

Work health and safety laws (WA)

This guide summarises the work health and safety laws for community organisations in Western Australia

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Part 1

Introduction



Introduction

In Western Australia (WA), Work Health and Safety (WHS) laws aim to protect workers and others from safety hazards in the workplace. The laws also provide a framework for continuous improvement and progressively higher standards of WHS compliance.



Disclaimer

This guide provides information on WHS laws in Western Australia. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this guide.

In WA, occupational safety and health is principally regulated by the [Work Health and Safety Act 2020 \(WA\)](#) and the [Work Health and Safety \(General\) Regulations 2022 \(WA\)](#) (**WA WHS laws**).



Note – recent changes to occupational health and safety laws in WA

Since 31 March 2022, Western Australia has implemented the [national 'model' WHS laws](#) through the WA WHS laws. Victoria is now the only state that has not adopted the 'model' WHS laws.

WA WHS laws aim to protect workers and other persons from harm to their health and safety arising from hazards and risks by, (among other things) imposing duties on organisations, officers, workers and other persons at workplaces to ensure safety so far as reasonably practicable.

Compliance with these duties is important. Breaches can lead to significant fines and sometimes imprisonment (although imprisonment is rare).

There may be different laws in other states and territories and your organisation will need to check these other obligations if it operates outside Western Australia, particularly in Victoria where the model legislation has not been adopted.

This guide focuses on the legal duties and obligations that community organisations and the directors and officers of community organisations have under WA WHS laws.

This guide doesn't cover all the obligations and responsibilities that community organisations and officers have. It also doesn't cover the obligations of workers and other persons (for example, members of community organisations) under WA WHS laws.



Part 1

**Application of the WA WHS laws to
not-for-profit community
organisations**



Application of the WA WHS laws to not-for-profit community organisations

The [Work Health and Safety Act 2020 \(WA\)](#) and the [Work Health and Safety \(General\) Regulations 2022 \(WA\)](#) (**WA WHS laws**) use specific legal terminology to determine whether an organisation is required to comply with them.

The WA WHS laws state that they apply to a 'person conducting a business or undertaking' (**PCBU**).

So, to determine whether they will need to comply with the WA WHS laws, community organisations will need to consider whether they fall into the definition of a PCBU under the WA WHS laws.

If it's unclear whether your community organisation falls into the definition of a PCBU, you should seek legal advice.



Example

A charity organisation consists of a national body with state and local divisions.

The national body will be a PCBU if it engages paid employees. Whether a state or local division is also a PCBU depends on whether it is recognised as a separate entity that engages paid employees.

If a state or local group of division is identified as a PCBU, then it will owe WHS duties to its employees and volunteers, unless they are classified as a volunteer association.

The national body is a PCBU because it employs paid workers, and will owe duties to all workers, including the volunteers of the state or local groups that are volunteer associations. This is because the work of those volunteers is directed or influenced by the national body.

Conducting a business or undertaking

The WA WHS laws don't define what a 'business or undertaking' is, but it will typically involve some sort of organised operation or enterprise that is ongoing in nature. The term 'business' applies to for-profit enterprises, and the term 'undertaking' generally captures organisations that are not-for-profit making or commercial in nature.

It doesn't matter whether a business or undertaking is:

- conducted for profit or gain
- conducted by a person or a group of people, or
- structured as a partnership, incorporated association or unincorporated association

The definition of 'business or undertaking' is very broad and may capture many not-for-profit organisations, however (as discussed below) this is subject to an exception for 'volunteer associations'.

Under the WA WHS laws, a 'volunteer association' doesn't conduct a business or undertaking and therefore doesn't have duties under the WA WHS laws.



Exception for volunteer associations



Definition – volunteer association

A 'volunteer association' is defined in the WA WHS Act as:

a group of volunteers working together for one or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association

This means that organisations that consist entirely of volunteers are exempt from the duties under the WA WHS laws. If your organisation employs one or more persons to carry out paid work, whether casual, part-time or full time, it is not a volunteer association and must comply with the duties under the WA WHS laws.

It's important to note that payments made to volunteers for out-of-profit expenses (such as travel) when carrying out volunteer work are not regarded as a wage or salary. However, if other payments for carrying out volunteer work are made, they may constitute a wage or salary and mean the person is being 'employed' by the organisation.



For more information, see our [guide – Employee, contractor or volunteer?](#)



Example

A historical society is run by a group of volunteers. The society meets on a regular basis in each other's homes to discuss the society's progress and plan for the future. As the society doesn't employ anyone and they all work together for a community purpose, they are a volunteer association. This means that the society and its members don't have any duties under the WA WHS laws.



Tip

Even if your organisation is a volunteer association and is exempt from the duties under the WA WHS laws, it's a good idea to comply with the general WHS duties under the WA WHS laws. Australian courts have recognised that volunteers are owed a general duty of care by the organisations they support. Complying with the WA WHS laws will help ensure this duty is satisfied.

Who is a worker under WA WHS laws?

Once you determine that the duties under the WA WHS laws apply to your organisation, your organisation will owe duties to its 'workers'.

Under the WA WHS laws, 'worker' is given a very broad definition, and will include any of the following:

- employees
- contractors or subcontractors



- employees of a contractor or subcontractor
- employees of a labour hire company who has been assigned to work in the organisation
- outworkers
- apprentices or trainees
- students gaining work experience
- volunteers
- a person prescribed by the WA WHS Regulations

This means that, even if your not-for-profit organisation only employs one paid worker, your organisation will owe WHS duties to all workers, including volunteers.

When is a worker ‘at work’?

Under WA WHS laws, a PCBU owes WHS duties to a worker while the worker is at work in the business or undertaking.



Definition – workplace

A ‘workplace’ is defined in the WA WHS Act as:

a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work

And a ‘place’ includes a vehicle, vessel, aircraft, other mobile structure, and any waters and any installation on land, on the bed of any waters or floating on any waters.

This means that practically any location where work can be done for your organisation could be a ‘workplace’.

