Part 5 of the WHS Act, Consultation, representation and participation, to be operating effectively?

Please provide your reasoning and any evidence to support your answer.

**Section 82** – Referral of issue to regulator for resolution by inspector.

### Background

If a WHS issue arises, the concerned parties must first make reasonable efforts to attempt to mutually resolve the matter, under part 5 of the WHS Act. The parties must discuss the matter and apply an issue resolution procedure to resolve the issue between both parties.

If both parties fail to resolve the issue, section 82 allows any party to the issue to request the regulator to appoint an inspector resolve the issue.

Before requesting assistance from the regulator, parties are first encouraged to contact WorkSafe to discuss the consultation undertaken and investigate any other options that may help to resolve the issue.

### For consideration

Section 82 requires a WorkSafe inspector to make a decision to resolve a WHS issue within 2 days. Inspectors consistently report this time frame is not always achievable, as section 82 matters are often complex and time-consuming.

Another compounding effect on the tight review timeframe is that section 82A, *Extension of deadline for making decision resolving issue*, provides that if the deadline set by section 82(3) is not practicable, the regulator must apply to the Work Health and Safety Tribunal (Tribunal) to set a new deadline. The Tribunal will then set a new deadline that it considers to be practicable.

It is worthwhile noting that section 82A, *extension of deadline for making decision resolving issue*, is unique to Western Australia and is not harmonised with the model WHS laws.

Section 82A is not present in the model WHS Act but was introduced in the WHS Act based on recommendation 13 of *Review of the model Work Health and Safety laws: Final report*, as follows:

13: Resolving outstanding disputes after 48 hours Amend the model WHS Act to provide for:

(a) disputes under ss 82 and 89 of the model WHS Act to be referred to the relevant court or tribunal in a jurisdiction if the dispute remains unresolved 48 hours after an inspector is requested to assist with resolving disputes under the default or agreed procedures and with cease work disputes

(b) a PCBU, a worker, an HSR affected by the dispute or any party to the dispute to notify the court or tribunal of the unresolved issue they wish to be heard

(c) the ability for a court or tribunal to exercise any of its powers (including arbitration, conciliation or dismissing a matter) to settle the dispute, and

(d) appeal rights from decisions of the court or tribunal to apply in the normal way.

WorkSafe endeavours to review WHS issues between parties as quickly as possible. However, the current 2-day timeframe is proving to be unachievable in most cases. This leads to frustration for both parties involved in the dispute.

In Queensland, the *Work Health and Safety and Other Legislation Amendment Act 2024* split dispute resolution into two pathways.

The first pathway is where an inspector is required to first make a decision before the matter can be referred to the Queensland Industrial Relations Commission (QIRC). These matters relate to work group determinations, work group variations and the constitution of health and safety committees.

The second pathway is for matters where parties to an issue can either request an inspector to be appointed to assist with resolving the matter (and then refer the matter to the QIRC) or directly take a dispute to the QIRC.

The topic of referral of issues to regulators is currently under review by SWA through its Best Practice Review and the Queensland approach is being considered.

WorkSafe will monitor the proposed SWA changes to referral of issues and consult with the Minister and stakeholders accordingly.

**Questions:**

5a. Do you consider the 2-day turnaround time reasonable, or do you support Western Australia investigating alternative approaches to manage dispute resolutions (noting that SWA is reviewing the matter)?

5b. Do you consider the Queensland approach to dispute resolution preferable to Western Australia's?

Please provide your reasoning and any evidence to support your answer.

## TOPIC 4: Introduction of infringement notices

**For consideration**

The WHS Act does not currently allow for infringement notices. However, stakeholder feedback indicates that there may be merit in considering the introduction of infringement notices for select WHS compliance issues.

The model WHS Act allows for jurisdictions to implement a penalty notice scheme and Western Australia is the only jurisdiction yet to do so.

In New South Wales, infringement notices are generally issued for minor matters where a high volume of contraventions are expected (e.g. failing to comply with reporting obligations). A person who receives an infringement notice can choose to pay the amount specified in the notice as an alternative to court proceedings. If the person fails to pay, court proceedings can be brought against them for the alleged contravention.

