

Guide: Community organisations and Victoria's occupational health and safety laws

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Overview

Note there are OHS reforms on the horizon: Australia's work health and safety laws are on the verge of a major overhaul. The Federal Government intends to harmonise health and safety laws, making these laws consistent across all states and territories. The Model Work Health and Safety Act was due for enactment at the start of 2012 however the Victorian Government has recently (Sept 2011) announced that it intends to seek to defer the commencement date for 12 months (to 2013). When (and if) these new laws commence, they will impact on the way community organisations in Victoria interact with OHS laws.

This guide will be updated to reflect these changes once the reforms are finalised. In the meantime, the current laws continue to apply to Victorian community organisations.

This guide is designed to provide people who are involved in not-for-profit community organisations with a basic understanding of occupational health and safety laws in Victoria.

In Victoria, occupational health and safety in the workplace is regulated by the *Occupational Health and Safety Act 2004* (Vic) and the *Occupational Health and Safety Regulations 2007* (Vic) (**Victorian OHS laws**).

There are different laws in other States and Territories and your organisation will need to check these other obligations if it operates outside of Victoria.

Beware: Alongside the duties imposed on employers under Victorian OHS laws, there are also common law duties to provide employees with a safe workplace. The common law is the law that has been developed by the courts when deciding cases over time. Under the common law, all employers have a legal duty to take reasonable care to avoid exposing employees to reasonably foreseeable risks of injury. These obligations are **not** exhaustively covered in this guide, and independent advice should be sought in relation to a question about these common law duties.

The guide is divided into the following parts:

- ▶ **Part 1:** Do Victorian OHS laws apply to your not-for-profit community organisation?
- ▶ **Part 2:** If Victorian OHS laws do apply, what are the specific duties?
- ▶ **Part 3:** Who may be legally responsible under Victorian OHS laws?
- ▶ **Part 4:** What can your organisation do to comply with Victorian OHS laws?
- ▶ **Part 5:** What should your organisation do if there is a workplace incident?
- ▶ **Part 6:** What are the powers of the Victorian WorkCover Authority?

This guide focuses on the legal duties (obligations) that community organisations and the 'officers' of community organisations owe to various people, including their employees, volunteers, contractors, consultant and members of the public, under the Victorian OHS laws.

Victoria's OHS laws also set out a number of legal duties that employees or contractors who work in community organisations must comply with. These duties are not covered in this guide.

Note: The information in this document is a guide only, and is not legal advice. If you have a legal problem you should talk to a lawyer before making a decision about what to do. The information is written for people and organisations affected by the laws in Victoria, Australia, and is current at 1 October 2011.

Part 1: Do Victorian OHS laws apply to your not-for-profit community organisation?

Introduction

The Victorian OHS laws aim to improve the standards of workplace health and safety to reduce the chances of work-related injury and illness from occurring.

The Victorian OHS laws will apply to all community organisations that have employees, and may also apply to community organisations that are completely volunteer-based where they operate in a workplace.

To work out whether the Victorian OHS laws will apply to your community organisation, you will therefore need to consider whether your organisation:

- ▶ is an 'employer'; and/or
- ▶ is an organisation operating in a 'workplace'.

These two questions are dealt with separately below.

Beware: There are some other factors that will mean the Victorian OHS Laws apply to your organisation, particularly if you design, manufacture or install plant (such as machinery and equipment) or manage workplaces which perform this work. If you think this may be the case, you should seek independent legal advice as you may be subject to more onerous obligations.

Is our community organisation an 'employer'?

The Victorian OHS laws apply to all 'employers' in Victoria, whether they are not-for-profit or for-profit. Your community organisation will be considered to be an 'employer' if it:

- ▶ employs one or more people under a contract of employment (i.e. has at least one 'employee'); or
- ▶ employs one or more people under a contract of training (i.e. has at least one 'trainee' or 'apprentice').

Therefore, your organisation will not be an employer if it operates exclusively on the basis of assistance provided by volunteers who do not have a contract of employment or training.

Tip: For the purpose of determining whether a community organisation is an 'employer':

- ▶ It is not relevant that a community organisation relies heavily on volunteers - if an organisation employs even one person (e.g. a part-time bookkeeper), it will be considered an 'employer' under the OHS Act and will have to comply with all of the 'employer duties'.
- ▶ It is not relevant if your organisation is an unincorporated group - the OHS Act also applies to unincorporated bodies who are 'employers', and a breach of the OHS laws may mean a committee member is personally liable.