Whether a place is a ‘workplace’ for the purposes of the WA WHS laws will depend on the circumstances. If the regulator or a Court is required to make a determination as to whether a particular place is a ‘workplace’, they will have regard to:

- the activities of the business or undertaking
- what is involved in the performance or delivery of those activities, and
- where the activities take place



Tip

The following may be a ‘workplace’ for a not-for-profit organisation:

- where an organisation has workers working from home, the worker’s home
- where an organisation teaches children to swim, the swimming pool
- where an organisation conducts door-to-door fundraising appeals, the streets on which the appeal is conducted
- where an organisation requires workers to travel to rural, remote and regional areas, the worker’s car

If you are unsure what will constitute a workplace for your organisation, you should seek legal advice.



Part 2

Duties of not-for-profit community organisations under WA WHS laws



Duties of not-for-profit community organisations under WA WHS laws

The [Work Health and Safety Act 2020 \(WA\)](#) and the [Work Health and Safety \(General\) Regulations 2022 \(WA\)](#) (**WA WHS laws**) impose a number of separate duties on organisations, which are intended to protect the health and safety of workers.

The nature of WHS duties

Where a duty is imposed on an organisation under the WA WHS laws to ensure health and safety (where an organisation is person conducting a business or undertaking – a PCBU), the organisation is required to eliminate (or, if it is not reasonably practicable to do so, to minimise) risks to health and safety, so far as is reasonably practicable.

This section outlines:

- the key duties under WHS laws
- who the duties apply to, and
- what the duties require community organisations to do to meet their obligations

What are the key WHS duties?

Once you have worked out whether your community organisation is a PCBU, the following table provides a list of key responsibilities that community organisations have under WA WHS laws.

More information about each of the key responsibilities is set out below.

Key duties under WA WHS laws	Section of the Act
Primary duty of care	section 19
Duty of PCBU involving management or control of workplaces	section 20
Duty of PCBU involving management or control of fixtures, fittings and or plant at workplaces	section 21
Duty of PCBU that designs plant, substances or structures	section 22
Duty of PCBU that manufactures plant, substances or structures	section 23
Duty of PCBU that imports plant, substances or structures	section 24
Duty of PCBU that supplies plant, substances or structures	section 25
Duty of PCBU that installs, constructs or commissions plant or structures	section 26
Duty of PCBU that provides services relating to WHS	section 26A
Duty to notify regulator immediately of notifiable incidents	section 38
Duty to preserve incident sites	section 39



Duty to consult with other duty holders	section 46
Duty to consult workers	section 47
Duty to, on request, to facilitate election of health and safety representatives	section 50
Duties to consult with and confer with a health and safety representative	section 70
Duty to, on request, to train the health and safety representatives	section 72
Duty to, on request, to establish a health and safety committee	section 75
Duty to allow health and safety committee members to attend health and safety committee meetings and carry out functions as committee members	section 79

**Note**

See the [Work Health and Safety \(General\) Regulations 2022 \(WA\)](#) which sets out further duties and obligations that are specific to certain organisations and workplaces. These additional duties and obligations cover topics such as noise, hazardous manual tasks, confined spaces, falls, electrical safety, plant, hazardous chemicals and asbestos. These extra duties are not included in this guide.

Specific information on key duties owed under the WA WHS Act

This section provides more information about the key duties under WA WHS laws.

As you read more detail about each of the duties, you will notice that many of these responsibilities require a community organisation to discharge its duties 'so far as is reasonably practicable'. To find out more about what 'so far as is reasonably practicable' means, and what your organisation can do to make sure it complies with this standard of care, see part 4 of this guide.

Overarching duty to ensure the health and safety of workers**Who must comply with this duty?**

All community organisations that are PCBUs must comply with this duty.

What is the duty?

PCBUs must ensure, as far as is reasonably practicable, the health and safety of:

- workers engaged, or caused to be engaged, by the person, and
- workers whose activities in carrying out work are influenced or directed by the person,

while the workers are at work in the business or undertaking.

In addition to workers, PCBUs must also ensure, so far as is reasonably practicable, that the health and safety of 'other persons' is not put at risk from work carried out as part of the conduct of the business or undertaking. Other persons may include clients, customers, tradespeople and suppliers who visit the workplace.

This duty is very broad and there is a very large group of people that organisations covered by the WA WHS laws need to consider and not place at risk.

Ensuring health and safety of workers and other persons includes (but is not limited to):

- providing and maintaining a work environment without risks to health and safety
- providing and maintaining safe plant and structures
- providing and maintaining safe systems of work



- safe use, handling and storage of plant, structures and substances
- providing adequate facilities for the welfare at work of workers, including ensuring access to those facilities
- providing any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety, and
- monitoring the health of workers and the conditions at the workplace for the purpose of preventing illness or injury of workers



Note – the primary duty of care and psychological health and safety

As a result of changes to the model WHS Laws in 2022, the primary duty of PCBUs to ensure, as far as is reasonably practicable, the health and safety of workers now includes psychological health and safety. The duty is no longer limited to physical health and safety.

A PCBU must eliminate psychosocial risks in the workplace, or if that is not reasonably practicable, minimise these risks so far as is reasonably practicable.

To help implement this extended duty, [Safe Work Australia](#) has published a [Model Code of Practice for managing psychosocial hazards at work](#).

For the Model Code of Practice to apply in a particular state or territory, it must first be approved as a Code of Practice in that jurisdiction. Not all jurisdictions will implement the Model Code of Practice in the same way.

This extended duty of care applies in [Western Australia](#) since 4 January 2023.

WorkSafe Western Australia has developed its own Code of practice - [Psychosocial hazards in the workplace](#).

A duty imposed on an organisation to ensure health and safety requires the organisation to adopt a risk management approach that eliminates health and safety risks as much as is reasonably practicable. If it is not reasonably practicable to eliminate health and safety risks, the duty is to minimise them as much as is reasonably practicable.



Example

A charity organisation, staffed by employees and volunteers, arranges a sausage sizzle to raise money. The event takes place at a local park, where an employee and volunteer are responsible for setting up a barbeque. As the charity is a PCBU, it will owe a duty to all employees, volunteers and customers. They recklessly cause a gas leak which results in a minor explosion. The PCBU could be prosecuted for breaching its duty under section 19 of the WHS Act.

Duty of PCBUs involving management or control

Who must comply with this duty?

All community organisations that are PCBUs with management or control of a workplace must comply with this duty.

