



# Proposed amendments to penalties under the Work Health Safety Act in Queensland

Author: [Eric Halden](#)

Email: [ehalden@gnl.com.au](mailto:ehalden@gnl.com.au)

Phone: 0467 667 714

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Under the *Work Health and Safety Act 2011* (Qld) (**the WHS Act**), [penalties for offences relating to breaches of health and safety duties](#) have not increased in Queensland since the WHS regime was introduced in 2012. For several years there has been ongoing debate regarding two key considerations with respect to the sentencing process for breaches of [duties owed under the WHS Act](#).

Those considerations are:

- whether the penalties under the WHS Act serve as adequate punishments and deterrents against breaching WHS duties; and
- whether insurance policies covering WHS fines and indemnifying WHS fines undermine the WHS laws and should be prohibited.

The Queensland Government is expected to present proposed amendments to the WHS Act in late 2023/early 2024 that address these issues.

## Background to proposed WHS amendments

In March 2023, the majority of Australia's WHS ministers (including Queensland's minister) agreed to amend the model WHS laws to include substantial increases to penalties applicable to fines and periods of imprisonment.

Subsequently, in July 2023, the model WHS laws were amended to markedly increase the maximum penalties, particularly in relation to the most serious offences.

The amendments will not apply in a harmonised jurisdiction (i.e. all jurisdictions that have adopted the model WHS laws) until they are explicitly enacted by that jurisdiction.

## What are the proposed changes to maximum penalties under the WHS Act?

| OFFENCE                                                                                                                                                                                                                                                                                                                                                                             | CURRENT PENALTY                                   | PROPOSED PENALTY                                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|------------------------------------------------------|
| <b>INDUSTRIAL MANSLAUGHTER</b>                                                                                                                                                                                                                                                                                                                                                      |                                                   |                                                      |
| Body corporate<br><br>[ <b>note:</b> no proposed increase in maximum penalty of 20 years imprisonment for individuals]                                                                                                                                                                                                                                                              | \$10 million fine                                 | \$18 million fine                                    |
| <b>OFFENCE: CATEGORY 1 (RECKLESS CONDUCT)</b>                                                                                                                                                                                                                                                                                                                                       |                                                   |                                                      |
| Body corporate                                                                                                                                                                                                                                                                                                                                                                      | \$3 million fine                                  | \$10 million fine                                    |
| Company officer / Person conducting a business or undertaking (PCBU)                                                                                                                                                                                                                                                                                                                | \$600,000 fine; or<br>5 years imprisonment        | \$2 million fine; <b>or</b><br>10 years imprisonment |
| Individual                                                                                                                                                                                                                                                                                                                                                                          | \$300,000 fine; <b>or</b><br>5 years imprisonment | \$1 million fine; <b>or</b><br>5 years imprisonment  |
| <b>OTHER OFFENCES</b>                                                                                                                                                                                                                                                                                                                                                               |                                                   |                                                      |
| Maximum penalties for other offences under the WHS Act will be subject to proposed <b>increases of approximately 39%</b> to reflect the average increase in penalties nationally since 2012, when the WHS regime was introduced.<br><br>It is also proposed that WHS penalties be amended to reflect changes in the consumer price index, which would likely mean annual increases. |                                                   |                                                      |

## Proposed changes to insurance against fines under the WHS Act?

In the 2018 *Review of the model Work Health and Safety laws*, Marie Boland noted that insurance policies that cover the fines of those found guilty of breaching the WHS Act have the potential to reduce compliance with the laws and undermine community confidence.

The model WHS Laws were amended in 2022 to prohibit insurance and indemnity for WHS fines. Subsequently, several Australian jurisdictions, and the Commonwealth, have made it an offence to enter into such a contract of insurance or similar arrangement or provide insurance or a grant of indemnity for liability for a monetary penalty under the respective WHS laws.

The prohibition does not extend to indemnities for legal costs to defend prosecutions for breaches of WHS duties.

Queensland, however, has yet to enact legislation to prohibit such insurance and indemnity agreements, meaning there is no prohibition on insurance against or indemnifying for liability to pay for fines or penalties imposed under the WHS Act.

It is expected that in late 2023 Queensland will align its WHS Act with the other harmonised jurisdictions and prohibit insuring and indemnifying WHS fines.

## Considerations

There is a considerable shift in attitudes nationally towards WHS offences, demonstrated by increased penalties and the prohibition of insuring against payment of fines. These changes appear inevitable in Queensland in the near future.

Companies, directors and officers, and persons controlling a business or undertaking must take note of the changing WHS compliance landscape, particularly with the increasing costs of non-compliance. Although a proactive approach to managing WHS may incur initial costs, not taking such an approach can result in unsafe practices leading to prosecution and significant penalties – which are only going to get more severe.

## Need help from a WHS lawyer?

If you have duties and obligations under the WHS Act and the [workplace is being investigated or prosecuted for a breach of WHS laws](#), it's important that you seek legal advice from a lawyer experienced in work health and safety law.

We have strong technical knowledge of the health and safety duties and an intimate understanding of criminal procedure, enabling us to provide clear and practical advice and robust representation.

## Contacting Gilshenan &Luton Criminal Defence Lawyers

[07 3361 0222](tel:0733610222) (24/7)

[gnl@gnl.com.au](mailto:gnl@gnl.com.au)

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