

# Jackson McDonald presents The Future of METS

A presentation for Austmine Members



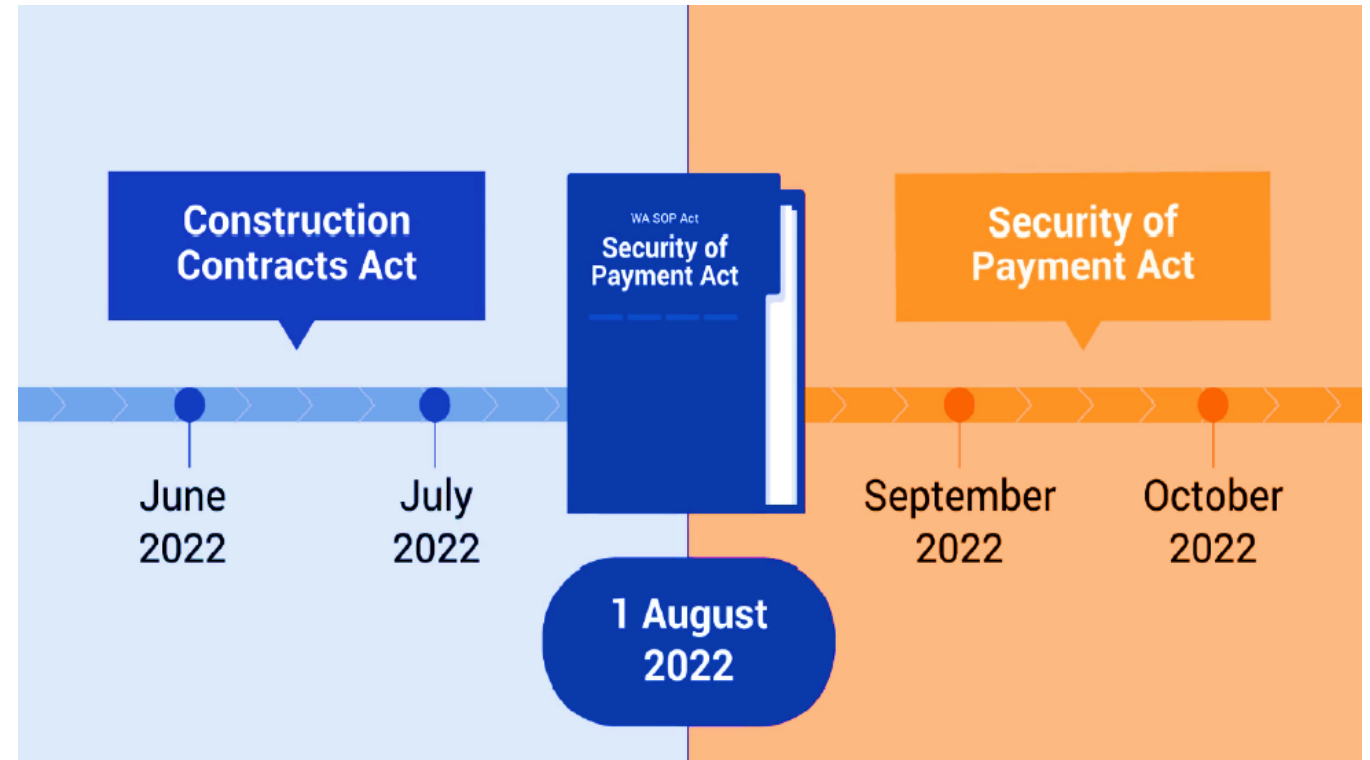


# Building and Construction Industry (Security of Payment) Its all about the *cash!*

Thomas Jacobs  
PARTNER



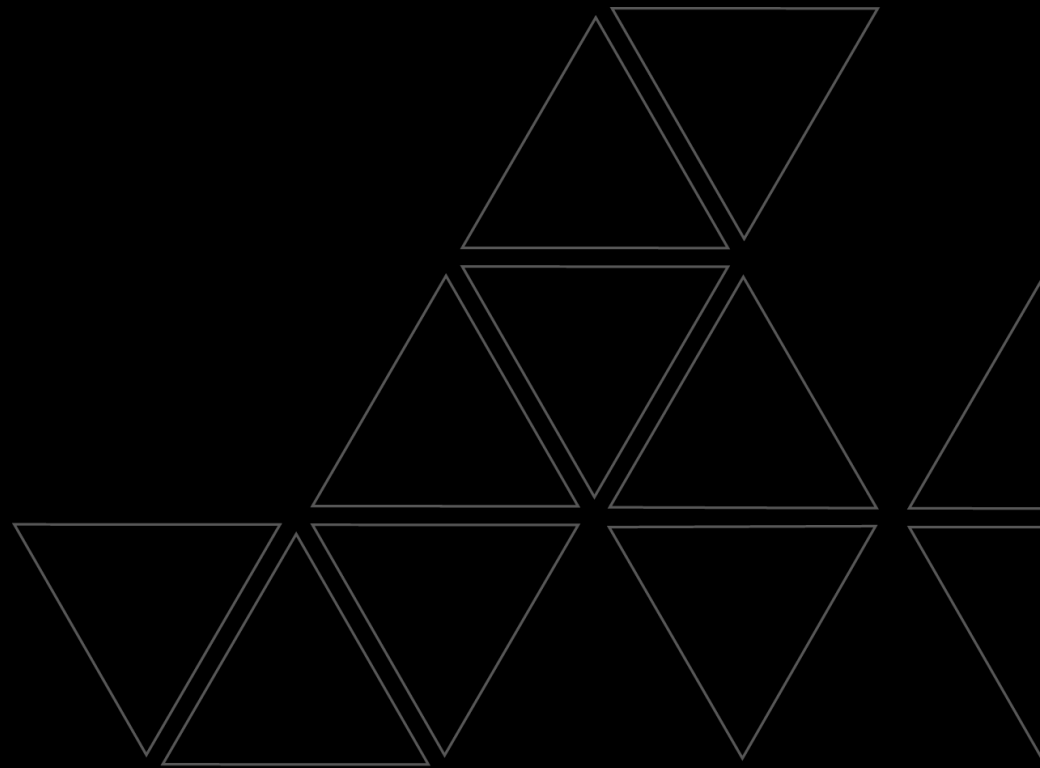
**New security of payment laws commence 1 August 2022. These laws will apply to construction contracts entered into on or after that date.**





# What does SOPA apply to?

Will it apply to your contracts?



# SOPA applies to most construction contracts

## So what is .....



construction contract – oral or in writing

construction work

related goods and services

value of construction contract



## But will it apply to METS members?

- The “*mining*” exemption has been narrowed.
- Are you involved in....
  - designing supplying or installing mineral processing equipment, conveyors, plant, machinery?
  - process plant maintenance contracts?
  - mining or resource sector civil works - repairs, maintenance, construction or design?
  - supply of electromechanical equipment (e.g. installing magnetic separators for iron separation, mechanical systems to reduce emissions and hydraulic systems into new mining or resource facilities)
  - supply control systems ( e.g engineering for safety, fire, electrical, hydraulic systems) or automation systems for conveyors?



## It is very different to the existing Construction Contracts Act 2004 (WA)

It only applies to contracts entered into before 1 August 2022

It prohibits certain terms

Implied certain terms

Introduced the adjudication process – rapid dispute resolution for payment disputes

From 1 August 2022 the SOPA applies



# The SOPA will make big changes to how you operate your construction contracts



Prohibition on “pay when paid” provisions

Time bar clauses can be declared to be **unfair and void**

Prohibition on “contracting out”

**Retention money trusts** - coming

Certain contracts must be **in writing** and contain **mandatory information**

**Deemed liability** if you don't respond to a payment claim in time





# The SOPA will make big changes to how you operate your construction contracts



Retentions can be swapped for **bank guarantees** - coming

Some adjudication determinations can be **reviewed**

Some limits on **adjudicator's fees**

Right to **suspend work** if not paid

Prohibition on **intimidation**



# When will all this come into effect?

1 August  
2022

**Stage 1 –**  
Rights to payment  
Prohibition on certain terms  
Right to suspend work  
Entitlement to statutory liens

