

Occupational health and safety laws in Victoria

A guide for community organisations

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Part 1

**How Victorian OHS laws apply to
community organisations**

How Victorian OHS laws apply to community organisations

This part of the guide considers:

- ▶ who the Victorian OHS laws apply to
- ▶ when a community organisation is an 'employer'
- ▶ when an organisation has the management or control of a workplace
- ▶ when an organisation doesn't employ people or have the management or control of a workplace



Disclaimer

This guide provides information on Victorian OHS laws. 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.

Victorian occupational health and safety laws aim to:

- secure the health, safety and welfare of employees and other persons at work
- eliminate risks to the health, safety or welfare of employees and other persons at work
- ensure that the health and safety of members of the public is not placed at risk by the conduct of employers and self-employed persons, and
- provide for the involvement of employees, employers, and organisations representing those persons, in formulating and implementing health, safety and welfare standards



In Victoria, occupational health and safety (**OHS**) in the workplace is principally regulated by:

- the [Occupational Health and Safety Act 2004 \(Vic\)](#) (**OHS Act**), and
- the [Occupational Health and Safety Regulations 2017 \(Vic\)](#) (**OHS Regulations**),
(together called the **Victorian OHS laws**).

The Victorian OHS laws are regulated and enforced by WorkSafe Victoria (**WorkSafe**) also known as the Victorian WorkCover Authority, a Victorian statutory authority.

Employers have duties under both the Victorian OHS laws and under the common law. The common law is the law that has been developed by the courts 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 you should seek independent legal advice on these common law duties.



Note

Different occupational or work health and safety laws apply in other states and territories. Your organisation will need to check its obligations under these laws if it operates outside Victoria or if employees perform work in those other states and territories.

Who the Victorian OHS laws apply to

The Victorian OHS laws apply to employers, self-employed persons, employees, and persons who manage or control workplaces.



The Victorian OHS laws apply to:

- community organisations that are employers (ie. have at least one 'employee' or 'trainee' or 'apprentice'), and
- community organisations that are completely volunteer-based where the organisation has management or control (to any extent) of a 'workplace'

To work out if the Victorian OHS laws apply to your community organisation, consider whether your organisation:

- is an 'employer', or
- has (to any extent) the management or control of a 'workplace'

We address these considerations below.

Is your community organisation an 'employer'?

The Victorian OHS laws apply to all 'employers' in Victoria – both not-for-profit and for-profit employers.

Your community organisation will be considered to be an employer if it:

- employs one or more workers under a contract of employment (this includes a person supplied by a labour hire service provider or agency), or
- employs one or more workers under a contract of training

Your organisation will **not** be an employer if it operates exclusively on the basis of assistance provided by volunteers (who don't have an employment contract or training contract).



Note

When determining whether a community organisation is an employer:

- It is not relevant if a community organisation relies heavily on volunteers – if an organisation employs even one person (for example, a part-time bookkeeper), it will be considered an ‘employer’ under the Victorian OHS laws and should comply with all the ‘employer duties’, and
- It is not relevant if your organisation is an unincorporated entity – the OHS laws apply to unincorporated bodies who are ‘employers’

If your community organisation is an employer, you are required to meet obligations under the Victorian OHS laws.

Does your community organisation manage or control a workplace?

Even if your community organisation is not an employer, your organisation may still be required to comply with Victorian OHS laws if it has (to any extent) the ‘management or control of a workplace’.



What is a workplace?

Under Victorian OHS laws, a ‘workplace’ is broadly defined as a place, whether in a building or structure, where ‘employees’ or ‘self-employed persons’ work. A place includes a car, truck, ship, boat, airplane and any other vehicle.

Whether a person has the management or control of a workplace will depend on certain things, for example:

- the contractual relationships between the parties at a workplace, and
- the extent of the management or control exercised by a party at the relevant place and at the relevant time

The factors that will be considered in determining whether a party had management or control over a workplace will include the extent to which a party can influence those on a worksite to maintain and enforce appropriate working practices and to avoid risks.



Note

Even if your community organisation has no employees, is completely volunteer-based and doesn’t engage contractors or consultants, it may still be taken to have the management or control of a workplace.

This means, if the place at which the community organisation carries out its work has contractors or other self-employed persons who attend the workplace from time to time:

- this place may be a workplace for the purposes of the Victorian OHS laws, and
- your organisation may be subject to statutory duties in relation to that workplace

More than one person or organisation may have duties relating to a particular work activity and the circumstances in which the work is taking place.



Example

A range of organisations that operate in the same building – a community centre. Some of the organisations operating out of the centre may be entirely volunteer-based, while others have employees. If this is the case, a volunteer-based organisation with (to any extent) the management or control of the centre will still be required to comply with various duties prescribed under Victorian OHS laws.

In this scenario, it's likely that more than one organisation will have a duty under Victorian OHS laws in relation to certain work activities (for example, shared spaces). The organisations will be required to consult, co-operate and coordinate to manage OHS risks in the community centre.

If your community organisation has (to any extent) the management or control of a workplace, you will have obligations under the OHS Act. You can find a summary of these obligations, together with practical examples, in [part 2 of this guide](#) (Duties of community organisations under the Victorian OHS laws).

What if your organisation is not an employer and doesn't manage or control a workplace?

If your community organisation isn't an employer and does not manage or control (to any extent) a place where employees or self-employed persons work, Victorian OHS laws are unlikely to apply. If you are unsure, seek legal advice or advice from WorkSafe.



Example

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

However, there may be other laws regulating health and safety matters which apply to your organisation, including common law obligations.

If you are unsure about what laws or duties apply to your community organisation beyond the scope of the Victorian OHS laws, you should seek independent legal advice.



Caution

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

For example, under the [Equipment \(Public Safety\) Act 1994 \(Vic\)](#) a community organisation which is in control of certain types of equipment must take reasonable care for the health and safety of its volunteers and any other person who may be affected by how the equipment is handled.



