

EXPLANATORY MEMORANDUM – OCCUPATIONAL SAFETY AND HEALTH AMENDMENT BILL 2017

1. Introduction

The purpose of the Occupational Safety and Health Amendment Bill 2017 (the Bill) is to amend the *Occupational Safety and Health Act 1984* (the OSH Act) to increase penalties listed under various provisions so that they:

- are in line with other jurisdictions in Australia; and
- ensure penalties better reflect the importance of a safe workplace.

In 2011, Safe Work Australia developed the Model Work Health and Safety (model WHS) Act under the *Inter-Government Agreement for Regulatory and Operational Reform in Occupational Health and Safety* (IGA). The purpose of the Bill was to lay the foundation for the harmonised work health and safety framework in all jurisdictions.

The amendments propose to increase the penalties for offences under the OSH Act to better align with the penalties in the model WHS Bill, allowing for inflation and rounded for simplicity. The further inflation increase is due to the model WHS Bill penalties being determined (during its development) in 2010.

2. Overview of the Bill

The penalties that are proposed to be amended can broadly be divided into two types:

Penalties attached to different 'levels' (Attachment A):

The OSH Act prescribes four 'levels' of breaches and associated penalties. These breaches cover 'general duty of care' by employers, principal employers and other persons. They also cover breaches of provisions applicable to certain residential premises. The plant designers, manufacturers, importers, and suppliers are also covered by the breaches defined by these 'levels'. There are different penalties for each 'level' for the first offence and then an increased penalty for a subsequent offence.

The penalties for the four 'levels' are given in section 3A of the OSH ACT. The current prescribed penalties have been approximated to the closest penalty in the model WHS Bill, inflated by 14 percent and rounded off to arrive at the amended penalties.

The proposed penalty level amendments at **Attachment A** have been established using the following principles:

- Level 1 in the OSH Act equates to Category 3 of the model WHS Act (inflated by 14 percent and rounded off).
- Level 2 in the OSH Act equates to Category 2 of the model WHS Act (inflated by 14 percent and rounded off).

- Level 4 in the OSH Act equates to Category 1 of the model WHS Act (inflated by 14 percent and rounded off).
- For level 3 offences in the OSH Act, the penalty is based on the mid-point between Category 1 and Category 2 penalties of the model WHS Act (inflated by 14 percent and rounded off).
- The full value of the WHS penalty is allocated to the OSH Act's Subsequent Penalty for each Duty Holder. The value of the OSH Act's First Offence penalty for each Duty Holder is 80 per cent of the Subsequent Penalty value. The model WHS Act only has one penalty for each Penalty category and, unlike the OSH Act, does not have different fine amounts for First and Subsequent offences.
- For Level 4 OSH Act offences, the length of imprisonment is increased to five years in lieu of, or in addition to, a monetary penalty.
- Inflation has eroded the value of the model WHS Act since 2010. The proposed OSH Act penalties have been adjusted and increased for the Western Australia inflation rate. The inflation rate is determined by calculating the percentage difference between the CPI for March 2010 and March 2017. The inflation rate for this period is 14 per cent.
- Only the quantum of each penalty in the OSH Act is being amended. There is no change to the tests for the penalties.

Penalties applicable to provisions other than specified by 'levels' (Attachment B):

These are for breaches relating to duties of employees and continuing offences.

These penalties are in different provisions of the OSH Act. They have been increased by a factor of 4. This methodology was adopted from the Level 1 First Individual offence under s. 3A(1)(b)(i)(l) of the OSH Act, being an increase from 25,000 to 100,000 (by a factor of 4).

Penalties specified for the breaches of regulations have not been changed.

3. Consultation

In September 2014, the former Government tabled the Work Health and Safety Bill 2014 as a Green Bill (the Green Bill) for consultation purposes. The Green Bill included proposals for penalties consistent with those in the model WHS Act.

The consultation was carried out through a public consultation and Decision Regulatory Impact Statement. The penalties in the model WHS Act were used as a basis for the consultation.

4. Clause Notes

Clause 1 sets out the short title of the Bill.

Clause 2 provides for the most provisions of the Bill to commence on a day or days to be appointed by proclamation.

Clause 3 gives effect to the amendments to the OSH Act contained in the Bill.

Clause 4 gives the changed penalties for specified provisions of the OSH ACT.

