# EXPLANATORY MEMORANDUM – MODEL WORK HEALTH AND SAFETY LEGISLATION AMENDMENT (OFFENCES AND PENALTIES) 2023 – Model Provisions

The *Model Work Health and Safety Legislation Amendment (Offences and Penalties) 2023* includesamendments to the model Work Health and Safety (WHS) Act and model WHS Regulations including:

* amending the model WHS Act to include a jurisdictional note and model penalties for the offence of industrial manslaughter
* amending section 31 of the model WHS Act to clarify that an officer may commit a Category 1 offence under section 31 of the Act
* amending how WHS penalty provisions are expressed, increasing penalty amounts and providing for the indexation of penalty amounts
* inserting new provisions allowing for aggregation of conduct for body corporate PCBUs, and
* a technical amendment to regulations 55C and 55D (psychosocial regulations) to correct the placement of the regulation 9 note.

**Part 1 – Name of model provisions**

The model provisions are the *Model Work Health and Safety Legislation Amendment (Offences and Penalties) 2023.*

**Part 2 – Amendment of the Model Law**

This clause provides that Schedule 1 amends the model WHS Act and Schedule 2 amends the model WHS Regulations.

### **Schedule 1 – Amendments to the model WHS Act**

**Item [1] Section 4 Definitions**

This item inserts the following terms into the definition section, and signals where the terms are defined in another section of the Act:

***authorised person****, in Part 13, Division 4 – see section 244.*

***board of directors****, in Part 13, Division 4 – see section 244.*

***category 1 monetary penalty, category 2 monetary penalty and category 3 monetary penalty*** *– see Schedule 4, clause 1 for the relevant maximum amounts.*

***Commonwealth Criminal Code****, in Part 13, Division 4 – see section 244.*

***industrial manslaughter monetary penalty*** *– see the jurisdictional note in the Appendix.*

***physical element****, in Part 13, Division 4 – see section 244.*

***tier A monetary penalty, tier B monetary penalty, tier C monetary penalty, tier D monetary penalty, tier E monetary penalty, tier F monetary penalty, tier G monetary penalty, tier H monetary penalty, tier I monetary penalty*** *–see Schedule 4, clause 2 for the relevant maximum amounts.*

***WHS civil penalty provision tier 1, WHS civil penalty provision tier 2, WHS civil penalty provision tier 3, WHS civil penalty provision tier 4*** *–**see Schedule 4, clause 3 for the relevant maximum amounts.*

**Item [2] Section 30A**

*Background – Industrial manslaughter*

Recommendation 23b of the 2018 Review of the model WHS laws was to include an industrial manslaughter offence in the model WHS Act. However, the Decision Regulation Impact Statement to the 2018 Review (Decision RIS) did not recommend implementing Recommendation 23b.

At the meeting of WHS ministers on 20 May 2021 which considered the recommendations of the Review, the required two thirds majority of ministers did not support amending the model WHS Act to include an industrial manslaughter offence.

Subsequently, at the meeting of WHS ministers on 28 February 2023, ministers by majority agreed to amend the model WHS Act to include a jurisdictional note and model penalty amounts for the offence of industrial manslaughter. The model penalties agreed by WHS ministers were $18 million for a body corporate and 20 years’ imprisonment for an individual.

The amendments will enable jurisdictions to create or retain an existing offence of industrial manslaughter. The amendments also address community expectations that duty holders should be subject to greater accountability and high penalties where a death has occurred.

Item [2] Section 30A

This item inserts a new section 30A to include a jurisdictional note for the offence of industrial manslaughter and specifies model penalties for the offence.

The new section 30A does not create an industrial manslaughter offence in the model WHS Act or set out the elements of such an offence. Section 30A refers to a jurisdictional note in the Appendix, which provides that each jurisdiction may insert local provisions to create an offence of industrial manslaughter.

The jurisdictional note in the Appendix clarifies that the offence of industrial manslaughter is in addition to the existing offence under section 31 (Gross negligence or reckless conduct – Category 1) and addresses conduct by a person that represents a gross deviation from the reasonable standard of care resulting in a work-related fatality.

The jurisdictional note recommends that the maximum penalty for the offence is 20 years imprisonment for an individual, and a Category 1 monetary penalty ($18 million) for a body corporate.

