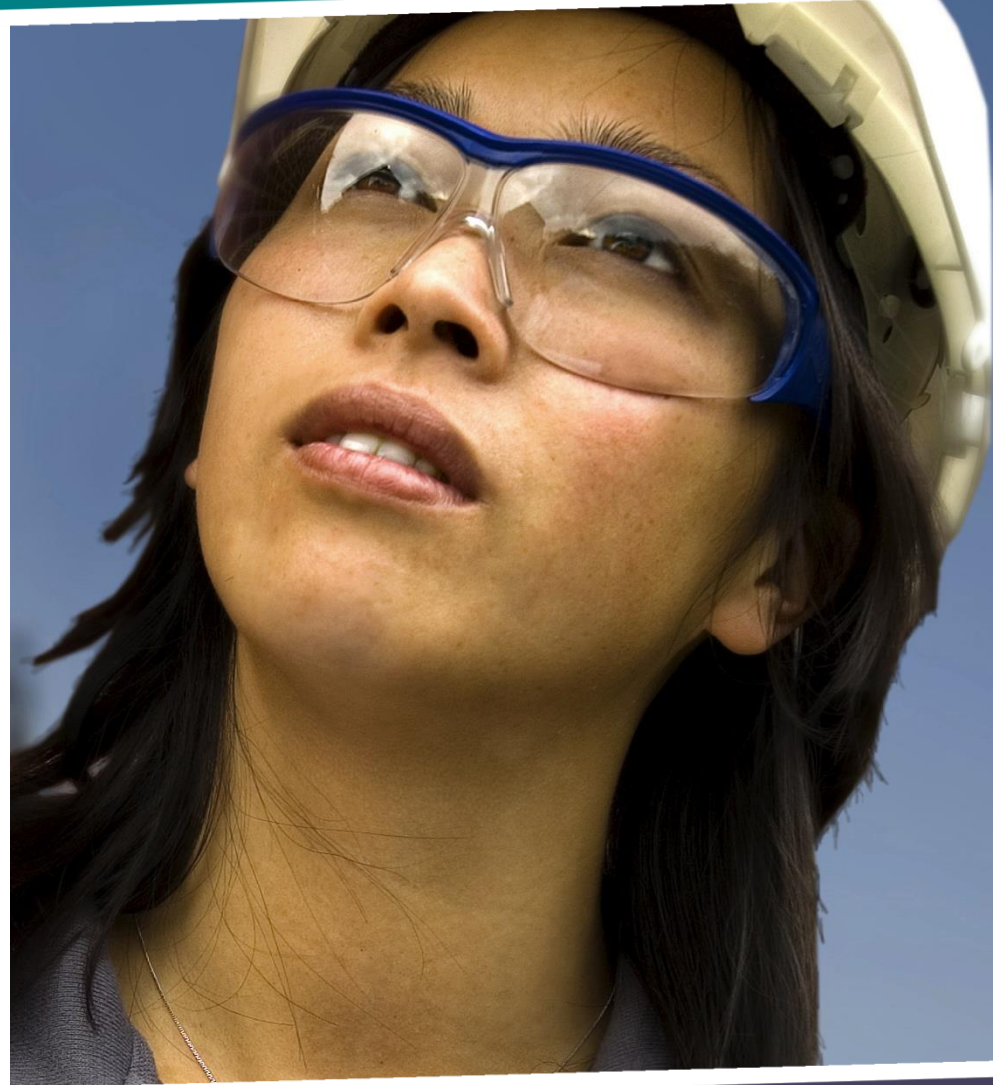




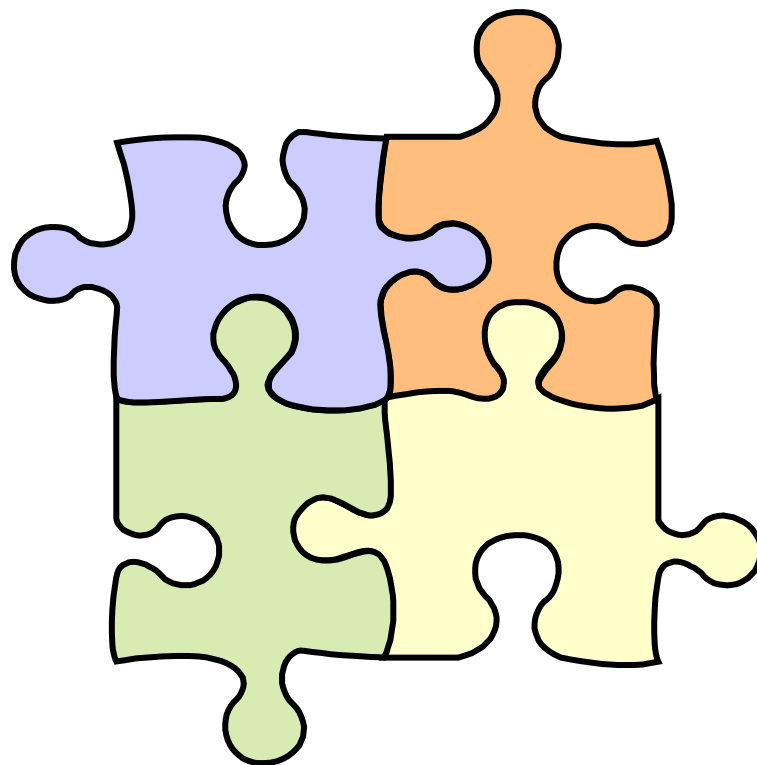
Government of Western Australia
Department of Mines, Industry Regulation and Safety

