

## Health & Safety – New Penalties

The recommendations of the Independent Taskforce on Workplace Health and Safety for changes to the Health & Safety in Employment Act include a new tiered penalty regime and a **significant increase in maximum penalty levels**. These stronger enforcement tools are intended to provide an incentive to businesses to comply with their health and safety obligations so they can avoid the increased penalties. The proposals include:

Tiered Penalties	Maximum Penalties	
	Individual	Body Corporate
<b>Category 1 Reckless Conduct:</b> A person who has a health and safety duty without reasonable excuse engages in conduct that exposes an individual (to whom that duty is owed) to a risk of death or serious injury or illness, and the person is reckless as to the risk	<b>\$600,000</b> <u>or</u> five years' imprisonment, <u>or</u> both	<b>\$3 million</b>
<b>Category 2 Failure exposing to serious risk:</b> A person fails to comply with their health and safety duty, and the failure exposes an individual to a risk of death or serious injury or illness	<b>\$300,000</b>	<b>\$1.5 million</b>
<b>Category 3 Failure:</b> A person fails to comply with their health and safety duty	<b>\$100,000</b>	<b>\$500,000</b>

**Note:** These penalties apply to individuals who may be those persons conducting a business or undertaking (PCBU) and persons who may be a worker (including working as an employee, a contractor or subcontractor, an employee of a contractor or subcontractor, or an employee of a labour hire company).

Insurance against these fines is not allowed - no one is able to insure against fines that might be imposed for any of the offending under the Act. The Act states that if an insurance company offers insurance against these fines or if an employer or other person buys such a policy both of them are committing an offence and the policy has no legal effect.

However, insurance policies can still cover other costs:

- the cost of defending a prosecution; and/or
- the amount of reparation ordered to be paid to a victim by the Court

Instead of insuring against the risk of prosecution employers and others are encouraged to invest in systems to identify and manage hazards and thus prevent harm.