



Quick Guide

Occupational Health & Safety Laws & Volunteers – Australian Capital 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 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 the Australian Capital Territory is governed principally by the *Occupational Health and Safety Act 1989* (ACT).

Other relevant legislation include: the *Volunteer Protection Act 2001*(ACT) and the *Workers' Compensation Act 1951*(ACT).



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Volunteers and the Law

The ACT 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 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.

The duty of care that an employer owes to 'other persons' is to ensure that any person at or near a workplace under the employer's control are not exposed to risk to their health or safety arising from the conduct of the employer's undertaking.

In deciding whether an employer has taken all reasonable steps to ensure that the employer has complied, consideration is given as to whether employees have been given codes of practice relevant to their workplace and whether these codes have been complied with.

The ACT Act also refers to the 'welfare' of employees. The meaning of 'welfare' is not explicitly defined in the ACT, but it is thought to relate to providing employees with counselling, training opportunities or career assistance.

Volunteer-involving organisations that have control of a workplace must also take all reasonably practicable steps to ensure that the workplace is safe and does not pose risks to health.

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

Penalties can be imposed for breaches of the *Occupational Health and Safety Act 1989* (ACT).

The ACT also has provisions within the *Crimes Act* against industrial manslaughter. This new legislation allows that an employer can be held responsible where the employer is 'reckless about causing serious harm to the worker...or is negligent about causing the death of the worker, by its conduct'. In this context, a worker is defined broadly and can include volunteers.

Under the *Crimes (Sentencing) Act 2005*, a non-conviction order can be given for an offence. However, this does not mean that the volunteer-involving organisation is free from claims of compensation. The court can make an order or direction for compensation that it could have made if a conviction had been recorded.

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

Volunteers are also covered under the *Worker's Compensation Act 1951* if he/she undertakes work that is of financial benefit to the enterprise. In some cases, the Minister may give the enterprise, trade or business a volunteer exemption certificate.

The Minister may also declare a volunteer to be a worker—and therefore covered by the Act—if he/she deems it is in the public interest to do so.

Volunteers' Personal Civil Liability

The *Volunteer Protection Act 2001* protects volunteers in the ACT from personal liability for negligence where they work for a community organisation. Liability that would normally be attached to the volunteer is transferred to the community organisation for which they work. The Act also limits the right to bring proceedings against a volunteer personally.

Further Reading

Occupational Health and Safety Act 1989. A Guide for Users

http://www.workcover.act.gov.au/pdfs/guides_cop/Guide-OHS_Act.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.