Modernising Work Health and Safety laws in Western Australia

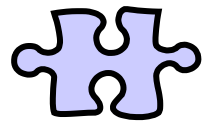
**Presented by
Andrew Cotgreave**



Modern work health and safety (WHS) laws

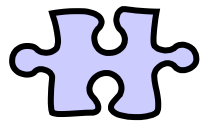


Modern work health and safety laws

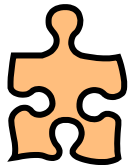


One Act for all Western Australian workplaces

Modern work health and safety laws

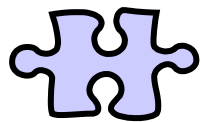


One Act for all Western Australian workplaces

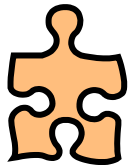


Based on the national model WHS Bill

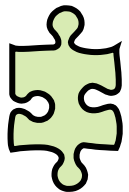
Modern work health and safety laws



One Act for all Western Australian workplaces

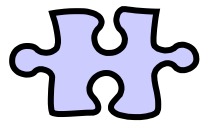


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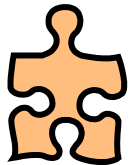


Tailored for our unique conditions

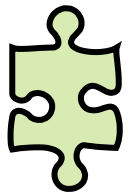
Modern work health and safety laws



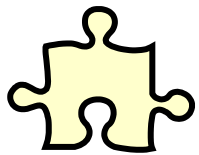
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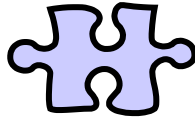
Based on the national model WHS Bill



