



# Quick Guide

## Occupational Health and Safety Laws and Volunteers – Northern Territory

**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 a 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 the Northern Territory, workplace health and safety is governed principally by the *Work Health Act 1986* (NT).

Other relevant legislation includes the *Building Act 1993* (NT); *Dangerous Goods Act 1988* (NT); *Marine Act 1981* (NT); *Mining Management Act 2001* (NT); *Personal Injuries (Liabilities and Damages) Act 2003* (NT); *Radiation (Safety Control) Act 1978* (NT).



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## Volunteers and the Law

The Northern Territory's *Work Health Act 1986* (NT) provides a very broad definition of a worker, that would include volunteers. A worker is defined

- as anyone who performs work or services of any kind for another person;
- under an agreement of any form.

Under this definition, a volunteer would be considered as a worker and be covered by the legislation.

If the volunteer does not fall into the above category of a worker, the Act still protects anyone else who is not an employee, but who is affected by the employer's undertaking. This would include volunteers.

Volunteer-involving organisations have a duty of care to ensure that, as far as practicable, a volunteer's health and safety is not adversely affected by the work they are engaged in. This includes maintaining a safe workplace and plant, making arrangements for the safe handling and transport of plant and substances, providing training and instruction to enable volunteers to carry out their work in a safe manner and ensure that visitors to a workplace are aware of and abide by safety requirements.

## 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 duty of care that it owes to volunteers.

## Penalties

The *Work Health Act 1986* (NT) sets a maximum penalty on both corporations and individuals for breaches of the duty 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

The Northern Territory specifically excludes volunteers from laws relating to workers' compensation and rehabilitation. The exception to this is some volunteer fire-fighters, volunteer emergency services personnel and prescribed volunteers.

## Volunteers' Personal Civil Liability

Under the *Personal Injuries (Liabilities and Damages) Act 2003* (NT) volunteers do not incur personal civil liability for a personal injury caused by an act done in good faith and without recklessness while doing community work for a community organisation.

## Further Reading

A guide to safety management

<http://www.worksafe.nt.gov.au/corporate/publications/pub0002.pdf>

## 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.