

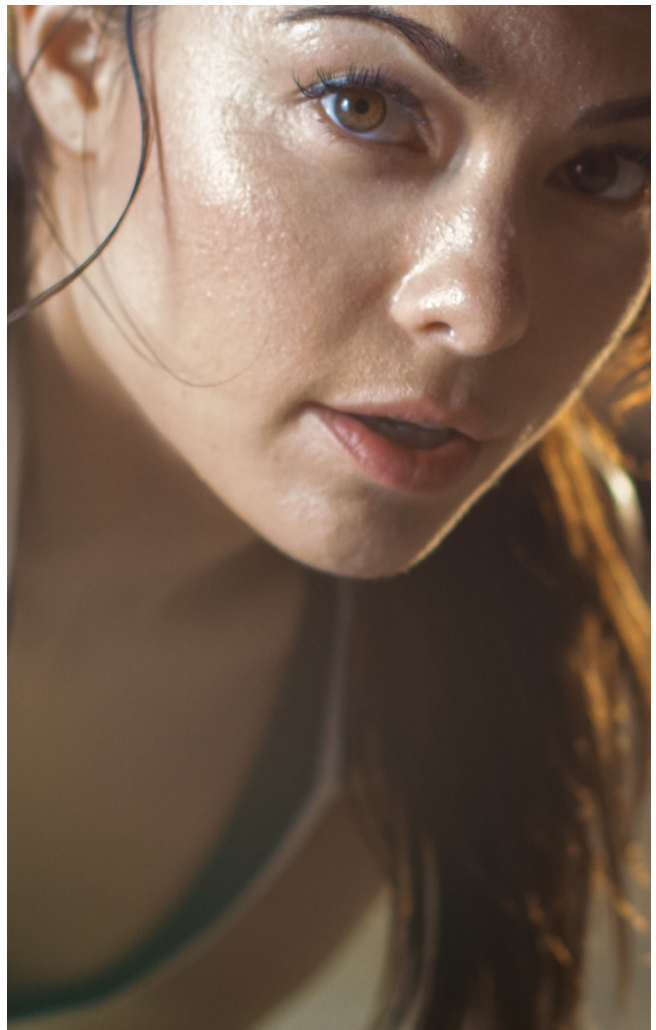
GUIDE

UNDERSTANDING HEALTH AND SAFETY OBLIGATIONS

When it comes to managing mental health and wellbeing within your sporting community, there are some obligations under work health and safety, and common law that is of value to understand.

The purpose of this **Understanding Health and Safety Obligations Guide** is to provide you with practical knowledge of what some of your obligations might be, some tips on how to meet these obligations, and how to manage any issues that arise.

This document is supported by an **Understanding Health and Safety Considerations for Mental Health and Wellbeing Infographic** to summarise key messages and put this information into an easy to use format.



WORK HEALTH AND SAFETY ACT & WORK HEALTH AND SAFETY REGULATIONS

The purpose of the Work Health and Safety Act 2020 (WA) (WHS Act) and Work Health and Safety Regulations 2022 (WA) (WHS Regs) is to protect the health, safety and welfare of workers and other persons who are at, or come into contact, with a workplace.

This includes psychological health and safety.

The WHS Act and WHS Regs apply to a 'person conducting a business or undertaking' – or PCBU. Within this definition:

- A 'person' can be a company such as a company or unincorporated association or partnership, or an individual if they are a sole trader or self-employed.
- A 'business' is an enterprise that conducts business with a view to making a profit and has a degree of organisation. An 'undertaking' may have elements of an organisation but is usually not commercial or for profit in nature.

As such, a PCBU encompasses all forms of modern working arrangements such as public and private companies, partnerships, sole traders and self-employed people, government entities, educational institutions, cooperatives, and associations if they have one or more employees. However, for the purposes of the WHS Act and WHS Regs, a PCBU does not include incorporated or unincorporated volunteer associations if they do not employ anyone.

As WA's sporting entities differ in their size and business structures – the extent to which the WHS Act and WHS Regs apply will vary. If you are unsure as to whether you or your member organisations would be considered a PCBU, it would be best to seek definitive independent advice.

