

# Occupational safety and health laws

This guide sets out the basic understandings of occupational safety and health laws for community organisations in Western Australia

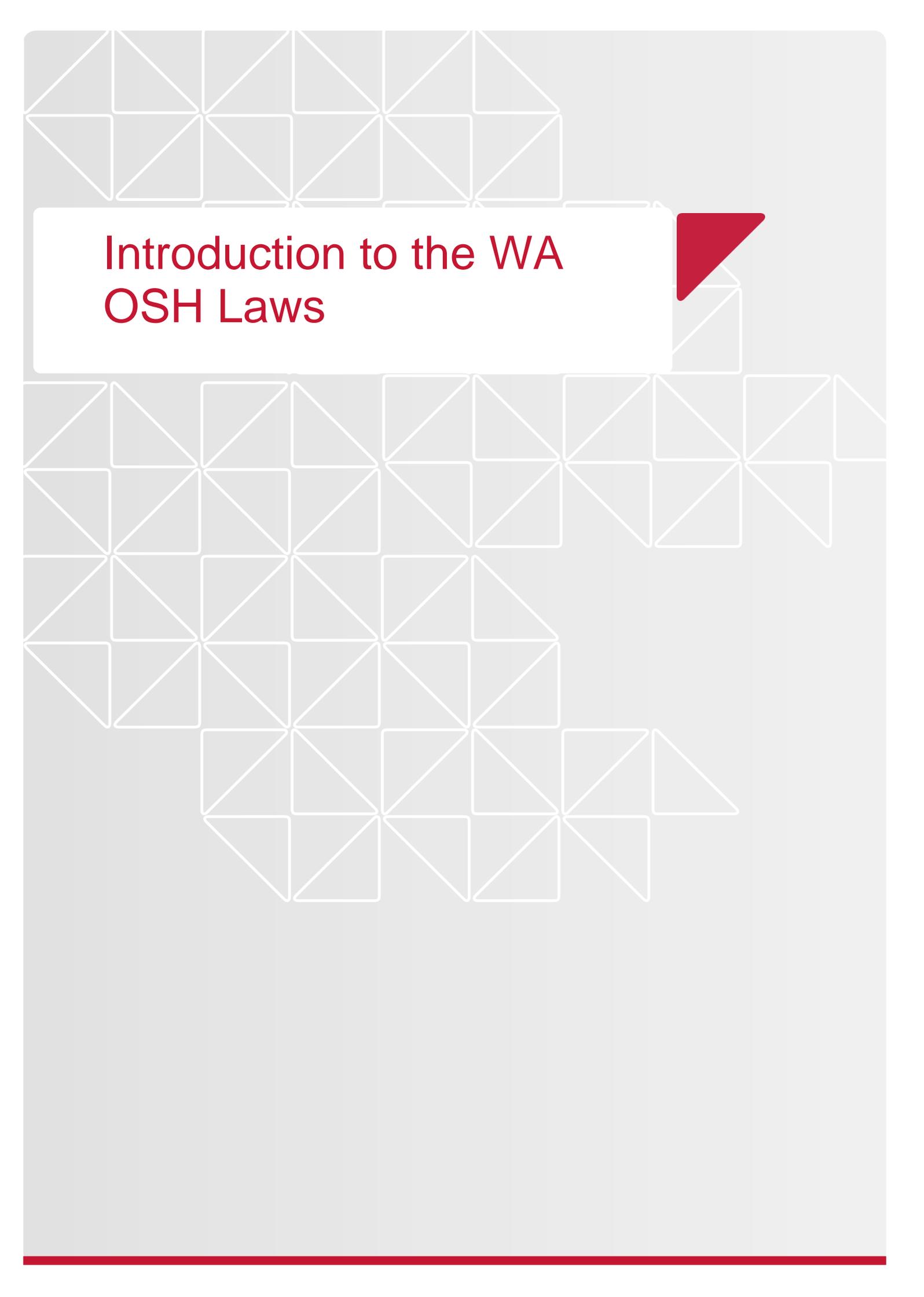
November 2015

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# Introduction to the WA OSH Laws



# Introduction to the WA OSH Laws

In Western Australia (WA), Occupational Safety and Health (OSH) 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 OSH compliance.

In WA, OSH is principally regulated by the *Occupational Safety and Health Act 1984* (WA) and the *Occupational Safety and Health Regulations 1996* (WA) (WA OSH laws).

WA OSH 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 are different laws in other States and Territories and your organisation will need to check these other obligations if it operates outside of Western Australia. Legislation containing safety laws specific to certain industries and activities also apply in Western Australia, for example in relation to mining and resources, rail safety, chain of responsibility for road transport, and dangerous goods.

This guide focuses on the legal duties and obligations that community organisations and the directors and officers of community organisations have under WA OSH Laws. It does not cover all of the obligations and responsibilities that community organisations and officers have. It also does not cover the obligations of workers and other persons (for example, members of community organisations) under WA OSH Laws.

## CAUTION



### Current WA OSH law

All Australian states/territories except for Western Australia and Victoria have 'harmonised' their OSH law by adopting 'model' legislation. Organisations will need to be careful to understand the different regimes, and will need to comply with the applicable OSH Law in each state/territory they operate in.

### Proposed amendments to WA OSH Law

WA may adopt the 'model' OSH laws in the future. A bill, the [Work Health and Safety Bill 2014](#) (WA) is currently before Parliament.