Part 2

**Duties of community organisations
under the Victorian OHS laws**

Duties of community organisations under the Victorian OHS laws

This part of the guide covers the key duties that apply:

- ▶ where an organisation is an employer, and
- ▶ where an organisation is an employer or has the management or control of a workplace



What duties does your organisation have under Victorian OHS laws?

There are many duties under Victorian OHS laws.

Some of these duties under the Victorian OHS laws are summarised below.

Duties that apply where an organisation is an employer

- Provide and maintain a working environment for employees that is safe and without risks to health (section 21 of the OHS Act)
- Monitor the conditions of the workplace and the health of employees (including providing information concerning health and safety in the workplace and keeping relevant records) (section 22 of the OHS Act)
- Ensure that other people aren't exposed to risks to their health or safety arising from the organisation's activities (section 23 of the OHS Act)
- Consult with employees about matters relating to OHS (Section 35 of the OHS Act – and 35A if employees are labour hire employees)
- Notify WorkSafe immediately about notifiable incidents, preserve the incident site and keep a record of the incident (sections 38 and 39 of the OHS Act)
- On request, negotiate with employees to establish a designated work group to represent employees on health and safety issues (sections 43 and 44 of the OHS Act)
- On request, or if required, establish a health and safety committee (section 72 of the OHS Act)
- Attempt to resolve OHS issues with employees (or representative) within a reasonable time frame, or (if required by the nature of the threat and degree of risk) direct that the work is to stop (section 73 and 74 of the OHS Act)
- Not to discriminate against employees or prospective employees who are involved in health and safety matters (also applies to prospective employers) (section 76 of the OHS Act)

Duties that apply where an organisation is an employer or has the management or control of a workplace

- Keep the workplace (including all entrances and exits) safe and without risks to health (section 26 of the OHS Act)
- Not to recklessly place another person in danger of serious injury in the workplace (section 26 of the OHS Act)
- Ensure the design, manufacture, installation, supply, erection or commission of plant, substances, materials (such as machinery and equipment), buildings and structures is safe and without risks to health and safety (sections 27 to 31 of the OHS Act) (Duties are specific to persons who design, manufacture, supply, install, erect or commission certain types of plant, substance, materials, buildings or structures)
- Hold appropriate licenses, registrations, permits and qualifications where required (sections 40 to 42 of the OHS Act) (applies where the organisation that manages or controls a workplace is carrying out work)
- Allow access to the workplace by an authorised representative who is acting within their powers (section 93 of the OHS Act)
- On request, produce documentation and answer questions put to them by an inspector (section 100 of the OHS Act)
- Comply with a non-disturbance notice issued by an inspector (section 110 of the OHS Act)
- Comply with an improvement notice issued by an inspector (section 111 of the OHS Act)
- Comply with a prohibition notice issued by an inspector (section 112 of the OHS Act)
- Comply with a request for name and address issued by an inspector (section 119 of the OHS Act)
- Comply with a direction given by an inspector at the workplace (section 120 of the OHS Act)
- Assist and not intentionally hinder, obstruct, conceal information from or assault, intimidate or threaten, an inspector who is performing their functions or powers (sections 121 and 125 of the OHS Act)



Caution

Further duties and obligations set out in the OHS Regulations apply to certain employers, workplaces and work activities.

These duties cover topics such as manual handling, noise, prevention of falls, confined spaces, plant, high risk work, construction work, hazardous substances and materials, hazardous industries, licensing and registration. Community organisations must be aware of and comply with these duties.

More information about some of these key duties under the Victorian OHS laws follows.



Note

As you read more about each of the duties, you will notice that many require a community organisation to ensure that risks to health and safety 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](#) (Complying with Victorian OHS laws).

Key duties owed where an organisation is an employer

Duty to provide and maintain a working environment that is safe and without risks to health

Employers must, so far as reasonably practicable, provide and maintain for employees of the employer a working environment that is safe and without risks to health.

Employers must:

- provide safe systems of work (for example, a system where employees do not lift heavy objects in an unsafe manner)
- provide and maintain safe plant and equipment (for example, machinery, equipment, appliances or tools)
- make arrangements for safe use, handling, storage and transport of plant and substances
- maintain the condition of each workplace under its management and control
- provide adequate facilities for the welfare of employees at the workplace (for example, first aid, dining, bathroom facilities), and
- provide appropriate information, instruction, training and supervision to enable employees to perform their work in a way that is safe and without risks to health

All employers owe this duty to:

- their employees
- any independent contractors or consultants they engage, and
- any employees of those independent contractors or consultants



Case example

A disability support worker employed by the Department of Health and Human Services was sexually assaulted by a resident at a disability service residential facility. The resident was a convicted sex offender and had prior convictions, including for indecent assault.

The employer was charged with failing to provide necessary information about the resident's risk of violence (including sexual violence) to staff working directly with the resident and exposing the staff to risks to their health and safety.

The employer pleaded guilty and was sentenced without conviction to an adjourned undertaking for twelve months with a special condition that they pay \$50,000 to a charity.

Director of Public Prosecutions v The Crown in the right of State of Victoria (Department of Health Human Services) [2018] VCC 886



Case example

A support worker at a not-for-profit, non-government organisation was injured while travelling in a car with a client with autism. The client had previously assaulted a staff member. The organisation made no changes to the way it provided transport for clients following the previous incident.

The court found the organisation failed to maintain a safe working environment and fined it \$15,000. On appeal, the fine was reduced to \$10,000. The organisation now uses a vehicle to transport the client which has a row of seats separating the client and the workers.

DPP v Golden City Support Services (Unreported, Bendigo County Court, Patrick J, 26 August 2016)



Case example

A grounds worker employed at a private school and registered charity in Melbourne was found dead on school grounds with a wound to his head. A large eucalyptus tree branch was positioned next to his body, with a section of the large branch and a pile of smaller cut branches nearby. Two chainsaws were located near the dead worker, one of which was still running when they were found. The dead worker wasn't wearing a safety helmet at the time and there were no eyewitnesses to the incident.

