



INTERPRETIVE GUIDELINE

# The meaning of 'person conducting a business or undertaking' (PCBU)

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## Introduction

This interpretive guideline has been designed to help Western Australian organisations and their associated workforces, including volunteers, prepare for the introduction of the new work health and safety laws.

A person conducting a business or undertaking (PCBU) is a broad concept that extends beyond the traditional employer-employee relationship to include all types of modern working arrangements. This document sets out who may be a PCBU.

A PCBU has a primary duty of care to ensure, so far as is reasonably practicable, the health and safety of workers.

A PCBU owes a primary duty of care to workers if it:

- engages or causes the engagement of workers to carry out work
- directs or influences workers carrying out work

while the workers are at work in the business or undertaking.

A PCBU also has a primary duty of care to ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

A PCBU may also have further duties if it:

- manages or controls workplaces, or fixtures, fittings or plant at workplaces
- designs, manufactures, imports or supplies plant, substances or structures used in work
- installs, constructs or commissions plant or structures used in work.

## A person may be an organisation or an individual

A 'person' can include a body corporate (company), unincorporated body or association or a partnership.

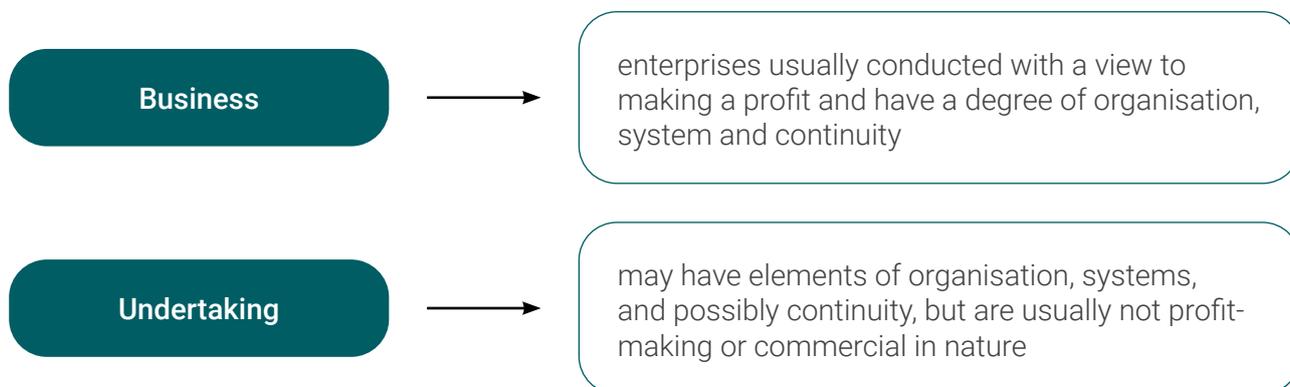
An individual is also a 'person' but will only be a PCBU where that individual is conducting a business in their own right, for example, a sole trader or self-employed person.

Individuals who are in a partnership that is conducting a business will individually and collectively be a PCBU.

## What is a 'business' or 'undertaking'?

The *Work Health and Safety Act 2020* (WHS Act) does not define a 'business' or 'undertaking'.

Whether a person conducts a business or undertaking is a question of fact to be determined in the circumstances of each case. The following diagram identifies the usual meaning of these terms:



A person conducts a business or undertaking whether it is conducted alone or together with others, and whether or not it is conducted for profit or gain.

### Performance of work

The concept of 'work' is relevant to identifying what is a business or undertaking. The duties of a PCBU are all associated with the carrying out of work.

As 'work' is not defined in the WHS Act, it has its ordinary meaning. The following criteria may help determine if an activity is work for the purposes of the WHS Act:

- the activity involves physical or mental effort by a person or the application of particular skills for the benefit of another person or for themselves (if self-employed), whether or not for profit or payment
- activities for which the person or other people will ordinarily be paid by someone is likely to be considered to be work
- activities that are part of an ongoing process or project may all be work if some of the activities are for remuneration
- an activity is more likely to be work where control is exercised over the person carrying out the activity by another person
- formal, structured or complex arrangements are more likely to be considered to be work than ad hoc or unorganised activities.

