



STEWARDSHIP & RISK

WHS Duties and Officer Liability for Association Boards

Employing even one staff member changes the legal position of every director overnight

A narrow exemption in the model Work Health and Safety Act creates a false sense of security for many association boards. A purely volunteer-run organisation with no employees at all is treated as a 'volunteer association', is not a PCBU, and so does not carry the primary duty or the officer due diligence duty, although individual volunteers can still have duties, for example when they are at another organisation's workplace. The moment that same organisation employs even one paid staff member, that exemption disappears completely, and the full weight of the Act, including personal, non-delegable obligations on every director, applies in full.

Every state and territory except Victoria has implemented the model WHS laws, with some local differences. Victorian associations are covered by the Occupational Health and Safety Act 2004 (Vic), which has its own officer and volunteer provisions, so Victorian boards should check that Act and WorkSafe Victoria guidance rather than rely on the model Act section numbers used below.

Which rules apply to your association?

The law depends on how your association is set up. A **company limited by guarantee** follows the Corporations Act 2001 (Cth) and its constitution. An **incorporated association** follows its state or territory associations Act and its rules. A **registered charity** also follows the ACNC Act and the ACNC Governance Standards, and some Corporations Act rules are replaced for charities that are companies. Check your own governing documents, and get advice before decisions with legal consequences.

In this resource

1. [The Threshold Most Growing Associations Cross Without Noticing](#)
2. [The Officer's Due Diligence Duty, Personal And Non-Delegable](#)
3. [The Volunteer Immunity, And Its Real Limit](#)
4. [What Active Board Engagement Actually Looks Like](#)

The Threshold Most Growing Associations Cross Without Noticing

Once an association employs staff, it becomes a person conducting a business or undertaking, a PCBU, under the model WHS legislation, carrying a primary duty to ensure, so far as reasonably practicable, the health and safety of workers and others affected by its activities. This is precisely the trajectory this series has focused on throughout, an association that began as a small, entirely volunteer-run body and grew into an organisation with real staff, real premises, and real operational complexity. The transition from volunteer association to PCBU is not always a moment anyone consciously notices, but it carries real, immediate legal consequences for the board the moment it happens.

The Officer's Due Diligence Duty, Personal And Non-Delegable

Once an organisation is a PCBU, every officer, a term drawn from the same Corporations Act definition discussed earlier in this series, carries a separate, personal duty under section 27 to exercise due diligence ensuring the organisation meets its WHS obligations. This duty cannot be delegated away, and an officer can be found to have breached it independently of whether the organisation itself is convicted of anything. The due diligence standard has six specific elements: keeping current knowledge of WHS

matters, understanding the organisation's operations and associated hazards, ensuring appropriate resources and processes actually exist and are used, maintaining incident and hazard reporting processes, ensuring compliance processes exist, and actively verifying, not just assuming, that all of this is operating in practice.

A safety policy sitting in a folder satisfies none of these six elements on its own. The duty requires active, ongoing verification that the organisation's safety systems are working, which is precisely the same discipline this series has argued for across every other governance category, real engagement rather than the appearance of compliance.

The Volunteer Immunity, And Its Real Limit

Here is the point that will reassure most association boards, most of whose directors serve as volunteers. A volunteer officer still carries the due diligence duty in full, but cannot be prosecuted for failing to meet it, a specific immunity built into the Act to avoid discouraging voluntary board service. This protection applies only to officers who act on a voluntary basis, receiving nothing beyond out-of-pocket expenses. A director who receives sitting fees or an honorarium may not be a volunteer for this purpose. This immunity is narrower than it first sounds, however. A volunteer director can still be prosecuted in their separate capacity as a worker, a lower standard requiring reasonable care for their own and others' safety, if their own conduct directly creates or fails to address a risk. The officer-level immunity protects volunteer directors from prosecution for board-level oversight failures. It does not create blanket immunity from every WHS obligation that could ever apply to them personally.

What Active Board Engagement Actually Looks Like

A New South Wales case illustrates the practical difference clearly. In *SafeWork NSW v Miller Logistics Pty Ltd*; *SafeWork NSW v Doble* [2024] NSWDC 58, the company was convicted of a safety failure but its managing director was acquitted of the due diligence charge. The court accepted he had appointed a competent WHS manager, required regular safety reporting, visited sites and followed up issues as they were raised. Check for any later appeal before relying on it. The case is an illustration of exactly the point this series has made repeatedly: an officer's personal duty and the organisation's own compliance are legally separate questions, and documented board-level engagement is what actually protects an individual director, regardless of what happens to the organisation itself.

- Confirm your association's actual PCBU status honestly, particularly if it has grown from a purely volunteer body into one with paid staff, since this status change carries immediate legal consequences whether or not the board has consciously registered it.
- Build regular WHS reporting into standing board agendas, connecting to the reporting discipline discussed throughout this quarter, rather than treating safety as a delegated matter the board never revisits.
- Ensure the board actively verifies that safety processes are operating, not merely that a policy document exists, consistent with the sixth due diligence element specifically.
- Understand the volunteer officer immunity accurately: it protects against prosecution for the officer-level due diligence duty specifically, not against every possible WHS-related liability a volunteer director could face.

- Ask for evidence, not just assurances: WHS reports, incident and hazard registers, audit or inspection findings, and the decisions made about safety resourcing.

Boards should also know that the model WHS laws and Victoria's OHS Act now include industrial or workplace manslaughter offences that can apply to officers, and that the model WHS Regulations require psychosocial hazards such as bullying, excessive workload and poor support to be managed like any other risk. Scope and commencement differ, so check the law in your own jurisdiction.

Work health and safety obligations are not a risk category reserved for construction sites and factories. Any association that employs staff carries these duties, and they extend to its events, premises and volunteers. The officers governing it carry a personal, non-delegable obligation to engage with them actively, not simply to trust that someone else has it handled.

This is one of the practical governance topics built into our Board Director course, alongside the papers, tools and frameworks that turn the principle into your board's actual practice. [Explore the course](#)

Annie Gibbins

Founder and CEO, Nexus Leadership

BOARDROOM ACTION WORKSHEET

WHS Duties and Officer Liability for Association Boards

Turn the resource into evidence, a decision and an accountable next step. Keep the completed record in your association's approved board records system.

1 What is the issue or decision?

State the governance question in one clear sentence.

2 What evidence do we already have?

Record the facts, source documents and stakeholder evidence available now.

3 What evidence is still needed?

Identify the legal, regulatory, financial, member or operational information still required.

4 What is the agreed next action?

Capture the owner, timeframe and how the matter will return to the board.

Action owner	Review date	Board decision or resolution

General education, not legal, financial, tax, clinical or governance advice. Confirm specifics at the relevant primary source or with your own qualified adviser. Nexus Leadership is operated by Lipstick Consulting Pty Ltd · ABN 15 619 120 482.

CONTINUE YOUR LEARNING

Turn governance principles into practical board action.

Self-paced courses, editable resources and practical support for association boards and CEOs at nexusleadership.com.au.