If the WHS Act and WHS Regs apply to your sporting organisation, and some or all of your member organisations (e.g. clubs), there will be a responsibility,

as far as is reasonably practicable, to provide safe and healthy places and systems of work, wherever they perform work.

In a nutshell, what this means is that the WHS Act and WHS Regs requires many sporting organisations and their member organisations to take action to prevent or lessen potential risks to the health and safety of workers and volunteers.

Importantly, as the WHS Act and WHS Regs creates a primary duty of care for workers, it is important to understand how a worker is defined for the purposes of the WHS Act and WHS Regs applying in your context. A worker is defined to include employees, subcontractors, an employee or contractor of a subcontractor, an employee of a labour hire company who has been assigned to work in the business or undertaking, an apprentice or trainee, a student gaining work experience, or a volunteer.

Practically, what this means is that many sporting organisations and their member organisations may have the responsibility to assess and manage risk pertaining to psychological health and safety.

If this applies to our organisation, how could I meet this obligation?

- Implement a mental health and safety policy. A template for this policy can be found in the [True Sport – Sport Administrator eToolkit for Mental Health and Wellbeing](#).
- Ensure that any policy that you implement is able to be fully enacted. It must be practical, suitable, and attainable depending on your organisation's capability and capacity.
- Implement a health and safety risk management process.

PSYCHOSOCIAL HAZARDS

As part of the WHS Act and WHS Regs requirement to assess and manage risk pertaining to psychological health and safety, Western Australia's Workplace Health and Safety (General) Regulations 2022 requires organisations (including sporting organisations and member organisations who the WHS Act and WHS Regs apply to), as far as is reasonably practicable, to eliminate or minimise psychosocial hazards.

A psychosocial hazard is a hazard that arises from or relates to the design or management of work, a work environment, plant (e.g. equipment, machinery or appliances or tools) at a workplace, or workplace interactions or behaviours that may cause harm, whether or not it may also cause physical harm.



Examples of psychosocial hazards within a sport context are:

- Poor leadership practices and workplace culture.
- Poor or no policies and procedures.
- Unreasonable role and responsibility expectations.
- Inadequate support.
- Inappropriate and unreasonable behaviour.
- Poor organisational justice (e.g. unfair, inconsistent, or opaque decision making).
- Exposure to bullying, harassment, violence, aggression or discrimination.
- Exposure to traumatic events including vicarious and secondary trauma.
- Fatigue or burnout.

The good news is that to assist anyone who has a duty to prevent, so far as is practicable, psychosocial hazards (which may include some sporting organisations and their member's organisations), a model Code of Practice – Psychosocial Hazards has been published. This Code is designed to provide practical guidance on preventing and managing psychosocial hazards.

- You can access the Code of Practice: Psychosocial Hazards in the Workplace (2022) [here](#).
- Examples of some things to consider depending on the context of your organisation are:
 - Have Position Descriptions in place that clearly defines expectations and have a clear scope of work.
 - Have processes in place to make people aware of how they can access mental health and wellbeing support.
 - Implement and enact a **Mental Health and Wellbeing Policy**.
 - Share mental health and wellbeing resources.
 - Implement a Mental Health Champion.

DISCRIMINATION

The Disability Discrimination Act 1992 (DDA) makes it unlawful to discriminate against, disadvantage in any way, harass or victimise someone on the basis of a disability or impairment.

This includes mental health impairment or disability.

Further, specific to Western Australia, the Equal Opportunity Act 1984 (WA) (EOA) prohibits discrimination on the ground of an 'impairment' which, for the purpose of mental health, is related to "any defect or disturbance in the normal structure of functioning of a person's brain whether arising from a condition subsisting at birth or from an illness or injury.....".

As such, sporting organisations and their member organisations are required to ensure that decisions (such as membership or managing mental health issues) do not involve or give rise to unlawful discrimination.

Examples of mental health discrimination could be when:

- A person is treated less favourably, or not given the same opportunities, as others in a similar situation because of their mental health condition; or
- A rule or policy is the same for everyone but has an unfair effect on people with a mental health condition.