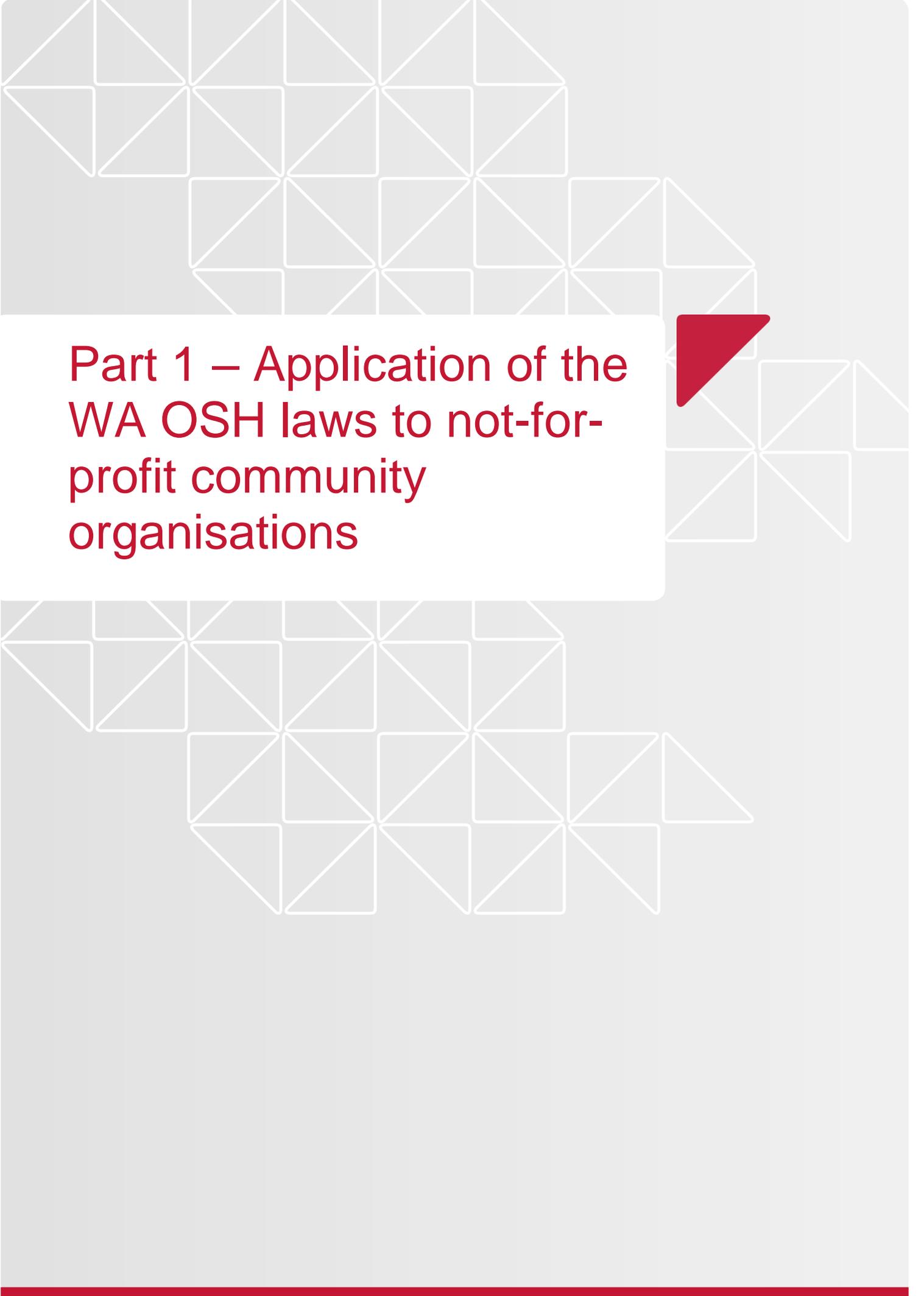
If WA does adopt the model laws, WA's law will be 'harmonised' with the law in all other states except Victoria. This means it will be easier for organisations operating across several states to comply with the law.

Your organisation should remain aware of these proposed changes and the status of the Bill to ensure that you are able to comply with the new laws if and when they pass.

## NOTE



The information contained in this document is a guide only, and is not legal advice. If you or your organisation has a legal problem you should talk to a lawyer before making a decision about what to do. The information in this guide is written for people and organisations who fall under the jurisdiction of the laws that apply in QLD, Australia and is current at 30 November 2015.



**Part 1 – Application of the  
WA OSH laws to not-for-  
profit community  
organisations**

# Part 1 - Application of the WA OSH Laws to not-for profit community organisations

**The WA OSH laws will apply to all community organisations that have employees, and may also apply to community organisations that are completely volunteer-based where they conduct work or activities at a ‘workplace’.**

To work out whether the WA OSH laws apply to your community organisation, you will need to consider whether your organisation:

- is an ‘employer’, and/or
- is an organisation operating in, or operating its own ‘workplace’.

If either of the above apply to your organisation, the WA OSH Laws are likely to apply.

Each question is dealt with separately below.

## CAUTION

Alongside the duties imposed on employers under WA OSH laws, there are also common law duties to provide employees with a safe workplace. The common law is the law that has been developed by the courts when deciding cases over time. Under the common law, all employers have a legal duty to take reasonable care to avoid exposing employees (and others who might be exposed to risks from the business) to reasonably foreseeable risks of injury. These obligations are not exhaustively covered in this guide, and independent advice should be sought in relation to a question about these common law duties.

## Is our community organisation an ‘employer’?

The WA OSH laws apply to all ‘employers’ in WA, whether they are not-for-profit or for-profit. Your community organisation will be considered to be an ‘employer’ if it:

- employs one or more people under a contract of employment (ie. has at least one ‘employee’), or
- employs one or more apprentices under a contract of training (ie. has at least one ‘apprentice’).

In many cases, the OSH laws deem consultants, contractors, subcontractors and labour hire workers that are engaged to perform work in your business to be your employees, extending the scope of the organisations that can be considered an ‘employer’ under the OSH laws. If your organisation has no employees, but does use contractors, subcontractors or labour hire workers, it may need to seek legal advice about whether OSH laws apply.