If your community organisation is an 'employer' you have a considerable number of obligations under the Victorian OHS laws. We have listed these obligations under the heading: [If Victorian OHS laws do apply, what are the specific duties?](#) (at page 6 of this Guide).

Does our community organisation manage or control a workplace?

If your community organisation is not an 'employer', your organisation may still be required to comply with Victorian OHS laws if it has 'management or control of a workplace'. Under Victorian OHS laws, a 'workplace' is broadly defined as a place, whether or not in a building or structure, where 'employees' or 'self-employed persons work'.

Therefore, if your community organisation manages or controls a place where employees or self-employed persons work, then the place will be considered a 'workplace', and your organisation may owe a duty of care to ensure that the workplace (and access to the workplace) is safe and without risks to the health of people in the vicinity. The various duties owed within a workplace are listed below under the heading: [If Victorian OHS laws do apply, what are the specific duties?](#) (at page 7 of this Guide).

It is important to note that even if your community organisation has no employees, is completely volunteer-based and does not engage contractors or consultants, it may still be taken to 'manage or control a workplace'. This is because the Victorian OHS laws do not require that your community organisation be involved in the engagement of those persons. All that is required is that your community has a degree of control over the place at which the work is carried out.

This will mean that if the place at which the community organisation carries out its work has contractors or other self-employed persons who attend the workplace from time-to-time, then this place may be a 'workplace' for the purposes of the Victorian OHS laws and your organisation may owe a duty of care in relation to that workplace.

Example: A community centre or community hub may have a range of organisations that operate from the building. Some of the community organisations operating out of the centre may be entirely volunteer-based, while others may have employees. If this is the case, a volunteer-based organisation with management and control of the centre will still be required to comply with the 'workplace' duties in the OHS Act.

If your community organisation operates in a workplace, you will have a number of obligations under the Act. You can find a summary of these obligations, together with practical examples under the heading: [If Victorian OHS laws do apply, what are the specific duties?](#) (at page 6 of this Guide).

What if our organisation does not employ people and does not manage or control a workplace?

If your community organisation is not an employer and the people involved in your organisation have no contact with a 'workplace' that is managed or controlled by your community organisation, the Victorian OHS laws are unlikely to apply.

Example: An entirely volunteer-run group meets in each other's homes regularly to discuss their organisation's progress and plan for the future. Because there are no employees in the organisation and no employees are present in the various homes, Victorian OHS laws will not apply.

However, there may be other laws which are applicable to your specific circumstances and which may create obligations and/or duties of care. If you are unsure as to what laws or duties apply to your community organisation outside of the Victorian OHS laws, you should seek independent legal advice.

Beware: If your community organisation is not an employer, and does not operate in a workplace, this does not mean you can ignore health and safety altogether! Your organisation may not have to comply with Victorian OHS laws, but will still need to take reasonable care to ensure that volunteers and members of the public who come in to contact with the organisation are safe.

Part 2: If Victorian OHS laws do apply, what are the specific duties?

What are the duties our organisation has under the OHS laws?

Once you have worked out whether your community organisation is an 'employer', or 'manages or controls a workplace', the following table provides a list of the key responsibilities that community organisations have under Victorian OHS laws.

More information about each of the below duties is set out under the heading: [Specific information on the key duties owed under the OHS Act](#), and can be reached by clicking on the appropriate responsibility listed in the first column.

Responsibility under Victorian OHS laws (Note: click on key duties for more details)	Section of Act	Organisation with at least one 'employee'	Organisation who 'controls or manages a workplace'
Provide and maintain a working environment that is safe and without risks to health	s.21	✓	
Monitor the conditions of the workplace and the health of employees	s.22	✓	
Protect other people from risks arising from the organisation's activities	s.23	✓	
Keep the workplace (including all entrances and exits) safe and without risks to health	s.26	✓	✓
Take care in the manufacturing or installation of plant and materials (such as machinery and equipment)	s.27-31	✓	✓
Not to recklessly endanger a person who is at the workplace	s.32	✓	✓
Consult with employees on OHS issues	s.35	✓	
Notify Victorian WorkCover Authority about certain incidents and preserve then incident site	s.38-39	✓	
Hold appropriate licenses, registrations and permits where required	s.40	✓	
On request, negotiate with employees to establish a designated working group to represent employees on health and safety issues	s.43	✓	
On request, establish a health and safety committee	s.72	✓	

Responsibility under Victorian OHS laws (Note: click on key duties for more details)	Section of Act	Organisation with at least one 'employee'	Organisation who 'controls or manages a workplace'
Attempt to resolve OHS issues with employees (or representative) within a reasonable timeframe	s.73	✓	
Not to discriminate against those people who are involved in health and safety negotiations	s.76	✓	
Allow access to an authorised representative who is acting within his or her powers	s.93	✓	✓
On request, produce OHS documentation and answer questions put to them by the inspector	s.100	✓	✓
Not to intentionally obstruct, mislead or intimidate an inspector who is performing his or her functions	s.125	✓	✓

Note: There are also further duties and obligations set out in the OHS regulations that will be specific to certain employers and workplaces. These extra duties are not included in this Guide.

