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Three Categories of WHS Offences and a Table of NSW Penalty Units - 2023

Newspapers and TV have been regularly reporting for some time on the concerns about the rising cost of living. The cost of living is measured by the CPI, (the Consumer Price Index). The Reserve Bank of Australia, in the hope of restraining the rising cost of living, has for some time has been increasing the interest rates for money borrowed. And the \$ cost of WHS penalties have been going up because they are linked to the CPI.

The Change in WHS penalties on 10/6/20 – from dollars to penalty units

The NSW WHS Act and WHS Regulation were amended on the 10th of June 2020 so that WHS penalties are expressed in penalty units. They used to be expressed in \$ dollars. As at the 10th June 2020, one penalty unit = \$100. For example, the penalty shown in the table below of 34,630 penalty units meant that maximum fine for a PCBU could have been \$3,463,000, (34,630 penalty units x \$100 = \$3,463,000).

Dollar Value of Penalty Units Adjusted Every Financial Year based on the CPI

The dollar value of a penalty unit is now adjusted each financial year depending on whether the Consumer Price Index (CPI) has increased or decreased. For the financial year of 1/7/22 - 30/6/23 one penalty unit = \$107.47 because the penalty unit value rose since 10/6/20 from \$100 to \$107.47 because the CPI had increased. (34,630 penalty units x \$107.47 = \$3,721,686.10)

What will the \$ value of the penalty unit be for the financial year of 1/7/23-30/6/24? As the CPI currently tends to increase over time, we could probably expect that the dollar value of the penalty unit will continue to rise. You can always find the current \$ value of the penalty unit on SafeWork NSW's website at:

<https://www.safework.nsw.gov.au/legal-obligations/legislation/accordians/increases-to-penalty-provisions-work-health-and-safety-amendment-review-act-2020-schedule-2-consequential-amendments-to-the-whs-act>

WHS Maximum Penalties in NSW			
When the Penalty Unit System Started on the 10th June 2020 one Penalty Unit = \$100. In the financial year 1/7/22-30/6/23, it is \$107.47			
Category of Offence	Individual Penalty Units	PCBU (as an Individual), or an officer of a PCBU Penalty Units	PCBU Body Corporate Penalty Units
<u>Category 1</u> Gross negligence or reckless conduct	3,465 penalty units, or 5 Years imprisonment, or both	6,925 penalty units or 5 Years imprisonment or both	34,630 penalty units

<u>Category 2</u> Failure to comply with health & safety duty exposes individual to risk of death or serious injury or illness	1,730 penalty units	3,465 penalty units	17,315 penalty units
<u>Category 3</u> Failure to comply with health & safety duty	575 penalty units	1,155 penalty units	5,770 penalty units

The table of penalty units on SafeWork NSW's website includes the \$dollar value of all the Sections in the WHS Act that have penalty units.

2nd March 2023