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

Based on the national model WHS Bill

Tailored for our unique conditions
Modern work health and safety laws

- One Act for all Western Australian workplaces
- Based on the national model WHS Bill
- Tailored for our unique conditions
- Developed after extensive consultation
A single Act for WHS

Current laws

- Mines Safety and Inspection Act 1994
- Occupational Safety and Health Act 1984
- Pipelines Act 1969
- Dangerous Goods Safety Act 2004
- Petroleum and Geothermal Energy Resources Act 1967
- Petroleum (Submerged Lands) Act 1982
- Petroleum and Geothermal Energy Safety Levies Act 2011
A single Act for WHS – proposed structure

- **Work Health and Safety Act**
  - Work Health and Safety Regulations (General)
  - Work Health and Safety Regulations (Mines)
  - Work Health and Safety Regulations (Petroleum)

- **Dangerous Goods Safety Act 2004**
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
Key features of the model WHS Bill

OSH or MSI  
Model WHS

General duty of care  →  Primary duty of care
Key features of the model WHS Bill

OSH or MSI

General duty of care

Primary duty of care

Model WHS

Employer
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Person conducting business or undertaking (PCBU)
Key features of the model WHS Bill

OSH or MSI

- General duty of care
- Employer
- SHR/SHC/PINs

Model WHS

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**OSH or MSI**
- General duty of care
- Employer
- SHR/SHC/PINs
- Regulator/IN/PN

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Model WHS

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Some new features of the model WHS Act:

– Due diligence for officers.
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– 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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Consultation paper
Recommendation 23 – References to the Industrial Relations Act 1979

Replace references to the defined phrase relevant state or territory industrial law with the Industrial Relations Act 1979

4, 116, 124, 131(2)(c)(i), 133(c)(i), 137(1)(b)(a), 137(1)(d)(a), 138(2), 150(b), 150(c)(i)

Background

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

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Industrial law</th>
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<tbody>
<tr>
<td>Federal (constitutionally covered corporations and Commonwealth workplaces)</td>
<td>Fair Work Act 2009</td>
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<tr>
<td>State-system workplaces in Western Australia</td>
<td>Industrial Relations Act 1979</td>
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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 Registrar 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 permit

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

### Response to jurisdictional note

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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?

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

From the appendix in the model WHS Bill....
Jurisdictional notes – Example

Relevant State or Territory
industrial law
Jurisdictional notes – Example

Relevant State or Territory industrial law

Industrial Relations Act 1979
Jurisdictional notes – more examples

Commission for Occupational Safety and Health
Jurisdictional notes – more examples

Commission for Occupational Safety and Health  →  Work Health and Safety Commission
Jurisdictional notes – more examples

Commission for Occupational Safety and Health

Work Health and Safety Commission

Occupational Safety and Health Tribunal
Jurisdictional notes – more examples

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- Commission for Occupational Safety and Health
- Occupational Safety and Health Tribunal
- Mining Industry Advisory Committee

→

- Work Health and Safety Commission
- Work Health and Safety Tribunal
- Mining and Critical Risk Advisory Committee
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To maintain current approach in WA

OSH or MSI

Model WHS

Right to cease unsafe work if you are at risk
To maintain current approach in WA

**OSH or MSI**
Right to cease unsafe work if you or another person are at risk

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To maintain current approach in WA

**OSH or MSI**

Right to cease unsafe work if you or **another person** are at risk

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

**Model WHS**

Right to cease unsafe work if you are at risk

Person must comply with improvement notice
To maintain current approach in WA

OSH or MSI

Right to cease unsafe work if you or another person are at risk

Person must comply with improvement notice and notify Regulator of compliance

Model WHS

Right to cease unsafe work if you are at risk

Person must comply with improvement notice

No equivalent
To maintain current approach in WA

**OSH or MSI**

- Right to cease unsafe work if you or **another person** are at risk
- Person must comply with improvement notice and **notify Regulator of compliance**
- Regulator may request independent valuation

**Model WHS**

- Right to cease unsafe work if you are at risk
- Person must comply with improvement notice
- No equivalent
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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Other reforms proposed by MAP: 14
Other reforms

• Include a specific duty of care on the providers of workplace health and safety advice, services or products.
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• Ensure that enforceable undertakings are not available for Category 2 offences involving a fatality.
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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.

• 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.
Right of entry – Recommendations

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• For consistency with other Australian jurisdictions, WA will adopt the unamended 2011 provisions.
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• 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
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.

30 June 2018

31 August 2018
Questions?


WHSReform@dmirs.wa.gov.au