The Court found:

- it was reasonably practicable for the school to reduce the risks associated with falling branches by providing a system to determine whether tree works ought to be completed by external contractors or by its employees
- the school failed to provide information, instruction and training to its employees in relation to the risks associated with cutting a branch from a tree with a chainsaw, and
- the school failed to ensure that the workplace was safe and without risks to health

The school pleaded guilty to the charges and was ordered to pay a fine of \$140,000.

Director of Public Prosecutions v Haileybury [2022] VCC 166

Duty to monitor conditions of the workplace and health of employees

All employers owe this duty to their employees and must comply with it.

Employers must, so far as reasonably practicable:

- monitor the health, including the psychological health, of employees
- monitor the conditions at any workplace under the employer's management and control, and
- provide information to employees concerning health and safety at the workplace, including in other languages if appropriate

Information provided must include the name of people who employees may file an enquiry or complaint about health and safety with.

So far as is reasonably practicable, community organisations must also:

- keep information and records on employee health and safety (for example, first aid records and relevant employee medical information), and
- engage or employ suitably qualified persons to provide advice to the organisation on its employees' health and safety

The monitoring and information which an employer must provide will differ according to the nature of work and the environment in which employees perform that work.



Examples

- Where employees are exposed to high noise levels, an employer may be required to regularly test the hearing of those employees, the volume and duration of that noise, and to provide information to employees regarding the safe performance of work in a noisy environment.
- Where employees work long shifts, an employer may be required to monitor fatigue in those employees.
- If employees are regularly exposed to certain substances, an employer may be required to arrange medical tests for those employees, monitor levels of those substances and provide relevant information about the safe performance of work.

When asking yourself whether certain actions are required, remember that the employer must monitor and provide information so far as is reasonably practicable.



Caution

Community organisations should ensure that they monitor the psychological health of their employees. This involves consulting with employees about psychosocial hazards, discussing controls with the health and safety committee (where one exists, or even establishing such a committee) and using focus groups and regular employee surveys.

Employers need to identify, assess and manage psychosocial hazards and risks. See [part 4](#) of this guide (Complying with Victorian OHS laws) for more information about psychosocial hazards.



Tip

Community organisations should consider engaging a suitably qualified person to advise on OHS:

- during periodic OHS reviews of the operations of the organisation
- when developing and implementing systems for the long-term management of OHS
- when establishing OHS consultative and issue resolution structures for the workplace
- when planning to modify the work premises, plant, substances or materials for use at work
- before changes to work practices and systems of work are introduced
- when establishing new operations or projects
- when new OHS information becomes available from an authoritative source
- when a hazardous exposure or incident, injury, illness or adverse result of environmental or health monitoring indicates that risk control measures are inadequate, and
- when managing complex issues related to psychological health such as bullying and stress



Caution

Employing or engaging a suitably qualified person to provide OHS advice does not guarantee legal duties and responsibilities under Victorian OHS laws will be met. Legal obligations can't be transferred or delegated to a consultant.

Therefore, it's important for community organisations that employ or engage a person for advice to stay actively involved in OHS issues, including monitoring and reviewing risk controls.

Duty not to expose other persons to risks to health or safety arising from the organisation's activities

Employers must, so far as reasonably practicable, ensure that persons other than employees (for example, volunteers) are not exposed to risks to their health and safety arising from the conduct of the undertaking of the employer. This may include:

- any activity which is done in the course of carrying on the organisation's activities (for example, holding a fun day at a community kindergarten)
- any risks to health and safety that may arise when performing work or providing services at one or more locations (regardless of whether these are carried out at the ordinary place of work), and
- any activity which is ancillary to the organisation's operations (for example, a subcontractor's employees cleaning a workplace after hours)

This duty is owed to volunteers, clients, and any other members of the public that might be affected by an organisation's activities.

Employers should understand the risks that their undertakings may pose and do what is reasonably practicable to eliminate or reduce those risks.



Example

Scouts Victoria was charged by WorkSafe with contravening section 23 of the OHS Act in relation to an incident involving a volunteer. The volunteer suffered an injury to their hand when using a wood splitter during maintenance works at a campsite used by Scouting groups. WorkSafe alleged that Scouts Victoria had failed to supply the volunteers with safe plant, adequate training or adequate supervision.

Scouts Victoria entered into an Enforceable Undertaking valued at \$42,150 in November 2014 as an alternative to prosecution.



Example

A council allowed 21 volunteer members of a cricket club to remove cement render and sheeting from the walls of its premises. Members of the club were exposed to asbestos in the process. Before conducting the work, the council failed to make enquiries about the presence of asbestos in the walls of their buildings.

The court found that the council failed to ensure that people (volunteer members of a community organisation) were not exposed to risk. The council was found to have breached Victorian OHS laws and fined \$20,000.

Duty to consult with employees on OHS matters

All employers owe this duty to their employees and must comply with it. This duty does not strictly extend to volunteers, however it is best practice for community organisations to include volunteers in these consultations.

Employers have a duty to consult with their employees regarding matters that affect, or are likely to affect their health and safety.

Employers are required, so far as is reasonably practicable, to consult with employees about the following matters:

- identifying or assessing hazards or risks to health and safety at the workplace
- making decisions about ways to control risks to health and safety
- making decisions about the adequacy of facilities for the welfare of employees
- making decisions about various health and safety procedures, including:
 - resolving health and safety issues
 - consulting with employees
 - monitoring the health of employees and workplace conditions, and

- providing information and training to employees
- determining the membership of a health and safety committee
- proposing changes that may affect the health or safety of employees
- establishing designated work groups represented by health and safety representatives (see sections 54, 67 and 70 of the OHS Act), and
- establishing health and safety committees (see section 72 of the OHS Act)

Consulting with employees requires the employer to:

- share information with the employees
- give the employees a reasonable opportunity to express their views about the matter, and
- take those views into account

In some circumstances, it may be necessary to arrange members of designated work groups to elect a health and safety representative from among the group. The views of employees can be effectively communicated to an employer through a health and safety representative. If the employer and employees have agreed to consultation procedures, these procedures must be followed to properly consult employees.



For more guidance see WorkSafe's [webpage 'Consultation'](#) and ['Consultation guide for employers'](#).