1 February  
2023

**Stage 2 –**  
Retention trust scheme (phase 1)  
New Regulator powers

1 February  
2024

**Stage 3 –**  
Retention trust scheme (phase 2)  
Fairer contracting practices (substituting retentions)



# Key takeaways

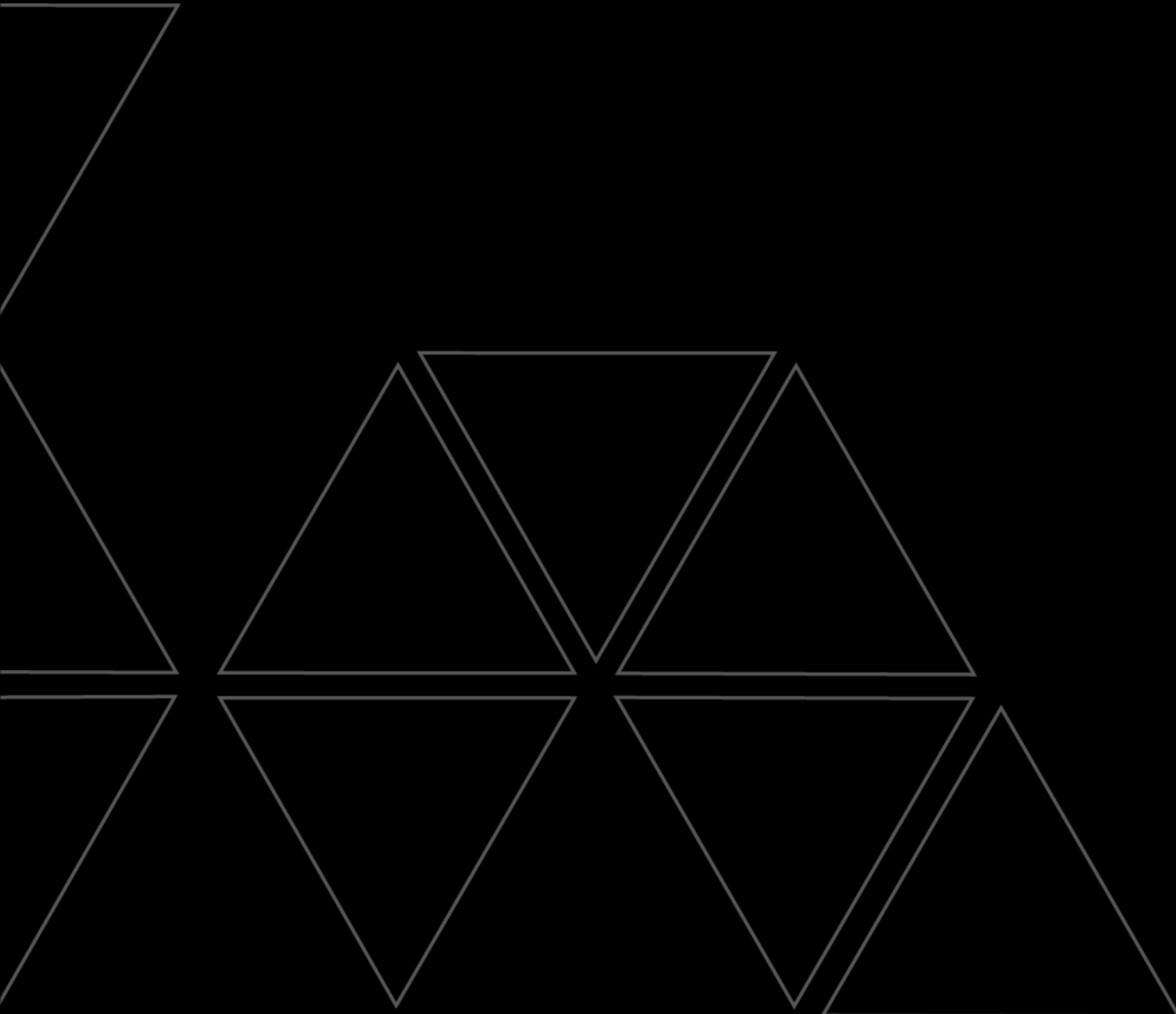
## I'm a METS contractor

- New statutory right for payment
- Statutory PCs must be endorsed
- Paying party must send payment schedule or full PC amount due
- Only 20 business days to start adjudication
- Certain contracts must be in writing
- Your subbies get similar rights
- You may be able to argue time bars are unfair
- Retention Trusts – coming
- New rights to suspend work
- New rights to swap retentions for bond

## I supply related goods or services to METS contractors

- Statutory PC must be endorsed
- Paying party must send payment schedule or full PC amount due
- Only 20 business days to start adjudication
- Certain contracts must be in writing
- Your subbies get similar rights
- You may be able to argue time bars are unfair
- Retention Trusts are coming and will affect you



