



Government of Western Australia
Department of Mines and Petroleum
Resources Safety

MINES SAFETY AND INSPECTION ACT
– WHAT EMPLOYEES AND EMPLOYERS
NEED TO KNOW

Penalties and enforceable undertakings

Who can be prosecuted?

Under the *Mines Safety and Inspection Act 1994*, prosecutions can be launched against employees and employers, with the latter including individuals and corporations.

How far up the organisation can a prosecution go?

Where a person commits an offence under the Act, a superior officer of that person (including a director, manager, company secretary or other officer of a corporation) also commits the offence and attracts the same

penalty if one or more of the following can be proved:

- he or she knowingly permitted or employed the person to commit the offence
- the offence was attributable to his or her neglect
- he or she consented or connived in the acts or omissions.

What is the time limit for commencing a prosecution?

Proceedings for a prosecution under the Act must commence within three years of the alleged offence being committed.

How are the new penalties structured?

Penalties are divided into four levels of severity based on the type and extent of the breach:

- Level 1 — a breach of the Act, excluding General Duty provisions (part 2, division 2), or regulations
- Level 2 — a breach of the General Duty provisions of the Act that does not result in serious harm or death
- Level 3 — a breach of the General Duty provisions of the Act resulting in serious harm or death
- Level 4 — a breach of the General Duty provisions of the Act in circumstances of gross negligence resulting in serious harm or death.

What are enforceable undertakings?

An enforceable undertaking provides an alternative to paying a fine for breaching the Act, with the aim of improving occupational safety and health.

Undertakings can only be entered into for minor offences and where no-one has been harmed.

The enforceable undertaking may require the offender to take specific actions, such as remedying the breach, or carrying out a specific project designed to improve occupational health and safety.

The undertaking is an alternative to paying a fine so its cost should correspond to the fine nominated for the severity of the offence.

What are the penalties?

	Employees		Employers			
			Individuals		Corporations	
	First	Subsequent	First	Subsequent	First	Subsequent
Level 1	\$5,000	\$6,250	\$25,000	\$31,250	\$50,000	\$62,500
Level 2	\$10,000	\$12,500	\$100,000	\$125,000	\$200,000	\$250,000
Level 3	\$20,000	\$25,000	\$200,000	\$250,000	\$400,000	\$500,000
Level 4	\$25,000	\$31,250	\$250,000 and 2 years in jail	\$312,500 and 2 years in jail	\$500,000	\$625,000

Who can ask for an enforceable undertaking?

The option of an enforceable undertaking is available only if offered by the court.

It is open for either the prosecutor or the defendant to ask the court to adjourn proceedings to allow each to consider if an enforceable undertaking is acceptable.

Courts can order an offender to either pay a monetary penalty or enter into an enforceable undertaking with the State Mining Engineer.

Enforceable undertakings legally bind an offender found liable under the Act.

How does an enforceable undertaking work?

Once the offender has accepted an undertaking, the offender and the State Mining Engineer agree on the nature and terms of the undertaking.

The commitment to an enforceable undertaking must be lodged no later than 28 days from when the order was made. The court specifies the date by which the undertaking must be entered into.

The commitment includes the offender agreeing to take the action specified, taking responsibility for all associated costs, and completing the required action by a specified date.

An undertaking cannot include actions the offender would have had to take anyway to comply with the Act.

What happens if the offender doesn't comply?

Failure to comply with an enforceable undertaking is an offence and, if convicted, the offender would be required to pay the original penalty as well as a further penalty for non-compliance.

Does Resources Safety have an enforcement and prosecution policy?

The Department of Mines and Petroleum's enforcement and prosecution policy can be viewed at www.dmp.wa.gov.au

Want to know more?

For information on safety and health in the mining industry, look at the Resources Safety website at www.dmp.wa.gov.au/ResourcesSafety

The *Mines Safety and Inspection Act 1994* and *Mines Safety and Inspection Regulations 1995* are available from the State Law Publisher's website at www.slp.wa.gov.au

The information in this brochure is intended as a general guide only. The relevant Acts and regulations should be consulted for detailed information, or contact your regional inspectorate.

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