What is the duty?

An organisation with 'management or control', in whole or part, of a 'workplace' has a duty to ensure, so far as is reasonably practicable that:

- the workplace



- the means of entering or exiting the workplace, and
 - anything arising from the workplace,
- are without risks to the health and safety of any person.

More than one organisation can have control over a workplace at any one time.



Example

An organisation is leasing office space. The organisation has been made aware that the front door mat has been damaged and protrudes from the ground. The organisation fails to remove the door mat which creates a risk of a person tripping. A maintenance person arrives to fix the air-conditioning unit and trips on the mat, causing injury. The organisation may be liable under WA WHS laws as it was in control of the workplace and the means of entering it at the time, even though it doesn't own the premises.

There are additional duties in the WA WHS Act for organisations who:

- manage or control fixtures, fittings or plant at a workplace
- design, manufacture, import or supply plant, substances or structures, or
- install, construct or commission plant or structures for a workplace

Duty to notify regulator immediately of notifiable incidents and duty to preserve incident sites

See part 5 of this guide for an outline of the duties your organisation must fulfil when an incident occurs.

Duty to consult, co-operate and co-ordinate with other duty holders

Organisations that have a duty under the WA WHS laws must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons or organisations that have an overlapping duty in relation to areas of overlap. This is referred to as a horizontal consultation duty.

There could be several duty holders influencing how work is carried out at a workplace (for example suppliers, contractors and the building landlord). To meet their duty, the duty holders need to consult, co-operate and co-ordinate activities so as far as is reasonably practicable for all matters where they have shared or overlapping duties. The duty to consult, co-operate and co-ordinate with other duty holders doesn't require all involved to reach agreement about how to discharge their WHS duty. Each duty holder will separately remain responsible for meeting their WHS duties.



Example

A not-for-profit arts organisation has contracted a construction company to make renovations to their workshop and gallery space. Both the arts organisation and the construction company will likely owe a duty under WA WHS Laws to ensure, so far as is reasonably practicable, that the workers carrying out the renovations are safe. This doesn't mean that the arts organisation and the construction company are both separately required to provide protective clothing and equipment to the workers.

The construction company may fulfil their duty by providing the protective clothing and equipment to the workers, and the arts organisation may fulfil their duty by satisfying themselves that the construction company has provided the protective clothing and equipment to the workers, and making sure this fulfils their own obligations.



Duty to consult with workers

Organisations must consult, so far as is reasonably practicable, with their workers who carry out work for the organisation who are, or are likely to be, directly affected by matters relating to WHS. This duty is owed not only to employees but also to volunteers.

The WHS Act requires organisations to ensure there is consultation with workers on the following matters:

- the identification of hazards and assessment of risks arising from the work carried out or to be carried out by the organisation's operations
- decision making about ways to eliminate or minimise risks
- decision making about the adequacy of facilities for the welfare of workers
- proposed changes which may affect the health and safety of workers, and
- decision making about procedures for consultation with workers, resolving WHS issues, monitoring the health of workers, monitoring workplace conditions and providing information and training for workers

In these instances, organisations must ensure that:

- relevant information about the WHS matters is shared with workers
- workers are given a reasonable opportunity to express their views or concerns about WHS issues, and
- workers are able to contribute to any relevant decision-making processes

The views of the workers should be taken into account and workers should be advised of the outcome of consultations in a timely matter.

Where the workers are represented by a health and safety representative, consultation must involve that representative.

The meaning of consultation

Consultation doesn't mean negotiation or joint decision making. The views of the worker don't have to be adopted. The duty just requires those views to be taken into account by the organisation.

However, consultation should be real and not a mere formality. It's a process designed to help the organisation by giving them access to ideas from workers and providing an opportunity for workers to point out any WHS issues arising from the relevant decision. These issues may relate to the effectiveness of controls, the interaction of various controls or the practical difficulties of implementing the proposed controls.

Ways that consultation can occur include:

- sending out regular newsletters by mail or email which feature WHS news, information and updates
- regularly updating the volunteer sections of notice boards or websites with information, including the organisations latest safe work policies and procedures
- having a 'suggestions' email box for workers to make suggestions about ways to work safely and other matters
- having worker surveys
- holding regular meetings to discuss the work that you do and how to do it in the safest way
- holding short 'toolbox talks' where specific health and safety topics relevant to the task at hand are discussed or liaising with work groups through health and safety representatives, if workers request this

Duty to permit election of health and safety representative, on request, and to confer with and train the representative

The workers of an organisation may request that the organisation facilitate the election of one or more persons as a 'health and safety representative' to represent the employees and volunteers of that organisation in respect of WHS matters.

The purpose of a health and safety representative is to:

- represent workers in the work group in relation to WHS matters



- monitor measures taken by the PCBU to ensure they are compliant with the WHS laws in relation to workers in the work group
- investigate complaints from members in the work group regarding WHS matters, and
- look into anything that appears to be a risk to the health or safety of workers in the work group arising from the conduct of the organisation

Where a request for election is made, the organisation must follow the prescribed procedure for establishing work groups that health and safety representatives will represent and facilitate the election of health and safety representatives by the organisation's workers.

The organisation must also:

- consult on WHS matters with any health and safety representative for a work group carrying out work for the organisation
- confer with the health and safety representative whenever reasonably requested by the representative
- allow the health and safety representative to have access to information relating to hazards (including associated risks) affecting the workers in the work group and the health and safety of the workers in the work group
- provide any resources, facilities and assistance to the health and safety representative that are reasonably necessary to enable the representative to perform their functions
- with the consent of one or more of the workers from the work group, allow the health and safety representative to be present at an interview concerning WHS between a group of workers and an inspector or the PCBU
- permit the health and safety representative to accompany an inspector during an inspection of any part of the workplace, and
- allow the health and safety representative to attend an approved WHS training course. In WA, the health and safety representative may choose their own training course

Small organisations may not require a health and safety representative. In large organisations with both employees and volunteers, it may be useful for a health and safety representative to be elected.

Duty to establish a health and safety committee, on request, and to allow committee members to attend meetings and carry out functions

The workers of an organisation may request that the organisation establish a 'health and safety committee'. This request may be made by an elected health and safety representative or by five or more workers from the organisation. If such a request is made, a committee must be established within two months of the request.