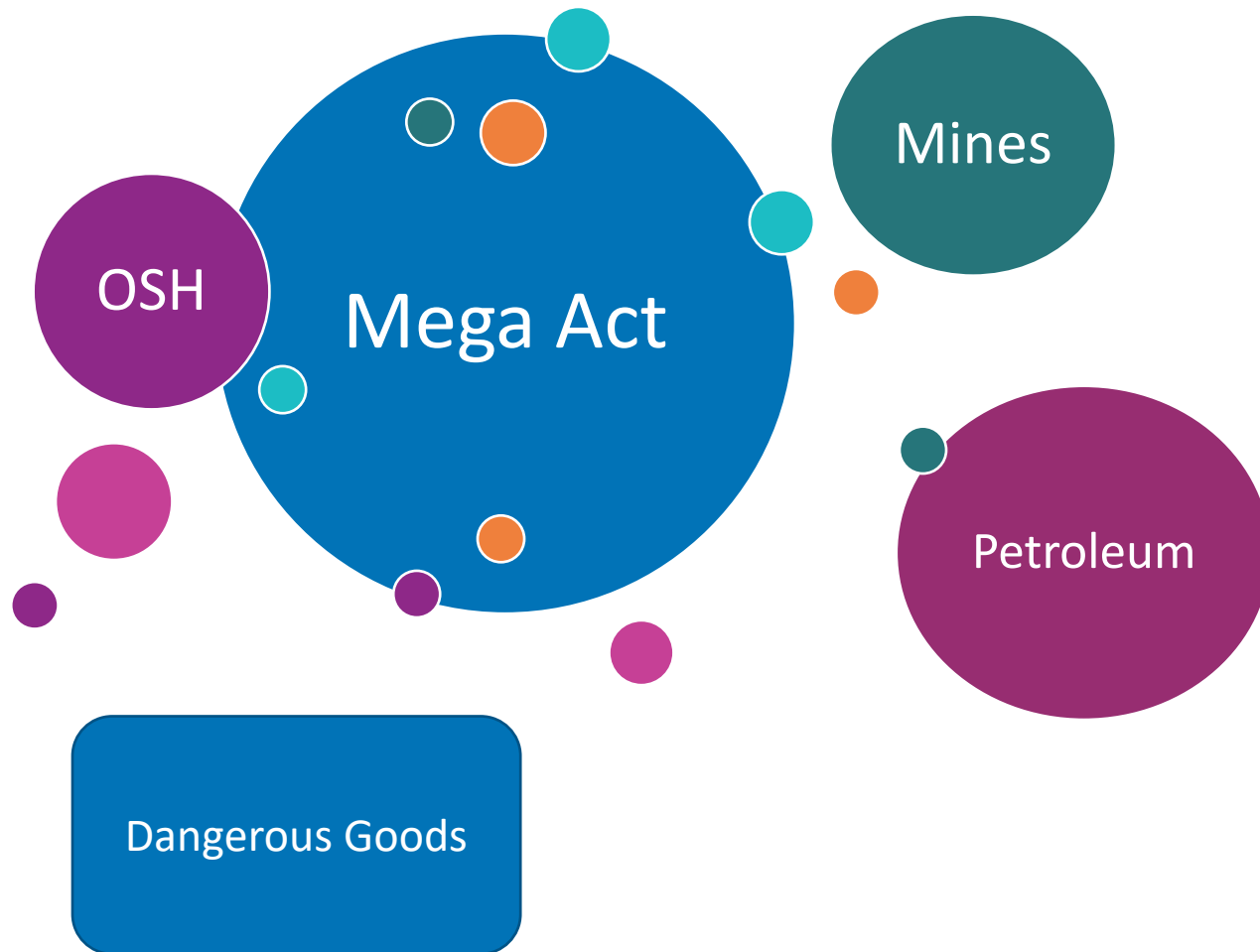


# WHS Update

Renaë Harding  
PARTNER



# One single Act for WHS\*\*



WHS Act		
General Regs	Mines Regs	Petroleum Regs



# Major “Changes”

Consolidate legislation

PCBU & Worker

Penalties

Industrial manslaughter

Company officer obligations

Insurance

WHS services

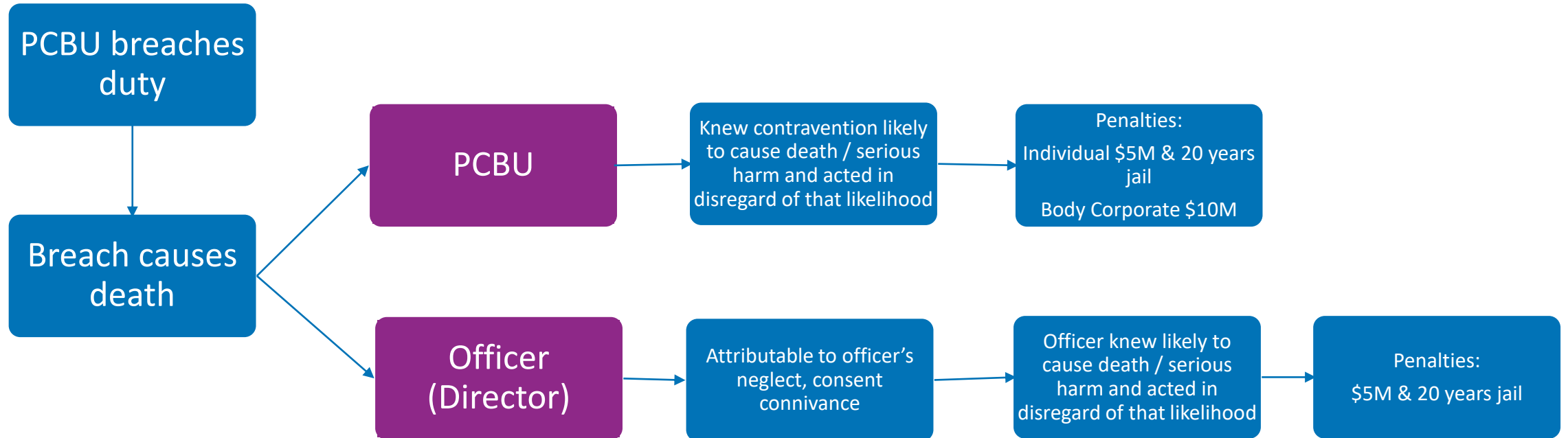


# Penalties

	OSH Act	WHS Act
No other offence prescribed	Company 1st offence - \$450K Individual 1st offence - \$100K Employee 1st offence - \$50K	PCBU (Company) - \$570K PCBU (Individual) - \$120K Individual - \$55K
Does not cause death or serious harm	Company 1 <sup>st</sup> offence - \$1.5M Individual 1 <sup>st</sup> offence - \$250K	PCBU (Company) \$1.8M PCBU (Individual) \$350K Individual - \$170K
Death or serious harm	Company 1st offence - \$2M Individual 1st offence - \$400K	PCBU (Company) - \$3.5M PCBU (Individual) - \$680K + 5 yrs Company Officer - \$680K & 5 yrs Individual - \$340K + 5 yrs
Gross negligence / Industrial Manslaughter	Company 1st offence - \$2.7M Individual 1st offence - \$550K + 5yrs jail	PCBU (company) - \$10M Company Officer - \$5M + 20yrs jail



# Industrial Manslaughter



- Serious harm:
  - Endangers or likely to endanger life
  - Results or likely to result in permanent injury or harm
- No need to convict the company
- No limitation period for IM prosecution





# Category 1 offence

Person has a  
duty

Person  
Breaches the  
Duty

Breach causes  
death

Liability is causal

No minimum standard of behaviour

- Careless
- Reckless
- Negligent



# Penalty shifts – 2021 prosecutions

## Pre Oct 2018

- \$320K – Industrial Construction Services
- \$310K – Resource Recovery Solutions
  - Prosecution overturned on appeal
  - Convicted of a lesser offence – \$230K
- \$200K - Salini Australia

## Post Oct 2018

- \$450K – Charman Australia
- \$550K – MT Sheds
- \$600K – PGQW Pty Ltd



# MT Sheds

24 May 2021

Fall from height fatality

MT Sheds - \$550K

Co. director – 2 years 2 months

- 18 months suspended
- 8 months immediate imprisonment

## Esperance business owner jailed after pleading guilty to gross negligence that led to death of Jake Williams

ABC Goldfields / By Emily JB Smith and Jarrod Lucas

Posted 2d ago, updated Yesterday at 5:23am



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Primary duties do not fundamentally change

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Short term administrative burden

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Some expansion of duty holders and who duties are owed to