Specific information on key duties owed under the OHS Act

This part provides more information about the key duties under Victorian OHS laws.

As you read more detail about each of the duties, you will notice that many of these responsibilities require a community organisation to ensure that certain risks or hazards are eliminated or reduced so far as is '*reasonably practicable*'. To find out more about what '*reasonably practicable*' means, and what your organisation can do to make sure it complies with this standard of care, see: [What can your community do to comply with Victorian OHS laws?](#) (at page 17 of this Guide).

Duty to provide and maintain safe and healthy working environment (s.21)

Who must comply with this duty?

All community organisations that are [employers](#) must comply with this duty.

What is the duty?

Community organisations that are [employers](#) must, so far as reasonably practicable, provide and maintain a safe and healthy working environment. Employers must ensure:

- ▶ there are safe systems of work;
- ▶ all plant and equipment (machinery, equipment, appliances or tools) remain safe;

- ▶ there is safe use, handling, storage and transport of plant and substances;
- ▶ there are adequate welfare facilities (e.g. first aid, dining, bathroom facilities); and
- ▶ there is appropriate information, instruction, training and supervision for employees.

Who is the duty owed to?

A community organisation employer owes this duty to its employees and any independent contractors or consultants it engages (as well as any employees of those independent contractors or consultants). This duty does not specifically apply to volunteers, but employers do owe a similar duty to volunteers and members of the public that are at the workplace (see: [Duty not to expose other persons to risk](#) below).

Duty to monitor workplace conditions and health of employees (s.22)

Who must comply with this duty?

All community organisations that are [employers](#) must comply with this duty.

What is the duty?

Employers must, so far as reasonably practicable, monitor the health of employees, and the conditions of their workplace, and keep records about employee health and safety. Where reasonably practicable, community organisations must:

- ▶ keep information and records on employee health and safety (eg first aid records and relevant employee medical information); and
- ▶ engage a suitably qualified person to advise the organisation on employee health and safety.

Who is this duty owed to?

Employers owe this duty to its employees. 'Monitoring' might include for example, the monitoring of fatigue in employees who are driving long hours, regularly testing the hearing of those employees exposed to high noise levels, or arranging medical tests if employees are exposed to certain substances.

Duty not to expose other persons to risk (s.23)

Who must comply with this duty?

All community organisations that are [employers](#) must comply with this duty.

What is the duty?

Community organisations who are employers must, so far as reasonably practicable, ensure that people are not exposed to risk to their health and safety arising from the employer's conduct, activities or operations. This will include:

- ▶ any activity which is done in the course of carrying on the organisation's activities (e.g. holding a fun day at a community kindergarten);
- ▶ when performing work or providing services at one or more places (regardless of whether these are carried on within a defined physical boundary);
- ▶ any activity which is ancillary to the organisation's operations (e.g. contractors cleaning a premise after hours).

Who is this duty owed to?

Employers owe this duty to everyone, not just employees. The duty therefore extends to volunteers, independent contractors or consultants (and the employees of contractors or consultants) and any other members of the public that might be affected by the organisation's activities.

Example: A charity organisation, staffed by employees and volunteers, arranges a sausage sizzle to raise money. The event takes place at a local park, where an employee and volunteer are responsible for the set up of a barbeque. They recklessly cause a gas leak which results in a minor explosion. The employee, volunteer and a passer-by are injured. As the charity is an employer, they will owe a duty to all three injured parties (the employee under section 21 of the OHS Act and the volunteer and passer-by under section 23 of the OHS Act).

Case Study: A council allowed 21 volunteer members of a cricket club to remove cement render and cement sheeting from the walls of its premises. Members of the club were exposed to asbestos in the process. The council had failed to make enquiries as to the presence of asbestos in the walls of their buildings. The court found that the council had failed to ensure that people (volunteer members of a community organisation) were not exposed to risk as a result of an undertaking. The council was found to have breached the OHS Act and fined \$20,000.

