

## Safety Responsibility and Accountability

Your organisation has a legal obligation to provide and maintain a safe environment for your volunteers, customers, and visitors. This arises under common law (established by the courts) and in some cases under specific workplace legislation. In NSW health and safety in the workplace is regulated by the NSW WHS Laws (WHS Act 2011 & WHS Regulation 2011). The NSW WHS Laws apply to all organisations that have one or more employees. They do not apply to organisations that only engage volunteers and have no employees or contractors ('volunteer associations') i.e. nobody is paid to complete work.



### TIP

Even if your organisation is a volunteer association it is a good idea to comply with the general WHS duties under the WHS Act, as the Australian courts have recognised that volunteers and visitors are owed a general duty of care. Complying with the act will help meet those duties.



### IMPORTANT

Even if your organisation is a volunteer association, and thus exempt from the NSW Safety Laws, under common law of negligence (established by the courts) you owe a duty of care to your volunteers and visitors to take reasonable steps to avoid foreseeable harm, injury, or loss. In the event of an incident where an individual receives a 'loss', they may take legal action against the organisation.

### Primary Duty of Care

The primary duty of care requires duty holders to ensure health and safety, so far as is reasonably practicable (SFAIRP), by eliminating risks to health and safety. If this is not reasonably practicable, risks must be minimised so far as is reasonably practicable.

It is recommended that volunteer associations ensure, SFAIRP;

- The provision and maintenance of a working environment that is safe and without risks to health and safety, including safe access to and exit from the workplace
- The provision and maintenance of plant, structure and systems of work that are safe and do not pose health risks (for example providing effective guards on machines and regulating the pace and frequency of work)
- The safe use, handling and storage of substances (for example toxic chemicals, dusts and fibres)
- The provision of adequate facilities for the welfare of volunteers at work (for example access to washrooms, lockers and dining areas)
- The provision of information, instruction, training or supervision to volunteers needed for them to work without risks to their health and safety and that of others around them
- That the health of volunteers and the conditions of the workplace are monitored to prevent injury or illness arising out of the conduct of the business or undertaking

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### **EXAMPLE – Managing Car Parking**

The safety risks for volunteer car parking attendants include injuries caused by vehicles, tripping or slipping, sunburn, heat exhaustion, fatigue and verbal abuse which may potentially result in psychological harm. The organisation should identify the risk and provide a comprehensive briefing about the risks and the strategies for their avoidance.

### **Organisations Legal Responsibility for the actions of volunteers**

The Civil Liability Act 2002 (NSW) sets out a special protection which provides that volunteers (and the organisation they work for) are not liable for anything done (or not done) in good faith while volunteering for a community organisation, if the work meets the following tests:

- 1) The work has been undertaken by a volunteer
- 2) The organisation is a 'community organisation'
- 3) The work being completed by the volunteer is 'community work'
- 4) The community work has been organised by a community organisation
- 5) The actions or omissions were done in good faith
- 6) No exception applies



### **IMPORTANT**

Despite the protection provided under the Civil Liability Act 2002 (NSW), an organisation may still be legally responsible for the acts or omissions of its volunteers if it can be shown by the person bringing the claim that the organisation was negligent as it breached a primary duty of care owed to that person.

### **Managing the Risk**

Organisations should apply the following strategies to mitigate the risk of legal proceedings and financial loss by:

- Creating a safe physical environment
- Undertaking regular risk assessments to identify potential risk to health and safety of volunteers, customers, and visitors (see THNSW's next Sector Briefing)
- Clearly defining the roles and tasks volunteers are permitted to complete (and specify any prohibited actions)
- Ensuring volunteers have easy access to any policies, guidelines, work instructions etc.
- Providing training on any relevant policies, guidelines, work instructions etc.
- Having sufficient and appropriate insurance coverage in place

Risk identification, assessment and control is a fundamental strategy in achieving the primary duty of care.

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### Insurance

Insurance is a way of managing specific risks by paying another party (the insurer) to bear the financial costs of certain losses should they occur.

Common types of insurance include:

- Volunteer Personal Accident Insurance – *Protecting volunteers*
- WorkCover Insurance (workers comp) – *Protecting employees*
- Director and Officer Liability Insurance – *Protecting committee members*
- Public Liability Insurance – *Protecting members of the public and selling goods or services*
- Professional Indemnity Insurance – *Protecting experts or advisors*
- Motor Vehicle Insurance – *Protecting Vehicles*

Volunteers can sometimes fall between the gaps as they may not be covered by an organisation's insurance policies when they suffer injuries while completing their role. It is important to remember that:

- Workers Compensation insurance does not cover volunteers
- Public liability insurance typically does not cover injuries caused to volunteers



### TIP

Check your organisations insurance policies to ensure you have sufficient and appropriate coverage.

### KEY LEARNING

Your organisation:

- ✓ Has general duty of care for the safety of your volunteers and visitors
- ✓ May be legally responsible for the acts or omissions of your volunteers
- ✓ Should identify health and safety risks to your volunteers and visitors
- ✓ Should identify strategies (controls) to reduce your health and safety risks SFAIRP
- ✓ Should monitor the effectiveness of your strategies
- ✓ Should have sufficient and appropriate insurance coverage

If you have more questions or queries, contact:

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