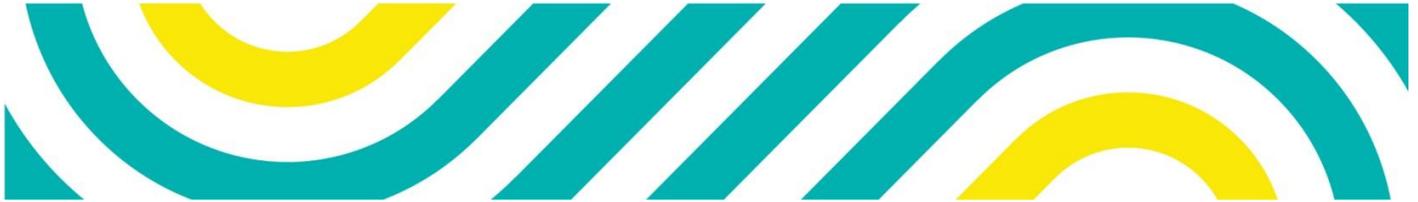

Charities and volunteer associations – What you need to know about health & safety laws



The Health and Safety at Work Act 2015 (**HSW Act**) is now officially law, and will come into force on 4 April 2016. If you are involved with running a charity or any other organisation with volunteers, or if you do volunteer work yourself, you need to know how the HSW Act will affect you.

What does the HSW Act say?

The aim of the HSW Act is to reduce the incidence of injuries and improve the health of workers in the workplace. It requires people in charge of a business or other type of undertaking to properly assess risks and hazards created by their activities and to remove or minimise them where possible.

The HSW Act sets out the processes to be followed to identify risks, sets up a procedure for the involvement of workers in the management of health and safety, and establishes a regime of inspections and prosecutions to ensure compliance with the HSW Act.

Can your organisation be prosecuted for a breach of the HSW Act?

In general, the HSW Act imposes duties on a person conducting a business or undertaking (**PCBU**) in any workplace. A workplace includes any place where work is carried out for a business or other type of undertaking, even if that business or undertaking is a not-for-profit organisation.

However, there is a carve-out in the legislation, so that a “volunteer association” is not a PCBU which owes the duties which other individuals and businesses will owe. The definition of a volunteer association is fairly narrow:

“a group of volunteers (whether incorporated or unincorporated) working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.”

Your organisation cannot therefore be prosecuted for a breach of the HSW Act if it only has volunteers. This is the same as under the current law. If your organisation has employees as well as volunteers, then it will be treated like any other PCBU, and may be prosecuted, regardless of whether the breach was in respect of the health and safety of a worker or of one of your volunteers.

All that is required to be a PCBU is one employee for the entire organisation, so if your organisation operates as a series of branches under one operating structure, an employee in one branch may deem the other branches to be a PCBU, even if those branches do not employ anyone. You need to be aware of the structure of every branch and office in your organisation.

What do you need to do to comply with the HSW Act?

If your organisation is a PCBU, to comply with the requirements of the HSW Act:

- Your organisation must ensure the health and safety of your workers (including volunteers) and of other workers whose activities are influenced or directed by your organisation. Your organisation must also ensure that the health and safety of any other person isn't put at risk because of the work being carried out. This includes providing a safe work environment, with safe equipment, and suitable procedures in place.

- Officers of your organisation must also exercise due diligence to ensure that your organisation complies with its obligations. This should be done by ensuring that your organisation has health and safety policies and procedures which are appropriate for the risks the organisation creates and that these policies are adhered to.

Failure to comply with the HSW Act, particularly if a serious injury eventuates, can result in very high fines up to a maximum of \$300,000 for an individual, \$600,000 for an officer, and \$3,000,000 for the organisation.

Casual volunteers vs volunteer workers

Where volunteers carry out work for a PCBU, the HSW Act distinguishes between casual volunteers and volunteer workers.

If you are a volunteer who regularly carries out work for a PCBU charity or organisation, you will be considered to be a volunteer worker.

However, you will be a casual volunteer, not a volunteer worker, if your work is limited to:

- participating in a fund-raising activity (such as selling chocolates or raffle tickets);
- assisting with sports or recreation for an educational institute, sports club, or recreation club (for example volunteering your time as a coach, umpire or referee);
- assisting with activities for an educational institute outside the premises of the educational institution (including being a helper on school camps); or
- providing care for another person in the volunteer's home.

A PCBU charity or organisation will owe the same duties to volunteer workers as to other workers. This includes appropriate training, induction or supervision to carry out their work safely. It will not owe the same duties to casual volunteers but will still owe them the general duties owed to others in the workplace, such as customers or visitors.

If you are a volunteer worker, you will need to comply with the obligations that the HSW Act places on workers. This means that you will need to take responsibility for your own and others' health and safety. You must comply with any policies and procedures or instructions issued by the charity or organisation that you are working for.

Worker participation in health and safety

Because duties are owed by workers as well as by PCBUs and officers, it is important that workers are involved in the health and safety policies of a business. To facilitate this, the HSW Act sets out a number of requirements for worker participation, including consultation with workers when identifying hazards in the workplace, and when deciding whether to have a health and safety representative or health and safety committee.

However, these requirements do not apply to volunteer workers. Therefore you will only need to consult with employees in relation to health and safety issues, and not with volunteers. Of course, you can still discuss health and safety issues with your volunteers if you choose to do so.

What if your volunteer role is as an officer?

Many not-for-profit organisations have volunteer board members or trustees. These people will be considered to be officers of the PCBU, as they occupy a position that allows them to exercise significant influence over the management of the organisation.

As a volunteer officer you have the same duties that a paid officer would have, to exercise due diligence to ensure that the PCBU complies with its health and safety duties, by:

- acquiring, and keeping up to date, knowledge of health and safety matters;
- gaining an understanding of the nature of the operations of the PCBU and of the hazards and risks associated with those operations; and
- ensuring that the PCBU has, and uses:
 - appropriate resources and processes to eliminate or minimise risks to health and safety;

- appropriate processes for receiving, considering and responding to information regarding incidents, hazards, and risks; and
- processes for complying with any duty or obligation of the PCBU under this Act.

However, despite having these duties, a volunteer officer cannot be prosecuted under the HSW Act for failing to comply with these duties. This is a slightly bizarre situation of the law creating an unenforceable duty. It will obviously be good practice to comply with the due diligence duty.

In this role, you could still be prosecuted:

- as a worker or other person in a workplace, for breaching your obligations to take care of your own and others' health and safety; or
- as an officer, for failing to comply with any enforcement measures mandated by WorkSafe, such as an improvement notice or prohibition notice which has been issued to the PCBU.

If you have any questions about how the HSW Act applies to you or your organisation, contact a member of our health and safety team.

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