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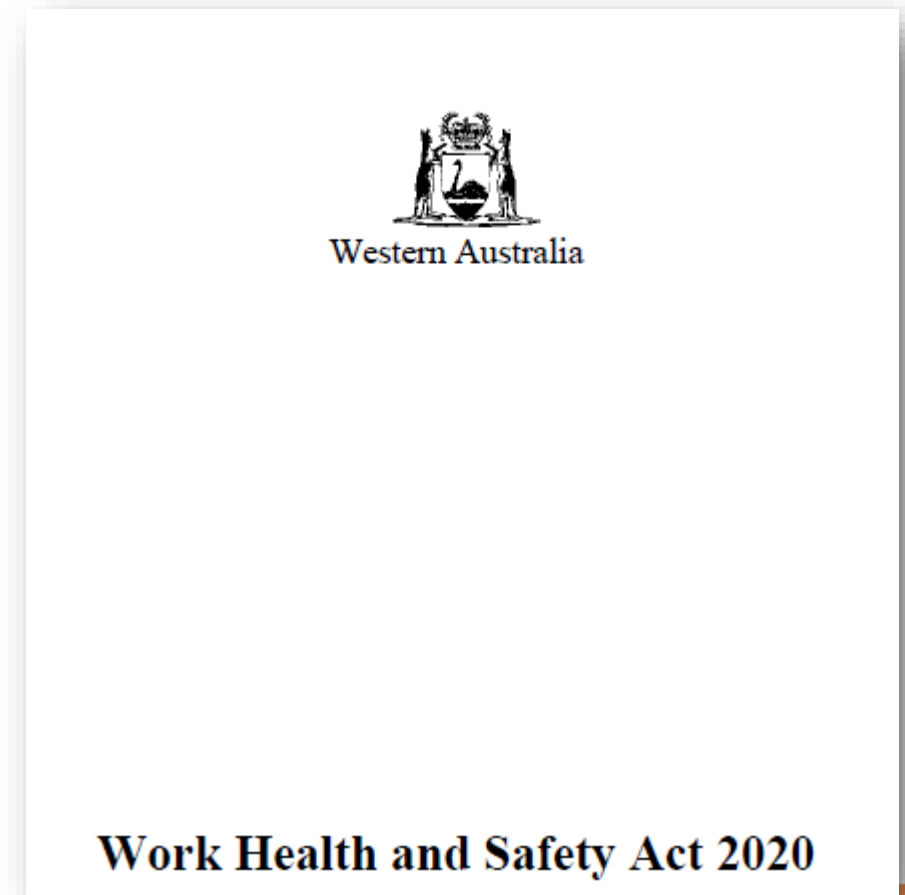
Increase in legal risk for front line supervision

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Impact of regulations not known yet

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## Some strategic considerations



# Practical considerations



Increased focus on prosecution and targeting individuals



Higher penalties



Too much reliance on useless statistics



Small and medium business at higher risk



# METS sector procurement in 2022

Luke Paterson  
PARTNER





***From 'move fast and break things' to ...***





# COVID-19 - China

5 January 2020

On 31 December 2019, the WHO China Country Office was informed of cases of pneumonia of unknown etiology (unknown cause) detected in Wuhan City, Hubei Province of China. As of 3 January 2020, a total of 44 patients with pneumonia of unknown etiology have been reported to WHO by the national authorities in China. Of the 44 cases reported, 11 are severely ill, while the remaining 33 patients are in stable condition. According to media reports, the concerned market in Wuhan was closed on 1 January 2020 for environmental sanitation and disinfection.

The causal agent has not yet been identified or confirmed. On 1 January 2020, WHO requested further information from national authorities to assess the risk.

National authorities report that all patients are isolated and receiving treatment in Wuhan medical institutions. The clinical signs and symptoms are mainly fever, with a few patients having difficulty in breathing, and chest radiographs showing invasive lesions of both lungs.





