

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Additional Estimates 2011-2012**

Agency - Safe Work Australia

DEEWR Question No. EW1223_12

Senator Fifield asked on 15 February 2012, Hansard page 82

Question

SWA - Harmonisation

Senator FIFIELD: Indeed. Perhaps rather than me present scenarios to you, maybe you could provide us with a scenario where a group of volunteers under pre-harmonised laws in that particular jurisdiction would not have been considered workers and subject to the pre-existing OH&S regime but under the new regime would be. Mr Hoy: I am loathe to provide hypotheticals. Senator FIFIELD: I am not asking for a hypothetical, I am asking for an example of where the situation would have changed as a result of the harmonised laws. Worked examples are a pretty common thing. Mr Hoy: I will take it on notice, but as I said, I am loathe to cook up—CHAIR: Won't this be in the table? I think you have presented the table you talk about already to the committee. Mr Hoy: It may not necessarily cover it.

Answer

Safe Work Australia has provided the following response.

Meals on Wheels Volunteers (New South Wales)

Duties owed to volunteers

The previous occupational health and safety legislation in NSW provided that employers owed duties to employees as well as to others (who were not employees) to ensure that they were not exposed to risks to their health and safety (see s 8(2) NSW OHS Act). This included anyone who visited the workplace, including volunteers.

The *Work Health and Safety Act 2011* (NSW) (the WHS Act) now specifically includes volunteers in the definition of workers. This means that persons conducting a business or undertaking (PCBUs – formerly 'employers') owe duties to all workers (including volunteers) they engage.

Under the NSW WHS Act Meals on Wheels directly owe duties to volunteers who carry out 'work'.

Duties owed by volunteers

In all jurisdictions employees had a duty to take reasonable care of their own and other's safety but, as noted above, the term employee did not extend to volunteers in NSW.

The previous occupational health and safety legislation in NSW provided that persons at the workplace (which would include volunteers) must not interfere with or misuse things provided for health, safety and welfare, intentionally hinder or obstruct without reasonable excuse or recklessly endanger persons at a workplace.

Under the NSW WHS Act, volunteers (including Meals on Wheels volunteers) will be obliged to exercise due care in the performance of their duties. While at work, a worker, including a volunteer, must:

- a) take reasonable care for his or her own health and safety, and
- b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons, and
- c) comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with this Act, and
- d) co-operate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.

For those volunteer organisations and volunteers covered by the new laws, there is an overall duty on volunteers to take care in the workplace. However, the duty to ensure a safe workplace remains the primary duty of the employer or 'person conducting a business or undertaking' – not the volunteer.

Scouts (New South Wales)

Duties owed to volunteers

The previous occupational health and safety legislation in NSW provided that employers owed duties to employees as well as to others (who were not employees) to ensure that they were not exposed to risks to their health and safety (see s 8(2) NSW OHS Act). This included anyone who visited the workplace, including volunteers.

The *Work Health and Safety Act 2011* (NSW) (the WHS Act) now specifically includes volunteers in the definition of workers. This means that persons conducting a business or undertaking (PCBUs – formerly 'employers') owe duties to all workers (including volunteers) they engage.

Under the NSW WHS Act Scouts NSW directly owe duties to volunteers who carry out 'work'.

Duties owed by volunteers

In all jurisdictions employees had a duty to take reasonable care of their own and other's safety but, as noted above, the term employee did not extend to volunteers in NSW.

The previous occupational health and safety legislation in NSW provided that persons at the workplace (which would include volunteers) must not interfere with or misuse things provided for health, safety and welfare, intentionally hinder or obstruct without reasonable excuse or recklessly endanger persons at a workplace.

Under the NSW WHS Act, volunteers (including Scouts NSW) will be obliged to exercise due care in the performance of their duties. While at work, a worker, including a volunteer, must:

- a) take reasonable care for his or her own health and safety, and
- b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons, and
- c) comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with this Act, and
- d) co-operate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.

For those volunteer organisations and volunteers covered by the new laws, there is an overall duty on volunteers to take care in the workplace. However, the duty to ensure a safe workplace remains the primary duty of the employer or PCBU – not the volunteer.

Surf Life Saving (New South Wales)

Duties owed to volunteers

The previous occupational health and safety legislation in NSW provided that employers owed duties to employees as well as to others (who were not employees) to ensure that they were not exposed to risks to their health and safety (see s 8(2) NSW OHS Act). This included anyone who visited the workplace, including volunteers.

The *Work Health and Safety Act 2011* (NSW) (the WHS Act) now specifically includes volunteers in the definition of workers. This means that persons conducting a business or undertaking (PCBUs – formerly ‘employers’) owe duties to all workers (including volunteers) they engage.

Under the NSW WHS Act Surf Life Saving (NSW) directly owe duties to volunteers who carry out ‘work’.

Duties owed by volunteers

In all jurisdictions employees had a duty to take reasonable care of their own and other’s safety but, as noted above, the term employee did not extend to volunteers in NSW.

The previous occupational health and safety legislation in NSW provided that persons at the workplace (which would include volunteers) must not interfere with or misuse things provided for health, safety and welfare, intentionally hinder or obstruct without reasonable excuse or recklessly endanger persons at a workplace.

Under the NSW WHS Act, volunteers (including Surf Life Saving NSW) will be obliged to exercise due care in the performance of their duties. While at work, a

worker, including a volunteer, must:

- a) take reasonable care for his or her own health and safety, and
- b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons, and
- c) comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with this Act, and
- d) co-operate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.

For those volunteer organisations and volunteers covered by the new laws, there is an overall duty on volunteers to take care in the workplace. However, the duty to ensure a safe workplace remains the primary duty of the employer or PCBU – not the volunteer.