**Item [3] Section 31 (Gross negligence or reckless conduct – Category 1)**

This is a technical amendment to paragraph 31(1)(b) to clarify that an officer may commit a Category 1 offence under section 31 of the Act. An officer’s duty in clause 27 of the Act is expressed as being owed to a PCBU (to ensure the PCBU’s compliance with its WHS duties), rather than to an individual (as required by section 31). However, the penalties for a breach of s 31 have always included a penalty for a breach of the duty by an officer of a PCBU. This amendment makes it clear that an officer may commit a Category 1 offence under section 31 of the Act by specifying that the offence is committed if the officer of a PCBU exposes an individual (to whom the PCBU owes a health and safety duty) to a risk of death or serious illness or injury.

On 7 April 2022, Safe Work Australia Members (Members) agreed to amend the Act to clarify that officers can be convicted of a Category 1 offence.

**Items [4] – [17], [19]-[22]**

*Background – Penalties*

Items 4 –17 and 19-22 give effect to recommendation 22 of the 2018 Review.

Recommendation 22 of the 2018 Review recommended:

* 1. amending the penalty levels in the model WHS Act to reflect increases in CPI and in the value of penalty units in participating jurisdictions since 2011; and
  2. reviewing the increased penalty levels as part of future reviews of the model WHS Act and model WHS Regulations to ensure the levels remain effective and appropriate.

On 20 May 2021, WHS ministers agreed to Option 2 in the DRIS to increase penalty levels in the model WHS Act, and to review penalty levels as part of future reviews of the model WHS Act. This decision also extends to penalty levels for offences in the model WHS Regulations. The penalty levels for offences in the model WHS laws had not been increased since their introduction in 2011.

WHS ministers also agreed to further consider significant increases to penalties under the model WHS Act in relation to Category 1 offences.

On 30 June 2022, Members agreed the following actions to give effect to the WHS ministers’ decision on Recommendation 22:

1. to amend the model WHS Act to insert a mechanism to increase penalties annually in line with national CPI so that penalties maintain their real value over time;
2. to amend the model WHS Act to immediately increase monetary penalties by 39.03%.

The 39.03% increase in monetary penalty amounts represents the average increase in penalty units for non-WHS offences across all jurisdictions since 2011 (when the model WHS law was introduced).

On 23 March 2023, Members agreed to significantly increase penalties for the Category 1 offence to:

1. in the case of an offence committed by bodies corporate - $10,425,000
2. in the case of an offence committed by an individual as a PCBU or as an officer of a PCBU - $2,085,000 or 10 years’ imprisonment or both
3. in the case of an offence committed by an individual (other than as a PCBU or as an officer of a PCBU) - $1,042,000 or 10 years’ imprisonment or both.

These items give effect to these decisions, by amending the model WHS Act to significantly increase the penalties for the Category 1 offence, to increase the monetary penalties in the model WHS laws by 39.03% and introduce annual indexation of penalty amounts to reflect the movement in the Australian Consumer Price Index (‘CPI’).

There are 13 different penalty amounts in the model WHS laws. There are also more than 600 provisions of the model WHS Act and model WHS Regulations that create an offence or civil penalty provision and for which individual monetary penalty amounts are specified. Given the number of individual penalty provisions, the introduction of annual indexation to adjust penalty amounts in the model WHS law for future movements in national CPI necessitates a different drafting approach to the specification of penalties.

At present, every offence/civil penalty provision includes the maximum monetary penalty at the foot of the provision expressed as a dollar amount.

Therefore, each year following indexation, over 600 separate amendments would need to be made to vary the dollar amounts. This would create an unduly burdensome drafting exercise both for the Parliamentary Counsel’s Committee that is responsible for maintaining the model WHS law and for individual model law jurisdictions.

As a result, this instrument replaces each individual penalty amount with a reference to the relevant penalty tier. For example, regulation 337 makes it an offence for a supplier of a hazardous chemical to supply the chemical for use at another workplace if the supplier knows or ought reasonably to know that the chemical is not correctly packed. The maximum penalty for an offence against regulation 337 is currently $3000 (for an individual) and $18,000 (for a body corporate). These maximum monetary amounts will be omitted from the foot of regulation 337 and instead the provision will state that the maximum monetary penalty for an offence under regulation 337 will be the Tier E monetary penalty.

