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Higher NSW WHS Dollar Penalties are now in Force

NSW Parliament began the task of considering proposed amendments to the NSW WHS Act in November 2019. However, the parliamentary legal process of turning the proposed amendments into law was interrupted by the end of year break and later, the need to handle the COVID-19 situation.

Parliament has now completed the parliamentary process and the amended WHS Act and amended WHS Regulation became law on the 10th of June. A PDF copy of the amended WHS Act was released on the 15th of June and is available at the NSW Legislation website [HERE](#). A PDF copy of the amended WHS Regulation was also released on the 15th of June and is available at the NSW Legislation website [HERE](#)

This WHS article focusses on the increases in WHS penalties and the new system of “penalty units” that became law in NSW on the 10th of June.

In brief, the changes to the penalties are;

- The penalties for each offence in the amended WHS Act and the amended WHS Regulation are now expressed in penalty units. They used to be expressed in dollars.
- A penalty unit has a dollar value and that value is \$100 for each penalty unit shown in the WHS Act (WHS Act section 242B) and WHS Regulation.

For example, the “reckless conduct” maximum penalty for a company is 34,630 penalty units (WHS Act section 31). Each penalty unit is worth \$100 so the maximum dollar penalty is \$3,463,000 for “reckless conduct” under the amended WHS Act. That is an increase of \$463,000 in dollar penalty compared to what it was in the WHS Act in November 2019. An increase of 15.43%.

- The dollar value of a penalty unit will increase every financial year (eg, 1/7/2020 -30/6/2021) to the same extent that the Consumer Price Index (CPI) figure has increased (WHS Act section 242B). As the CPI usually increases every year we could expect that the penalty units will probably increase each new financial year.

You might consider the dollar penalty increase of 15.43% for the “reckless conduct” offence as huge but 8 years has passed without an increase since the WHS Act began in 2012. The 15.43% is equivalent to an average annual increase over those 8 years of 1.92% per year. That is perhaps an annual increase that is similar to the increase in the Consumer Price Index (CPI) figure over those 8 years.

The penalty units and the dollar penalty for breaches of the WHS Act or WHS Regulation will continue to increase as years go by. That will not affect you as long as you continue to take and maintain effective actions to eliminate or reduce all WHS risks in your workplace so far as is reasonably practicable.

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