



# Quick Guide

## Occupational Health and Safety Laws and Volunteers – Queensland

**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 Queensland, occupational health and safety is governed principally by the *Workplace Health and Safety Act 1995* (QLD).

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



NVSC is a project of Volunteering Australia

Funded by the Department of Families, Community Services and Indigenous Affairs

## Volunteers and the Law

All persons who work in Queensland, including volunteers, are covered by the Queensland Act which imposes workplace health and safety obligations on employers and on persons who conduct a business or undertaking. Ensuring the health and safety of all other people including customers, visitors to the workplace, passers by and neighbours is a requirement of the Act.

If the organisation is a for-profit employer, all people undertaking work (paid and unpaid) are classed as a worker and covered by the Act. Such organisations have a legal obligation to ensure the workplace health and safety of each person who performs work activities. This includes providing and maintaining a safe and healthy work environment and providing information, instruction, training and supervision to ensure health and safety.

A volunteer-involving organisation that has control of a workplace also has an obligation to ensure that the risk of injury or illness from a workplace is minimised for persons coming into the workplace to work. A workplace is any place where work is, or is to be, performed and is quite broad in its definition.

Under Queensland law, volunteers who undertake construction work or enter a construction site are required to complete a general safety induction course and to be the holder of a 'construction blue card'.

### 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 *Workplace Health and Safety Act* imposes a penalty on employers who fail to provide a safe workplace.

Under the *Penalties and Sentences Act 1992 (Qld)* a court may order that an offender pay compensation for personal injury suffered by a person.

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, not insignificant and where a reasonable person in the position of the 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

Under the *Workers' Compensation and Rehabilitation Act (Qld) 2003* certain volunteers, such as those who work:

- for a counter-disaster organisation;
- in fire fighting or as honorary ambulance officers;
- for religious, charitable or benevolent organisations and non-profit organisations;
- in unpaid positions in local government;
- for statutory bodies or industrial union of employees;
- or employers of other public bodies and community service program (excluding people involved in a work for the dole project or a community development employment project)

may be eligible to receive compensation from an insurance contract entered into with WorkCover.

## Volunteers' Personal Liability

Volunteers do not incur any personal civil liability in relation to any act or omission done or made by the volunteer in good faith when doing community work organised by a community organisation or as an office holder of a community organisation.

## Further Reading

Workplace Health and Safety— People who conduct a business or undertaking  
<http://www.deir.qld.gov.au/workplace/rights/yourobligation/who/conduct/index.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.