Indexation will be applied to the penalty tier amounts and as a result apply automatically to each provision that specifies that penalty tier as the maximum penalty amount for that offence or civil penalty provision.

There will be 3 different kinds of penalty tiers.

First, category monetary penalties will be the penalties set for the 3 category offences in Part 2 of the model Act (in sections 31 – 33).

Second, there will be 4 WHS civil penalty provision tiers for the 4 different civil penalty amounts used in Part 7 of the Act (workplace entry by WHS entry permit holders).

Last, there will be 9 different monetary penalty tiers used for the general offences in the model WHS Act and Regulations for the 9 different penalty levels used in the Act and Regulations that currently range from $139,000/$695,000 (which will become tier A) to $1700/$8500 (which will become tier I).

**Item [4] Section 31(1)**

This item amends section 31(1) to specify a maximum Category 1 monetary penalty for Category 1 offences for both an individual (as a PCBU or as an officer of a PCBU), and individual (otherwise) and a body corporate.

The amounts of the category monetary penalties are set out in the table in clause 1 of Schedule 4.

**Item [5] Section 32 (Failure to comply with health and safety duty – Category 2)**

This item amends section 32 to have a maximum Category 2 monetary penalty for Category 2 offences.

**Item [6] Section 33 (Failure to comply with health and safety duty – Category 3)**

This item amends section 33 to have a maximum Category 3 monetary penalty for Category 3 offences.

**Item [7] Sections 38(1), 39(1), 52(5), 56(2), 61(4), 70(1) and (2), 71(2), 72(7), 79(1), (3) and (4), 155(5), 165(2), 171(6), 177(2) and (6), 185(4), 188, 189, 268(1) and (2), and 271(2) and (4)**

This item amends sections 38(1), 39(1), 52(5), 56(2), 61(4), 70(1) and (2), 71(2), 72(7), 79(1), (3) and (4), 155(5), 165(2), 171(6), 177(2) and (6), 185(4), 188, 189, 268(1) and (2), and 271(2) and (4) to have a maximum tier D monetary penalty.

**Item [8] Sections 38(7), 75(1), 97, 210and 273**

This item amends sections 38(7), 75(1), 97, 210and 273 to have a maximum tier F monetary penalty.

**Item [9] Sections 41, 99(2), 193, 200(1), 219, 242(1) and 272A(1)**

This item amends sections 41, 99(2), 193, 200(1), 219, 242(1) and 272A(1)to have a maximum tier B monetary penalty.

**Item [10] Sections 42-- 46 and 47(1)**

This item amends sections 42--46 and 47(1) to have a maximum tier C monetary penalty.

**Item [11] Sections 53, 57 and 74**

This item amends sections 53, 57 and 74 to have a maximum tier H monetary penalty.

**Item [12] Sections 104(1), 107, 108(1), 109(1), 197 and 197D**

This item amends sections 104(1), 107, 108(1), 109(1), 197 and 197Dto have a maximum tier A monetary penalty.

**Item [13] Sections 118(3), 124-126, 128, 129, 143, 144(1), 145, 146, 147(1) and 148**

This item amends sections 118(3), 124-126, 128, 129, 143, 144(1), 145, 146, 147(1) and 148to have a maximum WHS civil penalty provision tier 2.

**Item [14] Section 123 Contravening WHS permit conditions**

This item amends s 123 to have a maximum WHS civil penalty provision tier 1.

**Item [15] Section 149 Return of WHS entry permits**

This item amends section 149to have a maximum WHS civil penalty provision tier 4.

**Item [16] Section 150 Union to provide information to authorising authority**

This item amends section 150 to have a maximum WHS civil penalty provision tier 3.

**Item [17] Section 190 Offence to assault, threaten or intimidate inspector**

This item amends section 190 to have a maximum tier B monetary penalty for an individual and body corporate.

**Item [18] Sections 244-244D**

*Background – Attribution and aggregation of conduct for body corporate PCBUs*

A body corporate is an artificial entity that can only act and make decisions through individuals. Existing section 244 provides for the attribution of conduct engaged in on behalf of a body corporate by an employee, officer or agent of the body corporate to the body corporate – that is, the conduct is taken to have been engaged in by the body corporate.

This item amends section 244 and inserts new sections 244A-244D. Sections 244A and 244B set out the circumstances in which the physical and fault elements of an offence are attributed to a body corporate.