Tip

While the duty to consult is not owed to volunteers, it's a good idea to involve all people involved in a community organisation in health and safety work practices.

Volunteers will often have some great ideas about the hazards they face in their volunteer work and how to reduce the risk of injuries and make the workplace safer.

Duty to notify WorkSafe about notifiable incidents and preserve an incident site

All employers who have the management and control of a workplace where an incident occurs must comply with this duty.

An employer should have appropriate procedures and training in place to educate its employees on reporting incidents internally. Key personnel should also receive training on what incidents need to be notified to WorkSafe and to ensure the incident site is not disturbed unless there are valid reasons to do so.

This duty creates an obligation on employers to immediately notify WorkSafe of certain incidents. For further information on this duty, including the types of incidents that will require notification and the process for notifying WorkSafe, see [part 5 of this guide \(Responding to a workplace incident\)](#).

There is also an obligation on an employer to preserve the site where the incident occurred until a WorkSafe inspector arrives on site, or until such other time WorkSafe directs when they are notified of the incident.

Key duties owed where an organisation is an employer or where an organisation manages or controls a workplace

Duty to keep the workplace safe and without risks to health

People and organisations that have (to any extent) the management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, and the means of entering and leaving it, are safe and without risks to health.

This duty applies regardless of whether that person or organisation is the owner of the premises. If several parties jointly 'manage or control' the workplace (or an aspect of the workplace), they may each owe duties under this section.

This duty applies to any person who enters the workplace at any time. This could include volunteers, clients, customers, service providers, contractors and others who enter the workplace.



Example

A community organisation leases office space. The organisation has been made aware that the front doormat is damaged and protrudes from the ground but does not remove the tripping hazard and does not report the issue to its landlord.

A maintenance person arrives to fix the air-conditioning unit and trips on the mat, causing injury. The community organisation may be liable under section 26 even though it doesn't own the premises.

Duty not to recklessly place another person in danger of serious injury in the workplace

All people and organisations must comply with this duty. This includes employers, persons who control or manage a workplace, employees, volunteers, clients, contractors and anyone else who could endanger a person at a workplace.

All people have a duty not to recklessly engage in conduct that places or may place another person who is at a workplace in danger of serious injury, without lawful excuse.

A person will be reckless where they do an act (or fail to do something) in circumstances where that person can foresee their act or omission will probably place, or may place, another person at the workplace in danger of serious injury. A serious injury includes an injury that endangers someone's life.

This duty is owed to everyone who is at a workplace, including employees, independent contractors (and their employees), volunteers and any other members of the public who would be affected by the community organisation's conduct.



Example

A volunteer-based, environmental lobby group protests outside a science laboratory and engages in a picket line, effectively blocking the entrance. Inside the building, an experiment being carried out causes toxic fumes to escape. An emergency evacuation of the building is called. When attempting to exit the building, the employees inside are blocked at the exit by the group. The lobby group delays the evacuation procedure and some employees are rushed to hospital because they have inhaled toxic fumes. The lobby group members may be found guilty of an offence under section 32 of the OHS Act in these circumstances.



Example

An employee of a community organisation directs a volunteer to drive a truck carrying donated furniture to one of the organisation's stores. The truck that the volunteer is instructed to drive has defective brakes and the employee knows this. While driving to the store, the volunteer attempts to apply the brakes, but the brakes fail. The volunteer swerves to the left side of the road to avoid traffic and collides with the support column of a road sign. The volunteer dies because of injuries sustained in the collision. The employee who directed the worker to drive the truck may be found guilty of an offence under section 32 of the OHS Act in these circumstances.

Duties to ensure the design, manufacture, installation, supply, erection or commission of plant, buildings, structures, substances and other materials is safe and without risks to health

These duties apply to any person or organisation that designs, manufactures, supplies, installs, erects or commissions:

- equipment used in a workplace (for example, machinery, appliances or tools)
- substances used in a workplace (for example, natural or artificial substances, whether in solid, liquid, gaseous or vapour forms), or
- plant, structures or buildings that comprise a workplace

These are complex duties that may require a person or organisation engaged in the manufacture, design, supply, installation, erection or commission of plant, substances, equipment, structures or buildings to:

- ensure the safety of the design
- carry out testing and examination to ensure safety, or
- provide adequate information to other persons who are provided with the relevant plant, substance or equipment

If you think your community organisation may be involved in the design, manufacture, supply, installation, erection or commission of substances, plant (which includes equipment and machinery), structures or buildings, you should seek legal advice about your obligations under the Victorian OHS laws.

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



For more guidance see WorkSafe's [webpage 'Occupational health and safety – your legal duties'](#).



Part 3

**Who can be legally responsible
under Victorian OHS laws?**

Who can be legally responsible under Victorian OHS laws?

This part of the guide covers:

- ▶ liability of community organisations
- ▶ liability of officers
- ▶ what is a 'failure to take reasonable care'?
- ▶ workplace manslaughter



Note

WorkSafe can prosecute the organisation, its officers, or in some circumstances, both. This includes prosecution for the offence of workplace manslaughter.

Liability of the community organisation

Community organisations

The maximum fines for a breach of the Victorian OHS laws by a community organisation are the same as they are for for-profit organisations, and they are significant (maximum penalties are approximately \$1.8 to 4.1 million, and up to \$20.4 million in cases of workplace manslaughter).

In addition to prosecuting the community organisation as an entity, WorkSafe may also prosecute the organisation's employees and officers (see below for more information on 'officers' of a community organisation).

The officers

Under certain circumstances, WorkSafe can also look to prosecute the officers of a community organisation when they believe there has been a breach of Victorian OHS laws.

Who is an officer?

Under Victorian OHS laws, 'officers' of a community organisation will include any of the following:

- a director or secretary of an incorporated community organisation
- a partner or officeholder of an unincorporated community organisation
- a person who makes decisions that affect the whole or a substantial part of the operations of a community organisation
- a person who has the capacity to significantly affect the community organisation's financial standing

- a person who commonly instructs the committee of management on how to perform its functions (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the organisation), and
- various people who may be involved in a community organisation as a receiver, or receiver and manager, of the property of the community organisation, administrator, liquidator or trustee of a community organisation

When can officers be personally liable?