As described in the overview, the first part of the table amends the penalties for Level 1 to Level 4 breaches given in section 3A of the OSH ACT. The amended penalties are outlined in **Attachment A**.

Other penalties are amended by a multiple of 4 except for s. 20A(1)(b), due to a rounding adjustment. These penalties are outlined in **Attachment B**.

The penalties covered in **Attachment B** are:

Penalties in s. 20A – Breaches of s. 20(1) or (3)

Penalties in s. 54A – Continuing offences

Attachment A

OSH Act provision	Penalty Level	Duty holder	Current OSH Act Penalty	WHS Equivalent Penalties	14 per cent inflation adjustment	Rounded to two significant digits
s. 3A(1)(a)(i)	Level 1	First Employee	\$5,000	\$40,000	\$45,600	\$50,000
s. 3A(1)(a)(ii)	Level 1	Subsequent Employee	\$6,250	\$50,000	\$57,000	\$60,000
s. 3A(1)(b)(i)(I)	Level 1	First Individual	\$25,000	\$80,000	\$91,200	\$100,000
s. 3A(1)(b)(i)(II)	Level 1	Subsequent Individual	\$31,250	\$100,000	\$114,000	\$120,000
s. 3A(1)(b)(ii)(I)	Level 1	First Body Corporate	\$50,000	\$400,000	\$456,000	\$450,000
s. 3A(1)(b)(ii)(II)	Level 1	Subsequent Body Corporate	\$62,500	\$500,000	\$570,000	\$570,000
s. 3A(2)(a)(i)	Level 2	First Individual	\$100,000	\$240,000	\$273,600	\$250,000
s. 3A(2)(a)(ii)	Level 2	Subsequent Individual	\$125,000	\$300,000	\$342,000	\$350,000
s. 3A(2)(b)(i)	Level 2	First Body Corporate	\$200,000	\$1,200,000	\$1,368,000	\$1,500,000
s. 3A(2)(b)(ii)	Level 2	Subsequent Body Corporate	\$250,000	\$1,500,000	\$1,710,000	\$1,800,000
s. 3A(3)(a)(i)	Level 3	First Individual	\$200,000	\$360,000	\$410,400	\$400,000
s. 3A(3)(a)(ii)	Level 3	Subsequent Individual	\$250,000	\$450,000	\$513,000	\$500,000
s. 3A(3)(b)(i)	Level 3	First Body Corporate	\$400,000	\$1,800,000	\$2,052,000	\$2,000,000
s. 3A(3)(b)(ii)	Level 3	Subsequent Body Corporate	\$500,000	\$2,250,000	\$2,565,000	\$2,500,000
s. 3A(4)(a)(i)	Level 4	First Individual	\$250,000 and 2 years imprisonment	\$480,000 or imprisonment for 5 years or both	\$547,200 or imprisonment for 5 years or both	\$550,000 and 5 years imprisonment
s. 3A(4)(a)(ii)	Level 4	Subsequent Individual	\$312,500 and 2 years imprisonment	\$600,000 or imprisonment for 5 years or both	\$684,000 or imprisonment for 5 years or both	\$680,000 and 5 years imprisonment
s. 3A(4)(b)(i)	Level 4	First Body corporate	\$500,000	\$2,400,000	\$2,736,000	\$2,700,000
s. 3A(4)(b)(ii)	Level 4	Subsequent Body corporate	\$625,000	\$3,000,000	\$3,420,000	\$3,500,000

Attachment B

OCCUPATIONAL SAFETY AND HEALTH ACT 1994	CURRENT FINE	PROPOSED FINE
20A. Breaches of s. 20(1) or (3), penalties for		
20A(1)(a) First offence	\$25,000	\$100,000
20A(1)(b) Subsequent offence	\$31,250	\$120,000
20A(2)(c) First offence	\$20,000	\$80,000
20A(2)(d) Subsequent offence	\$25,000	\$100,000
20A(3)(c) First offence	\$10,000	\$40,000
20A(3)(d) Subsequent offence	\$12,500	\$50,000
54A. Continuing offences (daily)		
54A(2)(a) Person	\$200	\$800
54A(2)(b) Individual	\$1,000	\$4,000
54A(2)(c) Body corporate	\$2,000	\$8,000