



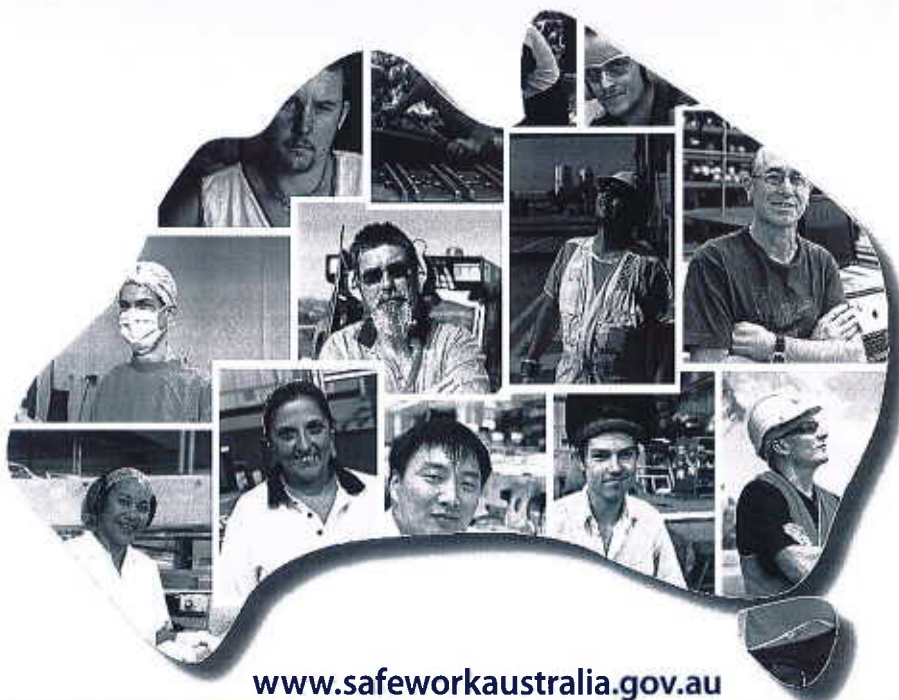
**safe work australia**

# Volunteer organisations and the model Work Health and Safety Act

## LEGISLATIVE FACT SHEET SERIES

### Overview

This fact sheet provides information on the coverage of the model Work Health Safety Act to volunteer organisations. In this fact sheet, the term 'volunteer organisation' is used to describe all volunteer organisations, including not for profit and community service organisations, whether or not they are covered by the model work health and safety laws.



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The model Work Health and Safety Act (WHS Act) aims to protect the health and safety of all workers nationwide, including volunteers. Protecting the health and safety of volunteers demonstrates that their commitment is valued and recognises the vital role they play in the community.

This fact sheet provides information on the coverage of the model WHS Act to volunteer organisations. In this fact sheet, the term 'volunteer organisation' is used to describe all volunteer organisations, including not for profit and community service organisations, whether or not they are covered by the model work health and safety laws.

## Do the model work health and safety laws apply to your volunteer organisation?

A volunteer organisation owes duties to its volunteers under the WHS Act, where it:

1. conducts a 'business or undertaking' (whether for profit or not), and
2. is not a 'volunteer association' as defined by the model work health and safety laws.

This means that the model work health and safety laws do apply if your volunteer organisation employs staff as well as volunteers to carry out work for the organisation. However, the model work health and safety laws do not apply to a 'volunteer association' (whether incorporated or unincorporated). Page 4 of this fact sheet sets out the definition of a volunteer association.

## Is your organisation a 'person conducting a business or undertaking'?

The main health and safety duty under the model WHS Act is owed by a 'person conducting a business or undertaking' (PCBU). A PCBU may be a corporation, a partnership, an unincorporated or incorporated association, a self employed person, a sole trader or the Crown. Some volunteer organisations, such as those which run retail businesses and those which employ staff for example, are PCBUs. If so, the duty is to ensure, so far as is reasonably practicable, the health and safety of workers engaged in work for the business or undertaking. This duty is owed to all workers including volunteer workers.

Whether the model work health and safety laws apply in a particular situation depends on a number of things such as:

- the nature of the organisation for which the work is being carried out whether at the time, the work was being carried out for a community purpose or as part of the conduct of a business or undertaking carried on by the organisation
- the nature of the work being undertaken by a volunteer work in this context, does not include activities of a purely social, recreational or domestic nature, and
- what a volunteer is actually doing at the time of a safety incident, for example, whether the activity was within the volunteer's duties or something being done on their own initiative.