Paid officers

An officer of a community organisation may be found personally liable for a breach of Victorian OHS laws if:

- the organisation contravenes Victorian OHS laws and the contravention arises because the officer failed to take reasonable care, and
- the officer is not a volunteer who, when they failed to take reasonable care, was acting as a volunteer

Volunteer officers

Volunteer means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses).

Volunteer officers of an organisation will generally not be held liable for breaches of Victorian OHS laws for anything done by them in a volunteer capacity, even where they fail to take reasonable care.

However, they should:

- always act in good faith in that capacity, and
- not recklessly or negligently engage in conduct that may place another person who is at a workplace at risk of injury

So, if your community organisation is made up of officers who are volunteers, those volunteer officers can't be held personally liable as officers under Victorian OHS laws. However, as noted earlier in this guide, a volunteer officer may still owe duties under Victorian OHS laws in their personal capacity. There are also other common law duties that require volunteer officers to exercise a reasonable standard of care.

What is a 'failure to take reasonable care'?

In determining whether an officer of an organisation has failed to take reasonable care and may be guilty of an offence, a court will consider:

- what the officer knew about the matter concerned
- the extent of the officer's ability to make, or participate in the making of, decisions that affect the organisation in relation to the matter concerned, and
- whether the contravention by the organisation can be attributed to an act or omission of any other person



Tip

If you take on a paid position as an 'officer' in a community organisation, you may have responsibilities under Victorian OHS laws and are potentially liable if something goes wrong.

It's a good idea to make sure you are aware of your organisation's obligations under Victorian OHS laws and the measures being put in place to eliminate or minimise risks.

Make sure OHS is discussed regularly at committee meetings so 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.

WorkSafe has published [helpful guidance](#) the duties officers have in taking reasonable care to ensure that their organisation complies with the OHS Act.

**Tip**

An officer who receives reimbursement from the organisation for out-of-pocket expenses will still be classified as a volunteer for the purposes of Victorian OHS Law if they are acting on a voluntary basis.

WorkSafe has [published guidance](#) for community service volunteer boards and committees.

Workplace manslaughter

Where an organisation engages in conduct that is negligent and breaches an 'applicable duty' which results in a death, an organisation or its officers may be charged with the offence of workplace manslaughter (see sections 39A – 39G of the OHS Act).

Workplace manslaughter can give rise to a fine of up to \$20.4 million for an organisation or a 25-year prison sentence for an individual.

Who can be charged with workplace manslaughter?

If they owed the deceased an 'applicable duty' under the OHS Act and engaged in conduct that was negligent:

- a person (including an incorporated or unincorporated organisation), who is not a volunteer, or
- an officer of an organisation (the organisation may be incorporated or unincorporated), who is not a volunteer,

may be charged with workplace manslaughter offences.

**Note**

The applicable duties encompass almost all the OHS duties set out in part 3 of the OHS Act, with some very limited exceptions relating to duties owed by employees.

For more information on the OHS duties owed by employees, see [part 4 of this guide](#) (Complying with Victorian OHS laws).

When is conduct negligent?

Conduct is negligent if:

- it involves a great falling short of the standard of care that would have been taken by a reasonable person in the circumstances in which the conduct was engaged in, and
- there was a high risk of death, serious injury or serious illness



Part 4

Complying with Victorian OHS laws

Complying with Victorian OHS laws

This part of the guide covers:

- ▶ the meaning of 'reasonably practicable'
- ▶ psychosocial hazards
- ▶ employee obligations



What does 'reasonably practicable' mean?

Many of the duties in the Victorian OHS laws require that employers and other persons do what is 'reasonably practicable' in the circumstances to meet their obligations to provide a safe and healthy working environment.

This requires employers and other persons to eliminate risks to health and safety, or where this is not reasonably practicable, reduce the risks so far as is reasonably practicable.

What is 'reasonably practicable' will depend on:

- the likelihood of the hazard or risk concerned eventuating
- the degree of harm that would result if the hazard or risk eventuated
- what the person concerned knows, or ought reasonably to have known, about the hazard or risk and any ways of eliminating or reducing the hazard or risk
- the availability and suitability of ways to eliminate or reduce the hazard or risk, and
- the cost of eliminating or reducing the hazard or risk

In Australia, the courts have confirmed that:

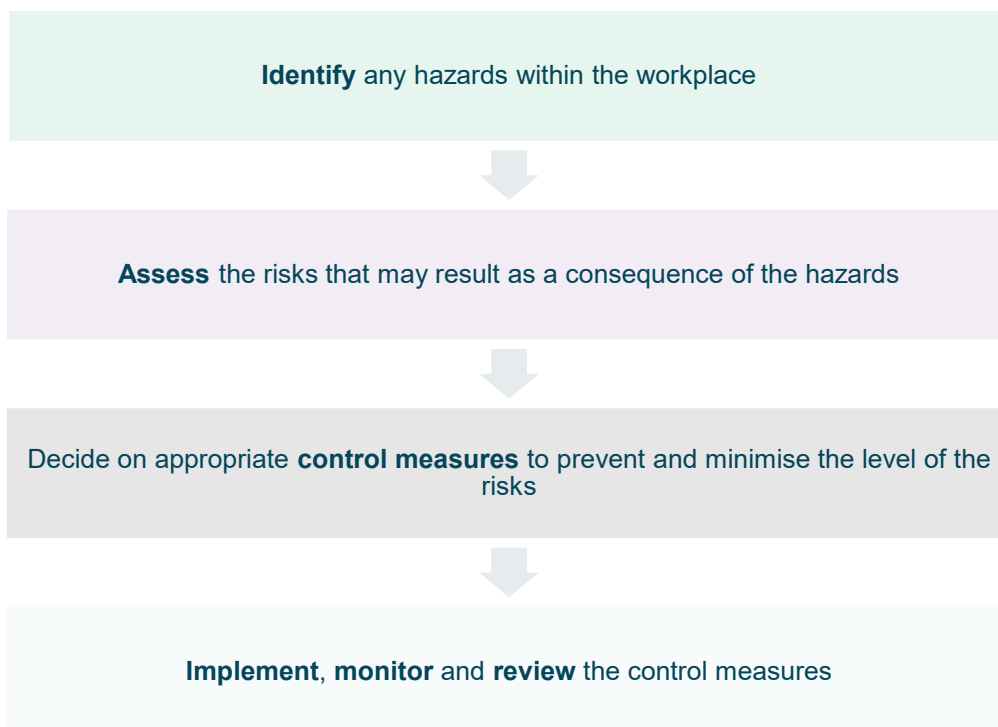
- something will not be 'reasonably practicable' simply because it is physically possible
- what is 'reasonably practicable' is judged objectively according to what was known at the time of the alleged breach, including relevant trade or industry knowledge, and the subjective knowledge of the person, 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