These amendments reflect the recommendations of the Australian Law Reform Commission’s Report 136 (Corporate Criminal Responsibility) on corporate attribution.

Sections 244A and 244B also allow for aggregation of conduct. This enables the conduct of authorised persons within a body corporate to be considered as a whole in determining whether the body corporate has committed an offence where intention, knowledge or recklessness is the fault element (or required state of mind). This means that the same individual does not need to have engaged in the relevant conduct and hold the relevant state of mind (fault element) in order to prove an offence against a body corporate.

Attribution and aggregation are not applicable to most offences in the model WHS laws, because for duty-based offences it is sufficient for the prosecution to demonstrate a failure by a body corporate PCBU to ensure, for example, the health and safety of workers so far as is reasonably practicable, without having to establish where in the company the failure occurred.

The model law provisions to which aggregation are applicable are those that have a fault element of knowledge, intention or recklessness; and which have a physical and fault element that are capable of being separated so that the physical element and fault element of two different individuals acting on behalf of the company may be attributed to the company. The model law offences to which aggregation may be applicable are:

* section 31 – Reckless conduct – category 1
* section 97(2) – intentionally remove etc an improvement notice
* section 109 – knowingly or recklessly make a misrepresentation
* section 188 – intentionally hinder or obstruct an inspector
* section 210(2) – intentionally remove etc a notice
* regulation 337 – retailer or supplier packing hazardous chemicals, and
* regulation 338 – supplier labelling hazardous chemicals.

**Section 244 Definitions**

The new section 244 defines key terms and concepts in sections 244A-244D.

***Authorised person*** for a body corporate is defined to mean an officer, employee or agent of the body corporate acting within the officer’s, employee’s or agent’s actual or apparent authority.

The definition of ‘authorised person’ incorporates the common law doctrine of actual and apparent authority. A person’s actual or apparent authority may extend beyond the actual or apparent scope of his or her employment.

Actual authority derives from the relationship between the principal and the agent (*Freeman and Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 [502]). Apparent authority is created by the relationship between the principal and the third party:

An ‘apparent’ or ‘ostensible’ authority, on the other hand, is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the ‘apparent’ authority, so as to render the principal liable to perform any obligations imposed upon him by such contract (*Freeman and Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 [502]).

***Board of directors*** is defined to mean the body, whatever it is called, exercising the executive authority of the body corporate.

***Commonwealth Criminal Code*** means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.

***Physical element*** is defined by reference to the definition in Division 4 Commonwealth Criminal Code.

**Section 244A Physical elements**

The new section 244A explains how the physical elements of an offence are attributed to a body corporate. Section 244A allows for the physical elements of an offence to be taken to have been committed by a body corporate if the conduct is committed by:

* the body corporate’s board of directors; or
* 1 or more authorised persons; or
* 1 or more persons acting at the direction of or with the express or implied agreement or consent of:
  + an authorised person, or
  + the body corporate’s board of directors.

**Section 244B Fault element – state of mind**

The new section 244B explains how the fault elements of an offence are attributed to a body corporate. Where it is necessary to establish a state of mind (fault element) of a body corporate in relation to the commission of the physical element of an offence, subsection 244B(1) provides that it is sufficient to show:

* the body corporate’s board of directors:
  + intentionally, knowingly, or recklessly carried out the relevant conduct; or
  + expressly, tacitly or impliedly authorised or permitted the carrying out of the conduct constituting the physical element of the offence; or
* an authorised person:
  + intentionally, knowingly or recklessly engaged in the relevant conduct; or expressly, tacitly or impliedly authorised or permitted the carrying out of the conduct constituting the physical element of the offence; or
* a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to the carrying out of the conduct constituting the physical element of the offence.

Subsection 244B(3) sets out factors that are relevant to determining whether a corporate culture existed for the purposes of paragraph 244B(1)(c).

Subsection 244B(2) establishes that paragraphs (1)(b) and (c) do not apply if the body corporate proves it took reasonable precautions to prevent the conduct, authorisation or permission of the conduct.

‘Corporate culture’ and ‘corporate officer’ are defined in subsection 244B(4). *Corporate culture* means 1 or more attitudes, policies, rules, courses of conduct or practices existing within the body corporate generally or in the part of the body corporate in which the relevant activity takes place. *Corporate officer* is defined by reference to section 9 of the *Corporations Act 2001* of the Commonwealth other than a partner in a partnership.