Duty to keep the workplace safe and without risks to health (s.26)

Who must comply with this duty?

All community organisations that are [employers](#) and/or [control or manage a workplace](#) must comply with this duty.

What is the duty?

This duty requires community organisations to ensure so far as is reasonably practicable that the workplace, and the means of entering and leaving that workplace are safe and without risks to health.

This duty is on the controller or manager of the workplace, which means that it will often be the responsibility for a group even when it is not the owner of the premises.

Who is the duty owed to?

This duty is not limited to people employed at the workplace, it also extends to any person who is likely to enter the premises at some stage. This could include volunteers, clients, customers, service contractors and others who enter the workplace.

Example: A community organisation is temporarily leasing an office space. The organisation has been made aware that the front doormat has been damaged and protrudes from the ground, however fails to remove the danger. A maintenance person arrives to fix the air-conditioning unit and trips on the mat, causing injury. The community organisation may be liable under s.26 as it was in control of the workplace at the time, even though it does not own the premises.

Duty to take care in the manufacturing or installation of plant and materials (ss.27-30)

Who must comply with this duty?

Any community organisation that designs, manufactures, supplies or installs:

- ▶ equipment used in a workplace (e.g. machinery, appliances or tools);
- ▶ substances used in a workplace (e.g. natural or artificial substances, whether in solid, liquid, gaseous or vapour forms); or
- ▶ structures or buildings for a workplace.

What is the duty?

If you think your organisation may be subject to this duty, you should seek legal advice about your obligations under the Victorian OHS laws as they are complex duties that require expert advice. It is not expected that many not-for-profit organisations will be within the scope of this duty, as it is intended to apply to those businesses involved in the design, supply and maintenance of plant machinery and equipment or substances.

Who is the duty owed to?

The duty is broad and owed to all people who might use the equipment, substances or structures, or those people who are exposed to the emissions or otherwise affected by the equipment.

Duty not to recklessly engage in conduct that may place another person in danger of serious injury (s.32)

Who must comply with this duty?

All community organisations that are [employers](#) and/or [control or manage a workplace](#) and each person in the organisation must comply with this duty.

What is the duty?

All community organisations and people that are in a 'workplace' have a duty not to recklessly engage in conduct that may place another person who is at that workplace in danger of serious injury.

A person will be reckless where they do an act (or fail to do an act), knowing that serious injury is a probable consequence of their action or inaction. Serious injury includes both physical and mental damage which is significant and severe (for example injuries which interfere with enjoyment of life or involved disablement from work in the future).

Who is the duty owed to?

This duty is owed to everyone who comes in contact with the workplace, including employees, independent contractors (and their employees), volunteers and any other members of the public who would be affected by the community organisation's conduct.

Example: A volunteer-based, environmental lobby group is protesting outside a science laboratory. Inside the building, an experiment being carried out causes toxic fumes to escape. An emergency evacuation of the building is called, however, on trying to exit the building, the employees inside are blocked at the exit by the group. The lobby group recklessly delays the evacuation procedure and some employees are rushed to hospital because they have inhaled toxic fumes. The lobby group members may be found guilty of an offence under section 32 of the OHS Act in these circumstances.

Duty to consult with employees on OHS matters (s.35)

Who must comply with this duty?

All community organisations that are [employers](#) must comply with this duty.

What is the duty?

Community organisations who are employers have a duty to consult with their employees and independent contractors regarding matters that affect, or could possibly affect their health and safety. Employers are required to consult with employees on the following matters:

- ▶ identification of hazards or risks to health and safety at the workplace;
- ▶ making decisions about ways to control risks to health and safety;
- ▶ making decisions about the adequacy of facilities;
- ▶ making decisions about various health and safety procedures;
- ▶ determining the membership of a health and safety committee;
- ▶ proposing changes that may affect health or safety;
- ▶ establishing designated work groups represented by health and safety representatives; and
- ▶ establishing health and safety committees.

Consulting with workers may require the employer to provide employees with information about these matters. It would also mean giving the employees a reasonable opportunity to express their views about matters and taking those views into account. In some circumstances, it may be necessary to arrange members of designated work groups to elect a health and safety representative from among the group. The views of workers can be effectively communicated to an employer through a health and safety representative.

Who is this duty owed to?

Employers must consult with their employees and any independent contractors / consultant's they engage. This does not extend to volunteers, however it is best practice for community organisations to include volunteers in these consultations.

Tip: While the duty to consult is not owed to volunteers, it is a good idea to involve all people involved in a community organisation in health and safety work practices. Volunteers will often have some great ideas about how to make the workplace safer, to reduce the risk of injuries.

