



Statement of regulatory intent: Implementation of work health and safety legislation in Western Australia

1 Purpose

This Statement provides the principles for the regulatory approach that WorkSafe (inclusive of the general industries, mines safety and petroleum safety inspectorates) will apply during the second year of the implementation of the work health and safety (WHS) laws in Western Australia.

During this period, WorkSafe recognises that while awareness of WHS requirements continues to grow, workplaces and industries are still at varying stages of compliance.

Work health and safety laws have been in place since 31 March 2022 and systems for identifying, assessing and controlling known hazards should already be in place, as both the new WHS legislation and the previous occupational safety and health, mines safety and petroleum safety legislation require the elimination or minimisation of risks.

As a regulator we advocate for the health and safety of every worker and aim to prevent work-related death, injury or ill health.

2 What we do

The regulator achieves this using a variety of methods to influence change and help people manage risks at work. These include:

- providing advice, information and educational material
- operating licensing activities across industries
- carrying out targeted inspections and investigations
- securing compliance through effective and appropriate enforcement to prevent harm.

3 Approach to technical breaches where new provisions apply

Generally, inspectors will adopt a supportive and educative approach to compliance in relation to technical (low risk) breaches where new provisions or transitional arrangements still apply, provided duty holders have made, or, are making genuine attempts to comply with legislative requirements. New provisions are those that commenced on 31 March 2023, following a transitional period of 12 months.

However, inspectors may use enforcement tools where actions or omissions have resulted in serious health and safety risks to workers or the community (see Section 6).

4 Approach to technical breaches where requirements are similar to previous requirements

Where there is a technical breach of a provision that is similar to a provision under a previous applicable law, the matter will be addressed in accordance with the [Compliance and enforcement policy](#). In the event a notice is issued, the recipient has the right to seek review if they believe there are reasons the notice should not have been issued, or if they believe more time is required to comply.

5 Approach to WHS in high-risk industries

Based on injury and fatality data, high risk industries include:

- agriculture
- construction
- mining and exploration
- manufacturing
- road transport
- public administration and safety.

The regulator will increase its provision of education and information to assist high risk industries comply with the WHS laws, and will provide risk-based compliance services to these sectors.

6 Approach to breaches involving serious risks

Breaches involving serious risks to health and safety will be addressed using the [Compliance and enforcement policy](#). An inspector may use enforcement tools including, but not restricted to, issuing an improvement notice or prohibition notice in relation to the breach.

7 Approach to investigation of serious or fatal incidents

The [Compliance and enforcement policy](#) and the [Prosecution policy](#) will be applied in cases of serious or fatal incidents, without modification for the purposes of WHS implementation. This is because the management of critical risks at workplaces should already have been in place under the previous legislation.

The use of entry warrants for the purpose of obtaining evidence during an investigation into offence provisions under the WHS Act will be used lawfully and only when warranted by the investigative circumstances.

This approach to the use of entry warrants is provided for clarity purposes only.

8 Approach to WHS service providers under section 26A

In general terms, the duty imposed on a WHS service provider under section 26A:

- applies only to services that could potentially pose a risk in the workplace (e.g. measures to eliminate a specific hazard or control a risk)
- will most commonly apply to services provided to a specific person conducting a business or undertaking (PCBU) and tailored to the circumstances of a particular workplace
- protects the WHS service provider where the WHS service is incorrectly implemented by the PCBU (i.e. it is not applied to its 'relevant use').

General advice provided broadly, for example to members of a professional association or during training, is not considered a WHS service.

The interpretation of the scope of section 26A is provided for clarity purposes only.

9 Approach to volunteers

The WHS legislation is not intended to, and is not expected to, adversely affect volunteers.

The WHS laws require organisations to ensure, so far as is reasonably practicable, the physical and mental health and safety of all of its workers, including volunteers. The WHS laws are not designed to deter anyone from becoming a volunteer and we acknowledge the important contribution volunteers make to the community.

Accordingly, inspectors will generally adopt a supportive and educative approach to volunteers and any duties they may have as workers under the WHS legislation.

10 Approach to WHS undertakings and independent WHS reports

The WHS legislation provides opportunities for the regulator to use a range of enforcement tools to prevent injury and harm to workers and pursue compliance. This includes WHS undertakings as an alternative to a prosecution if it is appropriate in the circumstances, and if it is likely to deliver superior work health and safety outcomes to a court sanction. In some instances, a WHS undertaking may be a preferred approach to a prosecution because it is expected to achieve outcomes that cannot generally be achieved by a court sanction.

The regulator may also require a PCBU to procure, and provide to the regulator, a report that relates to work health and safety at any workplace of the business or undertaking, generally or in relation to WHS matters including a particular accident or other occurrence at any workplace of the business or undertaking. The report must be prepared by a suitably qualified person who is independent of the PCBU and who is approved by the regulator; and include any contents required by the regulator.

11 Review

WorkSafe will continue to monitor the implementation of WHS legislation and engage with industry, employee and employer stakeholders. This revision of the *Statement of regulatory intent* may be further amended to assist in the successful implementation of WHS legislation if required.