



*Significant
issues*



Emerging issues and trends

The following section outlines significant issues and trends impacting the department, and our responses to remain agile and customer focused, as well as judicial decisions that the department was engaged in during the year.

Responding to findings in the mining industry and looking forward

On 7 July 2021, the Parliamentary Community Development and Justice Standing Committee commenced an inquiry in to sexual harassment against women in the fly-in, fly-out (FIFO) mining industry. The 'Enough is Enough' report was tabled on 23 June 2022 and government will respond in due course.

The department continues to take psychosocial hazards including workplace sexual harassment and sexual assault very seriously, and improvements have been made during the reporting period to enhance our regulatory capability in these areas.

These improvements include, but are not limited to:

1. Standardising incident triaging systems to deliver consistent management of all incidents reported to WorkSafe;
2. Employing WorkSafe Mines Safety Mental Health and Wellbeing inspectors to provide a more timely response to reports;
3. Providing psychosocial hazard training for all WorkSafe Mines Safety inspectors with a focus on how to manage sexual harassment and sexual assault matters;
4. Publishing new [codes of practice](#) to address inappropriate workplace behaviours related to sexualised behaviour and new information sheets to aid in understanding of [gendered violence](#);
5. Conducting mentally healthy workplaces audits and confidential workplace surveys; and
6. Working with other key agencies to address sexual harassment and sexual assault issues in a whole of government approach.





Automatic Mutual Recognition Project

The ability to attract interstate tradespeople and licensed workers to Western Australia (WA) have increased. This is a result of legislative changes that enable automatic recognition for certain occupational licences and trades. The Automatic Mutual Recognition (AMR) project reflects the State Government's commitment to attract skilled workers to WA by making it easier for them to move and take advantage of employment opportunities. As the largest occupational licensing regulator in WA, the department established a small multi-disciplinary project team to work with various licensing authorities and regulators across Australia to implement the AMR scheme. The AMR features the following:

- ▶ A national (excluding Queensland) initiative that allows licensed individuals to undertake regulated activities in other states or territories (host states) under the authority of the licence held in the state the person principally resides or works.
- ▶ Allows an individual who operates in multiple jurisdictions to do so without needing to apply for separate licences and pay multiple registration fees in each of those states.
- ▶ Obligations on licensing authorities to share information with other states and territories on regulatory actions taken against persons undertaking activities under their home state licence.
- ▶ Obligations on interstate workers to notify a host state of an intention to undertake activities and establish that particular protective measures, such as insurance, contributions to fidelity funds or financial requirements have been met.
- ▶ Obligations on interstate workers to comply with occupational licensing laws that apply to activities undertaken in each state they operate.

Licensing authorities within the department are responsible for over 40 different licences that fall within the AMR scheme. This was a significant project that was required to be delivered in a relatively short amount of time.

The first phase of the project, focused on implementation, has achieved the following:

1. Amendments to various occupational licensing Acts and Regulations to meet AMR outcomes and to ensure that outcomes of disciplinary action could be provided to interstate regulators.
2. Participated in discussions on the challenges associated with implementing the AMR and collaborating with states and territories and the development of GovTeams for information sharing.
3. Worked extensively with internal stakeholders to identify particular licences that should be exempt from the AMR scheme.
4. Developed a simple notification process for interstate licencees to notify of their intention to undertake activities in Western Australia.
5. Liaised with other Western Australian licensing authorities and peak bodies representing licensed occupations.
6. Developed comprehensive website information for each licence and occupation the department administers.

The initial implementation was finalised on 30 June 2022, with the project team transferring responsibility to the operational area.





Significant court outcomes

The department serves Western Australia by supporting and protecting the community, industry, workers and consumers. One way the department does this is by establishing and enforcing standards including, where appropriate, pursuing outcomes in the WA Magistrate and/or Supreme Court by the departments legal services branches.

Prosecuting breaches in the workplace

Health and safety of workers

While the department and the WorkSafe Commissioner (the regulator) seek compliance with safety and health legislation, they also take enforcement action in the form of prosecutions in the WA Magistrates Court, aiming to penalise those who breach the laws and provide a deterrent for others.

During the year, the department increased the number of convictions it achieved in the WA Magistrates Court related to breaches of the work health and safety laws. A total of 30 convictions was achieved compared with 23 the previous year. This year also saw the highest ever penalty handed down for a breach of workplace safety legislation. **In March 2022, a State department was fined \$900,000 after an employee was seriously injured when attacked by a dog trained to respond to critical incidents.** The increase in the number of convictions achieved was facilitated by the addition of resources in the investigations and legal services areas of the department.

Electrical safety

The department regularly promotes awareness of electrical safety and regulation for consumers, industry and workers and as a result, the issues and implications of unsafe and uncontrolled electricity are well known. For the first time in department history, the regulator pursued two prosecutions under the Electricity (Network Safety) Regulations 2015 against a network operator. **The network operator contracted-out jobs to independent workers and failed to provide adequate instructions to them. This resulted in the community being exposed to unsafe electrical installations following the completion of their work.** It is the network operator's responsibility to ensure that the work of their contractors does not endanger any persons. The network operator was fined a total of \$75,000.





Australian Consumer Law (ACL) outcomes

For over a decade the Australian Consumer Law (ACL) has been in effect in Western Australia. The Consumer Protection division of the department works extensively to protect consumers, and promote fair and equitable outcomes for consumer and traders. Below are two significant Supreme Court outcomes the department has achieved on behalf of consumers.

