

If you do not fulfill your duties or obligations, you are in breach of the *Work Health and Safety Act 2011* (the WHS Act) or the *Electrical Safety Act 2002* (the ES Act) and could be prosecuted.

What is a breach?

A breach occurs when the law is not upheld; when:

- an action is taken that places a person at risk of injury, illness or death
- steps are not taken to avoid a risky situation from occurring
- there is a failure to comply with regulatory requirements.

Examples of breaches

Examples of breaches of the WHS Act include:

- exposing workers to the risk of excessive noise
- working at heights where the risk of falling is not controlled
- allowing unlicensed operators to use specified equipment such as forklifts
- not ensuring that plant is appropriately guarded to eliminate or minimise exposure of workers to moving parts
- failing to have in place safe work method statements for work carried out in or near a confined space
- not notifying the Office of Industrial Relations (OIR) when a notifiable serious injury or illness occurs at your workplace.

Examples of breaches of the ES Act include:

- performing unlicensed electrical work
- carrying out electrical work on energized electrical equipment when not permitted
- allowing unlicensed operators to use specified equipment such as forklifts
- not testing electrical work to ensure it is electrically safe
- not notifying the OIR of a serious electrical incident (SEI) or dangerous electrical event (DEE).

Categories of offences

There are four categories of offences for failing to comply with a health and safety duty under the WHS Act and SRWA Act or an electrical safety duty under the ES Act, depending on the degree of seriousness or liability involved.

Industrial manslaughter: the highest penalty under either the WHS Act, SRWA Act or the ES Act is for industrial manslaughter where a person conducting a business or undertaking (PCBU), or a senior officer, negligently causes the death of a worker.

Where a PCBU, or senior officer, commits industrial manslaughter, a maximum penalty of 20 years imprisonment for an individual, or \$10M for a body corporate, applies. [More information and definitions are here.](#)

Category 1: the next highest penalty under either the WHS Act or the ES Act is for a category 1 offence, These are serious breaches where a duty holder who recklessly endangers a person to risk of death or serious injury. Offences involving reckless conduct, will be prosecuted in the District Court.

- Corporation: up to \$3 million
- Individual as a person conducting a business or undertaking (PCBU) or an officer: up to \$600 000 / 5 years jail
- Individual e.g. worker: up to \$300 000/ 5 years jail.

Category 2: failure to comply with a health and safety duty or electrical safety duty that exposes a person to risk of death, serious injury or illness. Offences will be prosecuted in the Magistrates Court.

- Corporation: up to \$1.5 million
- Individual as a PCBU or an officer: up to \$300 000
- Individual e.g. worker: up to \$150 000.

Category 3: failure to comply with a health and safety duty or electrical safety duty. Offences will be prosecuted in the Magistrates Court.

- Corporation: up to \$500 000
- Individual as a PCBU or an officer: up to \$100 000
- Individual e.g. worker: up to \$50 000.

Note: Appeals in Category 1, Category 2 or Category 3 are made to the District Court..

On-the-spot fines

An on-the-spot fine is an alternative to prosecuting alleged offenders directly through the court. It is also called an infringement notice.

On-the-spot fines may be issued for workplace health and safety offences or electrical safety offences prescribed in Schedule 1 of the *State Penalties Enforcement Regulation 2014* (the SPER Regulation).

On 30 June 2017 the *State Penalties and Enforcement Regulation 2014* was amended to introduce two new infringement notice offences or 'on the spot fines' against requirements in the *Electrical Safety Regulation 2013* (ES Regulation) for exclusion zones and unsafe distances when working near overhead and underground powerlines.

Both PCBUs and workers can be issued with an on-the-spot fine. Examples of offences which can be issued with a fine include (but are not limited to):

- failure to comply with an improvement notice
- failure to record a notifiable incident (e.g. a work-caused serious injury or illness)
- allowing persons to carry out high risk work without seeing written evidence that the worker has the relevant high risk work licence
- failure to allow health and safety representative to exercise their powers or functions
- failure to use/wear PPE provided by PCBU in accordance with information, training or reasonable instruction given by PCBU (fine issued to worker)
- failure to test electrical work

- failure to ensure electrical equipment was de-energized before carrying out electrical work.

The fine may be paid in full at any Workplace Health and Safety Queensland (WHSQ) office within 28 days or arrangements can be made to pay an on-the-spot fine of \$200 or more in instalments.

The alleged offender can choose to contest the infringement notice in a Magistrates Court.

Failure to pay

Not paying the fine can lead to further enforcement action, including:

- redirection of wages or funds from a bank account
- issuing of a warrant for the seizure and sale of property
- suspension of the debtor's driver's licence until the debt is satisfied
- registration of the debt for enforcement interstate
- issuing an arrest and imprisonment warrant.