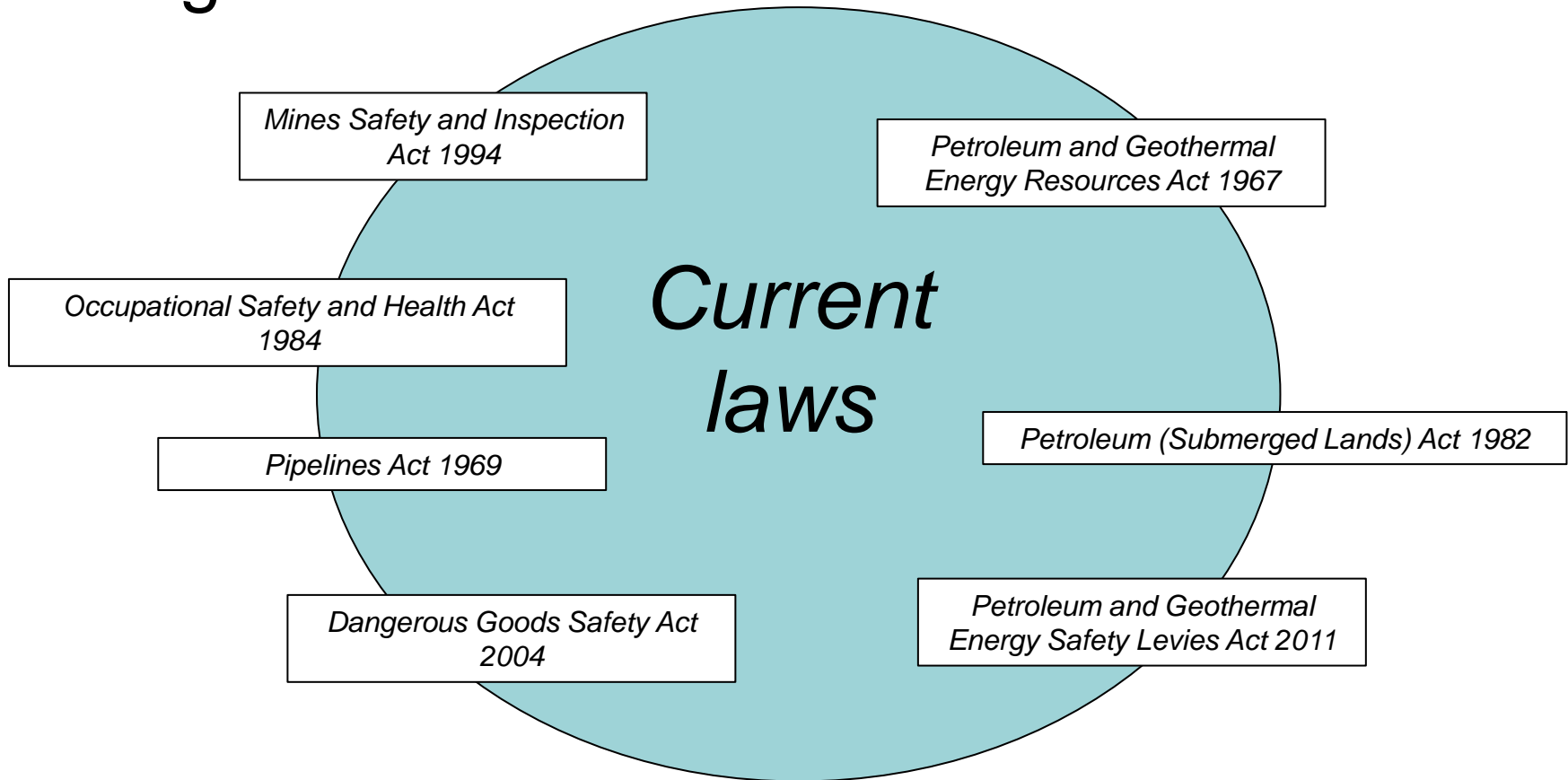
Tailored for our unique conditions



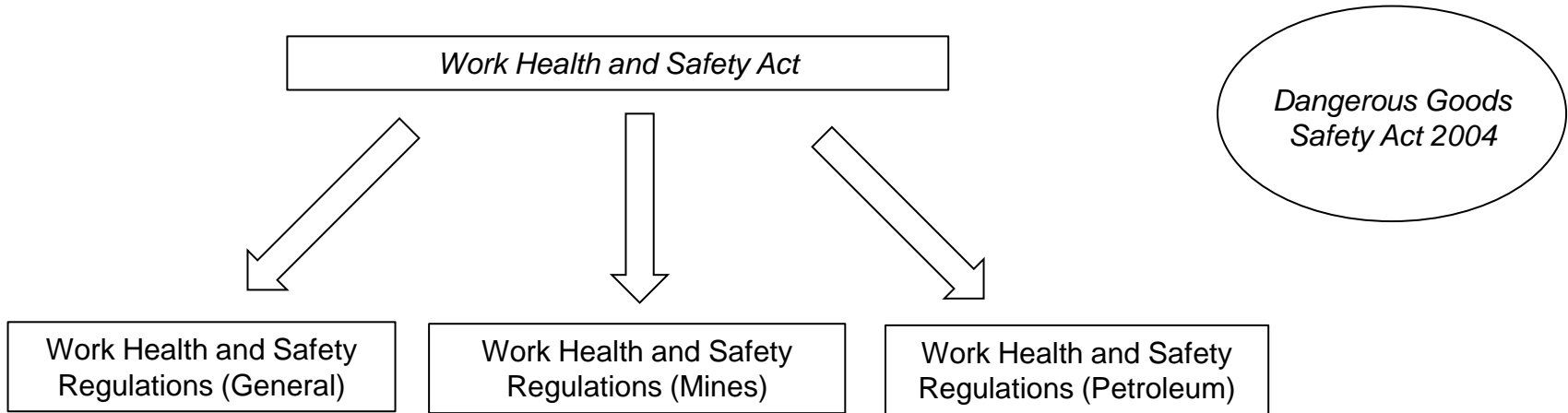
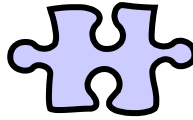
Developed after extensive consultation

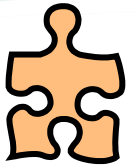


A single Act for WHS



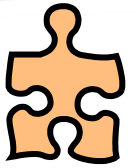
A single Act for WHS – proposed structure





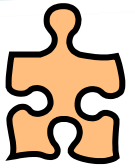
Based on national model WHS laws:

- WHS Act for Western Australia to be predominantly based on 2016 version of national model WHS laws developed by Safe Work Australia.



Based on national model WHS laws:

- WHS Act for Western Australia to be predominantly based on 2016 version of national model WHS laws developed by Safe Work Australia.
- Regulations under development to be based on the model WHS Regulations (general) and the National Mine Safety Framework (mines).