WorkSafe has published useful guidance on:

- [‘Controlling OHS hazards and risks in the workplace’](#) which sets out methods for organisations to identify and limit OHS hazards in the workplace, and
- [Volunteer health and safety for community service organisations](#)

WorkSafe advises duty-holders to undertake a four-stage process to control OHS risks:



For further guidance, see WorkSafe’s guidance [‘Controlling OHS hazards and risks in the workplace’](#) which sets out how to approach the [risk management process](#) in detail.

WorkSafe has also published information on [the hierarchy of control](#), a step-by-step approach to eliminating or reducing risks in the workplace – it ranks risk controls from the highest level of protection and reliability through to the lowest and least reliable protection.

The cost of eliminating or minimising risks may be a relevant factor for many community organisations with limited resources.

There must be a clear presumption in favour of safety. Once the likelihood and degree of harm from a hazard or risk is understood, and the availability and suitability of a relevant safety measure to eliminate or reduce the hazard or risk is established, that safety measure should be implemented unless the cost of doing so is so disproportionate to the benefit (in terms of reducing the severity of the hazard or risk) that it would be clearly unreasonable to justify the expenditure.

In determining whether a particular level of expenditure is reasonable in the circumstances, the duty-holder must have regard to:

- the likelihood and degree of harm of the hazard or risk, and
- the reduction of the likelihood and/or degree of harm that will result if the control measure is adopted

The greater the likelihood of the hazard or risk concerned eventuating, and/or the greater the degree of harm that would result if the hazard or risk eventuated, the less weight should be given to the cost of eliminating the hazard or risk.

If the degree of harm is significant, (for example, death or serious injury is highly likely) then it is extremely unlikely that the cost of eliminating or reducing the risk would ever be so disproportionate to the risk to justify a decision not to implement an available and suitable control measure.



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

Insurance and indemnities

While you may be able to obtain insurance for your legal fees, under Victorian OHS law:

- A term of a contract or other arrangement that purports to insure or indemnify a person for the person's liability to pay a pecuniary penalty is void to the extent that the term provides for that insurance or indemnity.
- There are prohibitions on insurance and indemnity for pecuniary penalties.

For more information, speak to your insurance broker.



WorkSafe and Safe Work Australia publish helpful guidance for organisations on complying with OHS laws. The guidance can be found on their websites.

Psychological health

Under the OHS Act, employers must, so far as reasonably practicable, provide and maintain for employees of the employer a working environment that is safe and without risks to health.

The definition of 'health' under the OHS Act includes 'psychological health'. This means that OHS obligations for the health of employees extends to their psychological health.

New [Occupational Health and Safety \(Psychological Health\) Regulations \(Regulations\)](#), which strengthen the existing obligations, start on 1 December 2025.

These Regulations focus on risk management (using the four-stage process to control OHS risks outlined above) and understanding an employer's obligations under its duty, so far as is reasonably practicable, to:

- identify psychosocial hazards
- assess, where necessary, any associated risks to health or safety
- control risks to a person's health or safety associated with psychosocial hazards, and
- monitor, review and, where necessary, revise risk controls

Compliance Code

WorkSafe has published a [Compliance Code](#) to help to employers comply with their psychological health duties under Victorian OHS laws.



WorkSafe's [Compliance code: Psychological health](#) provides practical guidance on employer obligations to manage workplace psychosocial hazards and associated risks.



What is a psychosocial hazard?

A psychosocial hazard means any factor or factors in:

- the work design
- the systems of work
- the management of work
- the carrying out of the work, or
- personal or work-related interactions

that may arise in the working environment and may cause an employee to experience one or more negative **psychological responses** that create a risk to the employee's health or safety

Examples of psychosocial hazards include:

- aggression or violence
- bullying
- exposure to traumatic events or content
- high job demands
- low job control
- low job demands
- low recognition and reward
- low role clarity
- poor environmental conditions
- poor organisational change management
- poor organisational justice
- poor support
- poor workplace relationships
- remote or isolated work, and
- sexual harassment

A **psychological response** includes cognitive, emotional and behavioural responses and the physiological processes associated with them.

If it is not reasonably practicable to eliminate a risk associated with a psychosocial hazard, the employer must reduce the risk so far as is reasonably practicable by:

- altering the:
 - management of work
 - plant
 - systems of work
 - work design, or
 - workplace environment
- using information, instruction or training, or
- using a combination of any of these measures

Work design means the equipment, content and organisation of an employee's work tasks, activities, relationships and responsibilities within a job or role.

Employers may only exclusively use information, instruction or training if none of the other control measures are reasonably practicable.

If employers use a combination of the control measures, information, instruction or training must not be the predominant control measure used.

Review of risk control measures

An employer must review and, if necessary, revise any measures implemented to control risks associated with any psychosocial hazards:

- before any alteration is made to any thing, process or system of work that is likely to result in changes to risks associated with psychosocial hazards
- if new or additional information about a psychosocial hazard becomes available to the employer
- if an employee, or a person on behalf of an employee, reports a psychological injury or a psychosocial hazard to the employer
- after any notifiable incident occurs that involves one or more psychosocial hazards
- if, for any other reason, the risk control measures do not adequately control the risks associated with a psychosocial hazard, or
- after receiving a request from a health and safety representative



For more information, see:

- WorkSafe's webpages [Psychological health](#) and [Understanding psychosocial hazards and your legal duties](#)
- Safe Work Australia's webpage [Psychosocial hazards](#)

What are an employee's obligations?