Duties about notifying of incident and preservation of site (s.38-39)

Who must comply with this duty?

All community organisations that are [employers](#) who have the management and control of a workplace must comply with this duty. Even where there is a manager or supervisor on duty, the

ultimate responsibility to report incidents will rest with the employer (e.g. your community organisation).

What is the duty?

This duty creates an obligation on employers to immediately notify the Victorian WorkCover Authority (WorkSafe) of serious workplace incidents. For further information in this duty, including the types of incidents that will require notification and the process for notifying WorkSafe, please see: [What should your organisation do if there is a workplace incident?](#)

Who is this duty owed to?

This duty is owed to all employees, volunteers and members of the general public who are seriously injured or affected by a workplace incident.

For further information in this duty, including the types of incidents that will require notification and the process for notifying WorkSafe, please see: [What should your organisation do if there is a workplace incident?](#)

Part 3: Who may be legally responsible under Victorian OHS laws?

The short answer to this question is that it will depend on the circumstances, however there is a chance that both your organisation and its individual officers could be liable for failure to comply with Victorian OHS laws. The Victorian WorkCover Authority is able to prosecute the organisation, its officers, or in some circumstances, both of these.

Liability of the community organisation itself

Incorporated community organisations

If your community organisation is incorporated (such as an incorporated association or a company limited by guarantee), the organisation itself is considered to be a separate 'person' for the purposes of the Victorian OHS laws and can be found guilty of breaches of the OHS Act.

This means that an incorporated organisation as a whole can be held responsible for breaches of the Act by its officers, employees, or agents, where those officers, employees or agents are performing tasks within the scope of their authority.

The fines that can be given for a breach by a not-for-profit organisation are potentially the same as they are for for-profit organisations, and they are significant (the maximum penalty is over \$1 million, although it is possible that lesser fines would be given in some circumstances). In addition to finding the incorporated community organisation liable, the Victorian WorkCover Authority may also prosecute the organisation's officers personally (see below for more information on 'officers' of a community organisation).

Unincorporated community organisations

If your community organisation is unincorporated, it is not recognised by law and cannot itself be prosecuted for breaches of the Victorian OHS laws.

However, as with an incorporated organisation, the 'officers' of an unincorporated organisation can be held personally liable for a breach, and could potentially incur penalties where there has been a serious failure to take adequate care to prevent or report workplace injuries.

Please see below for further information on who will be considered an 'officer' of a community organisation.

The 'officers' of a community organisation

Under certain circumstances, the Victorian WorkCover Authority can also look to prosecute the officers of a community organisation when there has been a breach of the Victorian OHS laws.

Who is an officer?

Under Victorian OHS law, 'officers' of a community organisation (whether incorporated or unincorporated) will include any of the following:

- ▶ a member of a committee of management of a community organisation;
- ▶ a person who makes decisions that affect the whole or a substantial part of the operations of a community organisation;
- ▶ a person who has the capacity to significantly affect the community organisation's financial standing;
- ▶ a person who commonly instructs the committee of management how to perform its functions; and
- ▶ various people who may be involved in a community organisation as a receiver, administrator, liquidator or trustee of a community organisation.

When can officers be personally liable?

Paid officers

An officer of a community organisation (whether incorporated or unincorporated), may be found personally liable for a breach of the Victorian OHS laws if:

- ▶ they receive payment for their position as an officer in the organisation (that is, they are not a volunteer officer); and
- ▶ they fail to take reasonable care, so that a breach of a duty (that the organisation is required to comply with) may be attributable to them personally.

Volunteer officers

Volunteer officers of an organisation will not be held liable for breaches of the Victorian OHS laws for anything done by them in a volunteer capacity, even where they fail to take reasonable care. The Act defines a 'volunteer' as being a person who is acting on a voluntary basis, namely those individuals who are not being compensated for their work.

Tip: An officer will still be classed as a volunteer, even where they receive repayment from the organisation for out-of-pocket expenses incurred as a result of their position.

Therefore, if your community organisation is made up of officers who are volunteers, then the Victorian OHS laws will not hold your volunteer officers personally liable for breaches of the organisation's duties as an employer. However, as noted earlier in this Guide, a volunteer officer may, in their personal capacity, still owe duties under Victorian OHS Laws where they are managing or controlling the workplace at the time of an incident. There will also be other duties under common law that will require a standard of care to be met in these circumstances.

What is a 'failure to take reasonable care'?