Your organisation will not be an employer if it operates using only assistance provided by volunteers who do not have a contract of employment or training, or a contract as an independent contractor

If your community organisation is an ‘employer’, you have a number of obligations to meet under the Western Australian OSH laws. These duties are discussed in Part 2 of this guide.

## TIP

For the purpose of determining whether a community organisation is an 'employer':

- It is not relevant that a community organisation relies heavily on volunteers - if an organisation employs even one person (e.g. a part-time bookkeeper), it may be considered an 'employer' under the OSH Act and will need to comply with all of the 'employer duties'.
- It is not relevant if your organisation is an unincorporated entity - the OSH Act also applies to unincorporated bodies who are 'employers', and a breach of the OSH laws could mean a committee member is personally liable.

## Does our community organisation have, to any extent, control of a workplace?

If your community organisation is not an 'employer', your organisation may still be required to comply with Western Australian OSH laws if it has, 'to any extent, control of a workplace'.

Under WA OSH laws, a 'workplace' is broadly defined as:

***"a place, whether or not an aircraft, ship, vehicle, building or other structure, where 'employees' or 'self-employed persons' work."***

If your community organisation has, to any extent, control of a place where employees or self-employed persons work, then your organisation may owe a duty of care to ensure that the workplace (as well as access to and egress (exit) from the workplace) is safe and without risks to the safety and health of people in the vicinity. The various duties owed within a workplace are listed below in Part 2 of this guide.

Even if your community organisation has no employees, is completely volunteer-based and does not engage contractors or consultants, it may still be taken to have 'control' of a workplace. If the place at which the community organisation carries out its work has contractors or other self-employed persons attending the workplace from time-to-time, then this place may be a 'workplace' for the purposes of the Western Australian OSH laws, and your organisation may owe a duty of care in relation to that workplace.

## CAUTION

It does not matter that your organisation does not employ contractors/self-employed persons attending the workplace. All that is required for your organisation to owe duties under the WA OSH Laws is for the organisation to have a degree of control over the place where the contractors/self-employed persons carry out work.

### EXAMPLE

A community centre or community hub may have a range of organisations that operate within the same building. Some of the community organisations operating out of the centre may be entirely volunteer-based, whereas others have employees. If this is the case, a volunteer-based organisation with, to any extent, control of the centre will still be required to comply with the 'workplace' duties in the OSH Act.



## What if our organisation does not employ people and does not have, to any extent, control of a workplace?

If your community organisation is not an employer and the people involved in your organisation have no contact with a 'workplace' that your community organisation has, to any extent, control of, the Western Australian OSH laws are unlikely to apply.

### EXAMPLE

An entirely volunteer-run group meets in each other's homes regularly to discuss their organisation's progress and plan for the future. Because there are no employees in the organisation and no employees are present in the various homes, Western Australian OSH laws will not apply.