While at work, employees have a duty to take reasonable care for their own health and safety and for the health and safety of others who may be affected by their actions or omissions at a workplace.

Employees must also co-operate with their employer's efforts to comply with Victorian OHS laws.



Remember

Everyone also has a duty not to recklessly engage in conduct which places or may place another person in danger of serious injury.



Part 5

Responding to a workplace incident

Responding to a workplace incident

This part of the guide covers:

- ▶ initial response to an incident
- ▶ notification procedure
- ▶ post-incident investigation



There is no 'one size fits all' response to an OHS incident or complaint.

The best and most appropriate response will largely depend on the nature of the incident. Some incidents require immediate responses and notification to WorkSafe under the Victorian OHS laws.



Note

There are significant penalties for employers who fail to immediately report certain workplace incidents to WorkSafe.

'Incidents' can include situations where no one was hurt, but where people were exposed to a serious risk to their health or safety from an immediate or imminent exposure to a hazard.

Initial response to an incident

Immediately after a workplace incident, the first thing a community organisation should do is protect others who may be exposed to a harm, provide first aid and take any essential action to make a workplace safe.

Then, the community organisation must determine if the incident falls within the definition of a 'notifiable' incident in the Victorian OHS laws.



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.

That person should be aware of the responsibilities of the organisation under the Victorian OHS laws (including notification and preservation requirements, as outlined below).

Notification and reporting requirements

While all workplace incidents should be recorded by all community organisations no matter how large or small, there are particular legal obligations on community organisations as employers to report incidents which fall within the definition of a notifiable incident.

The immediate reporting requirement

An employer must notify WorkSafe immediately after becoming aware of a 'notifiable' incident at a workplace under the management and control of the employer.



Note

A 'workplace' will include any place, whether a building or not, where employees work.

This could include sporting fields, vehicles and any other places that employees of your community organisation undertake their duties. Serious incidents occurring in these places may require notification to WorkSafe by your organisation.

WorkSafe requires notification of incidents that lead to certain injuries including (but not limited to) incidents which result in:

- death
- medical treatment within 48 hours of exposure to a substance
- immediate treatment in hospital as an in-patient, or
- immediate medical treatment for injuries including amputation, a serious head or eye injury, serious laceration or removal of skin, electric shock, a spinal injury, or loss of a bodily function



Note

It's important to remember that an organisation's duty to notify WorkSafe of incidents causing serious injury will apply in relation to any person, not just employees. So, this will include volunteers and members of the public.

The duty to notify WorkSafe also applies to incidents that expose a person (which includes employees, volunteers or members of the public) to a serious risk to their health or safety, emanating from an immediate or imminent exposure to hazards, regardless of whether an actual injury has occurred.

A 'serious risk' to someone's health or safety occurs where:

- exposure to the incident create a risk which, if it had been realised, could have resulted in the death or a serious injury or illness of a person, and
- the risk was not minor and there was a real possibility the risk could have eventuated

These types of incidents include:

- the collapse, overturning, failure or malfunction of, or damage to, any plant that must not be used without a licence or registration
- the collapse or failure of an excavation or of any shoring supporting an excavation
- the collapse or partial collapse of all or part of a building or structure
- an implosion, explosion, or fire
- electric shock
- uncontrolled escape, spillage or leakage of any substances, or
- the fall or release from a height of any plant, substance or thing



Note – imminent exposure

'Imminent' exposure means a person was, or would have been, exposed to a serious risk to health or safety when the incident occurred.

This includes where a person was not in the vicinity when an incident occurred, but:

- was in the vicinity prior to the incident
- ordinarily would have been in the vicinity, or
- was nearby when the incident occurred

The notification procedure

If you believe that an incident has occurred which requires notification to WorkSafe (see above), your organisation must telephone WorkSafe (call 132 360) as soon as it becomes aware of the notifiable incident. Any delay in reporting the incident could mean that your organisation has breached its obligations under the Victorian OHS laws.

It is recommended that you seek legal advice in relation to notifiable incidents.

The 48-hour written notification requirement

In addition to immediately telephoning WorkSafe to report a notifiable incident, an employer must provide WorkSafe with a written record of what occurred within 48 hours of becoming aware of the incident. Written notification is required to be in a form specified by WorkSafe.

This record must be kept by the employer for at least five years.



Case example

An organisation operated residential home care sites for the elderly and people with a disability.

A resident of the organisation was performing routine exercises on a tilt table under the supervision of his carer. During the exercises another resident called out to the carer for assistance and the carer left the patient on the tilt table in a squatting position. As he left he told the patient he would be back in five minutes and gave him the controls. While alone the patient pressed a button to change the angle of the tilt table. The button he pressed in fact changed the angle of the table so that a significant amount of pressure was placed on his legs.

Unable to support his own weight, he fell to the floor and broke both his legs. He required a significant hospital stay after the incident. The organisation failed to notify WorkSafe in writing within 48 hours after being required to immediately notify WorkSafe. The organisation entered into an enforceable undertaking with the regulator.

Victorian WorkCover Authority v Australian Home Care Services Pty Ltd (Unreported, Moorabbin Magistrates' Court, Clifford M, 11 May 2017)



Tip

Your organisation should keep copies of blank incident notification forms on hand to minimise delays in providing written notice should a notifiable incident occur in your workplace.

You can download the incident notification form from the [WorkSafe website](#).

Preservation of incident site

The Victorian OHS laws require that incident sites be preserved to allow WorkSafe to investigate (if required). If a notifiable incident does occur in your organisation, the site where the incident occurred should not be disturbed until a WorkSafe inspector arrives at the workplace, unless you have been directed otherwise by WorkSafe.