The purpose of a health and safety committee is to:

- facilitate co-operation between the organisation and workers in instigating, developing and carrying out measures designed to ensure the workers' health and safety while at work
- assist to develop standards, rules and procedures in relation to health and safety that are to be followed or complied with at the workplace, and
- fulfil any other functions as agreed between the organisation and the committee

Organisations must allow each member of the health and safety committee to spend the time that is reasonably necessary to attend meetings of the committee or to carry out functions as a member of the committee.



Part 3

**Who can be legally responsible
under WA WHS laws?**

Who can be legally responsible under WA WHS laws?

Your organisation, its officers and employees could be liable for failure to comply with WA WHS laws. WorkSafe WA is able to prosecute the PCBU, its employees, or in some circumstances, both.

Liability of the community organisation itself

Incorporated community organisations

If your community organisation is incorporated (such as an incorporated association or a company limited by guarantee), the organisation itself is considered to be a 'person' for the purposes of the WA WHS laws and can be found guilty of breaches of the WHS Act, the WHS Regulations, or both.

This means that an incorporated organisation as a whole can be held responsible for breaches of the WA WHS laws by its officers, employees or agents, where those officers, employees or agents are performing tasks within the scope of their authority.

The WA WHS regulator, WorkSafe WA may prosecute not-for-profit organisations in the same way it would commercial enterprises.

Your community organisation's officers and employees could also be prosecuted separately if they breach their duties under WA WHS laws.



Example

An incorporated not-for-profit organisation operates educational seminars out of their office space. On the morning of a seminar, a gas leak is identified in the office. To save additional resources, the director decides to proceed with the event. Several employees and seminar attendees suffer injury and illness from gas poisoning. The organisation could be held liable for the director's decision (made within the director's authority) under the WA WHS laws.

The director could also be held personally liable for his actions. This is discussed below.

Unincorporated community organisations

If your community organisation is unincorporated, it can't itself be prosecuted for breaches of the WA WHS laws.

However, as with an incorporated organisation, the officers of an unincorporated organisation can be held personally liable for a breach of their officer duties under the WA WHS laws (unless they are volunteers). Others involved in an unincorporated association may also be liable under the WA WHS laws for a failure to comply with the duty of workers, or the duties of other persons at the workplace.

Prosecution of officers WorkSafe WA can prosecute the officers of a community organisation when there has been a failure to comply with the officer's duty under the WHS Act.

Liability of officers

Who is an officer?

Under the WA WHS laws, an 'officer' of a community organisation may include:

- a director, committee or board member of the organisation (including the secretary)
- a person who makes decisions, or participates in making decisions, that affect the whole or a substantial part of the operations of an organisation (for example, a CEO)
- a person who has the capacity to significantly affect the organisation's financial standing
- a person who commonly instructs the committee of management on how to perform its functions, and
- various people who may be involved in an organisation in positions of responsibility such as a receiver, administrator, liquidator or trustee of an organisation

When can officers be personally liable?

Paid officers

An officer of an organisation (whether incorporated or unincorporated), may be found personally liable for a breach of the WHS Act if:

- they receive payment for their position as an officer in the organisation (that is, they are not a volunteer officer), and
- they fail to exercise due diligence (discussed below) to ensure that the organisation complies with its duties or obligations under the WHS Act

Volunteer officers

A volunteer officer is expected to comply with the duty of officers under the WHS laws. However, they can't be prosecuted for failing to comply with that duty. This immunity from prosecution under the WHS laws has been designed to ensure that people are not discouraged from taking up voluntary officer positions in organisations.

However, a volunteer officer can be prosecuted in their capacity as a 'worker' if they fail to meet their duty as a 'worker' under the WHS Act.

Due diligence

An organisation's officers must exercise due diligence to ensure that the organisation complies with its duties or obligations under the WHS Act.

Due diligence requires reasonable steps to:

- acquire and keep up-to-date knowledge of WHS matters
For example, acquire knowledge of what the WHS laws require, the strategies and processes for eliminating or minimising hazards and risks so far as is reasonably practicable and emerging issues.
- gain an understanding of the nature of the organisation's operations and the risks and hazards associated with those operations
For example, obtaining advice from a suitably qualified person and conducting safety audits to provide a general understanding of the hazards and risks associated with the organisation's operations.
- ensure the organisation has available and uses appropriate resources and processes to eliminate or minimise health and safety risks
For example, gaining an understanding of what is needed for health and safety, making decisions about procedures and resources and ensuring they are used. Resources include human and not just financial resources.
- ensure the organisation has appropriate processes for receiving and considering information regarding incidents and hazards, and responding to that information in a timely way



For example, considering the reporting of incidents, near misses and emerging hazards and risks, identifying if any further action is required to eliminate or minimise the hazards or risks so far as is reasonably practicable and ensuring these steps are taken by the organisation.

- ensure that the organisation implements processes for complying with any duty or obligation under the WHS laws

For example, considering legal reviews of WHS systems against legislative requirements and ensuring that any 'gaps' in compliance are addressed.

- verify the provision and use of resources and process referred to above

This requires active verification — for example verifying through inspection or auditing processes that the resources and processes are in place and being used.



Tip

Officers should ensure that WHS is discussed regularly at committee meetings so that you can satisfy yourself (and discharge your due diligence duty) that all reasonably practicable steps are being taken to ensure a safe working environment for people involved in your organisation.

Liability of workers

Who is a worker?

Under WA WHS laws, a worker includes the following people:

- employees
- contractors or subcontractors
- employees of a contractor or subcontractor
- employees of a labour hire company who has been assigned to work in the organisation
- outworkers
- apprentices or trainees
- students gaining work experience
- volunteers

What duties do workers owe?