Volunteer organisations may be primarily focussed on working for one or more community purposes but in the course of doing so, may at times be involved in the conduct of a business or undertaking. For example, a charity organisation may run a shop to raise money for the organisation. If the organisation or its members employ any person to operate the shop, it will need to comply with the model work health and safety laws in relation to workers and other persons at the shop, including volunteers. The nature of the particular activities of an organisation and its volunteers at any point in time, will determine whether the duties and requirements of the model work health and safety legislation apply. If a volunteer organisation employs staff as well as volunteers, the work health and safety legislation will apply to the organisation. Examples of volunteer organisations that conduct businesses or undertakings may be:

- emergency services organisations
- war veterans organisations, and
- charity, not for profit and conservation organisations that employ staff or run businesses.

Examples of activities that are not intended to be regarded as businesses or undertakings because they are carried out by volunteer associations are:

- the local woodwork club that meets once a month as a collective of volunteer members and volunteer office bearers

- a senior citizens' group set up for the purposes of encouraging social interaction and arranging social activities for members of the group, where the members and office bearers are all volunteers
- a junior sports club in which the office bearers are volunteers, and all fundraising and other activities of the club are all carried out by volunteers, such as the parents of the children playing the sport, and
- a group of parents coaching a children's sporting team on a voluntary basis.

### What is a 'business' or 'undertaking'?

A volunteer organisation owes duties under the WHS Act where it conducts a 'business' or 'undertaking'. Whether a volunteer organisation is involved in the conduct of a business or undertaking within the meaning of the WHS Act will depend on the circumstances. Where a volunteer organisation employs staff however, it is a PCBU.

The WHS Act states that a person conducts a business or undertaking whether it is conducted alone or together with others, and whether or not it is conducted for profit or gain. Formal, structured or complex arrangements may be more likely to be considered businesses or undertakings rather than ad hoc or unorganised activities, whether the organisation is incorporated or not.

Trades, occupations and professions (for profit or not) and enterprises or going concerns for the purchase, sale or supply of goods and services fall within the definition of a 'business or undertaking'.

Work relates to a business or undertaking if it is carried out for the purpose of that business or undertaking. For example, this will be the case where the product, service or outcome is for the benefit of the business or undertaking, as in the work of shop assistant for a charity shop or fundraising organisation.

For more information about the meaning of a 'person conducting a business or undertaking' under the model work health and safety laws, refer to the [Interpretative Guideline Model Work Health and Safety Act, The meaning of 'person conducting a business or undertaking'](#).

### When does your volunteer organisation owe duties to its volunteers under the model work health and safety laws?

A volunteer organisation that is conducting a business or undertaking owes duties to workers while they are 'at work' in the business or undertaking. This includes workers and volunteers:

- who are engaged, or caused to be engaged by the organisation, and
- whose activities in carrying out work are influenced or directed by the organisation.

The duties imposed on a PCBU by the WHS Act are all associated with workers carrying out work. Some, but not all, volunteers will be workers under the WHS Act. A volunteer is a worker if they carry out work in any capacity for a PCBU. Volunteers who work in employment-like settings are likely to be workers and may therefore owe and be owed duties by a volunteer organisation that is a PCBU. Employment-like settings are those characterised by features such as structured work arrangements, employment contracts with workers, systems of work and payment for the services of workers.

### When is a volunteer 'carrying out work'?

The term 'work' covers a wide variety of activities. A person carries out work when they perform a duty or task or engage in effort or activity directed towards the production of something, such as planting trees or performing first aid.

'Work' is not defined in the WHS Act and will be given its ordinary meaning. The following criteria may help in deciding if an activity which a volunteer performs is likely to be 'work' for the purposes of the WHS Act:

- Activities that involve physical or mental effort by a person or the application of particular skills for the benefit of another person or for themselves (if self-employed), whether or not for profit or payment may be considered work.
- Activities for which the person or other people will ordinarily be paid are likely to be considered work.

- c. Activities that are part of an ongoing process or project may all be work if some of the activities are for remuneration.

For example, surf lifesavers are usually volunteers who perform work activities for the club. The club has an obligation to the surf lifesavers to ensure the work health and safety of all who perform work for the club, whether they are paid or not.

### **Is the work being carried out ‘influenced or directed’ by the PCBU volunteer organisation?**

A volunteer organisation that is a PCBU also owes health and safety duties to workers (including volunteers) whose activities in carrying out work are ‘influenced or directed’ by the organisation. This means that in circumstances where workers (including volunteer workers) are not in an employment relationship but work under the direction and requirements of the volunteer organisation, the organisation will still owe them health and safety duties. This means that the person in control of the business or undertaking or their representative is aware of, and has some control over the work to be undertaken. There does not have to be any agreement in writing but the arrangement might be indicated by factors such as providing the person with instruction, equipment, training or assistance, or controlling or supervising the work.

