



Quick Guide

Occupational Health and Safety Laws and Volunteers – Tasmania

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

Occupational health and safety in Tasmania is governed principally by the *Workplace Health and Safety Act 1995*.

Other relevant legislation include: the *Civil Liability Act 1998* and the *Workers' Rehabilitation and Compensation Act 2003*.



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Volunteers and the Law

The Tasmanian Act does not explicitly refer to volunteers, but they are recognised by the law as 'other persons'. The Act also contains provisions designed to cover member of the public generally and any other person who is not a paid employee, who may be affected by the conduct of the employer's undertaking. This would include volunteers.

The duty of care that an employer owes to 'other persons' is to ensure, so far as is reasonably practicable, that the health and safety of volunteers is not adversely affected as a result of the work carried on at a workplace.

Volunteer-involving organisations that have control of a premises, plant, substance or temporary public stand also must ensure so far as is reasonably practicable that the premises and the entrances and exits do not pose a risk to health and safety.

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

Under the *Workplace Health and Safety Act 1995* (Tas), penalties can be imposed on employers that fail to provide safe workplaces. If a body corporate fails to comply with the Act, each director is taken to have failed to comply with the act. Corporations can be fined up to \$165,000 and individuals \$55,000 for contravening the Act.

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 the 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

Volunteers may be covered by Tasmania's workers' compensation laws. The *Workers' Rehabilitation and Compensation Act 1988* (Tas) defines a worker as anyone who works under a contract of service with an employer. The contract can be express or implied, oral or written. Fire-fighters, ambulance service providers, police volunteers who voluntarily provide service for the benefit of the state are taken to be workers for the purposes of this Act.

Under the *Sentencing Act 1997* (Tas) a guilty party can be ordered to pay compensation for injury, loss, destruction or damage resulting from an offence.

Volunteers' personal civil liability

Under Tasmanian law, volunteers do not incur personal civil liability for any act or omission done in good faith when doing community work organised by a community organisation or an office holder of an organisation. This protection does not extend to situations where volunteers engage in criminal conduct, are intoxicated or acts outside of the scope of the organisation's activities or contrary to instructions.

Further reading

Duties of Employers and Self-Employed Persons

<http://www.workcover.tas.gov.au/workcoverPublish/resource/polemployers-1.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.