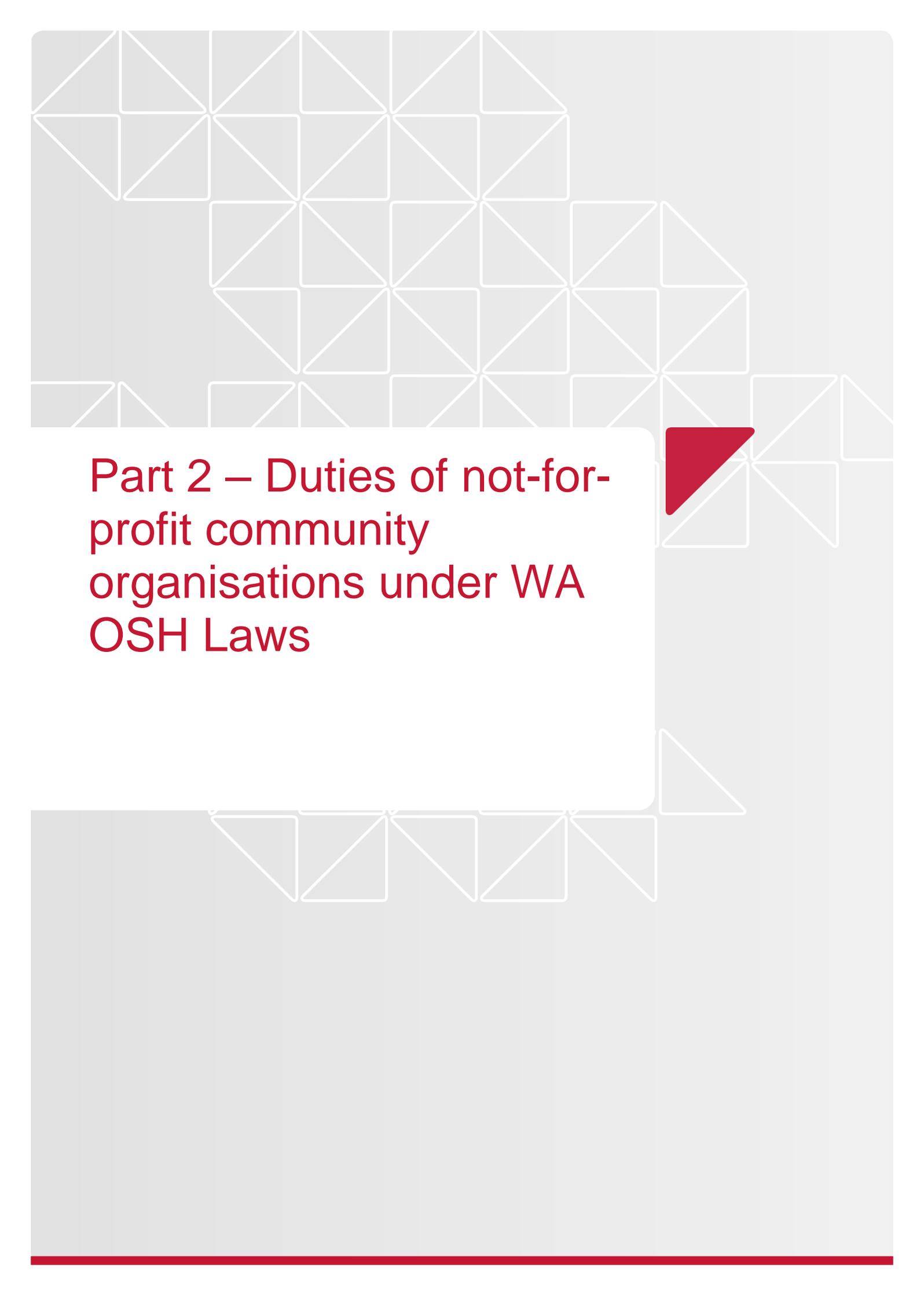


However, there may be other laws which are applicable to your specific circumstances and which may create obligations and/or duties of care. If you are unsure as to whether the WA OSH laws apply to your organisation, or what laws or duties apply to your community organisation outside of the WA OSH laws, you should seek independent legal advice.

### CAUTION

If your community organisation is not an employer, and does not operate in a workplace, this does not mean you can ignore health and safety altogether! Your organisation may not have to comply with WA OSH laws, but will still need to take reasonable care to ensure that volunteers and members of the public who come into contact with the organisation and its activities are safe.





**Part 2 – Duties of not-for-profit community organisations under WA OSH Laws**

## Part 2 – Duties of not-for-profit community organisations under WA OSH Laws

The WA OSH Laws impose a number of separate duties on organisations, which are intended to protect the health and safety of workers.

### The nature of OSH duties

Where a duty is imposed on an organisation under the WA OSH Laws to ensure health and safety (where an organisation is an 'employer' or controls a workplace, this will require the organisation to eliminate (or minimise) risks to health and safety so far as is reasonably practicable.

This section outlines the key duties under OSH Laws and who they apply to, and what the duties require community organisations to do in order to meet their obligations.

### What are the key OSH duties?

Once you have worked out whether your community organisation is an 'employer', or has 'to any extent, control of a workplace', the following table provides a list of key responsibilities that community organisations have under WA OSH laws, depending on whether they are an employer, and/or control a workplace.

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

Responsibility under Western Australian OSH laws	Section of Act	Organisation with at least one 'employee'	Organisation that has, 'to any extent, control of a workplace'
Provide and maintain a working environment in which the employees are not exposed to hazards	s.19	✓	
Not adversely affect the safety and health of other persons	s.21	✓	
Ensure the workplace (including all entrances and exits) does not expose people to hazards	s.22		✓

If your community organisation designs, manufactures, imports or supplies plant for use at a workplace, ensure that the design and construction of the plant is such that persons who properly install, maintain or use the plant are not, in doing so, exposed to hazards	s.23	✓	
Consult with safety and health representatives on OSH issues	s.19	✓	
Notify WorkSafe WA about injuries, diseases and deaths	s.231	✓	
On request, establish a health and safety committee	s.38	✓	
Attempt to resolve OSH issues with employees (or the safety and health representative) within a reasonable time frame	s.24	✓	
Not to discriminate against those people who are involved in health and safety matters	ss.35A, 35B, 56	✓	
On request, produce OSH documentation and answer questions put to them by an inspector	ss. 43, 47	✓	✓
Not to intentionally obstruct, mislead or intimidate an inspector who is performing his or her functions or powers	s.47	✓	✓

### CAUTION

There are also further duties and obligations set out in the OSH regulations that will be specific to certain employers and workplaces. These extra duties are not included in this Guide.



# Specific information on key duties owed under the OSH Act

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This part provides more information about the key duties under Western Australian OSH laws.

As you read more detail about each of the duties, you will notice that many of these responsibilities require a community organisation to ensure 'that certain risks or hazards are eliminated or reduced so far as is 'reasonably practicable'. To find out more about what '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.

## Duty to provide and maintain a working environment in which the employees are not exposed to hazards (s.19)

### Who must comply with this duty?

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

### What is the duty?

Community organisations that are employers must, so far as is reasonably practicable, provide and maintain a working environment in which the employees are not exposed to hazards. For example, employers must ensure that:

- workplaces, machinery, equipment and systems of work are such that employees (and deemed employees) are not exposed to hazards
- there is appropriate information, instruction, training and supervision for employees
- they consult with safety and health representatives (if any) and other employees regarding OSH
- there is adequate personal protective clothing and equipment to protect employees against any hazards, and
- the use and transportation of machinery, equipment and substances is carried out in such a way that the employees are not exposed to hazards.

### Who is the duty owed to?

A community organisation employer owes this duty to:

- its employees
- independent contractors or consultants engaged by the organisation (as well as any employees of those independent contractors or consultants), and
- labour hire workers.

This duty does not specifically apply to volunteers, but employers do owe a similar duty to volunteers and members of the public that are at the workplace or who are affected by their activities.

# Duty not to adversely affect the safety and health of other persons (s.21)

## Who must comply with this duty?

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

## What is the duty?

Community organisations who are employers must, so far as reasonably practicable, ensure that the safety and health of other persons are not adversely affected as a result of work undertaken by the employer or any employee of the employer. This will include:

- any activity which is done in the course of carrying on the organisation's activities (e.g. holding a fun day at a community kindergarten)
- when performing work or providing services at one or more places (regardless of whether these are carried on within a defined physical boundary), and
- any activity which is ancillary to the organisation's operations (e.g. contractors cleaning a premise after hours).

## Who is the duty owed to?

Employers owe this duty to everyone, not just employees. The duty therefore extends to:

- volunteers
- independent contractors or consultants (and the employees of contractors or consultants, and
- any other members of the public that might be affected by the organisation's activities.