In determining whether an officer of an organisation has failed to take reasonable care and may be guilty of an offence, the Victorian WorkCover Authority will consider:

- ▶ what the officer knew about the likelihood of an incident occurring; and
- ▶ the extent of the officer's ability to make, or participate in the making of, decisions that could have prevented the incident; and
- ▶ whether the incident occurred due to an act or omission of any other person.

Tip: If you take on a paid position as an 'officer' in a community organisation, you may have responsibilities under the OHS Act and are potentially liable if something goes wrong. Therefore, it is a good idea to make sure you are aware of your organisation's obligations under the OHS Act and the measures that are being put in place to eliminate or minimise the risk.

In many cases, a breach of a duty in the OHS Act will only be found when a community organisation (and its officers) did not take reasonably practicable steps to eliminate or reduce a risk. You should ensure that OHS is seriously discussed regularly at the committee meetings so that you can satisfy yourself that all reasonably practicable steps are being taken to ensure a safe working environment for people involved in your community organisation.

Part 4: What can your community organisation do to comply with Victorian OHS laws?

What does 'reasonably practicable' mean?

You may have noticed that many of the duties within the Victorian OHS laws require that employers do as much as is 'reasonably practicable' to ensure they have met their obligations to provide a safe and healthy working environment.

This standard of care requires the employer to eliminate potential risks to health and safety, or where this is not reasonably practicable to do so, reduce the risks to an acceptable level. Whether or not it is reasonably practicable to do, or refrain from doing, risk prevention and elimination will depend on:

- ▶ the likelihood of the hazard or risk concerned eventuating;
- ▶ the degree of harm that would result if the hazard or risk eventuated;
- ▶ what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;
- ▶ the availability and suitability of ways to eliminate or reduce the hazard or risk; and
- ▶ the cost of eliminating or reducing the hazard or risk.

In Australia, the courts have confirmed that:

- ▶ something will not be 'reasonably practicable' simply because it is physically possible;
- ▶ what is 'reasonably practicable' is judged according to what was known at the time of the alleged breach; and
- ▶ to determine what is 'reasonably practicable', it is necessary to balance the likelihood of the risk occurring against the cost, time and difficulty involved in removing that risk.

WorkSafe Victoria has published a useful guide for workplaces entitled 'Controlling OHS hazards and risks' which sets out methods for organisations wishing to identify and limit OHS hazards in the workplace. A link to the WorkSafe Victoria site is available at the end of this guide under [Related Resources](#).

Worksafe Victoria advises duty-holders to undertake a four stage process to controlling OHS risks which requires community organisations to:

- ▶ identify any hazards within the workplace; and
- ▶ assess the risks that may result as a consequence of the hazards; and

- ▶ decide on appropriate control measures to prevent, minimise, the level of the risks; and
- ▶ implements those control measures and monitor and review those control measures.

Tip: The cost of eliminating or minimising risks may be a relevant factor for many community organisations with limited resources. However, if there is an incident in the workplace, it is not a defence to a breach of the OHS Act to claim “We are a not-for-profit group and we couldn’t afford to reduce that risk.”

To reduce your chance of being found guilty for a breach of the OHS Act, your organisation needs to be able to show (documented proof is best!) that it has identified and considered risks and then took practical steps within its resources to eliminate or reduce those risks. Often these don’t need to be expensive measures. For example, if your volunteers are lifting items, you may not need to buy an expensive hydraulic lifting machine, but you could train volunteers in safe lifting practices and post reminder notices around the premises.

Your community organisation may wish to review its approach to risk management, as well as review the appropriate insurance options. PilchConnect has produced a separate guide to risk management and insurance which is located at www.pilch.org.au/insurance/.

What are the obligations of the employee?

Employees have a duty to take reasonable care for their own health and safety and for the health and safety of others who may be affected by their actions while at work (s. 25 of the OHS Act).

In determining whether an employee has breached this section, your organisation should consider:

- ▶ whether the employee acted in a manner appropriate to the skills and expertise of a reasonable person in the employee’s position; or
- ▶ whether the employee acted within the organisation’s OHS policies and procedures.

Employees also have a duty not to recklessly engage in conduct which places, or may place another person in danger of serious injury. This is consistent with section 32 of the OHS Act as detailed above.

Part 5: What should your organisation do if there is a workplace incident?

There is no 'one size fits all' response to an OHS incident or complaint. The best and most appropriate response will largely depend on the nature of the incident, however there are some incidents that require immediate responses and notification to WorkSafe under Victorian OHS laws.