**Section 244C Mistake of fact**

The new section 244C introduces a mechanism by which a body corporate can rely on the defence of mistake of fact, if mistake of fact is relevant to determining liability for an offence. A body corporate may rely on mistake of fact only if:

* the employee, agent or officer of the body corporate who carried out the conduct was under a mistaken but reasonable belief about facts that, had they existed, would have meant the conduct would not have constituted the offence; and
* the body corporate proves it took reasonable precautions to prevent the conduct.

**Section 244D Failure to take reasonable precautions**

The new section 244D includes factors that may be used toestablish that a body corporate failed to take reasonable precautions, in relation to subsection 244B(2) and section 244C. A failure to take reasonable precautions may be evidenced by the fact that the conduct constituting the offence was substantially attributable to:

* inadequate management, control or supervision of the conduct of one or more of the body corporate’s employees, agents or officers; or
* failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

**Item [19] Section 254 When is a provision a WHS civil penalty provision**

The penalties imposed under Part 7 of the model Bill (Workplace entry by WHS entry permit holders) are civil only; however, consistently with the way penalties in the model Bill generally are expressed, the civil penalties are currently expressed as monetary amounts. To facilitate the introduction of annual indexation of penalties, the monetary amounts for each of the WHS civil penalties will be replaced by a reference to a WHS civil penalty tier. There are 4 different WHS civil penalty tiers representing the 4 different civil penalty amounts. This item amends section 254 to refer to WHS civil penalty provision tiers (a definition of WHS civil provision tier is included in section 4). It replaces the words (wherever occurring) “1 or more amounts by way of monetary penalty” with “a maximum penalty, expressed as a WHS civil penalty provision tier".

Therefore, a subsection of Part 7 is a WHS civil penalty provision if:

* the words ‘WHS civil penalty provision’ and a maximum penalty, expressed as a WHS civil penalty provision tier are set out at the foot of the subsection; or
* another provision of Part 7 specifies that the subsection (or section) is a WHS civil penalty provision.

A subregulation (or a regulation that is not divided into subregulations)is a WHS civil penalty provision if:

* the words ‘WHS civil penalty provision’ and a maximum penalty, expressed as a WHS civil penalty provision tier; or
* another provision of the regulation specifies that the subregulation (or regulation) is a WHS civil penalty provision.

**Item [20] Section 272B Liability of officers for offences by body corporate under s 272A**

This item amends section 272B to have a maximum tier B monetary penalty.

**Item [21] Section 276 Regulation-making powers**

This item amends paragraph 276(3)(h) to include that the regulations may prescribe the following penalties for an offence under the regulations:

* a tier E monetary penalty
* a tier F monetary penalty
* a tier G monetary penalty
* a tier H monetary penalty
* a tier I monetary penalty

**Item [22] Schedule 4**

This item inserts a new Schedule 4 ‘Penalty amounts’ which includes clauses 1-6.

**Clause 1 Maximum monetary penalties – categories 1-3**

Clause 1 establishes the maximum penalty for offences under the Act where a category 1, category 2, or category 3 monetary penalty is specified. The maximum penalty is set out in the table to clause 1 as indexed under clause 4 and rounded under clause 5:

|  |  |  |  |
| --- | --- | --- | --- |
| **Tier** | **Maximum penalty— individual (as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking)** | **Maximum penalty— individual (otherwise** | **Maximum penalty—body corporate** |
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|  |
|  |
|  |
| category 1 | $2 085 000 | $1 042 000 | $10 425 000 |  |
| category 2 | $418 000 | $209 000 | $2 090 000 |  |
| category 3 | $140 000 | $70 000 | $700 000 |  |

For categories 1-3 there are different maximum penalties for individuals (as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking), and individual (otherwise) and a body corporate.

The penalty amounts in the table to Clause 1 include the 39.03% increase to monetary penalties for Category 2 and 3 offences (which represents the average increase in penalty units for non-WHS offences across all jurisdictions since the introduction of the model WHS laws in 2011), and the significant increase for Category 1 offences as discussed at item 4 (above).

