

# SENTENCING OCCUPATIONAL HEALTH AND SAFETY OFFENCES

## PLAIN LANGUAGE SUMMARY

The Victorian Government has asked the Sentencing Advisory Council to advise on possible reforms to how courts sentence occupational health and safety (OHS) offences in Victoria.

We have prepared two publications that we will use to seek your views:

- A **statistical report** which shows how courts have been sentencing OHS offences
- A **consultation paper** which describes issues that we want to explore with the community

**This plain language summary** includes the key findings from the statistical report and the key questions from the consultation paper.

### What are OHS offences?

OHS offences are crimes set out in Victoria's *Occupational Health and Safety Act 2004* (OHS Act).

The OHS Act includes a wide range of offences. The most common offence is an employer failing to make sure (1) the workplace is safe for employees and (2) other people aren't put at risk.

When a company commits this offence, the maximum fine is about \$1.7 million. For individuals, the maximum fine is about \$350,000.

### How many OHS offences are there?

There are almost 400,000 workplaces in Victoria. WorkSafe conducts about 40,000 inspections of Victorian workplaces every year. WorkSafe doesn't prosecute every risk it identifies. Usually, only the worst risks and incidents end up in court. Victorian courts sentence around 75 cases of OHS offences each year.

Courts mostly sentence companies for OHS offences (83%). Most individuals who are sentenced for OHS offences are men (97% of individuals).

OHS offences are most common in the construction (36%) and manufacturing (30%) industries.

We looked at around 1,200 cases going back 16 years:

- No one was killed or injured in **25%** of cases
- Someone was injured in **64%** of cases
- Someone was killed in **11%** of cases

### Occupational Health and Safety Act



### MAXIMUM PENALTY



COMPANIES  
\$1.7 MILLION

INDIVIDUALS  
\$350,000

### OHS OFFENDERS

COMPANIES  
83%



MALES  
16%



FEMALES  
under 1%



## How do courts sentence OHS offenders?

Courts most commonly sentence OHS offenders to a fine (87% of cases).

Another 11% of offenders receive an undertaking (also known as a good behaviour order). An undertaking prohibits offenders from committing more OHS offences. In many of these cases, the offender also has to make a charitable donation. In some cases, the offender may undertake safety projects for themselves or their industry.

Courts imposed other sentencing orders in just 2% of cases. Other sentencing orders include community correction orders, prison sentences, and diversion. Courts only sentenced one person to prison in 16 years.

Courts can make an **adverse publicity order** for OHS offences. This means the offender has to publish the details of their OHS offence, for example, in a newspaper or on a website. We found only one adverse publicity order for OHS offences in 16 years.

## Fine amounts for OHS offences

There have been various reviews of OHS offences over the last 30 years. These reviews have all said that fines are too low to deter unsafe work practices, especially in large companies.

We found that the average fine in the last 10 years was **\$69,000**. The smallest fine was \$600, and the largest fine was \$1 million.

## Should courts impose bigger fines if someone is hurt?

Courts have to consider many factors when deciding on a fine for OHS offences:

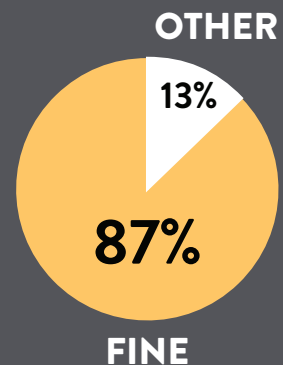
- How serious was the risk to health and safety?
- How likely was the risk of injury?
- How good or bad was the offender's track record for OHS incidents?

The law in Victoria says that the size of a fine doesn't depend on whether someone was injured or killed. In theory, letting someone work on a roof without adequate protection is just as serious as someone falling off the roof.

But we found that courts imposed the biggest fines in cases where someone was killed, and courts imposed the next biggest fines in cases where someone was injured.

We have provided three case studies (on the next page) showing different risks. In Case Study 1, the court imposed a fine of \$15,000 when no one was injured. In Case Study 2, the court imposed a fine of \$50,000 when someone was seriously injured. In Case Study 3, the court imposed a fine of \$300,000 when someone died.

