



Courtenell

Work Health & Safety Training and Consulting

02 **9552 2066**
train@courtenell.com.au



Will There Be a 50% Increase in WHS Penalty Levels?

Would you be in favour of a 50% increase in the \$ penalty levels for offences under the WHS Act and WHS Regulation? It is one of the recommendations made in the *Review of the Model WHS Laws: Final Report* that was published 25 February 2019. Safe Work Australia's website tell us that;

"The report recommendations will be subject to a regulation impact statement process before WHS ministers respond later in 2019."

The Report was written for Safe Work Australia by Ms Marie Boland who has a wealth of experience in WHS policy and regulation that includes 2 years as the Executive Director of SafeWork SA. The recommendation to increase penalties is explained at page 117 of the Report:

"I recommend that penalty levels should be increased in order to retain their real value as a deterrent. The penalty levels in the model WHS Act could be increased by 50 per cent as an approximate halfway point to the 90.9 per cent increase in the Commonwealth penalty unit value since 2011. Penalty levels in the model WHS Regulations should also be increased proportionately to the increase in the penalties for offences against the model WHS Act. I also recommend that these penalty levels should be reviewed as part of the ongoing review cycle for the model WHS Act and model WHS Regulations to ensure they remain effective and appropriate."

I found that regulators are not consistent in their use of infringement/penalty notices. I note, for example, that New South Wales has expanded the list of penalty notice offences in its model WHS laws and is advocating expansion within the model WHS laws more generally."

Current WHS Penalties

Current Penalties for WHS Category 1, 2 and 3 Offences All States & Territories except Vic and WA			
Category of Offence	Individual	PCBU (as an Individual) or an officer of a PCBU	Body Corporate
Category 1 Reckless Conduct	\$300,000 or 5 Years imprisonment or both	\$600,000 or 5 Years imprisonment or both	\$3,000,000
Category 2 Failure to comply with health & safety duty	\$150,000	\$300,000	\$1,500,000
Category 3 Failure to comply with health & safety duty	\$50,000	\$100,000	\$500,000

Effective Action

So sometime in 2019 we should know if WHS penalty levels really will increase and by how much. Meanwhile the best action for PCBUs is to continue to create a safe and healthy workplace and satisfy the requirements of the WHS Act and WHS Regulation.

Note

You can access the *Review of the Model WHS Laws: Final Report*, on SafeWork Australia's website [HERE](#)

14th May 2019