The amount payable in an infringement notice would be significantly lower than the penalty that a court could impose in relation to the alleged contravention. This would ensure that infringement notices, which do not reflect a court sanction or constitute an admission of guilt, would remain a subordinate but effective compliance measure.

In Western Australia, dangerous goods officers currently issue infringement notices in accordance with section 56 of the *Dangerous Goods Safety Act 2004*. Approximately 20 are issued per year, and reportedly the administration and resource implications are minimal.

Selecting offences to be prescribed as penalty offences, and determining the associated penalties, would be an integral aspect of establishing a WHS infringement notice scheme in Western Australia.

For example, Queensland has identified a number of priority infringeable offences for enforcement. If a Queensland inspector identifies a contravention of a provision determined by the regulator to be a priority, the inspector will issue an infringement notice.

Priority infringeable offences in Queensland include:

- non-compliance with an improvement notice;
- incident notification and reporting;
- consultation with workers; and
- safety management and record keeping.

**Questions:**

6. Do you support Western Australia introducing an infringement notice penalty scheme?
7. Can you provide an argument for or against introducing an infringement notice penalty scheme?

Please provide your reasoning and any evidence to support your answer.

## TOPIC 5: Requirement to display notices for psychosocial hazards

In 2022, PricewaterhouseCoopers (PwC) were engaged by WorkSafe to undertake a regulatory capability review of WorkSafe Mines Safety in preventing and responding to sexual assault and sexual harassment in the Western Australian mining industry. Recommendation 29 of the *Regulatory Capability Review of WorkSafe Mines Safety: Final Report* was to 'consider supporting changes on the requirement to display notices for sexual assault and sexual harassment'.

WorkSafe responded, as follows:

> *The WHS Act requires notices to be displayed in the workplace for transparency and as a deterrent to unsafe practices. WorkSafe acknowledges the importance of displaying notices and ensures identifying information is not included on notices. WorkSafe will consider the settings for notices during the statutory review of the WHS Act. In the interim, the affected person will be consulted about the wording of notices where practicable.*

Section 210 of the WHS Act currently requires that a person to whom a notice is issued must, as soon as possible, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being conducted that is affected by the notice.

Given recommendation 29, WorkSafe is considering including a provision in the WHS Act to allow for certain notices relating to psychosocial hazards to not be displayed at workplaces. Instances where this could apply may be where a notice relates to a specific matter, incident, party, or sensitive content.

**Question:**

8. Based on the PwC report findings and recommendation 29, do you support including a provision in the WHS Act to allow for certain notices relating to psychosocial hazards to not be displayed at workplaces?

Please provide your reasoning and any evidence to support your answer.

## TOPIC 6: General feedback on the operation and effectiveness of the WHS Act or other WHS matters

WorkSafe recognises that workplace participants and the public may also want to provide feedback on the general operation and effectiveness of the Act or on other WHS matters not specifically outlined in this discussion paper.

If you have any additional feedback on Western Australia's WHS laws that you would like to bring to WorkSafe's attention, please do so.

**Questions:**

9a. Do you have any additional feedback on the general operation and effectiveness of Western Australia's WHS laws?

9b. Do you have any positive feedback regarding Western Australia's adoption of the harmonised WHS laws?

9c. Do you consider Western Australia's WHS legislative framework to be effectively addressing emerging workplace hazards?

9d. Do you consider Western Australia's WHS legislative framework to be reducing the compliance burden faced by industry and others?

Please provide your reasoning and any evidence to support your answer.

**Thank you** for taking time to consider the topics and questions outlined in this discussion paper. We look forward to reviewing any feedback you wish to provide as part of this Review.

**Department of Local Government, Industry Regulation and Safety**

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WSOct25_1528

# Submission template:

## *Work Health and Safety Act 2020*

## Statutory Review

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## Statutory review of the *Work Health and Safety Act 2020* (WHS Act)

Section 277 of the WHS Act requires the Minister responsible for the Act (the Minister for Industrial Relations) to undertake a statutory review (Review) of the operation and effectiveness of the Act and prepare a report for Parliament on the Review.