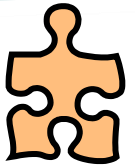


Key features of the model WHS Bill

OSH or MSI

Model WHS

General duty of care

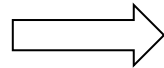


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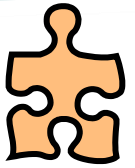
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Primary duty of care

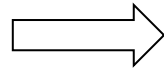


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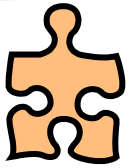
Model WHS

General duty of care



Primary duty of care

Employer

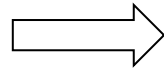


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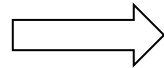
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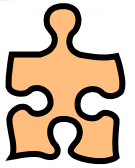


Primary duty of care

Employer



Person conducting
business or undertaking
(PCBU)

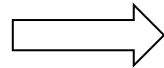


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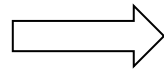
Model WHS

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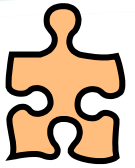
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SHR/SHC/PINs

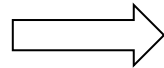


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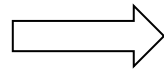
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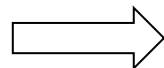
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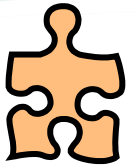


Person conducting
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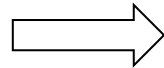


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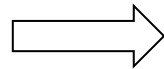
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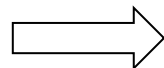
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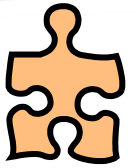
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HSR/HSC/PINs

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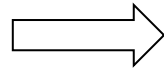


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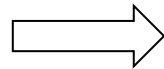
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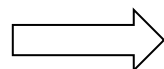
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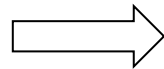
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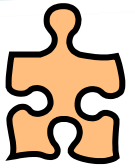


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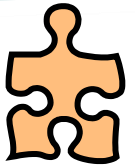


Regulator/IN/PN



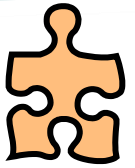
Some new features of the model WHS Act:

- Due diligence for officers.



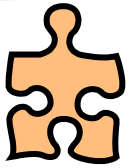
Some new features of the model WHS Act:

- Due diligence for officers.
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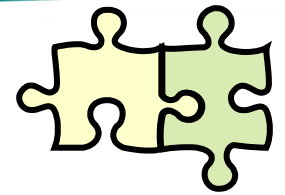
Some new features of the model WHS Act:

- Due diligence for officers.
- Enforceable undertakings.
- Right of entry for WHS matters.



Some new features of the model WHS Act

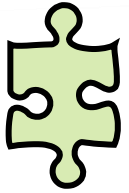
- Due diligence for officers.
- Enforceable undertakings.
- Right of entry for WHS matters.
- Search warrants/injunctions.



What is the MAP?

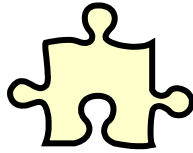
Ministerial Advisory Panel on Work Health and Safety

- Independent Chair
- Employer members: CCI, CME
- Employee group: UnionsWA
- Government: DMIRS
- Member for Mt Lawley
- Minister's Senior Policy Advisor



MAP Recommendations

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Implement current situation in WA	12
Technical clarification	4
Other reforms proposed by MAP	14



Consultation paper

Model Bill revised as at 21 March 2016

Model Work Health and Safety Bill


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PCC (196) 21 March 2016 1



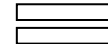
Government of Western Australia
Department of Mines, Industry Regulation and Safety



Modernising work health and safety laws in Western Australia

Proposals for amendments to the model Work Health and Safety Bill for adoption in Western Australia

Ministerial Advisory Panel
Chairperson: Stephanie Mayman

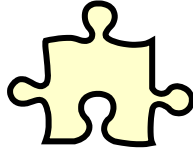


Coversheet

A version of this document is available on the DMIRS website that permits you to enter your comments into the form.

Contact name	
Organisation	
Contact telephone number (optional)	
Employment status (if applicable)	<input type="checkbox"/> Worker <input type="checkbox"/> Employer <input type="checkbox"/> Self-employed <input type="checkbox"/> Other (enter details) <input type="checkbox"/> Principal contractor <input type="checkbox"/> Contractor <input type="checkbox"/> OSH professional
Size of workplace	<input type="checkbox"/> Small (0-9) <input type="checkbox"/> Medium (20-199) <input type="checkbox"/> Large (200+)
Please indicate how you are making this submission (select one of the following categories)	<input type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Community organisation <input type="checkbox"/> Employer organisation <input type="checkbox"/> Industry representative <input type="checkbox"/> Other (enter details) <input type="checkbox"/> Academic <input type="checkbox"/> Government representative <input type="checkbox"/> Professional
Which industry sector do you operate in?	
Your type of job or business (if applicable)	
Is your submission confidential?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Your submission will be published if you do not indicate a preference.	
Number of pages in your submission	