Site preservation means ensuring the site where the incident occurred is not disturbed. However, there are exceptions which allow a site to be disturbed, including where disturbance is required in order to:

- protect a person's health or safety
- help someone who was injured in the incident, or
- make the site safe or prevent further occurrence of an incident

If you are unsure as to whether you are allowed to enter the incident site, or the extent to which you can disturb the incident scene, you should phone WorkSafe on 132 360 to discuss your concerns.

Register of Injuries

Under the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), an employer must keep a Register of Injuries in which a worker, or any person acting on the worker's behalf, may record any workplace incidents or injuries, no matter how minor they appear to be at the time. The employer must also ensure that the Register of Injuries is readily accessible at all reasonable times by workers and persons acting on a worker's behalf.



Note

A 'worker' includes anyone who performs or agrees to perform work at an employer's direction, instruction or request. This could include employees, interns, work experience students, contractors, employees of contractors and volunteers.

The information in the Register of Injuries includes:

- the injured worker's name and job title
- the date and time of the worker's injury
- the worker's exact location when they were injured
- the names of any witnesses to the injury
- the date on which the entry into the Register of Injuries is made, and
- the name of the person making the entry



Tip

Download the [Register of Injuries template](#) from the [WorkSafe website](#). When filled out, the register should be filed in a central place.

Investigate and prevent reoccurrences

Following an incident, an employer should investigate the circumstances in which the incident occurred. 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.

Legal assistance and advice should be sought in relation to the process.

The Victorian OHS laws require an employer to consult with employees, their independent contractors and the employees of those independent contractors 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 contractors 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 employer.



Part 6

**WorkSafe inspectors powers of entry
and inspection**

WorkSafe inspectors powers of entry and inspection



This part of the guide covers:

- ▶ an inspector's power to enter
- ▶ WorkSafe improvement, prohibition or non-disturbance notices
- ▶ Seeking review of WorkSafe decisions

WorkSafe inspectors have various powers of entry into, and inspection of, places under the Victorian OHS laws. These powers apply to places that community organisations might occupy, control, manage or conduct work at, and are briefly summarised below.

An inspector's power to enter

A WorkSafe inspector may enter a place that the inspector reasonably believes is a workplace at any time during working hours. Note that working hours is any time at which the workplace is usually open for work and may be different from standard business hours.

A WorkSafe inspector may also enter a place where they reasonably believe that there is an immediate risk to a person's health and safety, regardless of whether it is outside working hours.

There are some limits to this power – for instance, an inspector may not enter a place used only for residential purposes without either the consent of the occupier or a warrant.

Immediately upon entering a workplace, a WorkSafe inspector must take all reasonable steps to notify the occupier of the place and any health and safety representatives of their presence, and produce appropriate identification.

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

- inspect, examine and make enquiries at the place
- inspect and examine anything at the place, including documents
- bring any equipment or materials that may be required
- seize anything that may provide evidence of an offence against the Victorian OHS laws
- seize anything that requires further examination or testing offsite (where the inspector reasonably believes that the examination or testing cannot be conducted on site)
- take photographs or measurements, or make sketches or recordings
- exercise any powers available to them under the Victorian OHS laws
- do anything that is reasonably necessary to perform their functions, and
- require a person to produce documentation or answer questions

WorkSafe inspector entry reports

As soon as practicable after any visit, a WorkSafe inspector must give a report to the place's occupier and any health and safety representatives about the inspector's visit.

This report must include:

- the time of entry and departure
- the purpose of entry
- what was done during the visit
- a summary of the inspector's observations during the visit
- the procedures for obtaining further details from WorkSafe about the visit
- how to seek review of any decision by the inspector during the visit, and
- whether any photographs, sketches or recordings were made during the visit and where they may be inspected

WorkSafe improvement, prohibition or non-disturbance notices

A WorkSafe inspector has the authority to issue an improvement notice or prohibition notice if they reasonably believe that a person (whether or not an employer) has contravened or is contravening, the Victorian OHS laws or there is a serious risk to health and safety arising from immediate or imminent exposure to a hazard.

An inspector also has the authority to issue a non-disturbance notice if they believe it is necessary to facilitate the inspector's role under the Victorian OHS laws.

An improvement notice may include directions on how to remedy a contravention, or likely contravention, of Victorian OHS laws. 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 in an improvement notice to your community organisation should be followed as soon as possible. If you disagree with an improvement notice, you may seek review of the decision by WorkSafe, the Victorian Civil and Administrative Tribunal (**VCAT**) or both (see below).

A prohibition notice prevents a person or organisation from, for example, undertaking certain work or operating specified plant until the alleged serious risk emanating from an immediate or imminent exposure to a hazard is remedied. Again, a community organisation should seek to comply with the directions contained in a prohibition notice within the prescribed timeframe, and again, you may seek review of the decision by WorkSafe, VCAT or both.

A non-disturbance notice requires a person or organisation to stop using, moving or interfering with specific plant, substances or other things at a specific site. The non-disturbance notice can only apply for seven days at most, but an inspector can continue issuing notices to prevent disturbance of the site. As above, a community organisation should comply with the directions contained in a non-disturbance notice within the required timeframe. If you disagree with the non-disturbance notice, you may seek review of the decision by WorkSafe, VCAT or both.



Tip

Your organisation may wish to speak to a lawyer if it receives an improvement, prohibition or non-disturbance notice.

Seeking review of WorkSafe decisions

Your organisation, its officers or other eligible persons can seek a review, by [WorkSafe's Internal Review Unit](#), of certain decisions by WorkSafe inspectors.

There are strict timeframes for seeking a review of a WorkSafe inspector's decision (generally within 14 days after becoming aware of a notice). If your organisation disagrees with a WorkSafe inspector's decision, you should seek independent legal advice immediately to discuss your review rights. However, an application for review does not affect the operation of the decision unless WorkSafe stays the operation of the decision pending the review.

If you are dissatisfied with the decision of WorkSafe's Internal Review Unit, you can apply to VCAT for an external review.



WorkSafe has published [guidelines](#) to help organisations request a review of an OHS inspector decision.