**Clause 1A Maximum monetary penalties – industrial manslaughter**

Clause 1A includes reference to the jurisdictional note in the Appendix, which recommends a maximum monetary penalty of $18 million for industrial manslaughter.

**Clause 2 Maximum monetary penalties – tiers A-I**

Clause 2 establishes the maximum penalty for offences under the model Act and the model Regulations where a tier A, tier B, tier C, tier D, tier E, tier F, tier G, tier H or tier I monetary penalty is specified. The maximum penalty is set out in the table to clause 2 as indexed under clause 4 and rounded under clause 5:

|  |  |  |
| --- | --- | --- |
| **Tier** | **Maximum penalty— individual** | **Maximum penalty—body corporate** |
|  |
|  |
|  |
| tier A | $139 000 | $695 000 |  |
| tier B | $70 000 | $350 000 |  |
| tier C | $28 000 | $140 000 |  |
| tier D | $14 000 | $70 000 |  |
| tier E | $8 400 | $42 000 |  |
| tier F | $7 000 | $35 000 |  |
| tier G | $5 000 | $25 000 |  |
| tier H | $2 800 | $14 000 |  |
| tier I | $1 700 | $8 500 |  |

For tiers A-I there are different maximum penalties for individuals and for bodies corporate.

**Clause 3 Maximum monetary penalty – WHS civil penalty tiers 1-4**

Clause 3 establishes the maximum penalty for WHS civil penalty provisions under Part 7 of the Act where a tier 1, tier 2, tier 3 or tier 4 monetary penalty is specified. The maximum penalty is set out in the table to this subclause as indexed under clause 4 and rounded under clause 5:

|  |  |  |
| --- | --- | --- |
| **Tier** | **Maximum penalty— individual** | **Maximum penalty—body corporate** |
|  |
|  |
|  |
| tier 1 | $28 000 | $140 000 |  |
| tier 2 | $14 000 | $70 000 |  |
| tier 3 | $7 000 | $35 000 |  |
| tier 4 | $2 800 | $14 000 |  |

For civil penalty tiers 1-4 there are different maximum penalties for individuals and for bodies corporate.

**Clause 4 Indexation of maximum penalty amounts**

Clause 4 amends the penalty levels in the model WHS Act to reflect increases in the Consumer Price Index (CPI), as discussed at item [4] above. This is achieved by introducing an indexation formula, which is to be applied annually to all monetary penalties in the model WHS Act and the model WHS Regulations.

Clause 4(1) establishes that each monetary penalty set out in clauses 1-3 must be indexed for the year commencing on 1 July 2024, and each subsequent year in accordance with clause 4.

Clause 4(2) contains the formula for calculating the maximum amount of each monetary penalty that will apply in each year. The maximum amount is calculated as follows—

where –

A is the maximum amount of a monetary penalty set out in clauses 1-3.

B is the CPI number for the March quarter in the year immediately preceding the year for which the amount is calculated.

C is the CPI number for the March quarter of 2022.

This formula is adapted from the indexation formula used in subsection 242B(1) of the NSW *Work Health and Safety Act 2011*.

The denominator year of 2022 applies because the calculation of the one-off increase (of 39.03%) was for the period from the commencement of the model WHS law in 2011 until 2021.

Clause 4(3) provides that if the maximum amount of a monetary penalty calculated for a year is less than the amount that applied in the previous year, then the amount for the previous year continues to apply. This ensures that penalty levels do not decrease.

Clause 4(4) defines *CPI number* to mean the All Groups Consumer Price Index number, that is, the weighted average of the 8 Australian capital cities, published by the Australian Statistician. *Year* means a period of 12 months starting on 1 July.

*Example indexation of monetary value of penalty tier in accordance with clause 4(2):*

|  |
| --- |
| E.g., if indexing the tier A penalty for a body corporate in 2024:  Current maximum penalty amount = $695 000  B = 132.6 (the CPI number for the March quarter in 2023, being the year immediately preceding the year for which the amount is calculated)  C = 117.9, being the CPI number for the March quarter of 2022  The formula is:  $695 000 x 132.6/117.9 = $781,653.9440203561  This will be rounded up to the nearest $1000 in accordance with clause 5 = $782 000.  Therefore, the tier A maximum penalty amount for a body corporate from 1 July 2024 will be  $782 000. |

**Clause 5 Rounding of maximum penalty amounts**

Clause 5 specifies that for penalties under $10,000 and not a multiple of $100, the maximum amount of a monetary penalty will be rounded down to the nearest $100 and an amount of $50 is rounded down. For penalties more than $10,000 and not a multiple of $1000, the maximum amount of the penalty must be rounded to the nearest $1000 and an amount of $500 is rounded down.