MAP recommendations 30 June 2018 Page 114



Recommendation 23 – References to the *Industrial Relations Act 1979*

Replace references to the defined phrase relevant state or territory industrial law with the <i>Industrial Relations Act 1979</i>
4, 116, 124, 131(2)(c)(ii), 133(c)(ii), 137(1)(b)(ii), 137(1)(d)(ii), 138(2), 150(b), 150(c)(ii)

Background

The right of entry provisions of the model WHS Bill are intended to work in conjunction with applicable industrial relations laws:

Jurisdiction	Industrial law
Federal (constitutionally covered corporations and Commonwealth workplaces)	<i>Fair Work Act 2009</i>
State-system workplaces in Western Australia	<i>Industrial Relations Act 1979</i>

To investigate a suspected contravention, or to consult with workers on health and safety matters, a WHS entry permit holder must also hold a valid permit issued under the applicable industrial law.

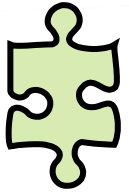
The model WHS bill uses the phrase **relevant state or territory industrial law** as a placeholder for a specific reference to the applicable state-system law. In Western Australia, the applicable state-system law is the IR Act which is to be used in place of the placeholder phrase. All of the clauses in the model WHS Bill that reference the **relevant state or territory industrial law** relate to right of entry.

Related recommendations

19	Right of entry
20	WHS entry permit holder may inform Regulator prior to entry
21	<i>Registrar</i> to be the authorising authority for the WHS entry permit system.
22	Work Health and Safety Tribunal to be the authorising authority for certain WHS entry permit matters.
24	Registrar to be added as an eligible party to make applications to the WHS Tribunal on specified matters entry permits

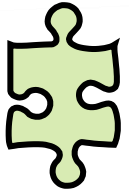
Clauses to be amended

Clause	Title	Amendment
4	Reference to definition of relevant State or Territory industrial law	Delete reference
116	definition of relevant State or Territory industrial law	Delete definition
124	WHS entry permit holder must also hold permit under other law	Replace relevant state or territory industrial law with <i>Industrial Relations Act 1979</i>
131(2)(c)(ii)	Application for WHS entry permit	
133(c)(ii)	Eligibility criteria	
137(1)(b)(ii), 137(1)(d)(ii)	Expiry of WHS entry permit	
138(2)	Application to revoke WHS entry permit	
150(b), 150(c)(ii)	Union to provide information to authorising authority	



MAP Recommendations

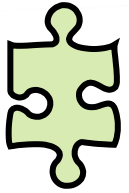
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What is a jurisdictional note?

From the definitions in the model WHS Bill....

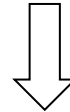
the WHS entry permit holder is exercising or proposes to exercise the right of entry.
relevant State or Territory industrial law means:
Note
See the jurisdictional note in the Appendix.
relevant union means the union that a WHS entry



What is a jurisdictional note?

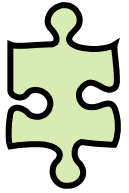
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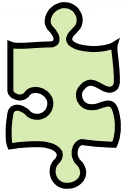
From the appendix in the model WHS Bill....

an of the functions of the authorising authority.
116 A State or Territory may insert its relevant industrial law. The Commonwealth may omit this definition and omit references to *relevant State or Territory industrial law* where they appear in sections 124, 131, 133, 137, 138 and 150)
152 Jurisdictions may add to the list of functions

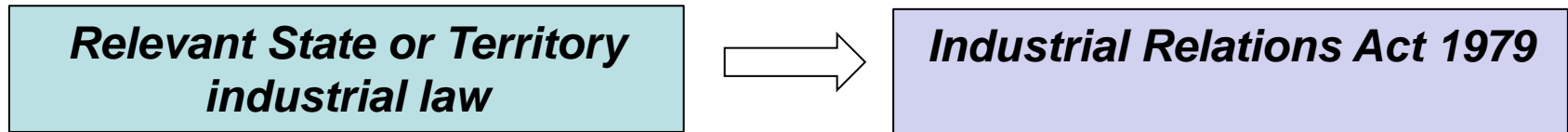


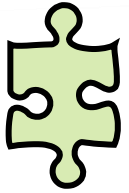
Jurisdictional notes – Example

***Relevant State or Territory
industrial law***



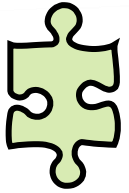
Jurisdictional notes – Example





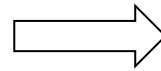
Jurisdictional notes – more examples

Commission for Occupational
Safety and Health

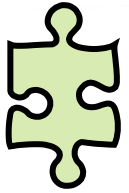


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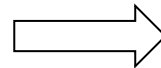


Work Health and Safety
Commission



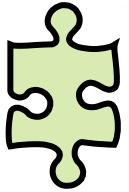
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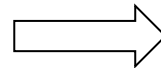
Work Health and Safety
Commission