### 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 the set up of a barbeque. They recklessly cause a gas leak which results in a minor explosion. The employee, volunteer and a passer-by are injured. As the charity is an employer, it will owe a duty to all three injured parties (the employee under section 19 of the OSH Act and the volunteer and passer-by under section 21 of the OSH Act).



### EXAMPLE

A council allows volunteer members of a cricket club to remove cement render and sheeting from the walls of its premises. Members of the club are exposed to asbestos in the process. Prior to conducting the work, the council fails to make enquiries as to the presence of asbestos in the walls of its buildings. The council has failed to ensure that people (volunteer members of a community organisation) are not adversely affected by a hazard arising from the work it is undertaking.



## Duty to ensure that persons at the workplace are not exposed to hazards (s.22)

### Who must comply with this duty?

All community organisations that have, to any extent, control of a workplace must comply with this duty.

### What is the duty?

This duty requires community organisations to ensure, as far as is reasonably practicable, that the workplace, and the means of entering and leaving it, are such that persons are not exposed to hazards. This duty applies to any community organisation that has, to any extent, control of the workplace, which means that your organisation may be responsible to ensure that any place used by the organisation to conduct its affairs is safe, even when it is not the owner of the premises. Accordingly, a number of parties who jointly have, to any extent, control of a premises might owe concurrent duties under this section.

### Who is the duty owed to?

This duty is not limited to people employed at the workplace, it also extends to any person who is at the workplace or uses the entrance to and exit from the premises. This could include volunteers, clients, customers, service providers, contractors and others who enter the workplace.

#### EXAMPLE

A community organisation is temporarily leasing office space. The organisation has been made aware that the front doormat has been damaged and protrudes from the ground, however fails to remove the tripping hazard. A maintenance person arrives to fix the air-conditioning unit and trips on the mat, causing injury. The community organisation may be liable under s.22 as it had control of the workplace and the means of entering it at the time, even though it does not own the premises.



## Duties of manufacturers etc. in respect of plant, structures and substances (s.23)

### Who must comply with these duties?

Any community organisation that:

- designs, manufactures, imports, supplies, erects or installs any plant (e.g. machinery, equipment, appliances, implements or tools) used in a workplace
- designs or constructs structures or buildings for use at a workplace, and
- manufactures, imports or supplies any substance for use at a workplace.

### What are the duties?

If you think your community organisation may be subject to these duties, you should seek legal advice about your obligations under the WA OSH laws as they are complex duties that require expert advice. It is not anticipated however that many not-for-profit organisations will fall within the scope of these

duties, as they are intended to apply to specialised businesses involved in the design, supply, installation and maintenance of plant and equipment or substances.

### Who is the duty owed to?

These duties are broad and owed to all people who might use or be affected by the design, manufacturing, installation or supply of plant, substances or materials.

## Duty to consult with safety and health representatives on OSH issues (s.19)

### Who must comply with this duty?

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

### What is the duty?

Community organisations who are employers have a duty to consult with safety and health representatives (if any) and other employees regarding occupational safety and health and the workplace.

Consulting with employees may require the employer to provide employees with information about certain safety and health related matters. It would also mean giving the employees a reasonable opportunity to express their views about matters and taking those views into account.

In some circumstances, it may be necessary to arrange members of designated work groups to elect a safety and health representative from among the group. The views of employees can be effectively communicated to an employer through a health and safety representative.

### Who is the duty owed to?

Employers must consult with:

- their employees
- contractors (and persons engaged by contractors), and
- labour hire workers

This does not extend to volunteers, however it is best practice for community organisations to include such persons in these consultations.

#### TIP

While the duty to consult is not owed to volunteers, it is a good idea to involve all people involved in a community organisation in safety and health work practices. Volunteers will often have some great ideas about how to make the workplace safer, to reduce the risk of injuries.



## Duties about notifying of deaths, injuries and diseases (s.23I)

### Who must comply with this duty?

All community organisations that are employers must comply with this duty. Even where there is a manager or supervisor on duty, the ultimate responsibility to report incidents will rest with the employer (who is likely to be the community organisation itself).

### What is the duty?

This duty creates an obligation on employers to immediately notify WorkSafe WA of deaths, and some injuries or diseases at the workplace. For further information on this duty, including the types of incidents that will require notification and the process for notifying WorkSafe WA, please see Part 5 of this guide.

### Who is the duty owed to?

This duty is owed to all employees, volunteers and members of the general public who are seriously injured by a workplace incident.



**Part 3 - Who may be  
legally responsible under  
WA OSH laws?**



## Part 3 - Who may be legally responsible under WA OSH laws?

The short answer to this question is that it will depend on the circumstances, however there is a chance that your organisation, its officers and employees could be liable for failure to comply with WA OSH Laws. WorkSafe WA is able to prosecute the organisation, its employees, or in some circumstances, both of these.

### Liability of the community organisation itself

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#### 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 an employer or 'person' for the purposes of the WA OSH laws and can be found guilty of breaches of the OSH Act. This means that an incorporated organisation as a whole can be held responsible for breaches of the WA OSH Laws by its officers, employees or agents, where those officers, employees or agents are performing tasks within the scope of their authority.

The WA OSH regulator, WorkSafe WA may prosecute not-for-profit organisations in the same way it would commercial enterprises. The maximum penalty that can be imposed is over \$500,000 (although it is likely that lesser fines would be given in most circumstances).

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

#### Unincorporated community organisations

If your community organisation is unincorporated, it is not recognised by law and cannot itself be prosecuted for breaches of the WA OSH laws.

However, as with an incorporated organisation, the officers, employees or individual members of an unincorporated organisation can be held personally liable for a breach, and could potentially incur penalties where there has been a serious failure to take reasonable care to prevent or report workplace injuries.

### Prosecution of officers and employees of a community organisation

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Under certain circumstances, WorkSafe WA can also look to prosecute the officers and employees of a community organisation when there has been a breach of the WA OSH laws.