## SENTENCING OUTCOMES FOR OHS OFFENDERS



## FINE AMOUNTS

MAXIMUM  
\$1.7 MILLION

LARGEST  
\$1 MILLION

AVERAGE  
\$69,000  
SMALLEST  
\$600

## Case Study 1: \$15,000 for risk of electrocution

The offender was a construction company. A WorkSafe inspector noticed that people were working within about 2 metres of an active powerline. The minimum safe distance is usually about 5 metres. The company did not have a permit for people to work so close to an active powerline.

The company pleaded guilty to breaching its health and safety duties to its employees by creating a risk of electrocution or electric shock.

The court said that employers in the construction industry should be aware of these risks and must be sent a message about the seriousness of this offending. The court also said that the company had no prior convictions and was of good character.

**The court sentenced the company to a fine of \$15,000**

## Case Study 2: \$50,000 for forklift injuries

An employee, Andrew\*, was helping to unload a shipping container using a pallet jack. Another employee, Blake\*, was using a forklift to remove pallets from the shipping container. At one point, the forklift reversed with a load that fell onto Andrew. Andrew was hospitalised with multiple broken bones and punctured lungs.

The company pleaded guilty to breaching its health and safety duties to its employees by failing to create and enforce an exclusion zone near the forklift.

The court said that this was a serious breach of the company's duty and that risks involving forklifts are well known. The court also said that the company cooperated with investigators, and that the company had no prior OHS convictions in almost 40 years.

**The court sentenced the company to a fine of \$50,000**

## Case Study 3: \$300,000 for a workplace death

The offender was a company that imported stone slabs for construction. A stone slab usually weighed about 250 kg. The ground at the worksite was on a slight slope. One employee used a forklift to remove the stone slabs from a shipping container. Another employee was in the shipping container using a screwdriver to separate the slabs from each other. This allowed the forklift to attach to each slab. On the day of the incident, Caroline\* was inside the shipping container, and stone slabs fell on her, killing her.

The company pleaded guilty to breaching its health and safety duties to its employees by failing to have a safe system of work, such as temporary restraints or an exclusion zone around the fall shadow of the slabs.

The court said this was a serious breach of the company's duty, especially given the risk of serious injury or death, and that the company should have been aware of the risk. The company pleaded guilty and fully cooperated with the investigation. The company had since implemented measures to reduce the risks.

**The court sentenced the company to a fine of \$300,000**



**Should offenders receive bigger fines if someone has been injured or killed?**



**Should larger companies receive bigger fines than smaller companies?**

## How many fines are paid?

Offenders fully pay most fines for OHS offences (67%). However, about \$2.3 million in fines go unpaid each year. Companies that have been wound up are much less likely to pay their fines.

We are asking for your views about how to improve fine payment rates, such as making company directors personally liable for fines.

UNPAID FINES  
\$2.3  
MILLION  
PER YEAR



## The role of people affected by OHS offences

OHS offences can have profound consequences for victims and their loved ones. We've heard that some people would like to be more involved in criminal proceedings for OHS offences.

First, people would like more clarity around how they can share their views in court (in **victim impact statements**).

Second, people would like the opportunity to participate in a **restorative justice conference** with the offender. Restorative justice conferences allow people to explain how OHS offences affect them. The conferences can help people to repair their relationships and to find out what will be done to stop the incident from happening again.

## HOW CAN I SHARE MY VIEWS?

- **EMAIL US** at [contact@sentencingcouncil.vic.gov.au](mailto:contact@sentencingcouncil.vic.gov.au)
- **FILL OUT OUR SURVEY** on Engage Victoria at [engage.vic.gov.au/sentencing-ohs-offences-in-victoria](https://engage.vic.gov.au/sentencing-ohs-offences-in-victoria)
- **ATTEND** one of our community conversation events:

Ballarat (19 Feb)	Morwell (21 Feb)	Shepparton (23 Feb)
Bendigo (26 Feb)	Geelong (28 Feb)	Lilydale (18 Mar)
Dandenong (20 Mar)	Melbourne (22 Mar)	Werribee (25 Mar)

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