



Quick Guide

Occupational Health and Safety Laws and Volunteers – Victoria

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 Victoria, workplace health and safety is governed principally by the *Occupational Health and Safety Act 2004* (Vic).

Other relevant Acts include the *Dangerous Goods Act 1985* (Vic), the *Equipment (Public Safety) Act 1994* (Vic) and the *Wrongs Act 1958* (Vic).



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Volunteers and the Law

Volunteers are not specifically referred to in Victoria's *Occupational Health and Safety Act 2004* (Vic), but they are covered under provisions relating to 'other persons'. Volunteers are also covered by other parts of the Act that protect members of the public who are non-employees but are affected by the activities of employers.

An employer must ensure as far as is reasonably practicable, that people other than employees are not exposed to risks to health and safety arising from the activities of the employee.

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.

Volunteer-involving organisations that are in control of a workplace must also ensure that the workplace and the means of entering and leaving it be without risk to health. Volunteer-involving organisations also have a common law duty to exercise reasonable care to avoid injury to all entrants on their premises.

Penalties

The *Occupational Health and Safety Act 2004* (Vic) provides for criminal penalties to be imposed on volunteer-involving organisations if they fail to provide a safe workplace. Any individual or body corporate that recklessly places another person at a workplace in danger of serious injury can face up to five years imprisonment and/or heavy fines.

Under the *Sentencing Act 1991* (Vic), offenders can be ordered to pay compensation to the injured person.

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, 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.

Volunteers' Personal Civil Liability

The *Wrongs Act 1958* (Vic) specifically provides that a volunteer, defined as 'an individual who provides a service in relation to community work on a voluntary basis' is not liable in any civil proceeding for anything done, or not done, in good faith by him or her in providing a service in relation to community work organised by a community organisation. Liability is borne, instead, by the volunteer-involving organisation.

Further reading

Employer Rights & Responsibilities

<http://www.workcover.vic.gov.au/wps/wcm/connect/WorkSafe/Home/Laws+and+Regulations/Employer+Rights+and+Responsibilities/>

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.