**Clause 6 Public notification of adjusted maximum penalty amounts**

Clause 6 provides that as soon as practicable after publication by the Australian Statistician of the CPI number for the March quarter each year the regulator must give notice of the maximum amount of each monetary penalty calculated under this Schedule on an appropriate government website, and in the Government Gazette.

**Item [23] Appendix**

This item amends the table of jurisdictional notes in the Appendix to include jurisdictional notes relating to the offence of industrial manslaughter.

Section 4 inserts a jurisdictional note. The jurisdictional note to section 4 provides that a jurisdiction that creates the offence of industrial manslaughter will need to insert a monetary penalty provided for in Schedule 4, and explains that the recommended maximum monetary penalty applies only to a body corporate and is $18 million.

Section 30A inserts a jurisdictional note which provides that each jurisdiction may insert local provisions to create an offence of industrial manslaughter. The note clarifies that the offence of industrial manslaughter is in addition to the existing offence under section 31 (Gross negligence or reckless conduct – Category 1) and addresses conduct by a person that represents a gross deviation from the reasonable standard of care resulting in a work-related fatality. The note also recommends that the maximum penalty for the offence is 20 years imprisonment for an individual, and for a body corporate an industrial manslaughter monetary penalty.

Schedule 4 (penalty amounts), clause 1A (maximum monetary penalties – industrial manslaughter) inserts a jurisdictional note which provides that a jurisdiction that creates the offence of industrial manslaughter should insert a clause providing for the maximum monetary penalty payable for the offence by a body corporate and recommends a maximum penalty of $18 million.

**Item [24] Appendix**

This item omits the jurisdictional note to section ‘244’ from the table and inserts instead:

244-244D A jurisdiction may omit these sections if the relevant laws of the jurisdiction (i.e. attribution and aggregation) already provide for this.

**Schedule 2 – Amendments to the model WHS Regulations**

**Item [1] Regulations 19, 22, 46, 47, 50(3), 66(2) and (5), 68, 70, 77(5), 85(1)–(3), 149, 150(1) and (2), 151, 162(4), 165(1), 176(2), 182(4), 187, 188, 195, 196, 198, 200, 213, 224, 235, 236, 239, 253, 254, 294–296, 298, 301, 302, 303(3), 304(2)–(4), 308, 310, 311, 312, 313(3), 316, 317, 327, 336–338, 344(3), (5) and (6), 346(3), 347(3), 369, 371(2), 372, 373, 385, 387, 388, 398(2), 401, 403, 409, 410, 415(2), 425– 428, 429(5), 430, 432(5), 433, 438, 439, 446, 448, 451(5), 454, 455, 464(3), 465, 466, 482(3), 529, 547, 548, 551, 553, 555(5), 557(8), 560, 562, 563, 567(4), 570 and 576**

This item amends regulations 19, 22, 46, 47, 50(3), 66(2) and (5), 68, 70, 77(5), 85(1)–(3), 149, 150(1) and (2), 151, 162(4), 165(1), 176(2), 182(4), 187, 188, 195, 196, 198, 200, 213, 224, 235, 236, 239, 253, 254, 294–296, 298, 301, 302, 303(3), 304(2)–(4), 308, 310, 311, 312, 313(3), 316, 317, 327, 336–338, 344(3), (5) and (6), 346(3), 347(3), 369, 371(2), 372, 373, 385, 387, 388, 398(2), 401, 403, 409, 410, 415(2), 425– 428, 429(5), 430, 432(5), 433, 438, 439, 446, 448, 451(5), 454, 455, 464(3), 465, 466, 482(3), 529, 547, 548, 551, 553, 555(5), 557(8), 560, 562, 563, 567(4), 570 and 576 to have a maximum tier G monetary penalty.

