



# Work Health and Safety 2019



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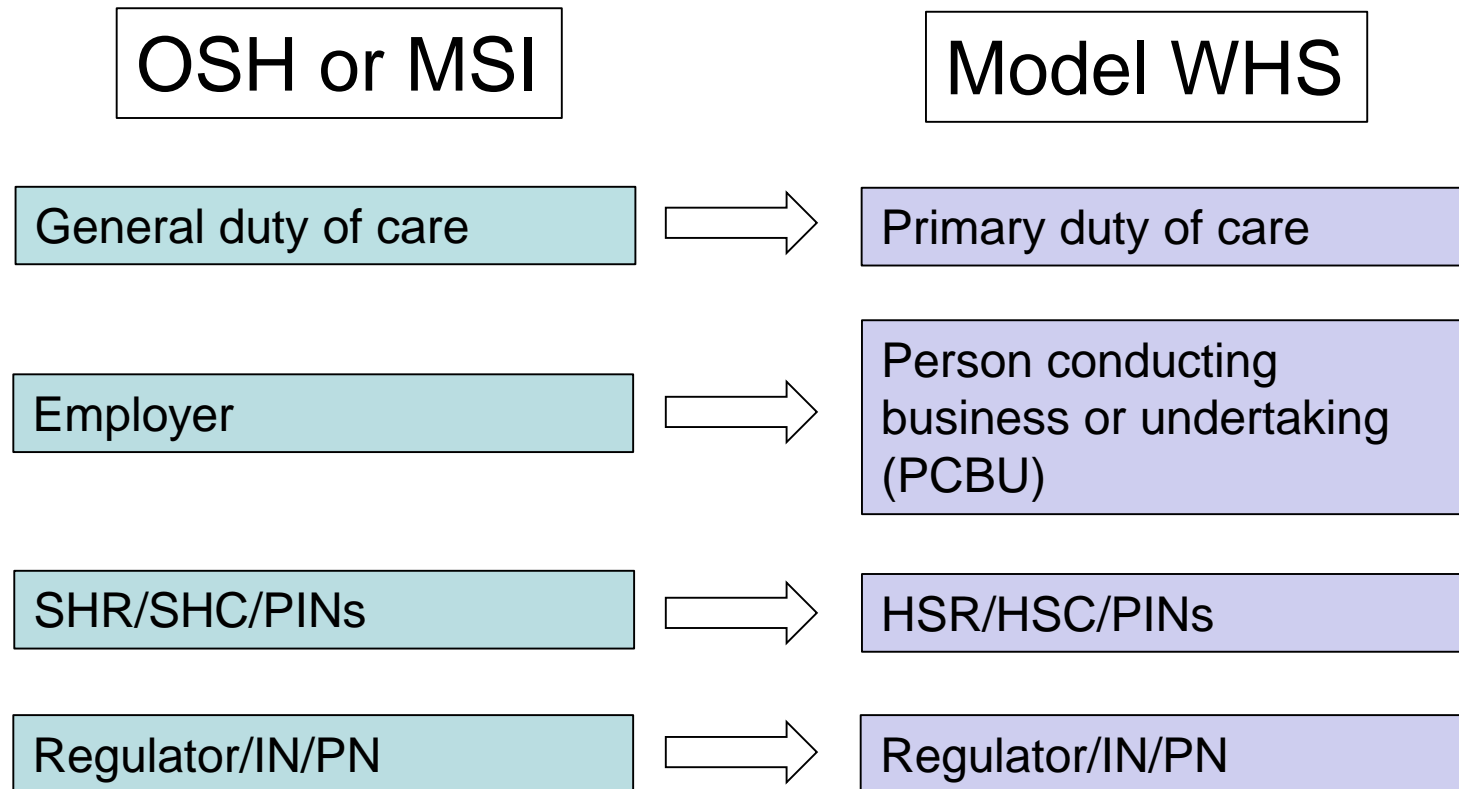
## Safety Levies Amendment Bill 2019

# WHS Bill 2019 – Approach to WHS Bill 2019

Amendments to the model WHS Bill were informed by:

- Recommendations of the Ministerial Advisory Panel (MAP);
- Recommendations made by more recent reviews of WHS, including:
  - The Review of the model Work Health and Safety laws Final report prepared by Marie Boland (the Boland Report); and
  - the Education and Employment References Committee report They never came home—the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia (the EERC report).
- Public comment;
- Government policy; and
- WA's legal framework.

# WHS Bill 2019 – Key features



# WHS Bill 2019 – Key amendments

- Industrial Manslaughter
- Specified duty of care for providers of WHS Services;
- Composition of HSC;
- Right of HSR to choose course of training; and
- Prohibition on insurance.

# WHS Bill 2019 – Industrial manslaughter

## **New offences of industrial manslaughter Recommendation 23B by the Boland Report; and Recommendation 13 the EERC Report.**

- New offence – Industrial manslaughter – crime;
- New offence – Industrial manslaughter – simple;
- Modified offence – Category 1.