# Australia's coronavirus spending to protect economy dwarfs the GFC stimulus package

Story Lab / By Markus Mannheim

Posted Sun 5 Apr 2020 at 2:53am, updated Sun 5 Apr 2020 at 6:37am

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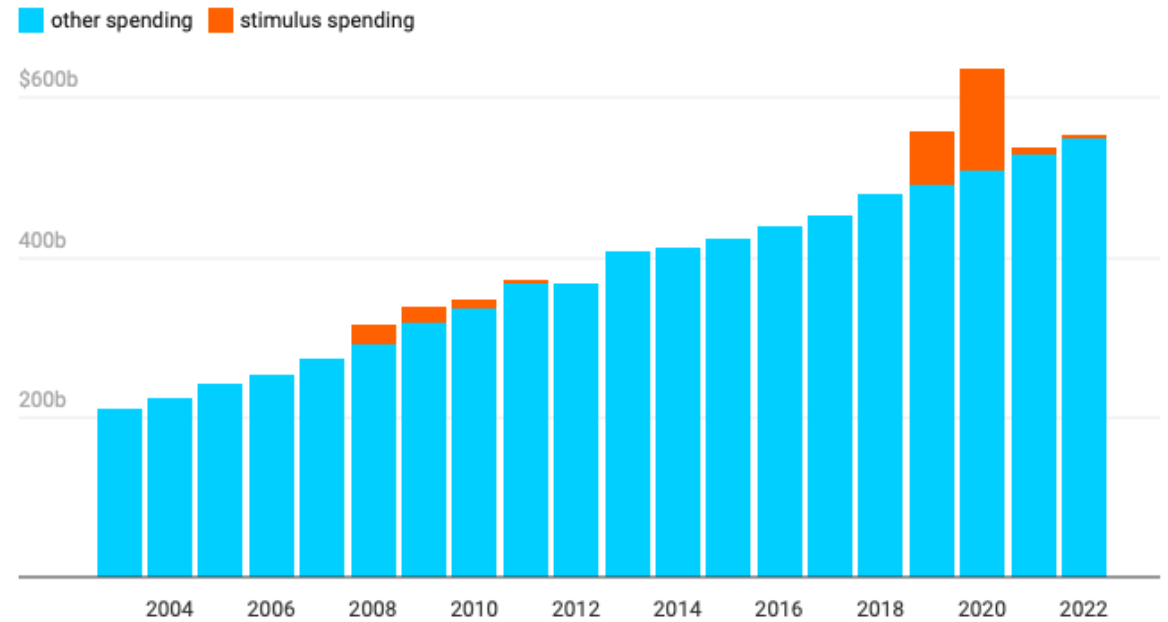
[abc.net.au/news/coronavirus-data-sti...](https://abc.net.au/news/coronavirus-data-sti...)

[COPY LINK](#)

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The Federal Government's economic response to the coronavirus pandemic has been sweeping, including payments for job seekers and "job keepers", as well as wage subsidies and support for businesses.

This chart shows two decades of Commonwealth spending (past and forecast), including both stimulus plans.



National WA [Construction](#)

# Clients, suppliers left in the lurch by another WA building company collapse



By [Sarah Brookes](#)

April 11, 2022 – 1.08pm

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Another building company has collapsed following [the voluntary wind-up of New Sensation Homes on Friday](#).

A notice was sent to clients of Clarkson-based Home Innovation Builders on Monday morning confirming the formal appointment of liquidator GTS Advisory.





ANALYSIS

# Inflation is growing at its fastest pace in 20 years. Is it making you behave differently?

By business reporter [Gareth Hutchens](#)

Posted Sun 8 May 2022 at 12:42pm, updated Mon 9 May 2022 at 4:15am





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# Inflation Is Poised to Ease According to These Three Key Indicators

- Prices for chips and shipping containers have come off peaks
- Central bankers are scrambling to snuff out soaring inflation





***From 'just-in-time' to 'just-in-case' ...***



# Supplier Due Diligence - Financial

- The 'easy one'
- Public financial statements
- Internal searches
- Credit checks / Director checks
- PPSR searches
- Doctor G



# Supplier Due Diligence - Commercial

- Who are the internal stakeholders?
- Supply compatibility
- Specifications / cost
- Reputation
- COGS / inflation risks
- What are the linchpins in your delivery model?
- Who are the alternative suppliers / markets?







# Supplier Due Diligence – IP, Privacy and Data

- Confidentiality and IP Rights (who owns)
- Personal Information and Sensitive Information
- Data security
- Data breach rights



# Supplier Due Diligence - ESG

- Anti-Modern Slavery
- Anti-Bribery and Corruption
- Other Environmental Concerns



# Decarbonisation through supply chains

- Real challenge for energy and resource intensive industries
- Collection of data
  - Challenge of opaque carbon accounting vs upstream decarbonisation reporting obligations
  - Format of data
  - Is it verifiable / auditable
  - What's the baseline and how can we track improvements?
- Contractual response:
  - Push carbon abatement costs upstream and downstream
  - Pass through obligations / claims downstream
  - Contractual obligation to comply with decarbonisation objectives and to collect and store data





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