WorkSafe is seeking feedback on the questions posed in the WHS Act statutory review discussion paper, which can be found on the Public Consultation - SafetyLine Hub. For ease of reference, the discussion paper questions have been repeated in this submission template.

**Important:** Please ensure you read the discussion paper before filling out this submission template. Otherwise, the questions will not make sense without the background context the discussion paper provides.

### Section 1: Submission details

| | |
|---|---|
| Full name | Erin Greaves |
| Organisation and position (if applicable) | Shire of Mingenew |
| Email | governance@mingenew.wa.gov.au |
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Size of workplace (number of workers)

☐ Small (0-9) ☒ Medium (20-199) ☐ Large (200+)

Please indicate in what capacity you are making this submission (select one of the following categories)

☐ Individual
☒ Business
☐ Community organisation
☐ Employer organisation
☐ Industry representative
☐ Academic
☐ Government representative
☐ WHS Professional
☐ Other (enter details)

| | |
|---|---|
| Which industry sector do you operate in? | Local Government |
| Your type of job or business (if applicable) | |

## Section 2: Permission details

### Internet publication

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

Please tick this box if you **do not consent** to having the content of your submission published. ☐

### Anonymity

Please tick this box if you want to remain anonymous (that is, you **do not consent** to having your name or your organisation's name published). ☐

### 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.

## Submission comments

Please enter your comments on each discussion topic within the tables provided.

Submissions are welcomed from all stakeholders, including duty holders, regulators, government agencies, unions, workers, legal professionals, researchers, members of the public and other parties who may be affected by topics discussed.

If you would like to provide general feedback on the operation and effectiveness of the WHS Act, unrelated to the specific questions, that feedback will also be considered.

When making your submission, please consider your submission feedback in the context of the *Work Health and Safety 2020* (WHS Act) Statutory Review Terms of Reference, as follows:

- identify areas for improvement to ensure the WHS Act remains relevant and aligned to evolving workplace practices in Western Australia;
- consider the review of the national model WHS Act to ensure harmonisation;
- consider whether the legislation provides a framework to effectively address ongoing and emerging workplace hazards;
- consider the burden faced by industry and others in complying with the laws;
- ensure effective compliance and enforcement of the WHS Act; and
- ensure effective internal, external, and tripartite consultation.

**Attachments:** If providing attachments with your submission template, please ensure they are labelled according to the relevant question number or topic.

**Submissions close:** 28 November at 5pm AWST.

Any questions in regard to this submission template can be directed to: whs_act_statutory_review@lgirs.wa.gov.au. Responses will not be immediate and may take up to 2-3 business days.

## Section 3: Feedback

### TOPIC 1: WHS Act, Part 2 – Health and safety duties

**QUESTIONS:**

1. Do you consider the health and safety duties in Part 2 to be operating effectively?
2. In your view, is section 26A achieving its intended outcome or causing unintended consequences for WHS providers and others (e.g. consultants)?

**Please provide your reasoning and any evidence to support your answers.**

COMMENTS:

The Shire considers that while the health and safety duties in Part 2 are well-intentioned, several provisions create uncertainty and unintended consequences for local governments, particularly in relation to the management of volunteer bushfire brigades.

A key issue is the expectation placed on local government CEOs as "officers" responsible for due diligence for volunteer bushfire operations. Most CEOs do not have specialised fire-behaviour, suppression, or incident-control expertise, and therefore cannot independently assess operational risks or validate tactical decisions made during dynamic emergency conditions. This creates ambiguity around what constitutes "reasonable steps" or "reasonably practicable" in circumstances where operational control and responsibility may shift rapidly between Local Government, DFES, and volunteer brigade leadership. This misalignment increases the perceived risk of personal liability — including industrial manslaughter exposure — for matters outside the CEO's professional knowledge and realistic capacity.