Workers must:

- take reasonable care for their own health and safety
- take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons
- comply, so far as they are reasonably able, with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with the WA WHS laws, and
- cooperate with any reasonable policy or procedure of the PSBU relating to WHS (that the PCBU has notified the workers of)

Examples of where a worker of an organisation will have breached the duty to take reasonable care include if the worker:

- fails to comply with instructions given by the organisation regarding the safety and health of the worker and other persons
- fails to properly use protective clothing and equipment provided by the organisation



- misuses or damages any equipment provided in the interests of safety and health
- fails to report any situation at the workplace that could constitute a hazard, and
- fails to report any injury or harm to health which arises in connection with the worker's work



Tip

If you take on a position with a community organisation, you may have responsibilities under the WA WHS laws and will potentially be liable if something goes wrong. Therefore, it's a good idea to make sure you are aware of your organisation's obligations under the WA WHS laws and the measures that are being put in place to eliminate or minimise risks.

In many cases, a breach of a duty in the WA WHS laws will only be found when a community organisation (and its workers) didn't take reasonably practicable steps to eliminate or reduce a risk. You should ensure that WHS is discussed regularly at committee meetings so that you can satisfy yourself that all reasonably practicable steps are being taken to ensure a safe working environment for people involved in your community organisation.

Liability of volunteers

As discussed above, a volunteer officer is expected to comply with the duty of officers under the WHS laws.

While they can't be prosecuted for failing to comply with that duty, a volunteer can be prosecuted in their capacity as a 'worker' if they fail to meet their duty as a 'worker' under the WHS Act.

Liability of multiple parties

Multiple parties who have duties under the WHS laws may be held responsible in relation to the same incident.



Example

An arts organisation operates in a theatre. A volunteer actor suffers injury due to the failure of a hoist being used in the theatre. The hoist was damaged by another volunteer, who did not inform the organisation of the issue. The organisation did not have a system in place for regular equipment inspections. In this situation, both the volunteer in their capacity as a worker, and the organisation in its capacity as a PCBU, could be prosecuted.



Note

The WA WHS laws also introduce the offence of industrial manslaughter.

Section 30A of the WA WHS Act says that a person commits the crime of industrial manslaughter if:

- the person has a health and safety duty as a PCBU
- the person engages in conduct that causes the death of an individual
- the conduct constitutes a failure to comply with the person's health and safety duty, and
- the person engages in the conduct:
 - knowing that the conduct is likely to cause the death of, or serious harm to, an individual, and
 - in disregard of that likelihood

If a person is found guilty under this section the maximum penalty is:

- for an individual as a PCBU or an officer of a PCBU – imprisonment for 20 years and a fine of \$5,000,000
- for a body corporate – a fine of \$10,000,000

This section does not apply to individuals in the capacity of worker.

Queensland, New South Wales, Victoria and Northern Territory have similar industrial manslaughter laws.



Part 4

Complying with WA WHS laws

Complying with WA WHS laws

Many of the duties under the *Work Health and Safety Act 2020 (WA)* and the *Work Health and Safety (General) Regulations 2022 (WA)* (**WA WHS laws**) require that PCBUs do as much as is 'reasonably practicable' to ensure they meet their obligations to provide a safe and healthy working environment.

The meaning of 'reasonably practicable' is considered in detail in this part of the guide.

What does 'reasonably practicable' mean?



Definition – 'reasonably practicable'

In the WHS Act, 'reasonably practicable' means:

that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety

Whether certain action is 'reasonably practicable' requires:

- taking into account and weighing up all of the relevant matters, including:
 - the likelihood of the hazard or the risk concerned occurring
 - the degree of harm that might result from the hazard or the risk
 - what the person concerned knows or ought reasonably to know, about the hazard or the risk and ways of eliminating or minimising the risk
 - the availability and suitability of ways to eliminate or minimise the risk, and
- after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk

No single matter determines what is (or was at a particular time) reasonably practicable to be done for ensuring health and safety.

Ordinarily, cost will not be the key factor in determining what is reasonably practicable for a duty holder to do, unless it can be shown to be 'grossly disproportionate' to the risk.

Objective test

The question of what is 'reasonably practicable' is determined objectively. There are two elements to the test:

1. First, the organisation must consider what can be done. That is, what is possible in the circumstance for ensuring health and safety?
2. They must then consider whether, in the circumstances, it is reasonable to do all that is possible.

This means that what can be done should be done unless it is reasonable in the circumstances for an organisation to do something less. This ensure that workers and others are provided with the highest level of protection that is reasonably practicable.



In Australia, the courts have confirmed that:

- something will not be 'reasonably practicable' simply because it is physically possible
- what is 'reasonably practicable' is judged according to what was known at the time of the alleged breach, and
- to determine what is 'reasonably practicable', it is necessary to balance the likelihood of the risk occurring against the cost, time and difficulty involved in removing that risk



Note

A PCBU cannot avoid responsibility for their obligations under the WA WHS Laws by contracting them out to someone else

Risk management

The primary duty imposed on an organisation to ensure health and safety implies a risk management process.

A risk management process will help an organisation to determine what is reasonably practicable and therefore to meet the requisite standard of care and control over WHS risks.

Risk management should involve the following four stage process to identify, assess and control risks:

1.	• Identify any hazards within the workplace
2.	• Assess the risks that may result as a consequence of the hazards
3.	• Decide on appropriate control measures to prevent and minimise the level of the risks
4.	• Implement, monitor and review the control measures

Risk management is an ongoing process, triggered when changes affect the work activities being undertaken.

Examples of when risk management processes may be triggered include when:

- starting a new business or purchasing a business
- expanding a business
- changing work practices, procedures or the work environment
- changing organisational structure or job roles
- introducing new workers or returning workers to the workplace
- purchasing new or used equipment or using new substances
- working with a new supplier or new commissioner of your services
- planning to improve productivity or reduce costs
- new information about workplace risks becomes available
- responding to workplace incidents (even if they cause no injury)
- responding to concerns raised by workers, health and safety representatives or others at the workplace, or
- required by the WA WHS Regulations for specific hazards



The risk management process



Source: Work Health and Safety Commission, *How to manage work health and safety risks: Code of Practice*, department of Mines, Industry Regulation and Safety (July 2022)

When determining what controls are appropriate, the WA WHS laws require organisations to apply the hierarchy of risk controls by implementing the highest order of controls before the lower order of controls.