# WHS Bill 2019 – Industrial manslaughter – PCBUs

30A – Industrial manslaughter - crime	30A Industrial manslaughter - simple
A person commits a <b>crime</b> if:	A person commits an <b>offence</b> if:
The person has a health and safety duty as a PCBU; and	The person has a health and safety duty as a PCBU; and
	The person <b>fails to comply</b> with that duty;
The person <b>engages in conduct</b> that causes the death of an individual;	The failure <b>causes the death</b> of an individual.
The <b>conduct</b> constitutes a failure to comply with the person's health and safety duty;	
The person engages in the conduct – <ul style="list-style-type: none"><li>• <b>Knowing</b> that the conduct is likely to cause the death of an individual; and</li><li>• In <b>disregard</b> of that likelihood.</li></ul>	
District Court.	Magistrate's Court.

# WHS Bill 2019 – Additional elements – Officers

30A – Industrial manslaughter - Crime	30A Industrial manslaughter - Simple
<p>The PCBU's conduct:</p> <ul style="list-style-type: none"><li>• Is attributable to any <b>neglect</b> on the part of the officer; or</li><li>• Is engaged in with the officer's <b>consent or connivance</b>.</li></ul>	<p>The PCBU's conduct:</p> <ul style="list-style-type: none"><li>• Is attributable to any <b>neglect</b> on the part of the officer; or</li><li>• Is engaged in with the officer's <b>consent or connivance</b>.</li></ul>



# WHS Bill 2019 – WHS Service Providers

## **MAP recommendation implemented without modification:**

- MAP recommendation 8;
- Specified duty of care for providers of WHS Services;
- WHS service provider must ensure, so far as is reasonably practicable, that the WHS services are provided so that any relevant use of them...will not put at risk the health and safety of persons who are at the workplace.

# WHS Bill 2019 – WHS Service Providers

## **Examples:**

- Recommendations or other advice;
- Testing or analysis;
- Other information or documents, for example, a report, plan, programme, strategy, guideline or manual;
- A training course or other educational course.

# WHS Bill 2019 – Composition of HSC

## **MAP recommendation modified in response to public comment:**

- MAP recommendation 15;
- Section 76(5) amended;
- Requirement that at least one member of the HSC representing the PCBU must have sufficient authority to ensure the PCBU is able to comply with their duties under section 79;
- Sections 79(5) and 79(6) added:
- Person must consider the recommendation or decision, provide a response and, if agreed, take action to implement the decision;
- Agreement must not be unreasonably withheld.

# WHS Bill 2019 – Right of HSR to choose training

## Model clause amended – Public consultation/NSW Court case

- Section 72(1)(c) amended to ensure HSR can attend their course of choice;
- PCBU must pay course fees and **reasonable** costs;
- Either party may request the Regulator to appoint an Inspector to make a decision regarding timeframe for attendance and reasonable costs;
- In practice, excess travel costs would not be reasonable where an equivalent course is available nearby – worker may be requested to cover excess costs but may not be required to change their choice of course.

# WHS Bill 2019 – Prohibition on insurance

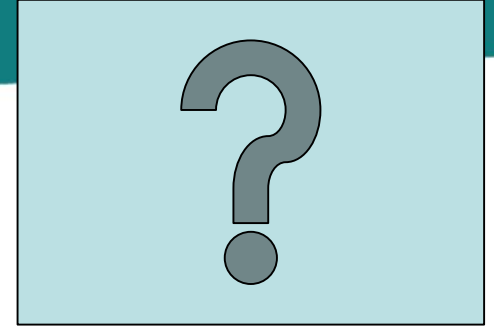
## **New clause included from recommendation of the Boland Report**

- Recommendation 26 of the Boland Report;
- Implemented in new section 272A;
- An insurance policy is of no effect to the extent that...it would indemnify a person for their liability to pay a fine for an offence against this Act.
- Insurance policy still has effect in relation to other matters.
- Offence in relation to entering into or offering an insurance policy for this purpose.

## Other matters of interest

- A person may invite an HSR from another workgroup to assist;
  - When that workgroup's HSR is unavailable;
  - If there is a serious risk to health or safety emanating from an immediate or imminent exposure to a hazard that affects or may affect a member of another work group;
  - From within the PCBU **or from another PCBU at the workplace**;
- HSRs may direct the cessation of unsafe work;
  - Exception – WA Police dangerous and covert operations;
- Duty to include HSR in consultations with workers in their workgroup;
  - Modified by “so far as is reasonably practicable”;
  - PCBU must make all reasonable efforts to carry out the consultation at times and places, or otherwise in ways, that are convenient for both the workers and the health and safety representative; and
- WHS right of entry to be retained in current IR laws.

# Questions & Information



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