Occupational Safety and Health
Tribunal



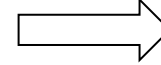
Jurisdictional notes – more examples

Commission for Occupational
Safety and Health

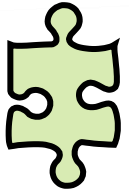


Work Health and Safety
Commission

Occupational Safety and Health
Tribunal

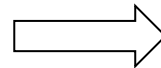


Work Health and Safety
Tribunal



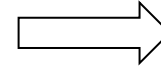
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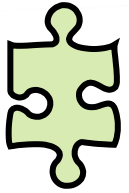
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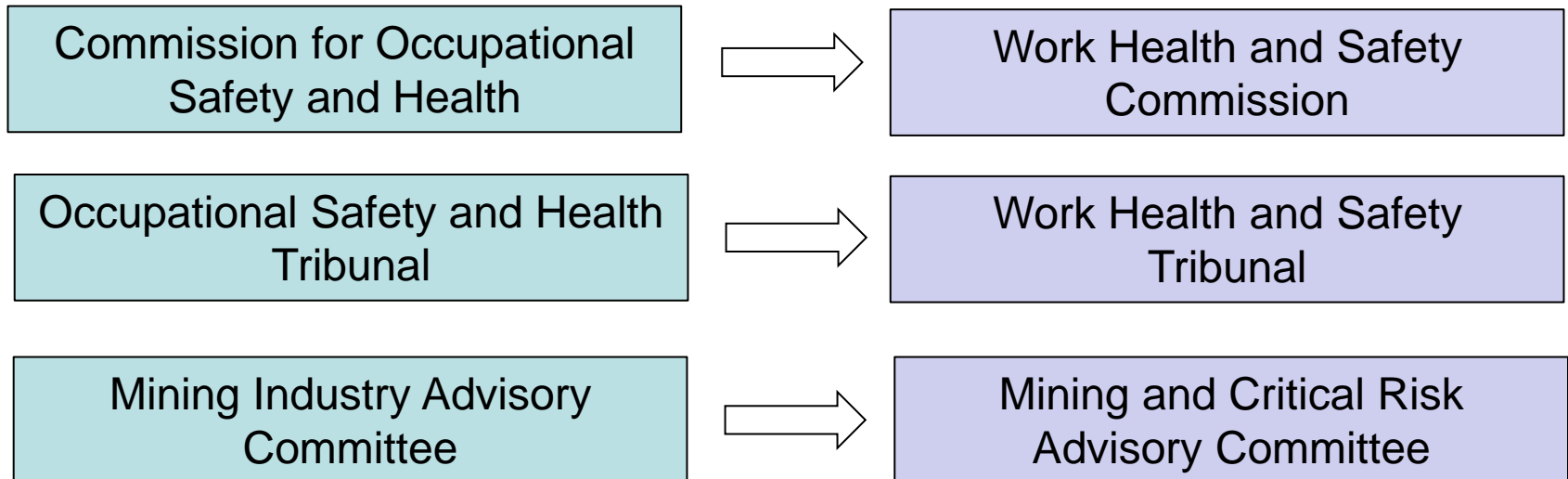