Use of unfair contracts

During the year, the department concluded its first civil litigation¹ under the Unfair Contract Terms provisions of the ACL with the Supreme Court ordering a Perth landlord to stop using and relying on terms in short-stay accommodation contracts which were declared to be unfair. The issue centred on the standard-form residence contracts for short-stay and holiday accommodation however, these contracts contained numerous terms that were difficult for occupants to comply with and sought to impose penalties for minor breaches.

Contract terms are considered unfair under the ACL if the standard form agreement being presented results in significant imbalance of rights and obligations between two parties. In this case, the contract terms were strongly in favour of the landlord while the renters faced considerable detriment. The Supreme Court accepted that the disputed contract terms were unfair. This success has reinforced the Commissioner for Consumer Protection's legal position on Unfair Contract Terms.

Permanently barred

The department pursued the harshest penalty available under the provisions of the ACL against an individual with over 20 years of history with Consumer Protection, resulting in nearly every form of enforcement action being taken against them by the department. In 2015, this individual received an Enforceable Undertaking which barred them from trading for five years, however, this was subsequently ignored. After further similar breaches of the ACL that resulted in further consumer

financial loss, the Commissioner for Consumer Protection considered it was within the public interest to pursue the strictest penalty available under the ACL. The unprecedented action involved an application to the Supreme Court seeking order² that this individual be permanently barred from having any involvement in any capacity in the retail sale, supply, installation, negotiation or acceptance of orders for any air-conditioning system for personal, household or domestic use. The Supreme Court was satisfied that a permanent injunction was necessary.

The comprehensiveness of the judgement against this individual puts an end to an ongoing saga against an individual who would not stop their misconduct until such drastic legal measures were imposed. It is a credit to all current and past department officers who have investigated this individual on behalf of consumers for such a lengthy period. It also marks a historic precedent for consumer protection in Western Australia.

The above two matters involved individuals and companies whom have become known to the department through repeated complaints. Most complaints do not require such extensive action to be taken and is demonstrated by the number of complaints resolved each year. Refer to pages 151–161 for more details. Regulated entities will be pursued if repeat offences occur, or if the risk to the community is high, and will be prosecuted if considered in the interest of the Western Australian community to take such action.



¹ Matter number CIV 3065/2019.

² Matter number CIV 2066/2020.



Responding to COVID-19

The COVID-19 pandemic continued to be of major concern through the year. The department remained proactive in its response to the COVID-19 pandemic through the department's COVID-19 Response Working Group, led by the Executive Director Corporate Services. The working group monitors incidences of COVID-19 in the department, and oversees the development and implementation of policies and procedures to support staff and ensure their ongoing wellbeing. With the support of Corporate Executive, the working group continued to implement strategies to manage the department's response to COVID-19 in the workplace. This included enacting business continuity plans specifically addressing the impacts of COVID-19 on vital business functions. Consequently, the department has continued to successfully deliver its services during a period of intense pressure. Staff were not only able to deliver services but also demonstrated great flexibility, resilience and perseverance in the face of the challenges presented.

The Work Health and Safety (WHS) team was instrumental in responding to staff who contracted COVID-19, ensuring they were safe and cared for and that they were aware of their entitlements. The WHS team also answered enquiries, organised the provision of personal protective equipment, including masks and rapid antigen tests, consulted with other agencies and ensured accurate and current advice was implemented and provided to the department's staff.



A special thanks to the efforts of the WHS team. The emails are informative and it is comforting to know the department is reaching out to staff with COVID-19.

Julie de Jong

The Premier recently thanked 19 departmental staff who responded to the call to assist the Public Health Emergency Operations Centre Contact Tracing Surge Workforces team. Staff were deployed full and part time, and collectively undertook 350 surveillance contact tracing shifts.

The Director General received feedback that the deployed staff performed to a high standard and their contribution was immensely valuable.

The department also continued to play its part in assisting workplaces to minimise the health and safety risks while allowing the economy to continue functioning. In support of the vitally important resources sector, some of the department's officers were authorised by the Chief Health Officer to help enforce compliance with the State's vaccine mandates within the mining and construction industry. We provided guidance and updated workplace information as the pandemic progressed and circumstances changed. This included changes to reflect duties under the new *Work Health and Safety Act 2020*. In response to the emerging issues around isolation in March 2022, the department developed specific guidelines to address isolation requirements on mine sites. These guidelines addressed mental health considerations for workers required to quarantine or isolate in accommodation provided by the person conducting a business or undertaking (PCBU).

The COVID-19 pandemic continues to affect the economy, with a direct impact on workers and consumers. In particular the economy is experiencing a high demand for workers, as well as a shortage of housing that has dramatically increased rental costs and made security of tenure a pressing issue for many renters. This has been exacerbated by stimulus measures to support building activity and the expansion of the mining sector. Furthermore, global shortages of goods and materials and disruptions to supply chains have also contributed to inflationary pressures. During the year, the department noted an increasing trend of complaints and enquiries related to the quality of used vehicles and timeliness in the delivery of building services, as well as travel cancellations that continue to cause problems for consumers. Balancing regulatory measures and consumer protections with the ongoing sustainability of industry continues to be a focus for policy work and regulatory reform in this area. This is in addition to ensuring regulation remains fit for purpose in the context of new products entering the market, such as e-rideables.