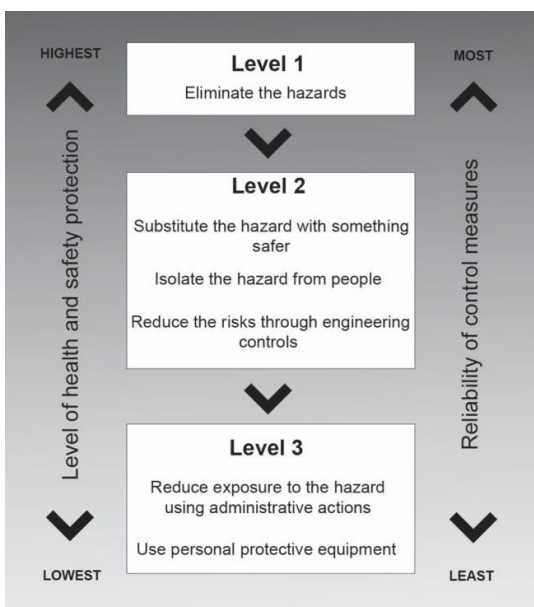
Specifically, duty holders are required to eliminate risks to health and safety so far as is reasonably practicable, and if it's not reasonably practicable to eliminate risks to health and safety – minimise those risks so far as is reasonably practicable.

In the event that it's not reasonably practicable for a duty holder to eliminate risks to health and safety, they must minimise risks, so far as is reasonably practicable by doing one or more of the following:

- substituting (wholly or partly) the hazard giving rise to the risk within something that gives rise to a lesser risk
- isolating the hazard from any person exposed to it, or
- implementing engineering controls

Should any risk still remain, the duty holder must minimise the remaining risk, so far as is reasonably practicable, by implementing administrative controls. Remaining risk must then further be minimised, so far as is reasonably practicable, by ensuring the provision and use of suitable personal protective equipment.

This process is known as **the hierarchy of risk controls**.



Source: Safe Work Australia, *How to Manage Work Health and Safety Risks, Code of Practice* (December 2011)



For more detailed information on each of these steps, see the [Model Code of Practice: How to Manage Work Health and Safety Risks](#).

The cost of eliminating or minimising risks may be a relevant factor for many organisations with limited resources. **However**, if there is an incident in the workplace, it's not a defence to a breach of the WHS laws to claim that 'we are a not-for-profit group and we couldn't afford to reduce that risk'.

If you can't eliminate or minimise the risk, you should give serious consideration as to whether the organisation should stop the activity which gives rise to the risk.

To reduce your chance of being found liable for a breach of the WA WHS laws, your organisation needs to be able to show that it identified and considered risks and then took reasonably practical steps to eliminate or minimise those risks. Documented evidence of these processes is recommended.

Often the measures introduced don't need to be expensive or elaborate. For example, if your volunteers are lifting items, you may not need to buy an expensive hydraulic lifting machine, but you could train volunteers in safe lifting practices and post reminder notices around the premises.



Your community organisation may wish to review its approach to risk management, as well as review the appropriate insurance options. For more information, see [our guide to risk management and insurance](#).



Part 5

Responding to a workplace incident

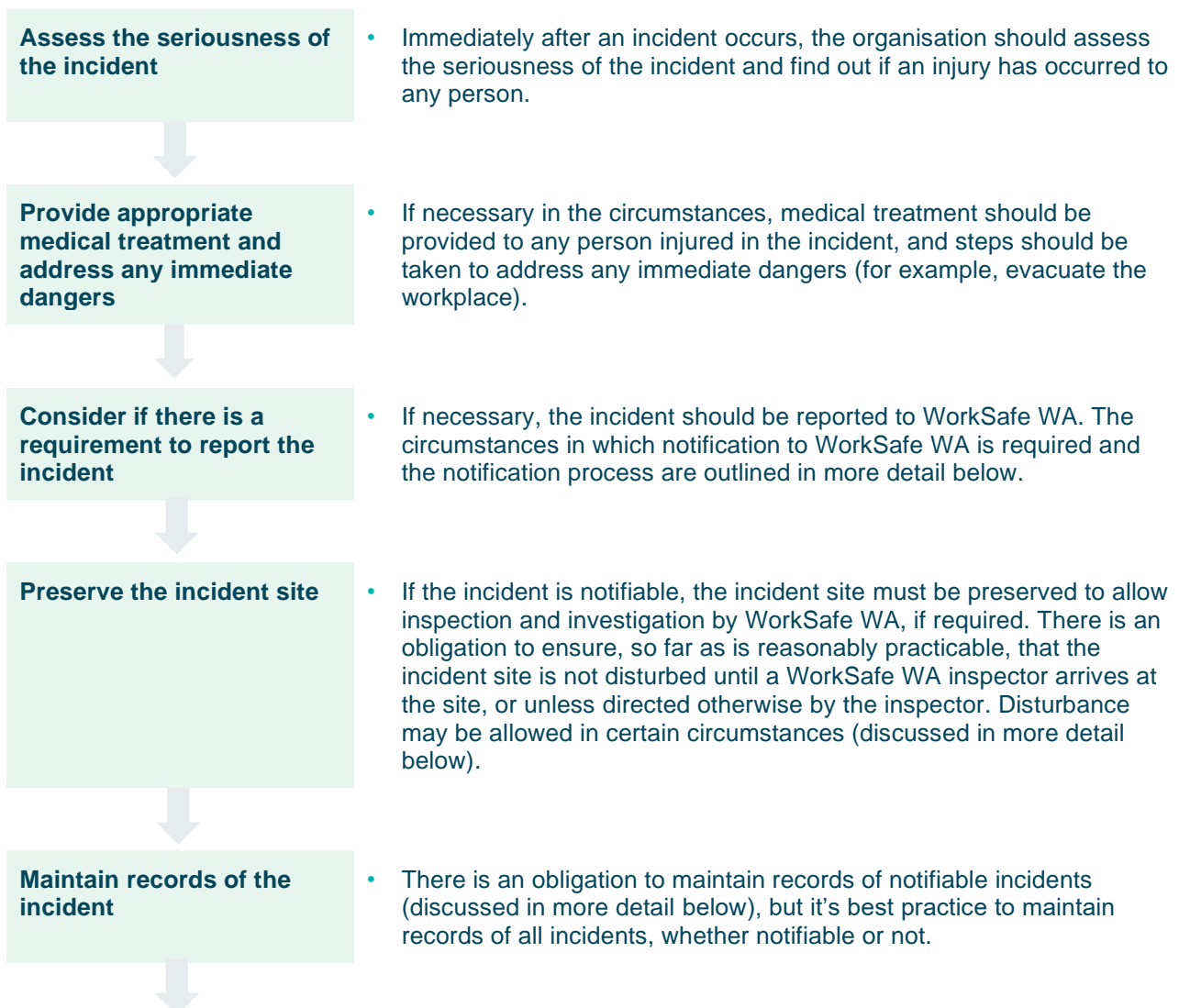
Responding to a workplace incident

There is no 'one size fits all' response to a workplace incident. The best and most appropriate response will largely depend on the nature of the incident.

