



Quick Guide

Occupational Health and Safety Laws and Volunteers – Western Australia

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 the Western Australia, occupational health and safety is governed principally by the *Occupational Health and Safety Act 1984 (WA)*.

Other relevant legislation include: *Volunteers Protection from Liability Act 2002 (WA)*; *Civil Liability Act 2002 (WA)*; *Factories and Shops Act 1963 (WA)*; and *Mines and Safety Inspection Act 1994 (WA)*; *Workers' Compensation and Injury Management Act 1994 (WA)*.



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Volunteers and the Law

Volunteers are not explicitly recognised by the Act, although they are included under the category of 'other persons'. The Act also contains provisions designed to cover members 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.

Volunteer-involving organisations that control a workplace need to take practicable steps to ensure that volunteers are not adversely affected by the organisation's activities.

The WA Act does not set out specific steps that volunteer-involving organisations have to take that are considered 'reasonably practicable' to ensure health and safety.

However, regard needs to be given to:

- the severity of any potential injury and harm to health that may be involved and the degree of risk of it occurring;
- the state of knowledge about injury or harm to health;
- the risk of that injury or harm to health occurring;
- the means of removing or mitigating the risk or mitigating the potential injury or harm to health; and the availability, suitability and cost of removing or mitigating the risk or potential injury.

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 1984 (WA)* imposes a penalty on employers that breach their duty of care to non-employees, including volunteers.

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.

Penalties can be imposed on volunteer-involving organisations who fail to provide a safe workplace. Volunteers who suffer injury can claim compensation for injury or loss suffered where an offence has been committed. A claim for civil damages can be made where a volunteer-involving organisation has been found in breach of its duty of care.

Personal civil liability of volunteers

There is no express provision in the *Civil Liability Act 2002* that a volunteer does not incur any personal civil liability from any act or omission done in good faith when undertaking volunteer work.

However, the *Volunteer (Protection from Liability) Act 2002* ensures that volunteers are not personally responsible for an act or omission done or made in good faith and without recklessness in the course of carrying out community work for a community organisation. The personal liability is transferred instead, to the organisation.

Further reading

General duty of care in Western Australian workplaces

<http://www.worksafe.wa.gov.au/newsite/worksafe/content/guidnotes/guidlaws0001.html>

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.