## Liability of officers

### who is an officer?

An 'officer' of a community organisation may include:

- a director of the organisation
- a manager, or
- the organisation's secretary

### when can officers be personally liable?

If an incorporated community organisation is found guilty of an offence under the WA OSH Laws, an officer of that community organisation may also be found guilty of the offence if it is proven that the offence:

- occurred with the consent of the officer (whether the consent is express approval or just intentionally allowing something to happen by not saying or doing anything), or
- was attributable to any neglect by the officer.

## Liability of employees

### Who is an employee?

Under WA OSH law, an employee of a community organisation (whether incorporated or unincorporated) is a person by whom work is done under a contract of employment or an apprentice.

### When can employees be personally liable?

An employee of a community organisation (whether incorporated or unincorporated), may be found personally liable for a breach of the WA OSH laws if they fail to take reasonable care:

- to ensure their own safety and health at work, and
- to avoid adversely affecting the safety or health of any other person through any act or omission at work.

### What is a 'failure to take reasonable care'?

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

- fails to comply with instructions given by the organisation regarding the safety and health of the employee 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 employee's work.

## TIP

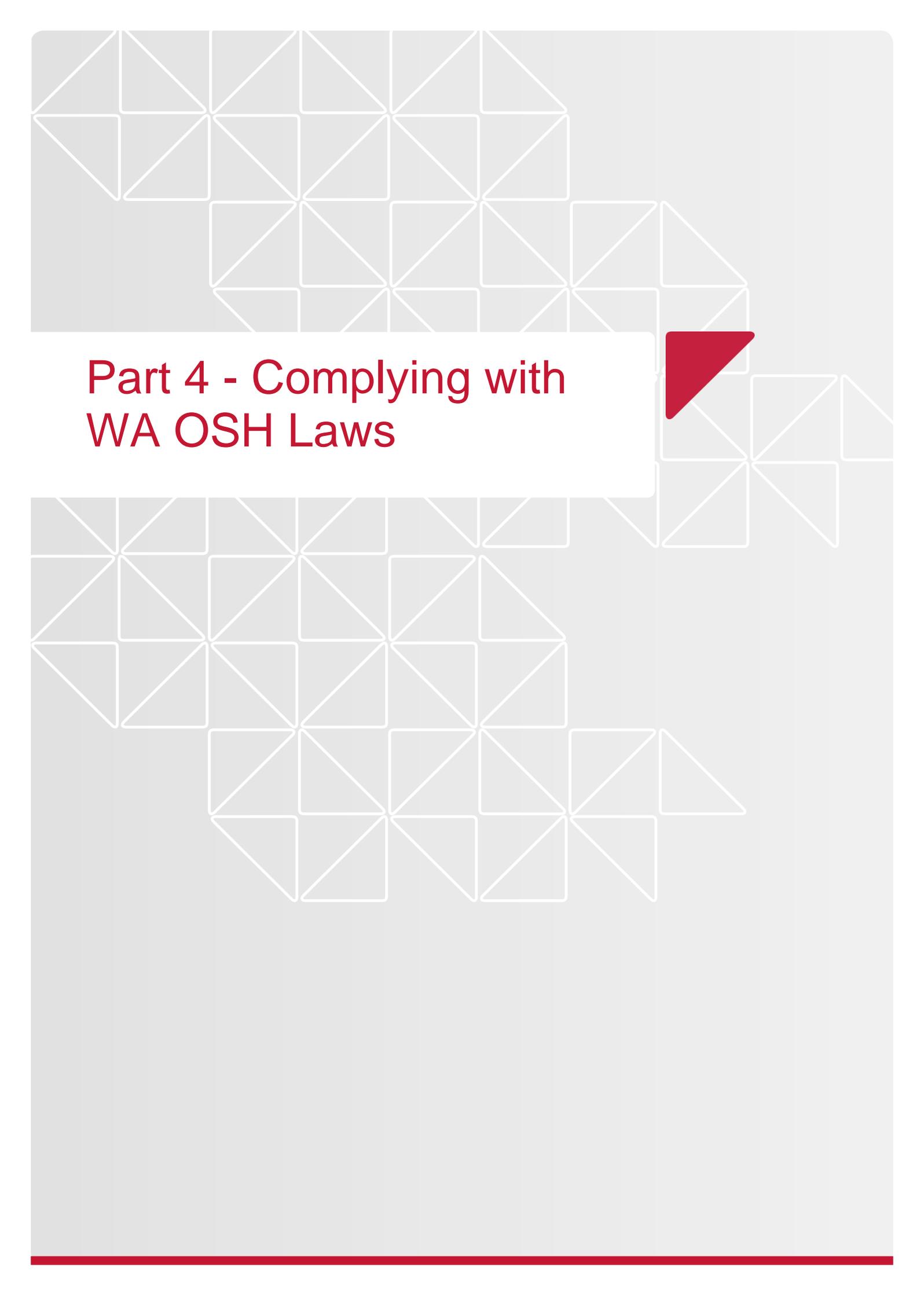
If you take on a position with a community organisation, you may have responsibilities under the WA OSH Laws and will potentially be liable if something goes wrong. Therefore, it is a good idea to make sure you are aware of your organisation's obligations under the WA OSH Laws and the measures that are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

In many cases, a breach of a duty in the WA OSH Laws will only be found when a community organisation (and its employees) did not take reasonably practicable steps to eliminate or reduce a risk. You should ensure that OSH 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

Volunteers of an organisation will not be held liable for breaches of the WA OSH laws for anything done by them in a volunteer capacity, even where they fail to take reasonable care. They must however act in good faith in that capacity at all times to avoid potential prosecution.

If your community organisation is made up of members who are volunteers, then the WA OSH Laws will generally not hold those volunteers personally liable for breaches of the organisation's duties as an employer. However, as noted earlier in this Guide, volunteers in their personal capacity still owe duties under WA OSH Laws where they are managing or controlling the workplace at the time of an incident. There will also be other duties under common law that will require a standard of care to be met in these circumstances.