However, some incidents require immediate responses and notification to WorkSafe WA under the [Work Health and Safety Act 2020 \(WA\)](#) and the [Work Health and Safety \(General\) Regulations 2022 \(WA\)](#) (**WA WHS laws**).

There are significant penalties for employers who fail to follow the correct procedures in the wake of a serious workplace incident.

What to do if a workplace incident occurs





Investigate and prevent reoccurrences

- Following an incident, community organisations should investigate the circumstances of how the incident occurred. The investigation should be as detailed as the circumstances of the incident require. If appropriate, notes should be recorded and witness accounts should be taken to provide the employer with a clear picture of how and why the incident occurred.



Tip

It's a good idea to have one or two people in your organisation (an officer or a manager) who agree to be responsible for the co-ordination of the response to a workplace incident.

This doesn't mean that the person is solely responsible – just that it's helpful to have one person to co-ordinate the response so that the incident can be dealt with appropriately. That person should be aware of the responsibilities of the organisation under the WA WHS laws, including notification and preservation requirements as outlined below.

When will an incident be reportable?

While all workplace incidents should be recorded by all community organisations no matter how large or small, there are particular work health and safety obligations on community organisation employers (under WA OSH laws) and on community organisations as PCBUs (under WA WHS laws) for the reporting of incidents which result in death, serious injury or illness, or a dangerous incident.

The immediate reporting requirement

Under WA WHS laws, a PCBU must notify WorkSafe WA immediately after they become aware of a notifiable incident arising out of the conduct of the business or undertaking.

A notifiable incident means:

- the death of a person
- a serious injury or illness of a person. This includes injury or illness requiring the person to:
 - have immediate treatment as an in-patient in a hospital
 - have immediate treatment for amputation, serious head injury, serious eye injury, serious burn, separation of skin from tissue (ie. degloving or scalping), spinal injury, loss of a bodily function, or serious lacerations
 - have medical treatment within 48 hours of exposure to a substance
 - (if it occurs in a remote location), be transferred urgently to a medical facility for treatment, or
 - (in the opinion of a medical practitioner) the person is likely to be prevented from performing their normal work for at least 10 days
- a dangerous incident. This includes an incident that exposes a worker or any other person to a serious risk to their health and safety from an immediate or imminent exposure to:
 - an uncontrolled escape, spillage or leakage of a substance
 - an uncontrolled implosion, explosion or fire
 - an uncontrolled escape of gas or steam
 - an uncontrolled escape of a pressurised substance
 - electric shock
 - the fall or release from a height of any plant, substance or thing



- the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with WHS Regulations
- the collapse or partial collapse of a structure
- the collapse or failure of an excavation or of any shoring supporting an excavation
- the inrush of water, mud or gas in workings, in an underground excavation or tunnel, or
- any other event prescribed by the OSH/WHS Regulations

Also refer to [SafeWork Australia's guidelines on incident reporting](#).

The notification procedure

If you believe that a notifiable incident has occurred in the workplace, your organisation should, after taking necessary steps to provide medical assistance and make the site safe (or while taking these steps if possible), immediately:

- notify WorkSafe WA of the notifiable incident, and
- seek legal advice

Any delay in reporting a notifiable incident could mean that your organisation is in breach of the WA WHS laws.

It's advisable in the case of a serious incident to obtain legal advice as early as possible to assist with the investigation and complying with your obligations.

How to make a notification about a notifiable incident

A notifiable incident must be notified to WorkSafe WA by the fastest possible means. The notification must be given by telephone or in writing (including email or fax).

If notification is given by telephone, the person giving the notice must:

- give the details of the incident requested by WorkSafe WA, and
- if required by WorkSafe WA, give a written notice of the incident within 48 hours

Preserving the incident site

Notifiable incident sites must be preserved to allow inspection of the site and a full investigation (if required). If a notifiable incident does occur in your organisation, you must ensure (so far as is reasonably practicable) that the site is not disturbed until a WorkSafe WA inspector arrives at the workplace, unless you have been directed otherwise by the inspector.

There are exceptions that allow a site to be disturbed, including where disturbance is required:

- to assist an injured person
- to remove a deceased person
- to make the site safe or to minimise the risk of a further notifiable incident
- to facilitate any police investigation, or
- in accordance with the authorisation of the regulator

The requirement to preserve a site only applies to the immediate area where the incident occurred and not the whole of the workplace. If you are unsure whether you are allowed to enter the incident site, or the extent to which you can disturb the location, you should contact WorkSafe WA to discuss your concerns.

Keeping records

It's important to maintain records of all workplace incidents, whether notifiable incidents or not, and no matter how serious they appear to be at the time.

In addition, the WA WHS laws require a PCBU to keep a record of each notifiable incident for at least five years from the day the notice of the incident is given to WorkSafe WA. There are penalties for failing to keep these records.



These records should include information such as:

- the employee's name and job title
- when, where and how the injury occurred
- the nature of the injury or illness and what parts of the employee's body were affected
- any witnesses to the injury or illness, and
- the date the employee notified the employer

Investigating and preventing reoccurrences

Following an incident, community organisations should investigate the circumstances of the incident.

Notes should be recorded and witness accounts should be taken to provide the organisation with a clear picture of how and why the incident occurred. Assistance and advice should be sought from the community organisation's lawyers in relation to the process.

Under WA WHS laws, a PCBU is required to consult with workers about the identification of any risks and possible resolution of any health and safety issues. In the context of an investigation, organisations should work with workers and volunteers to put measures in place (both remedial and precautionary) to ensure that a similar incident does not occur in the future.

