

Prohibition on insuring WHS fines and penalties: A comparison of WHS laws in Australia

| | NSW | VIC | WA | ACT | QLD | SA | TAS | NT |
|---|--|--|--|--|---|---|---------------------------------------|--|
| Legislation | Work Health and Safety Act 2011 (NSW) | Occupational Health & Safety Act 2004 (VIC) | Work Health and Safety Act 2020 (WA) | Work Health and Safety Act 2011 (ACT) | Work Health and Safety Act 2011 (QLD) | Work Health and Safety Act 2012 (SA) | Work Health and Safety Act 2012 (Tas) | Work Health and Safety (National Uniform Legislation) Act 2011 |
| Under the relevant WHS law, is there a prohibition against entering into a contract of insurance to insure or indemnify a person's liability to pay all or part of a WHS fine or monetary penalty? | Yes | Yes | Yes | Yes | Yes | Yes | No, but currently under review | No, but currently under review |
| If a prohibition applies, when did it commence? | 10 June 2020 | 22 September 2022 | 31 March 2022 | 31 July 2023 | 28 September 2024 | 1 September 2024 | N/A | N/A |
| Is it an offence to contravene the prohibition? | Yes | Yes | Yes | Yes | Yes | Yes | N/A | N/A |
| What is the penalty for committing an offence? | Individual: \$30,105 Corporation: \$150,525 | Individual: \$59,277 Corporation: \$296,385 | Individual: \$51,000 Corporation: \$255,000 | Individual: \$70,000 Corporation: \$350,000 | Individual: \$50,000 Corporation: \$50,000 | Individual: \$50,000 Corporation: \$50,000 | N/A | N/A |
| Is a term of a contract of insurance void to the extent it covers a person's liability for all or part of a WHS fine or monetary penalty? | Yes | Yes | Yes | Yes | Yes | Yes | N/A | N/A |
| Despite the prohibition, can a person enter a contract of insurance to insure or indemnify WHS investigation and / or prosecution costs? | Yes | Yes | Yes | Yes | Yes | Yes | N/A | N/A |
| Statutory Liability Considerations | * Statutory Liability insurance can cover expenses incurred to investigate and respond to alleged contraventions of legal obligations. In our experience, the legal costs incurred in responding to a statutory liability claim can exceed the fine or monetary penalty for a contravention. * These changes do not impact other fines and penalties which may be covered by statutory liability insurance. | | | | | | | |

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