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Three Categories of WHS Offences and Table of NSW Penalty Units

When the WHS Act was amended on the 10th of June 2020 an offence called “gross negligence” was added in to the Act as a Category 1 Offence. Now might be a good time to consider that offence and the three categories of offences in the WHS Act NSW (Divisions 2, 3 and 4, of Part 2) that cover the situation when a health & safety duty has not been complied with.

Everyone in your workplace has a health and safety duty under the WHS Act and the three categories of offence and the table of penalty units below could apply to them.

Three Categories of WHS Offence

Category 1 – Gross Negligence or Reckless Conduct (Section 31 WHS Act NSW)

The “gross negligence” offence applies to anyone in your workplace who has a health and safety duty, but without reasonable excuse, is grossly negligent in their conduct and exposes an individual to whom they owe that duty, to a risk of death or serious injury of illness.

The “reckless conduct” offence applies to anyone in your workplace who has a health and safety duty, but without reasonable excuse, recklessly engages in conduct that exposes an individual to whom they owe that duty, to a risk of death or serious injury of illness.

Category 2 - Failure to comply with health and safety duty (Section 32 WHS Act NSW)

This Category 2 offence applies if anyone in your workplace has a health and safety duty, but fails to comply with that duty, and their failure exposes an individual to a risk of death or serious injury or illness.

Category 3 - Failure to comply with health and safety duty (Section 33 WHS Act)

Anyone in your workplace commits this Category 3 offence if they have a health and safety duty, but they fail to comply with that duty.

Table of WHS Penalty Units in NSW - Three Categories of WHS Offence

The NSW WHS Act and WHS Regulation were amended on the 10th of June 2020 so that WHS penalties are now expressed in penalty units. They used to be expressed in dollars. As at the 10th June 2020 one penalty unit = \$100. For example, the penalty shown in the table above of 34,630 penalty units means that a maximum fine for a PCBU could be \$3,463,000 (34,630 penalty units x \$100 = \$3,463,000).

The dollar value of a penalty unit will increase every new financial year (eg. 1/7/2020 – 30/6/21) to the same extent that the Consumer Price Index (CPI) increases. As the CPI usually increases every year we could probably expect that the dollar value of the penalty unit will continue to rise.

WHS Maximum Penalties in NSW One Penalty Unit = \$100			
Category of Offence	Individual Penalty Units	PCBU (as an Individual), or an officer of a PCBU Penalty Units	PCBU Body Corporate Penalty Units
Category 1 <i>Gross Negligence, or reckless conduct</i>	<i>3,465 penalty units, or 5 Years imprisonment, or both</i>	<i>6,925 penalty units or 5 Years imprisonment or both</i>	<i>34,630 penalty units</i>
Category 2 <i>Failure to comply with health & safety duty exposes individual to risk of death or serious injury or illness</i>	<i>1,730 penalty units</i>	<i>3,465 penalty units</i>	<i>17,315 penalty units</i>
Category 3 <i>Failure to comply with a health and safety duty</i>	<i>575 penalty units</i>	<i>1,155 penalty units</i>	<i>5,770 penalty units</i>

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