These health and safety systems, including any plans to prevent incident occurrence, should be regularly reviewed and updated by the community organisation.



Caution

There are significant penalties for organisations that fail to comply with obligations regarding notifiable incidents under the WHS Act.



Tip

Include notices around your workplace about incident procedures and who to contact when an incident occurs. Your organisation should hold regular training for staff and managers on the incident response process.



Part 6

Entry and inspection powers of
WorkSafe WA

Entry and inspection powers of WorkSafe WA

WorkSafe WA can appoint inspectors to help make sure organisations are complying with WA WHS laws. Inspectors have various powers of entry into and inspection of workplaces under these laws, and are able to issue notices requiring organisations and people to take particular actions.

Power of WorkSafe WA inspectors to enter a workplace

Power to enter a workplace

A WorkSafe WA inspector may enter a workplace at any time in order to perform their functions. They are allowed to do so with or without the consent of the organisation, and are not required to provide prior notice.

Immediately on entering a workplace, a WorkSafe WA inspector must take all reasonable steps to notify the organisation, the person with management or control of the workplace, and any health and safety representatives of their presence and purpose. This is not required if the notice would defeat the purpose of entry or cause an unreasonable delay.

General powers on entry

Once inside a workplace, a WorkSafe WA inspector is permitted to:

- inspect, examine and make inquiries at the workplace
- inspect and examine anything (including a document) at the workplace
- bring to the workplace and use any equipment or materials that may be required
- take measurements, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings)
- take and remove for analysis, testing or examination a sample of any substance or thing without paying for it
- require a person at the workplace to give the inspector reasonable help to exercise these powers
- exercise any compliance power or other power that is reasonably necessary to be exercised by the inspector for the purpose of the WA WHS laws

An inspector may be accompanied by an assistant, such as an interpreter, to assist the inspector if the inspector considers the assistance necessary.



Note

Before requiring a person to answer a question or provide information or document, the inspector must warn the person that protection from self-incrimination is not a 'reasonable excuse' to refuse to answer the questions or provide the information.

However, the answers provided can't be used as evidence against a person in civil or criminal proceedings, except in relation to proceedings concerning the provision of false or misleading information.



WorkSafe WA Notices

WorkSafe WA inspectors can issue three types of notices:

- Improvement Notices
- Prohibition Notices, and
- Non-disturbance Notices

If you receive a notice, you should take it very seriously as there are significant penalties imposed for failing to comply with notices.



Tip

Your organisation may wish to speak to a lawyer if it receives an Improvement, Prohibition or Non-disturbance Notice.

Improvement Notice

An inspector can issue an Improvement Notice to an organisation if the inspector reasonably believes that the organisation is contravening the WA WHS laws (or has contravened the WA WHS laws) and it is likely the contravention will continue or be repeated.

An Improvement Notice may contain directions or recommendations on how to remedy the relevant contravention, prevent a likely contravention or remedy the things or operations causing the contravention or likely contravention.

There are penalties for failing to comply with an Improvement Notice.

Prohibition Notice

An inspector can issue a Prohibition Notice if the inspector reasonably believes that an activity is or may occur at a workplace that involves or will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard. A Prohibition Notice prevents a duty holder from carrying on the activity or carrying on the activity in a specific way, until the alleged immediate risk is remedied.

The direction may initially be given as an oral warning, but must be confirmed by a written Prohibition Notice as soon as practicable.

A Prohibition Notice must state the grounds for the notice and activity the inspector believes is or may involve risk. It may also include directions on the measures that should be taken to remedy the risk.

Penalties apply to individuals and a body corporate for failing to comply with a Prohibition Notice.

Non-disturbance Notices

An inspector can issue a Non-disturbance Notice to a person with management or control of a workplace if they reasonably believe that it's necessary to do so to facilitate the exercise of their compliance powers.

A Non-disturbance Notice may require the person to preserve the site (including any plant, substance, structure or thing associated with the site) where the notifiable incident has occurred for a specified period of time, or prevent the disturbance of a particular site (including the operation of plant) in other circumstances for a specified period, if reasonable in the circumstances. The period of time that the Non-disturbance Notice may preserve the site or prevent disturbance is limited to no more than seven days.

However, a Non-disturbance Notice does not prevent actions:

- to assist injured persons
- to remove deceased persons
- essential to make the site safe or prevent further incident
- associated with police investigations, or



- that have been permitted by an inspector

Penalties apply to individuals and body corporates for, failing, or refusing to, comply with a Non-disturbance Notice, without a reasonable excuse. The individual or body corporate has the evidential burden of showing they had a reasonable excuse.

A person who has been issued a notice must, as soon as possible, display a copy of the notice in a prominent place at or near the workplace. Penalties apply for failing to do this.

Seeking review of WorkSafe WA decisions

Your organisation can seek a review of certain decisions of WorkSafe WA, including decisions to issue an Improvement, Prohibition or Non-disturbance Notice. There are both internal review mechanisms and mechanisms to apply to the Work Health and Safety Tribunal for review of a decision.

You can apply to WorkSafe WA for an internal review of the notice within 14 days after the day on which the decision first came to the organisation's notice. However, for Improvement Notices, the appeal must be lodged within the period specified in the notice for compliance with the notice or 14 days (whichever is lesser).

The internal reviewer must review the notice and make a decision within 14 days after the application for review is received (additional time is allowed if further information is required by the reviewer). The decision may:

- confirm or vary the reviewable decision, or
- set aside the reviewable decision and substitute another decision that the internal review considers appropriate

The decision must be provided in writing and be accompanied by reasons for the decision. If the decision is not varied or set aside within the 14 day period, the decision is taken to have been confirmed by the internal review.

An organisation can seek an external review of a reviewable decision externally through the Work Health and Safety Tribunal as an alternative review, or can seek external review of a decision made on internal review. The application must be made within 14 days after the day on which the decision first came to the organisation's notice.

If your organisation is unhappy with any WorkSafe WA decision, you should seek independent legal advice immediately to discuss your review rights.



For more information, see [WorkSafe WA's guidelines](#) on requesting a review of a decision.