There are significant penalties for employers who fail to follow the correct procedures in the wake of a serious workplace incident. These procedures, together with the types of incidents that require notification are discussed below.

1. Initial response to an incident

Immediately after a workplace incident, the first thing a community organisation should do is assess the seriousness of the incident and find out whether an injury has occurred to any person.

If an injury has occurred, you should seek immediate, appropriate medical treatment for the injured person.

Tip: It is a good idea to have one or two people in your organisation (an officer or a manager) who agree to be responsible for the co-ordination of the response to a workplace incident. This does not mean that the person is solely responsible – just that it is helpful to have one person to co-ordinate the response so that the incident can be dealt with appropriately. That person should be aware of the responsibilities of the organisation under the OHS Act (including notification and preservation requirements, as outlined below).

2. Consider notification requirements

While all workplace incidents should be recorded by all community organisations no matter how large or small, there are particular legal obligations on community organisations as employers for the reporting of incidents which result in death or serious injury.

The immediate reporting requirement

An employer must notify the Victorian WorkCover Authority (WorkSafe) immediately after they become aware of an incident that results in serious injury or a death in the workplace. 'Serious' injury is defined in the following section.

Remember: A 'workplace' will include any place, whether or not a building, where employees work. This could include sporting fields, vehicles and any other places that employees of your community organisation undertake their duties. Serious incidents occurring in these places may require notification to WorkSafe by your organisation.

'Serious' Injury

WorkSafe requires notification of incidents that lead to 'serious' injury. This term includes (but is not limited to), incidents which cause:

- ▶ medical treatment within 48 hours of exposure to a substance;
- ▶ immediate treatment in hospital as an in-patient; or
- ▶ immediate medical treatment for severe injuries, e.g. amputation, serious head or eye injuries, serious lacerations, spinal injuries or electric shock.

It is important to remember that an organisation's duty to notify WorkSafe of incidents causing serious injury will apply in relation to any person, not just employees. This will therefore include volunteers, or even members of the public.

Duty to report specific incident types

The duty to notify WorkSafe also applies to incidents that expose a person (which includes employees, volunteers or members of the public) who are in the vicinity to an immediate health or safety risk or dangerous occurrence, which includes:

- ▶ the collapse or partial collapse of a building or structure; or
- ▶ the fall and release from a height of any plant substance or object; or
- ▶ the collapse or failure of an excavation or of any shoring supporting an excavation; or
- ▶ an implosion, explosion, or fire; or
- ▶ the escape, spillage or leakage of any substance, including dangerous goods.

An employer is not required to notify WorkSafe of a serious incident where the employer is the only person injured or otherwise harmed, or exposed to risk.

3. The notification procedure

If you believe that an incident has occurred which requires notification to WorkSafe (see above), the initial step is to immediately contact WorkSafe.

Your organisation must telephone WorkSafe as soon as it becomes aware of the incident. Any delay in reporting the incident could mean that your organisation is in breach of the Victorian OHS laws, which require immediate reporting of a notifiable incident.

The 48 hour written notification requirement

In addition to telephoning WorkSafe to report a workplace incident, an employer must provide WorkSafe a written record of what occurred within 48 hours of becoming aware of the incident. A record of this Incident Notification Form must keep by the employer for at least 5 years.

Written notification is required to be in a form specified by WorkSafe. Copies of the required form can be obtained at www.worksafe.vic.gov.au.

Tip: Your organisation should retain a number of copies of blank Incident Notification Forms on hand to minimise delays in providing written notice should a notifiable incident occur in your workplace. You can download the Incident Notification Form from the WorkSafe website at www.worksafe.vic.gov.au, or by calling 132 360.

Preservation of incident site

The Victorian OHS laws require that incident sites be preserved to allow a full investigation to occur (if required). If a notifiable incident does occur within your organisation, the site should not be disturbed until a WorkSafe inspector arrives at the workplace, or unless you have been directed otherwise by WorkSafe.

Site preservation means that you should not disturb anything within the vicinity of where the incident occurred. However, there are exceptions to this which allow a site to be disturbed, including where disturbance is required in order to:

- ▶ protect a person's health or safety;
- ▶ help someone who is injured; or
- ▶ make the site safe or prevent further injury.

If you are unsure as to whether you are allowed to enter the incident site, or the extent to which you can disturb the location, you should telephone WorkSafe on **132 360** to discuss your concerns.

Keep a register of injuries

Victorian OHS laws require an employer to keep a Register of Injuries in which employees should record any workplace incidents or injuries, no matter how serious they appear to be at the time. The employer must also inform its employees about how to access this Register.

