

EXPLANATORY MEMORANDUM – MINES SAFETY AND INSPECTION AMENDMENT BILL 2017

1. Introduction

The purpose of the Mines Safety and Inspection Amendment Bill 2017 (the Bill) is to amend the *Mines Safety and Inspection Act 1994* (the MSI 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 MSI 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 MSI 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 4A of the MSI 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 MSI Act equates to Category 3 of the model WHS Act (inflated by 14 percent and rounded off).
- Level 2 in the MSI Act equates to Category 2 of the model WHS Act (inflated by 14 percent and rounded off).

- Level 4 in the MSI Act equates to Category 1 of the model WHS Act (inflated by 14 percent and rounded off).
- For level 3 offences in the MSI 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 MSI Act's Subsequent Penalty for each Duty Holder. The value of the MSI 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 MSI Act, does not have different fine amounts for First and Subsequent offences.
- For Level 4 MSI 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 MSI 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 MSI 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 other breaches including duties of employees, duty to report some occurrences and situations, duty to provide specified information to safety and health representatives and continuing offences.

These penalties are in different provisions of the MSI Act. They have been increased by a factor of 4. This methodology was adopted from the Level 1 First Individual offence under s. 4A(1)(b)(i)(l) of the MSI 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

Extensive discussions were held with stakeholders while developing the draft Work Health and Safety (Resources and Major Hazards) Bill. The consultation was carried out through the Ministerial Advisory Panel appointed by the former Government 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 MSI Act contained in the Bill.

Clause 4 gives the changed penalties for specified provisions of the MSI 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 4A of the MSI ACT. The amended penalties are outlined in **Attachment A**.

Other penalties are amended by a multiple of 4 except for s. 10A(1)(b), due to a rounding adjustment. These penalties are outlined in **Attachment B**.

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

Penalties in s. 10A for breach of s. 10 – Duties of Employees

Penalty in s. 11(4) for breach of s. 11 – Duty to report some occurrences and situations (by persons)

Penalties in s. 21(5) for breach of s. 21(5) – Duty of a person to notify safety and health representative the intention of an inspector to examine a mine

Penalties in s. 23(3) for breach of s. 23(3) – Duty of a person to bring to the attention of safety and health representative and committee the result of an inspection noted in the record book by an inspector

Penalty in s. 26(3) for breach of s. 26(1) & (2) – Use and disclosure of information by inspectors

Penalties in s. 95(2) – Continuing offences

Attachment A

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

Attachment B

<i>MINES SAFETY AND INSPECTION ACT 1994</i>	CURRENT FINE	PROPOSED FINE
10A. Breaches of s. 10(1) or (3), penalties for		
10A(1)(a) First offence	\$25,000	\$100,000
10A(1)(b) Subsequent offence	\$31,250	\$120,000
10A(2)(c) First offence	\$20,000	\$80,000
10A(2)(d) Subsequent offence	\$25,000	\$100,000
10A(3)(c) First offence	\$10,000	\$40,000
10A(3)(d) Subsequent offence	\$12,500	\$50,000
11. Duty to report some occurrences and situations		
11(4) Person	\$10,000	\$40,000
21. Powers of inspectors		
21(5) Corporation	\$25,000	\$100,000
21(5) Individual	\$5,000	\$20,000
23. Record of inspection and notice of result		
23(3) Corporation	\$25,000	\$100,000
23(3) Individual	\$5,000	\$20,000
26. Use and disclosure of information by inspectors etc.		
26(3) Person	\$10,000	\$40,000
95. Continuing offences (daily)		
95(2)(a) Person	\$200	\$800
95(2)(b) Individual	\$1,000	\$4,000
95(2)(c) Body corporate	\$2,000	\$8,000