



# Penalties for workplace safety offences



In 2018, the Western Australian Government passed legislation to increase workplace safety and health offence penalties, under the *Occupational Safety and Health Act 1984* (OSH Act) and the *Mines Safety and Inspection Act 1994* (MSI Act).

Level 4 penalties increase from \$500,000 to a maximum \$2.7 million and level 1 penalties increase from \$50,000 to a \$450,000 maximum. The changes include increasing the maximum term of imprisonment from two years to five years.

This information sheet answers frequently asked questions about the new penalties. Table 1 summarises the changes to the penalties under the OSH Act and MSI Act.

## 1. When did the new penalties come into effect?

The new penalties took effect on 3 October 2018.

## 2. Can offences that occurred before 3 October 2018, attract the new penalties?

No. Penalties cannot be applied retrospectively. Only safety offences that happened from 3 October 2018 may be subject to the increased penalties.

## 3. Are the increased penalties consistent with other jurisdictions?

The increased penalties are consistent with the national model *Work Health and Safety Act*, and, while jurisdictions have their own requirements, these amendments do bring WA in line with other States and Territories. The penalties have also been further increased to recognise the inflation rate since 2010.

## 4. What are the four levels of safety offences?

Levels of safety offences range from level 4 to level 1, depending on the degree of seriousness and culpability.

**Level 1** – applies when a person commits an offence against the OSH/MSI Acts for which a penalty is not otherwise specified

**Level 2** – applies when a relevant provision is contravened but not in circumstances of gross negligence or causing death, or serious injury, to a person

**Level 3** – applies when a relevant provision is contravened causing the death of, or serious harm to, a person

**Level 4** – applies when a relevant provision is contravened in circumstances of gross negligence

*Summary of penalties under the OSH Act and MSI Act can be found on the next page.*

Table 1 Summary of penalties under the OSH Act and MSI Act

OSH provision [s. 3A Penalty levels defined]	MSI provision [s. 4A Penalty levels defined]	OSH / MSI Act penalty level	Duty holder	New OSH / MSI Act penalties
3A(1)(a)(i)	4A(1)(a)(i)	1	First offence – Employee	\$50,000
3A(1)(a)(ii)	4A(1)(a)(ii)	1	Subsequent offence – Employee	\$60,000
3A(1)(b)(i)(I)	4A(1)(b)(i)(I)	1	First offence – Individual	\$100,000
3A(1)(b)(i)(II)	4A(1)(b)(i)(II)	1	Subsequent offence – Individual	\$120,000
3A(1)(b)(ii)(I)	4A(1)(b)(ii)(I)	1	First offence – Body corporate	\$450,000
3A(1)(b)(ii)(II)	4A(1)(b)(ii)(II)	1	Subsequent offence – Body corporate	\$570,000
3A(2)(a)(i)	4A(2)(a)(i)	2	First offence – Individual	\$250,000
3A(2)(a)(ii)	4A(2)(a)(ii)	2	Subsequent offence – Individual	\$350,000
3A(2)(b)(i)	4A(2)(b)(i)	2	First offence – Body corporate	\$1,500,000
3A(2)(b)(ii)	4A(2)(b)(ii)	2	Subsequent offence – Body corporate	\$1,800,000
3A(3)(a)(i)	4A(3)(a)(i)	3	First offence – Individual	\$400,000
3A(3)(a)(ii)	4A(3)(a)(ii)	3	Subsequent offence – Individual	\$500,000
3A(3)(b)(i)	4A(3)(b)(i)	3	First offence – Body corporate	\$2,000,000
3A(3)(b)(ii)	4A(3)(b)(ii)	3	Subsequent offence – Body corporate	\$2,500,000
3A(4)(a)(i)	4A(4)(a)(i)	4	First offence – Individual	\$550,000 and imprisonment for 5 years
3A(4)(a)(ii)	4A(4)(a)(ii)	4	Subsequent offence – Individual	\$680,000 and imprisonment for 5 years
3A(4)(b)(i)	4A(4)(b)(i)	4	First offence – Individual	\$2,700,000
3A(4)(b)(ii)	4A(4)(b)(ii)	4	Subsequent offence – Body corporate	\$3,500,000