## Part 4 - Complying with WA OSH Laws

## Part 4 – Complying with WA OSH Laws

Many of the duties within WA OSH Laws require that employers do as much as is 'reasonably practicable' to ensure they have met their obligations to provide a safe and healthy working environment.

The meaning of 'reasonably practicable' is considered in detail in this section.

### What does 'reasonably practicable' mean?

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You may have noticed that many of the duties within the Western Australian OSH laws require that employers do what is 'reasonably practicable' in the circumstances to ensure they have met their obligations to provide a safe and healthy working environment.

This standard of care requires the employer to, so far as is practicable, provide and maintain a safe working environment in which the employees are not exposed to hazards. If something is practicable, it is 'reasonably practicable', taking into account:

- the severity of any injury or harm to health that may occur
- the degree of risk of that injury or harm occurring
- how much is known about the risk of injury or harm and the ways of removing or controlling the risk, and
- the availability, suitability and cost of the means of removing or controlling the risk.

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.

In order to meet the requisite standard of care and control over OSH risks, it is recommended that duty-holders undertake the following four stage process to:

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, and
4. implement those control measures and monitor and review those control measures.

## TIP

The cost of eliminating or minimising risks may be a relevant factor for many community organisations with limited resources. However, if there is an incident in the workplace, it is not a defence to a breach of the WA OSH Laws to claim “We are a not-for-profit group and we couldn’t afford to reduce that risk.”

To reduce your chance of being found guilty for a breach of the WA OSH Laws, your organisation needs to be able to show (documented proof is best) that it has identified and considered risks and has taken practical steps within its resources to eliminate or reduce those risks. Often these don’t need to be expensive measures. For example, if your volunteers are lifting items, you are not obliged to buy an expensive hydraulic lifting machine, but instead you could train volunteers in safe lifting practices and post reminder notices around the premises to comply with the same OSH duties.



## RELATED RESOURCES

Your community organisation may wish to review its approach to risk management, as well as review the appropriate insurance options. Not-for-profit Law has produced a separate guide to risk management and insurance which is located at [www.nfplaw.org.au/insurance](http://www.nfplaw.org.au/insurance)





## Part 5 - Responding to a workplace incident or complaint

## Part 5 – Responding to a workplace incident or complaint.

There is no ‘one size fits all’ response to an OSH incident or complaint. The best and most appropriate response will largely depend on the nature of the incident, however there are some incidents that require immediate responses and notification to WorkSafe WA under WA OSH 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 an OSH incident occurs

#### Overview of steps an organisation should take when responding to a OSH incident

- ✓ **Assess the seriousness of the incident.** Immediately after an incident occurs, the organisation should assess the seriousness of the incident and find out if an injury has occurred to any person.
- ✓ **Provide appropriate medical treatment.** If necessary in the circumstances, medical treatment should be provided to any person injured in the incident.
- ✓ **Consider if there is a requirement to report the incident.** If necessary, the incident should be reported to WorkSafe WA. The circumstances in which notification to WorkSafe WA is required and the notification process are outlined in more detail on the next page of this guide.
- ✓ **Maintain records of the incident.** There is an obligation to maintain records of notifiable incidents (discussed in more detail below), but it is best practice to maintain records of all incidents, whether notifiable or not.
- ✓ **Investigate and prevent re-occurrences.** Following an incident, community organisation employers 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 is 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 does not mean that the person is solely responsible – just that it is 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 OSH 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 OSH obligations on community organisations as employers for the reporting of incidents which result in death or serious injury.

## The immediate reporting requirement

An employer must notify WorkSafe WA immediately after they become aware of notifiable incidents.

### Notifiable incidents

An incident will be a notifiable incident if it results in:

- ✓ **the death of a person**
- ✓ **a notifiable injury occurring** (discussed below), or
- ✓ **a notifiable disease being contracted in the course of work** (discussed below)

### NOTE

A 'workplace' will include any place, whether or not a building, where employees work. This could include sporting fields, vehicles and any other place that employees of your community organisation undertake their duties. Serious incidents occurring in these places may require notification to WorkSafe WA by your organisation.



## Notifiable injuries

WorkSafe WA requires notification of certain kinds of injury. These are:

- a fracture of the skull, spine or pelvis
- a fracture of any bone in the arm (other than in the wrist or hand)
- a fracture of any bone in the leg (other than in the ankle or foot)
- an amputation of an arm, hand, finger, leg, foot or toe
- the loss of sight of an eye, or
- any other injury which, in the opinion of a medical practitioner, is likely to prevent an employee from working for 10 days.

## Notifiable diseases

WorkSafe WA requires notification of certain diseases (set out in column one of the below table) if contracted in the course of certain kinds of work (set out in column two of the below table).

DISEASE	WORK
Infectious diseases: <ul style="list-style-type: none"> <li>tuberculosis</li> <li>viral hepatitis</li> <li>legionnaires' disease</li> <li>HIV</li> </ul>	Work involving exposure to human blood products, body secretions, excretions or other material which may be a source of infection.
Diseases that can be transmitted from animals to humans: <ul style="list-style-type: none"> <li>Q fever</li> <li>Anthrax</li> <li>Leptospiroses</li> <li>Brucellosis</li> </ul>	Work involving the handling of or contact with animals, animal hides, skins, wool, hair, carcasses or animal waste products.

It is important to remember that an organisation's duty to notify WorkSafe WA of the above injuries or diseases will apply in relation to any person, not just employees. This will therefore include volunteers, or even members of the public.

## The notification procedure

If you believe that a notifiable incident has occurred in the workplace, your organisation should, after taking necessary steps to control or manage the incident (or while taking these steps if possible), immediately:

- notify WorkSafe WA of the notifiable injury, disease or death, and
- seek legal advice.