An activity may be work even though one or more of the criteria are absent or minor.

An activity that is domestic, recreational or social in nature may also be work. However, a person is unlikely to be conducting a business or undertaking if the activities form part of running a household or a person's ordinary daily life. See [Who is not a person conducting a business or undertaking](#) on page 4.

## Other factors that may determine if there is a business or undertaking being conducted

The performance of work itself is not the only factor in determining whether a person is conducting a business or undertaking. All of the circumstances must be considered in determining whether there is a business or undertaking being conducted in which the 'work' is being carried out. Relevant factors for consideration include:

- if there are elements of organisation, system and continuity associated with the performance of work
- if there are elements of control over the place where work is to be performed, the manner in which work is carried out, or the worker performing the work.

## Examples of a business or undertaking

- A retailer
- A wholesale business
- A manufacturing business
- An importer that is on-selling the imported goods
- An owner-driver of their own transport or courier business
- A fast food franchisor and the operator of the fast food outlet (the franchisee)
- A self-employed person operating their own business, including a householder if they operate a business or undertaking from home
- A government department or government agency
- A local council
- A school
- Partnerships and unincorporated joint ventures – where the partnership or joint venture is unincorporated, each partner is a person conducting the business or undertaking of the partnership or joint venture
- A builder (including principal contractors and sub-contractors)
- A not-for-profit organisation that engages and pays administrative staff
- A clothing manufacturer employing outworkers
- A strata company that engages any worker as an employee
- A mining company
- A contracting company that operates a mine for a mining company (any contractors, sub-contractors and sub-contractors of the sub-contractors that they engage are also PCBUs)
- A company operating a petroleum production facility

## Application to the Crown

The WHS Act applies to businesses or undertakings conducted by the Crown in Western Australia. The Crown operates through government departments and agencies, which differ in size and complexity. In determining whether a department or agency conducts a business or undertaking on behalf of the Crown, matters such as any legislation established or administered by the organisation, as well as organisational structure, governance and decision making, will be considered.

Proceedings against an agent of the Crown that is a body corporate will be taken against the body corporate. For other agents of the Crown that are not body corporates, proceedings will be taken against the Crown as the State of Western Australia.

## Multiple PCBUs at one location

There may be multiple businesses or undertakings and therefore multiple PCBUs involved in work at the same location. For example, PCBUs:

- at a shopping centre may include the:
  - owner of the multi-tenanted shopping centre
  - manager of the shopping centre
  - individual businesses operating from shops in the shopping centre
  - people carrying out ancillary activities, such as cleaning, security, shopping trolley collection
- at a construction site may include the:
  - principal contractor on the construction site
  - sub-contractors engaged by the principal contractor
  - sub-contractors engaged by sub-contractors, including self-employed contractors
  - client engaging the principal contractor
- at a service station may include the:
  - service station owner
  - service station operator, if different from the owner
  - mechanic, if running a separate business
  - PCBU carrying out the supply of gas cylinders to the public at the service station
  - operator of an attached fast food outlet.

A single business or undertaking may also operate at multiple locations.

## Who is not a person conducting a business or undertaking?

The WHS Act and regulations identify specific organisations that are not considered to be a PCBU for the purposes of the WHS Act. These are:

- volunteer associations except if they (or members on behalf of the association) employ a worker
- individuals engaged solely as a worker (such as an employee) and an officer (such as an executive manager) acting in that capacity alone
- local government members, who are acting in that capacity
- strata title companies (bodies corporate) that are responsible for common areas used only for residential purposes, unless the strata company engages one or more workers as an employee.

In addition, the following kinds of persons running a household are not intended to be PCBUs, depending on the circumstances:

- individuals who carry out domestic work in and around their own home for themselves or organise one-off events, such as dinner parties, garage sales, lemonade stalls
- individuals who engage a worker to carry out ad hoc home maintenance and repairs or other domestic work, such as casual babysitters or tradespersons to undertake repairs.