**Item [2] Regulations 39–45, 48, 49, 50(1), 53, 55, 57–59, 61, 64, 65, 67, 69, 71–75, 76(1), 78–80, 84, 154–161, 163, 164, 166, 168, 177–179, 183, 184A, 189–194, 197, 199, 201, 202, 204–212, 215, 216, 218, 219, 222, 223, 225, 231–234, 238, 240, 241, 299, 300, 306, 309, 314, 329, 330–335, 339, 340(1) and (2), 341–343, 344(1), 345, 346(1), 347(1), 348–350, 352–363, 365–368, 370, 371(1), 374—377, 379, 389, 391(2), 395–397, 398(1), 399, 400, 402, 405–408, 411–414, 415(1), 416, 417, 419, 420, 422, 424, 429(2) and (3), 432(2) and (3), 434–437, 440–443, 445(1), 449, 450, 451(2) and (3), 452, 453, 456–460, 462, 463, 464(1), 467–477, 479–481, 482(1) and (2), 483, 484, 536, 554, 555(1) and (4), 556, 557(1) and (5)–(7), 558, 559, 564–566, 567(1)–(3), 568, 569, 571, 572(1), 573–575**

This item amends regulations 39–45, 48, 49, 50(1), 53, 55, 57–59, 61, 64, 65, 67, 69, 71–75, 76(1), 78–80, 84, 154–161, 163, 164, 166, 168, 177–179, 183, 184A, 189–194, 197, 199, 201, 202, 204–212, 215, 216, 218, 219, 222, 223, 225, 231–234, 238, 240, 241, 299, 300, 306, 309, 314, 329, 330–335, 339, 340(1) and (2), 341–343, 344(1), 345, 346(1), 347(1), 348–350, 352–363, 365–368, 370, 371(1), 374—377, 379, 389, 391(2), 395–397, 398(1), 399, 400, 402, 405–408, 411–414, 415(1), 416, 417, 419, 420, 422, 424, 429(2) and (3), 432(2) and (3), 434–437, 440–443, 445(1), 449, 450, 451(2) and (3), 452, 453, 456–460, 462, 463, 464(1), 467–477, 479–481, 482(1) and (2), 483, 484, 536, 554, 555(1) and (4), 556, 557(1) and (5)–(7), 558, 559, 564–566, 567(1)–(3), 568, 569, 571, 572(1), 573–575 to have a maximum tier E monetary penalty.

**Item [3] Regulations 50(2), 66(3), 76(2), 77(2)–(4), 85(4), 94, 96–98, 111, 124–127, 139, 142, 150(3), 162(2), (3) and (5), 165(2), 170, 175, 176(3), 180, 181, 182(2), (3) and (5), 226, 228–230, 237, 242, 260, 262, 273, 275, 282, 287, 288, 288D, 303(1), (2) and (4), 304(5), 313(1), (2) and (4), 326, 340(3) and (4), 364, 378, 390, 391(3), 404, 418, 423, 444, 445(3) and (4), 461, 505–507, 512, 513, 525, 572(4), 587, 588, 593, 594 and 607**

This item amends regulations 50(2), 66(3), 76(2), 77(2)–(4), 85(4), 94, 96–98, 111, 124–127, 139, 142, 150(3), 162(2), (3) and (5), 165(2), 170, 175, 176(3), 180, 181, 182(2), (3) and (5), 226, 228–230, 237, 242, 260, 262, 273, 275, 282, 287, 288, 288D, 303(1), (2) and (4), 304(5), 313(1), (2) and (4), 326, 340(3) and (4), 364, 378, 390, 391(3), 404, 418, 423, 444, 445(3) and (4), 461, 505–507, 512, 513, 525, 572(4), 587, 588, 593, 594 and 607 to have a maximum tier I monetary penalty.

**Item [4] Amendment of regulation 55C (Managing psychosocial risks)**

This is a technical amendment to regulations 55C and 55D. This item amends regulation 55C to clarify that a person conducting a business or undertaking must manage psychosocial risks in accordance with Part 3.1 (other than regulation 36) and implement the control measures required by regulation 55D.

This item also includes a regulation 9 note at the foot of regulation 55C which has the effect that for a PCBU to comply with section 19 (primary duty of care), they must comply with regulation 55C. Regulation 9 explains the effect of a note linking a regulation to health and safety duties in the Act.

**Item [5] Amendment of regulation 55D (Control measures)**

This item omits the regulation 9 note at the foot of regulation 55D(3), and item [4] inserts a reg 9 note to regulation 55C.