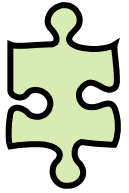
Work Health and Safety
Tribunal

Mining Industry Advisory
Committee

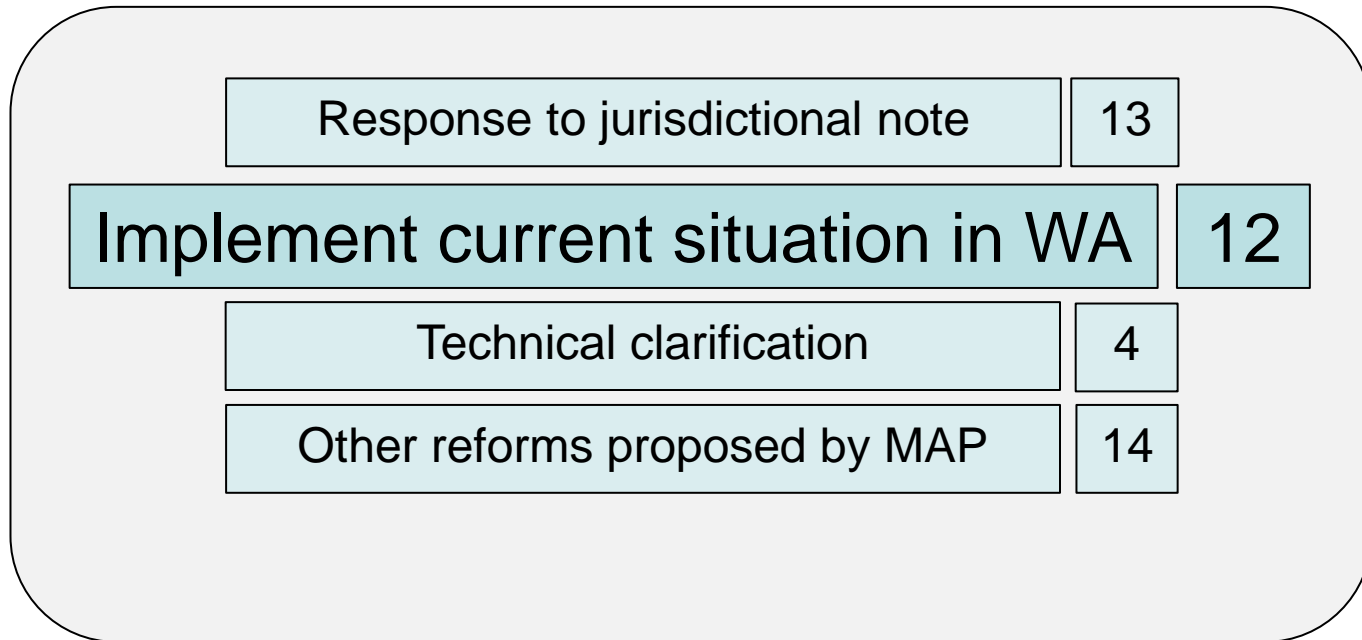


Jurisdictional notes – more examples

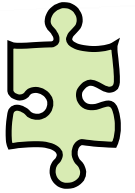




MAP Recommendations



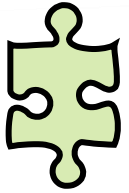
To maintain current approach in WA



OSH or MSI

Model WHS

Right to cease unsafe work
if you are at risk



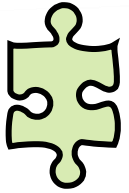
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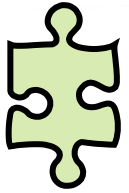
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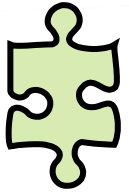
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Person must comply with improvement notice **and notify Regulator of compliance**

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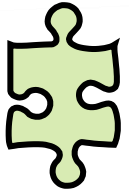
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No equivalent



To maintain current approach in WA

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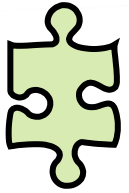
Regulator may request independent valuation

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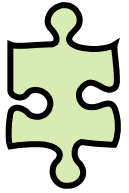
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MAP Recommendations

Response to jurisdictional note	13
Implement current situation in WA	12
Technical clarification	4
Other reforms proposed by MAP	14



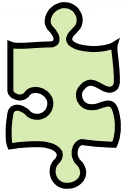
Technical clarifications

Amend the meaning of **supply** to include the loan of an item

Amend the meaning of **person conducting business or undertaking** to ensure only **workers** and **officers** who are 'natural persons' are excluded

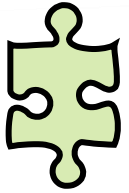
Amend the heading 'Negotiations for agreement for work group' to 'Negotiations for determination for work group'

Ensure the PCBU's obligation to ensure a health and safety representative (HSR) attends approved training is a 'requirement' rather than an 'entitlement'



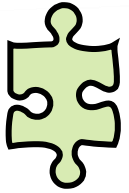
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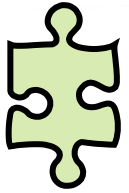
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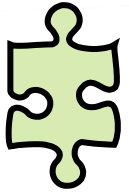
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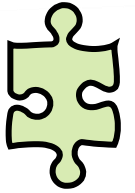
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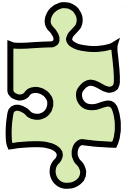
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Other reforms

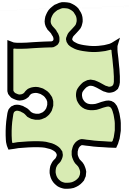


- Include a specific duty of care on the providers of workplace health and safety advice, services or products.



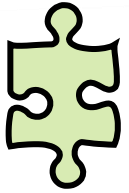
Other reforms

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- Require that a health and safety committee must include a representative from management with sufficient seniority to authorise the decisions and recommendations of the committee.



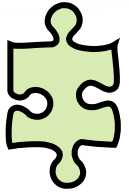
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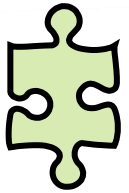
Other reforms

- Include a specific duty of care on the providers of workplace health and safety advice, services or products.
- Require that a health and safety committee must include a representative from management with sufficient seniority to authorise the decisions and recommendations of the committee.
- Ensure that enforceable undertakings are not available for Category 2 offences involving a fatality.
- Include a union as a party that can bring proceedings for breach of a WHS civil penalty provision.