For information about what your volunteer organisation needs to do to comply with the model work health and safety laws, refer to the fact sheet ‘What does a volunteer organisation need to do to comply with the model work health and safety laws?’.

### **What is a ‘volunteer association’ under the model work health and safety laws?**

A ‘volunteer association’ is defined as a group of volunteers working together for one or more community purposes where none of the volunteers (jointly or alone) employs any person to carry out work for the association. Volunteer organisations range from small informal community groups to large incorporated organisations. They may be unincorporated and incorporated associations. The WHS Act makes it clear that a ‘volunteer association’ does not conduct a business or undertaking and therefore does not owe

duties under the WHS Act.

The main factors in determining whether a volunteer organisation is a ‘volunteer association’ are whether the organisation:

- conducts a business or undertaking, or
- its volunteers employ people to work for that business or undertaking.

If not, the volunteer association is not covered by the WHS Act and will not owe duties to its volunteers under it. Nevertheless, even where the volunteer organisation does not fall under the work health and safety laws, it is prudent to comply with general work health and safety duties. The general law duties of volunteer organisations and volunteers are well established and Australian courts have long recognised that volunteers are owed a general duty of care by the people and the organisations they support.

### **What is a ‘community purpose’ under the model work health and safety laws?**

The WHS Act does not apply to ‘volunteer associations’ where a group of volunteers is working together for one or more community purposes.

The term ‘community purposes’ is not defined in the WHS Act but is intended to cover things such as:

- philanthropic or benevolent purposes, including the promotion of art, culture, science, religion, education, medicine or charity, and
- sporting or recreational purposes, including the benefiting of sporting or recreational clubs or associations.

### **When is a person ‘employed’ to carry out work for the volunteer organisation?**

If members of a charitable, religious, sporting or social volunteer organisation (whether unincorporated or incorporated) employ any person to carry out work for the organisation (for example a sporting club that employs bar and restaurant staff) the organisation will be conducting a ‘business’ or ‘undertaking’ under the model WHS Act. However, hiring a contractor who is

not an employee (for example to audit accounts or drive a bus on a day trip) will not cause the volunteer organisation to be a PCBU. This is because a contractor is not considered to be 'employed'.

Volunteer organisations with one or more employees do however, owe duties and obligations under the model WHS Act to those employees and to any volunteers who carry out work for the organisation.

## How do you tell if someone is 'employed' by a volunteer organisation?

An employee contributes labour and expertise to the business or undertaking of an employer and is usually employed to perform specific duties. Under Australian law, an 'employee' is usually (although not always) someone who has a 'contract of service' with their employer to perform such work.

'Contract of service' and 'contract for services' are common law phrases that are used to distinguish between the nature of services provided by a worker to an employer. A person who is employed usually performs work under a contract of service. There are many other indicators of whether a person is likely to be considered an employee. These include:

- a. whether there is an employment contract in place, even though a person may be paid a nominal amount in return for the work they are performing, this may still be sufficient to indicate that there is an employment contract in place
- b. the level of control or right to control that the employer may exercise such as over the manner in which the work is performed, the place of work and the hours of work
- c. whether the worker performs work for others (or is entitled to do so)
- d. whether the worker has a separate place of work and/or advertises their services to the world at large
- e. whether the worker provides and maintains significant tools or equipment
- f. whether the work can be delegated or subcontracted
- g. whether the putative employer has the right to suspend or dismiss the person engaged

- h. whether the worker is remunerated by periodic wage or salary
- i. whether the worker is provided with paid holidays or sick leave
- j. whether income tax is deducted from remuneration paid to the worker
- k. whether the work involves a profession, trade or distinct calling on the part of the person engaged, and
- l. whether the worker creates goodwill or saleable assets in the course of his or her work.

A contract for services however, refers to a relationship where a person provides services as an independent contractor. People who work under a contract for services generally have their own business, may provide their services to more than one client at a time and usually provide their own insurance cover. If so, they will be contractors and will not 'employed' by the volunteer organisation under the model WHS Act.

For more information regarding the duties of PCBU volunteer organisations under the model work health and safety laws, refer to the fact sheet [What do volunteer organisations need to do to comply with the model work health and safety laws?](#)

## Model Work Health and Safety Laws Fact Sheet Series

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