

# Offences and penalties

## Health and safety duty offences (sections 30A-33)

The WHS Act provides for the following categories of offences for breach of health and safety duties. The maximum penalties are different depending on the category of the offence and whether the offender is an individual (e.g. a worker, or a PCBU), an officer (as defined) or a body corporate.

**Industrial manslaughter** – applies to those with a WHS duty where their conduct in failing to comply with that duty caused a death. Only PCBUs and their officers can be charged with industrial manslaughter. The prosecution must establish, beyond reasonable doubt, that the person knew their conduct was likely to cause the death of, or serious harm to, an individual and they acted in disregard of that likelihood.

**Category 1** – applies to those with a WHS duty where their conduct in failing to comply with that duty caused the death of, or serious harm to, a person.

**Category 2** – applies to those with a WHS duty where their conduct in failing to comply with that duty exposed a person to the risk of death, injury or harm to health.

**Category 3** – applies to those with a WHS duty who failed to comply with that duty.

## Maximum penalties for breach of health and safety duty offences

Offence	Duty holder		
	Body corporate	Individual as a PCBU or officer	Individual as worker or other
Industrial manslaughter	\$10 000 000	\$5 000 000, 20 years in jail	Not applicable
Category 1	\$3 500 000	\$680 000, 5 years in jail	\$340 000, 5 years in jail
Category 2	\$1 800 000	\$350 000	\$170 000
Category 3	\$570 000	\$120 000	\$55 000

*Note: Where a penalty provides for a fine or term of imprisonment, the Court may impose a sentence that includes either or both penalties.*

## Exceptions (section 34)

Volunteers are not liable for a failure to comply with a health and safety duty except in their capacity as a worker (section 28) or other person at a workplace (section 29).

An unincorporated association is not liable for prosecution although its officers (except volunteers) may be prosecuted for a failure to comply with an officer's duty (section 27). Its members may owe duties in their capacities as workers (section 28) or other persons at a workplace (section 29).