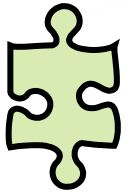
Right of entry – Recommendations

- Amendments made to the model WHS Bill in 2016 have not been adopted in any Australian jurisdiction.



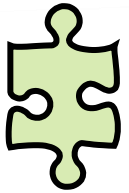
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Right of entry – Recommendations

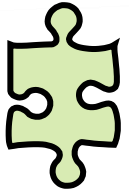
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- WHST/Registrar will administer the entry permit system.



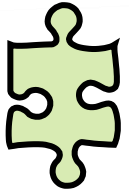
Right of entry – Recommendations

- Amendments made to the model WHS Bill in 2016 have not been adopted in any Australian jurisdiction.
- For consistency with other Australian jurisdictions, WA will adopt the unamended 2011 provisions.
- WHST/Registrar will administer the entry permit system.
- Registrar will be an eligible party to make applications to the WHST on specified matters.

Dangerous Goods



- Separate review to be conducted by DMIRS consulting with industry.
- **Stage One:** Reduce the existing regulatory framework.
- **Stage Two:** Review approaches to incorporate dangerous goods laws in the WHS laws.



Dangerous Goods

Stage One: Reduce the existing regulatory framework.

Dangerous Goods Safety Act 2004

Dangerous Goods Safety (General) Regulations 2007;

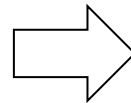
Dangerous Goods Safety (Explosives) Regulations 2007;

Dangerous Goods Safety (Security Sensitive Ammonium Nitrate) Regulations 2007;

Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007;

Dangerous Goods Safety (Major Hazard Facilities) Regulations 2007; and

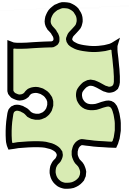
Dangerous Goods Safety (Road and Rail Transport of Non-explosives) Regulations 2007.



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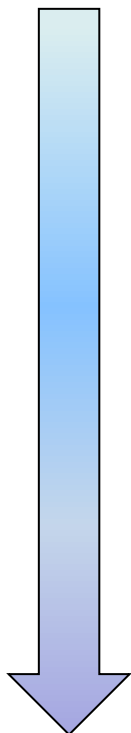
Dangerous Goods



Stage Two: Review approaches to incorporate dangerous goods laws in the WHS laws.

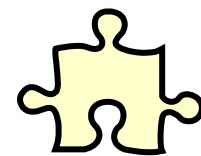
Will commence after Stage One is complete

30 June 2018



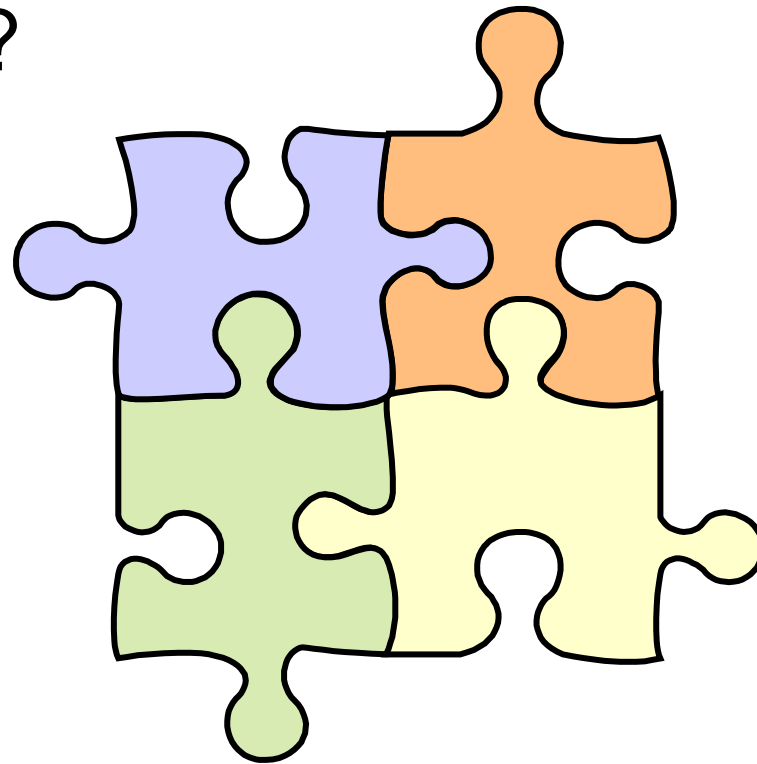
31 August 2018

Have your say!



- You may comment on any aspect of the WHS Act.
- Templates are provided on the DMIRS website.
- Please submit with a cover sheet.
- Your submission will be published unless you specify it is confidential.

Questions?



<https://www.commerce.wa.gov.au/publications/modernising-work-health-and-safety-laws-wa>

WHSReform@dmirs.wa.gov.au