



Quick Guide

Occupational Health and Safety Laws and Volunteers – South 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

Occupational health and safety in South Australia is governed principally by the *Occupational Health, Safety and Welfare Act 1986*.

Other relevant legislation include: the *Volunteers Protection Act 2001* and the *Civil Liability Act 1936* the *Workers' Rehabilitation and Compensation Act 1986*.



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Volunteers and the Law

The South Australian Act does not explicitly refer to volunteers, but they are recognised by the law as 'other persons'. The Act also contains provisions to protect members of the public generally - and anyone else who may be affected by the conduct of the employer's undertaking. This includes volunteers.

To owe a duty of care to 'other persons', a volunteer-involving organisation must be considered an employer under the Act; that is, an organisation that employs at least one person. The duty of care that an employer owes to 'other persons' is to ensure that any person (not an employee) is safe from injury and risks to health when the person is at a workplace that is under the management and control of the employer, or while the person is in a situation where they could be adversely affected by the acts or omissions occurring in connection with the work of the employer.

Volunteer-involving organisations that occupy a premise must also take all reasonably practicable steps to ensure that the workplace is maintained in a safe condition and that access and exits are safe to all people.

Common Law

Volunteer-involving organisations - regardless of whether it has paid 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 the volunteers - the volunteer-involving organisation will have expanded the scope of the duty of care that it owes to volunteers.

Penalties

Employers who fail to provide a safe workplace face penalties under the South Australian Act.

Under the *Criminal Law (Sentencing) Act*, a defendant may be required to pay compensation for injury, loss or damage resulting from the offence for which the defendant has been found guilty.

Volunteers are covered under the *Workers' Rehabilitation and Compensation Act 1986*, except in circumstances where the volunteers perform work that is of benefit to the State for the Crown.

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 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.

Volunteers' Personal Liability

Under the *Volunteer Protection Act*, a volunteer incurs no personal civil liability 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 *Volunteer Protection Act* transfers personal liability from the individual to the organisation.

Further Reading

Employer rights and responsibilities

[http://www.workcover.com/Home/Injury/Lifecycleofaclaim/Compensationcover/Employer rightsandresponsibilities/tabid/108/Default.aspx](http://www.workcover.com/Home/Injury/Lifecycleofaclaim/Compensationcover/Employer%20rightsandresponsibilities/tabid/108/Default.aspx)

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.