



# Quick Guide

## Occupational Health and Safety Laws and Volunteers – New South Wales

**This quick guide provides a straightforward overview of the responsibilities of volunteer-involving organisations in providing a safe and risk-free environment for volunteers.**

### Introduction

A healthy and safe workplace is important to the productivity, effectiveness and sustainability of any organisation. Organisations that employ one or more person also have obligations under Commonwealth and State laws to maintain a safe working environment.

Most federal and state laws do not make explicit reference to volunteers in their legislation; however this does not exempt volunteer-involving organisations from OH&S obligations. In most instances, volunteers fall under the category of 'other persons' to whom a volunteer-involving organisation owes a duty of care. While an employer's duty of care to 'other persons' is not usually defined as specifically as it is for employees, breaches of this duty of care are just as important and treated as seriously as if the person were an paid employee.

Volunteer-involving organisations also have other obligations to ensure the occupational health and safety of volunteers, including common law and laws relating to workers' compensation.

### Relevant Laws

In NSW occupational health and safety is governed principally by the *Occupational Health and Safety Act 2000* (NSW).

Other relevant legislation includes the *Coal Mines Regulation Act 1982* (NSW); *Dangerous Goods Act 1975* (NSW); *Workplace (Occupants Protection) Act 2001* (NSW); and *Civil Liability Act 2002* (NSW); the *Workers' Compensation Act 1987* (NSW); and *Workers' Compensation Act (Bush Fire, Emergency and Rescue Services) Act 1987* (NSW).



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## Volunteers and the Law

Volunteers are not specifically referred to in the *Occupational Health and Safety Act 2000* (NSW), but they are covered under provisions relating to 'other persons'. The legislation also contains provisions designed to protect individuals who are non-employees who are affected by the activities of volunteer-involving organisation.

Under NSW law, volunteer-involving organisations must employ at least one person to have a duty of care. If a volunteer organisation has only one employee, the employer will owe limited duties to its volunteers.

Volunteer-involving organisations must take all reasonably practicable steps to ensure that non-employees are not exposed to risks to their health or safety arising from the conduct of the undertaking of the employer. This includes ensuring reducing risks on premises, which includes any place where work is carried out, including land, buildings or vehicles.

### Common Law

Volunteer-involving organisations—regardless of whether it has employees or not—also have a common law duty of care to exercise reasonable care to avoid injury to all entrants on the premises. The risk must be 'reasonably foreseeable'—that is, not far-fetched or fanciful.

Volunteers with special needs may require a higher standard of care and therefore volunteer-involving organisations may need to take more time preparing them for their duties. Volunteer-involving organisations whose operations may expose volunteers to scenes or events that may cause nervous shock also need to factor in psychological injury as a foreseeable risk.

In some instances, the scope of a volunteer-involving organisation's duty of care may be expanded. For example, if a volunteer-involving organisation runs a working bee in which volunteers are asked to help with some demolition work outside of the normal voluntary activity of volunteers—the volunteer-involving organisation will have expanded the scope of the duty of care that it owes to volunteers.

### Penalties

The *Occupational Health and Safety Act 2000* (NSW) allow for criminal penalties to be imposed upon an employer that fails to provide a safe workplace.

Under common law, civil damage claims can also be made by, or on behalf of, a volunteer who is injured or killed as a result of breaching its common law duty of care.

Duty of care is breached in circumstances where the risk was foreseeable and significant, and where a reasonable person would have taken precaution.

In determining whether a reasonable person would have taken the precautions against risk or harm, the court takes into account the following:

- the probability that the harm would occur if care were not taken;
- the likely seriousness of the harm;
- the burden of taking precautions to avoid the risk of harm; and
- the social utility of the activity that creates the risk of harm.

## Compensation

With the exception of volunteer fire-fighters and volunteer emergency service personnel, volunteers can not make a claim for compensation under NSW workers' compensation laws. Volunteers can make a civil claim for damages for a breach of occupational health and safety laws. Volunteer fire-fighters and emergency services personnel are covered under the *Workers' Compensation Act 1987* (NSW) for occupational health and safety breaches.

## Volunteers' Personal Civil Liability

Volunteers in NSW do not incur any personal civil liability in relation to any act or omission done or made in good faith when:

- doing community work organised by a community organisation; or
- doing work as an office holder of a community organisation.

## Further Reading

Employers

<http://www.workcover.nsw.gov.au/Employers/General/default.htm>

## Acknowledgement

Volunteering Australia would like to thank Freehills for providing us with detailed advice in relation to the application of occupational health and safety and workers' compensation laws to volunteers in Australia.