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

Notifications should be made:

- initially, via telephone, through WorkSafe WA's 24 hour reporting line (1 800 678 198), and
- if required, in writing, by using the relevant notification form.

### RELATED RESOURCES

You can access WorkSafe WA's online notification form [here](#).

The details required for the purpose of notifying WorkSafe WA of an injury are:

- name and business address of the employer
- name, sex and occupation of the employee
- when, where and how the injury occurred
- nature of the injury (or report of death, where applicable), and
- the place to which the employee has been taken.

The details required for the purpose of notifying WorkSafe WA of a disease are:

- name and business address of the employer
- name, sex and occupation of employee
- name of the disease, and
- date of diagnosis of the disease.

## Record keeping

It is important to maintain records of all workplace accidents, dangerous occurrences or injuries, no matter how serious they appear to be at the time.

Such 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.

## Investigate and prevent reoccurrences

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Following an incident, community organisation employers should investigate the circumstances of how the incident occurred in the first place. 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. Assistance and advice should be sought from the community organisation's lawyers in relation to the process.

The WA OSH laws require an employer to consult with employees regarding the identification of any risks and possible resolution of any health and safety issues. In the context of an investigation, employers should work with employees 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.



**Part 6 – Entry and  
inspection powers of  
WorkSafe WA**



## Part 6 – Entry and inspection powers of WorkSafe WA

WorkSafe WA can appoint inspectors to help make sure organisations are complying with WA OSH Laws. Inspectors have various powers of entry into and inspection of workplaces under the Western Australian OSH laws. These powers apply to workplaces that community organisations might occupy, 'control or manage', or conduct work at, and are briefly summarised below.

### Power of WorkSafe WA inspectors to enter a workplace

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#### Power to enter a workplace

A WorkSafe WA inspector may enter a workplace at any time in order to perform his or her functions. Immediately upon entering a workplace, a WorkSafe WA inspector must take all reasonable steps to notify the employer of his or her presence.

#### General powers on entry

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

- bring any equipment or materials that may be required
- conduct any examinations and enquiries that he or she considers necessary
- examine any plant, substance or thing
- provide information to any person
- take and remove samples of any substance or thing without paying for it
- take possession of any plant or thing for further examination or testing
- take photographs and measurements, and make sketches and recordings
- require the production of, examine and take copies of any document
- require that the workplace, or any part of it, be left undisturbed
- interview any person and require that person to answer questions
- require any person to state his or her name and address
- require the employer or any person who works at a workplace to render assistance, and
- exercise any other powers under the Act or regulations.

In carrying out these functions, an inspector is required to act in such a manner as to avoid unduly or unreasonably interfering with any work or work process.

## WorkSafe WA inspector entry notification

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After completing the inspection, the inspector must notify the employer and any relevant safety and health representative of the action taken during the inspection and any further action that will be taken as a result of the inspection.

## WorkSafe WA Improvement or Prohibition Notices

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A WorkSafe WA inspector has the authority to issue an Improvement or Prohibition Notice to an employer if they believe that employer has contravened the WA OSH Laws, or there is a risk of imminent and serious harm to health and safety.



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

### Improvement notice

An Improvement Notice may contain directions as to how to remedy the relevant breach. If your community organisation receives an Improvement Notice, you should take it very seriously. There are penalties for failing to comply with an Improvement Notice, and any directions provided to your community organisation should be followed as soon as possible unless you do not agree with them and wish to seek internal review of the Notice.

### Prohibition notice

A Prohibition Notice prevents a duty holder from, for example, undertaking certain work or operating specified plant until the alleged immediate risk is remedied.

Again, a community organisation should seek to comply with the directions contained in a Prohibition Notice within the prescribed timeframe unless it does not agree with the proposed measures and wishes to seek internal review of the Notice.

## Seeking review of WorkSafe WA decisions

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Your organisation, its officers, employees or other eligible persons can seek a review of certain decisions of WorkSafe WA. There are both internal review mechanisms and/or application to the Occupational Safety and Health Tribunal for review of a decision.

There are strict timeframes for seeking a review of a WorkSafe WA decision. Requests for an internal review (by the Commissioner) must generally be lodged within 7 days of the issue of the Improvement or Prohibition Notice. Requests for external review (by the Occupational Safety and Health Tribunal)

must generally be lodged within 7 days of the decision made by the Commissioner under an internal review.

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

#### FURTHER READING

WorkSafe WA has released guidelines that will assist your organisation to deal with bringing an application for internal and external review. These guidelines can be found on WorkSafe WA website at [www.commerce.wa.gov.au/worksafe/review-notice-0](http://www.commerce.wa.gov.au/worksafe/review-notice-0).



# Resources

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## Related Not-for-profit Law Resources

- ✔ Insurance and Risk Management - [www.nfplaw.org.au/riskinsurance](http://www.nfplaw.org.au/riskinsurance)

This page on Not-for-profit Law's Information Hub outlines the various risks a not-for-profit organisation should be aware of.

- ✔ Employees and Volunteers - [www.nfplaw.org.au/people](http://www.nfplaw.org.au/people)

This page on Not-for-profit Law's Information Hub outlines the individuals who are frequently involved in not-for-profit organisations.

## Legislation

- ✔ [Occupational Safety and Health Act 1984 \(WA\)](#)
- ✔ [Occupational Safety and Health Regulations 1996 \(WA\)](#)

## Other related resources

- ✔ [SafeWork Australia – list of OSH legislation in Australia](#)

This page on SafeWork Australia's website contains links to the OSH legislation from around Australia.

- ✔ [WorkSafe WA](#)

This page is WorkSafe WA's homepage, and contains information about WA OSH Laws and how to make a workplace safe.

- ✔ [Review a notice](#)

This page on the WA Department of Commerce website provides information about how you can review improvement and prohibition notices.





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