The Shire is also increasingly concerned that the administrative and compliance burden created by WHS obligations is placing pressure on both local governments and volunteers. Requirements relating to training, inductions, documentation, record-keeping, and ongoing compliance monitoring are significant, particularly for small regional LGAs with limited resources. As these obligations increase, there is a real risk that volunteers may become discouraged from participating, or withdraw entirely, due to a sense of excessive red tape. A decline in volunteer numbers would directly undermine the community's ability to respond effectively to bushfires and other emergencies. The Shire strongly recommends that the Review consider proportional and realistic compliance expectations tailored to volunteer-based emergency services.

The Shire recommends the Review consider clarifying:

- the allocation of PCBU responsibility during emergency and multi-agency incidents,
- the limits of CEO/officer duty when operational decisions rest with trained fire officers, and
- the application of "reasonably practicable" to emergency response contexts.

The Review should also clarify the interaction between the WHS Act and the Bush Fires Act and Emergency Management Act to eliminate overlapping or conflicting duties during declared incidents.

## TOPIC 2: WHS Act, Part 3 – Incident notification

**QUESTION:**

3. Based on your understanding of the Safe Work Australia (SWA) overview of the proposed changes to incident notifications, do you support the intended changes?

**Please provide your reasoning and any evidence to support your answer.**

**COMMENTS:**

The Shire supports the intent of improving clarity around incident notification requirements. Local governments operate diverse workplaces that include employees, contractors, visitors, community participants, and in some cases, volunteers. Clear and practical guidance on what constitutes a notifiable incident — particularly regarding psychological harm, cumulative impacts, or incidents that occur off-site but arise out of work — would significantly reduce uncertainty.

Currently, ambiguity around thresholds such as “serious risk” and whether an injury “arises out of” work leads to inconsistent interpretation across the sector and increases administrative burden. Clearer definitions and examples would help ensure both appropriate reporting and efficient resource use.

The Shire supports changes that simplify decision-making, minimise ambiguity, and enable timely and confident compliance without imposing unnecessary process or duplication.

## TOPIC 3: WHS Act, Part 5 – Consultation, representation and participation

**QUESTIONS:**

4. Do you consider Part 5 of the WHS Act, Consultation, representation and participation, to be operating effectively?

5a. Do you consider the 2-day turnaround time reasonable (section 82(3)), or do you support Western Australia investigating alternative approaches to manage dispute resolutions (noting that SWA is reviewing the matter)?

5b. Do you consider the Queensland approach to dispute resolution preferable to Western Australia's?

**Please provide your reasoning and any evidence to support your answers.**

**COMMENTS:**

The Shire considers that the intent of Part 5 is sound and provides an appropriate framework for worker consultation and participation. However, applying these provisions in practice can be challenging in a local government environment, where work groups may include a mixture of permanent employees, casuals, contractors, and volunteers performing varied roles across multiple locations.

Additional guidance on proportionate and flexible consultation methods would assist LGAs to meet statutory requirements while ensuring that consultation is meaningful and achievable within operational constraints.

5a – Reasonableness of the 2-day turnaround requirement

The Shire considers the 2-day timeframe for dispute resolution decision-making to be demanding, particularly for small regional LGAs with limited staff resources and geographically dispersed operations. Delays caused by staff absence, operational priorities, or remote working conditions can make strict adherence impractical.

5b – Queensland dispute resolution model

The Shire supports further exploration of the Queensland model, which may offer a more flexible and workable approach for situations where immediate resolution is not feasible. A system that recognises resource variability and regional contexts would support fair and effective dispute resolution processes.

## TOPIC 4: Introduction of infringement notices

**QUESTIONS:**

6. Do you support Western Australia introducing an infringement notice penalty scheme?
7. Can you provide an argument for or against introducing an infringement notice penalty scheme?

**Please provide your reasoning and any evidence to support your answers.**

**COMMENTS:**

The Shire does not object to Western Australia considering an infringement notice scheme, provided it is implemented carefully and with appropriate safeguards.

An infringement notice pathway could support consistent and proportionate enforcement for lower-level WHS breaches, reducing the reliance on formal notices or prosecution in situations where education or corrective action would be more appropriate.