The Register of Injuries must include the following information:

- ▶ the employee's name and job title;
- ▶ the date and time of the employee's injury or illness;
- ▶ the employee's exact location when he or she was injured or became ill;
- ▶ how the injury or illness happened;
- ▶ the nature of the injury or illness and what parts of your body were affected;
- ▶ any witnesses to the injury or illness; and
- ▶ the date the employee notified his or her employer.

Tip: Download the "Accidents and Incidents Register" from the WorkSafe website at www.worksafe.vic.gov.au. When filled out, the register should be filed in a central place.

4. Investigate and prevent reoccurrences

Following an incident, community organisation employers should investigate the circumstances of how the incident occurred in the first place. Notes should be recorded and witness accounts should be taken to provide the employer with a clear picture of how and why the incident occurred.

The Victorian OHS laws require an employer to consult with employees regarding the identification of any risks and possible resolution of any health and safety issues. On the basis of this investigation, employers should work with employees and volunteers to set measures in place (both remedial and precautionary) to ensure that a similar incident does not occur in the future.

These health and safety systems, including any plans to prevent incident occurrence, should be regularly reviewed and updated by the community organisation.

Part 6: What are the powers of the Victorian WorkCover Authority?

The Victorian WorkCover Authority (WorkSafe) inspectors have various powers of entry into and inspection of the workplace under the Victorian OHS laws. These powers apply to workplaces that community organisation's might occupy and are briefly summarised below.

WorkSafe inspector's power to enter a workplace

A WorkSafe inspector may enter a workplace at anytime during business hours. If it is after business hours, a WorkSafe inspector may enter a workplace where they reasonably believe that there is an immediate risk to a person's health and safety.

Immediately upon entering a workplace, a WorkSafe inspector must take all reasonable steps to notify the employer and any health and safety representatives of his or her presence, and produce appropriate identification. Once inside a workplace, a WorkSafe inspector is permitted to:

- ▶ make enquiries;
- ▶ inspect and examine the workplace and anything in the workplace including documents;
- ▶ bring any equipment or materials that may be required;
- ▶ seize anything that may provide evidence of an offence;
- ▶ seize anything that requires further testing offsite;
- ▶ take photographs, samples or measurements, or make copies or recordings of documents;
- ▶ exercise any powers available to them under the Act or regulations;
- ▶ do anything that is reasonably necessary to perform their functions; and
- ▶ require a person to produce certain documentation or answer questions.

WorkSafe inspector entry reports

After any workplace visit, a WorkSafe inspector must detail their findings in a written report to the workplace's occupier. This report must include:

- ▶ the purpose of entry;
- ▶ what was done during the visit;
- ▶ a summary of the inspectors observations;

- ▶ the procedures for obtaining further details from WorkSafe;
- ▶ how to seek review of the inspectors decision; and
- ▶ whether any photographs, sketches or drawings were made and where they may be inspected.

WorkSafe improvement notices

A WorkSafe inspector has the authority to issue an Improvement Notice to an employer if they believe that employer has contravened the OHS Act or regulations.

An Improvement Notice may contain directions as to how to remedy a breach of the OHS Act. If your community organisation received an Improvement Notice you should take it very seriously. There are penalties for failing to comply with an Improvement Notice, and any directions provided to your community organisation should be followed as soon as possible.

Seeking review of WorkSafe decisions

Your organisation or its officers can seek a review of certain decisions of WorkSafe. There are both internal review mechanisms and/or application to the Victorian Civil and Administrative Tribunal (VCAT) for administrative review of a decision.

There are strict timeframes for seeking a review of a WorkSafe decision (14 days within receiving a notice). If your organisation is unhappy with a WorkSafe decision, you should seek independent legal advice immediately to discuss your review rights.

WorkSafe has released guidelines that will assist your organisation to deal with bringing an application for internal review. These guidelines can be found on the WorkSafe website at www.worksafe.vic.gov.au.

Related Resources

Related PilchConnect Resources

For online legal information resources for Victorian community organisations about::

- ▶ Insurance and Risk Management, see www.pilch.org.au/insurance
- ▶ Occupational Health and Safety, see www.pilch.org.au/OHS
- ▶ Employees and Volunteers, see www.pilch.org.au/thepeopleinvolved
- ▶ WorkSafe Victoria, see www.worksafe.vic.gov.au

Related legislation

Occupational Health and Safety Act 2004 (Vic)

Occupational Health and Safety Regulations 2007 (Vic)

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