It is also important to understand that discrimination on the grounds of mental health impairment or disability may not be unlawful where a requirement or condition is reasonably necessary. What is reasonably necessary will depend on the circumstances of each particular case, but typically would be related to issues of health and safety, or the inherent requirements of the activity.

It may also not be unlawful to discriminate in the context of work where avoiding the discrimination would impose unjustifiable hardship on an organisation.

Nevertheless, sporting organisations and their member's organisations must ensure that they and their management committees avoid discrimination on the ground of mental health impairment or disability in relation to membership terms, conditions or benefits. It will be unlawful to exclude a person on the ground of mental health impairment or disability from a sporting activity (including an administrative or coaching activity), unless the person is not reasonably capable of performing the activity or if other exceptions under the DDA apply.

- Don't exclude a person on the ground of mental health impairment or disability from a sporting activity.
- Provide equal opportunity and anti-discrimination information and/or training.
- Should discrimination in relation to mental health impairment or disability be an issue that a sporting organisation is managing, it is recommended that professional independent legal advice is taken.





PRIVACY OBLIGATIONS

The Commonwealth's Privacy Act 1988 (Privacy Act) legislates for the protection of the privacy and confidentiality of an individual's personal information including health information in government agencies and in organisations with a turnover of \$3M or more.

Within the Privacy Act, there are Privacy Principles which provide a broad set of guidelines for how an organisation regulates and deals with personal or private information as opposed to specific requirements and exemptions.

However, even in sporting organisations not covered by the Privacy Act, when managing mental health issues, upholding the privacy of individuals is still paramount. This includes not disclosing any information about mental health concerns without the individual's consent.

In fact, many organisations, where the Privacy Act does not apply, choose to adopt the Privacy Principles as a model guide on policies and procedures which deal with the disclosure of personal information – including a best practices approach to dealing with privacy and mental health issues.

It is also important to note that some exceptions to privacy apply – such as where disclosure is required or authorised under law. For example, there are statutory requirements to report suspected cases of child abuse – in which case you must report it to police, or preventing a serious threat to life, health or safety where it is unreasonable or impracticable to obtain the individual's consent to the disclosure. In these cases, as outlined in previous modules – you would contact emergency services on 000.

Workers or members within sporting organisations may also have a duty not to misuse confidential information, which would likely include information about other members or workers. The source of such a duty usually comes from contracts or policies.

PRACTICAL STEPS

Practical steps that you can take to protect privacy in relation to mental health issues include:

- 1 Implementing a confidentiality policy which people are required to comply with. Remember, the Privacy Principles within the Privacy Act are a helpful guide to use.
- 2 Do not use identifying factors when sharing information on a need-to-know basis.
- 3 Always seek written permission to share information where possible.
- 4 Be specific about what information you will be sharing, who with and why.
- 5 Never share information with others who do not need to know.
- 6 If someone shares private mental health information with you:
 - Clarify if they have received consent to do so; and
 - Encourage them to only share necessary and/or de-identified information.

COMMON LAW

Finally, it is helpful to understand that there are mental health obligations at common law.

At common law, we all have a duty of care to take reasonable steps to not cause foreseeable harm to another. It applies to everyone that each of us have to take reasonable care to avoid foreseeable harm to anyone else. This is beyond definitions of “persons conducting a business or undertaking”, beyond “workers” and certainly extending to all supporters and players. Harm can include both physical harm and psychological harm. This duty of care depends both upon your position and on the person for whom you owe this duty. This duty of care relationship exists in addition to statutory duty of care relationships such as under the WHS Act and is more general in application.

- Take reasonable due care and diligence with protecting the mental health and wellbeing of individuals.
- Provide mental health and wellbeing awareness information.
- Should issues arise in relation to mental health impairment or disability, it is recommended that professional independent legal advice is taken.

HELPFUL HINTS

- Access the [Mental Health and Wellbeing Policy](#), [Strategy Guides](#) and [Templates](#) to help you to understand and meet your mental health and safety obligations.
- Remember, this document is supported by the [Understanding Health and Safety Considerations for Mental Health and Wellbeing Infographic](#) to summarise key messages and put this information into an easy-to-use format.



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