However, the Shire emphasises the need for:

- clear criteria for when infringement notices are issued,
- consistency with existing statutory notices (e.g., improvement/prohibition notices), and
- assurance that the scheme will not disproportionately affect smaller LGAs or organisations with limited administrative capacity.

The Shire recommends that infringement notices be framed as an educational, early-intervention tool rather than a punitive mechanism for technical or paperwork-based non-compliance.

## TOPIC 5: Requirement to display notices for psychosocial hazards

**QUESTION:**

8. Based on the PwC report findings and recommendation 29, do you support including a provision in the WHS Act to allow for certain notices relating to psychosocial hazards to not be displayed at workplaces?

   **Please provide your reasoning and any evidence to support your answer.**

**COMMENTS:**

The Shire supports the recommendation to allow flexibility in how notices relating to psychosocial hazards are displayed.

Psychosocial matters — including bullying, harassment, violence, and mental health impacts — are often sensitive and personal. Publicly displaying notices about such hazards may unintentionally compromise privacy, escalate workplace tension, or deter workers from reporting concerns.

Providing the option to issue certain notices directly to affected workers or display them in restricted-access areas would preserve confidentiality and promote safer reporting while still meeting the regulatory intent.

A flexible approach would better reflect the nature of psychosocial risks and support psychologically safe workplaces.

## TOPIC 6: General feedback on the operation and effectiveness of the WHS Act or other WHS matters

**QUESTIONS:**

9a. Do you have any additional feedback on the general operation and effectiveness of Western Australia's WHS laws?

9b. Do you have any positive feedback regarding Western Australia's adoption of the harmonised WHS laws?

9c. Do you consider Western Australia's WHS legislative framework to be effectively addressing emerging workplace hazards?

9d. Do you consider Western Australia's WHS legislative framework to be reducing the compliance burden faced by industry and others?

**Please provide your reasoning and any evidence to support your answers.**

**COMMENTS:**

9a – General operation and effectiveness

The Shire acknowledges the purpose and value of the harmonised WHS framework. However, several areas of the Act create practical difficulty for local governments, particularly regarding the management of volunteer-based activities. Ambiguity in PCBU duties, officer due diligence, and multi-agency responsibility during emergency incidents creates uncertainty and increases the perceived risk of liability for local government executives.

9b – Positive aspects

The adoption of harmonised WHS laws has improved consistency with other jurisdictions, provided access to a broader body of guidance material, and helped align safety expectations across the sector.

9c – Addressing emerging hazards

The Shire supports the inclusion of psychosocial hazards within the WHS framework. However, clearer guidance, tools, and definitions are needed to support LGAs, especially those with limited resources, to assess and manage these hazards appropriately and proportionately.

9d – Compliance burden

The Shire notes that the compliance burden has increased significantly since the introduction of the WHS Act. This is particularly challenging for small regional local governments, which often have minimal dedicated WHS staffing. Increased reporting, due diligence documentation, formal consultation obligations, and record-keeping requirements generate substantial administrative load without always improving practical risk outcomes.

Further, compliance expectations applied to volunteer emergency services present a unique challenge. Excessive paperwork and procedural requirements risk discouraging

volunteer participation, which would reduce the community's emergency response capability and increase risk overall.

Further considerations relevant to local government:

- Clarification is needed regarding how officer duties apply in specialist or emergency contexts where CEOs lack technical expertise.
- The review should consider proportionality and scalability of compliance requirements for smaller organisations and volunteer settings.
- The relationship between WHS duties and insurance/indemnity arrangements requires clearer articulation, as WHS ambiguity is potentially contributing to increasing insurance costs and uncertainty for LGAs.
- Additional support and guidance should be made available to ensure emerging hazards (such as psychosocial risks, fatigue, and remote working) can be managed effectively within available resources
- The Shire recommends that prosecutorial guidance or safe-harbour provisions be considered for emergency response activities undertaken in good faith within approved structures, to provide certainty for officers and volunteers

**Submission:** Once completed, please submit this form to whs_act_statutory_review@lgirs.wa.gov.au

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