

## VOLUNTEERS & SPORTING ORGANISATIONS

January 2016

### HEALTH & SAFETY AT WORK ACT

The Health and Safety at Work Act will come in to force on 4th April 2016 bringing new responsibilities for everyone in the workplace. Under the Act, the coverage of volunteers reflects what is under the current law which distinguishes between casual workers and volunteer workers.

A purely volunteer organization where volunteers work together for community purposes and does not have any employees is known as a volunteer association under the Act. **A volunteer association is not a PCBU so the Act will not apply to it.**

I have recently received enquiries regarding the legal responsibilities of volunteers and sporting organizations and how they are covered by the Act. Many aspects need to be taken in to consideration when determining where your duties and responsibilities are held. The key is determining if your sporting club or organization is in fact a PCBU under the Act and whether you have workers, casual volunteers or volunteer workers.

This newsletter is designed to provide you further information and clarification on definitions set out in the new Act, to assist you in determining your responsibilities and duties which will be based on whether your sporting club has any paid workers.

#### WHAT IS A PCBU? (*Person Conducting a Business or Undertaking*)

A PCBU under the Health & Safety at Work Act is the primary duty-holder for ensuring, so far as reasonably practicable, the health and safety of **workers** who work for the PCBU, while the workers are at work in the business, and workers whose activities in carrying out the work are influenced or directed by the PCBU, while the workers are carrying out the work.

Where the group or organization is purely a 'volunteer association' – that group or organization will **not** be a PCBU and therefore, the Act will **not** apply.



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#### Key Facts:

- Your organization cannot be prosecuted for a breach in the HSW Act if it only has volunteers.
- If your organization 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 organization.
- You will be a casual volunteer if your work is limited to assisting with sports or recreation for a sporting or recreation club.
- If your organization is a PCBU, board members and/or trustees will be considered Officers and have the same due diligence duties as a paid Officer.

## VOLUNTEERS

### VOLUNTEER ASSOCIATION

A volunteer association is defined in the Act as a group of volunteers working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with other volunteers, employs any person to carry out work for the volunteer association.

### WHAT IF A VOLUNTEER ASSOCIATION ENGAGES A WORKER?

Although this provision has not yet been tested, if a volunteer organization **engages** a worker (as an independent contractor) and pays them a fee, this will **not** make them a PCBU. But, if they **employ** someone, that **will** mean they will be classified as a PCBU and have the consequent obligations and liabilities under the Act.

#### **Example #1:**

If a club (eg. High School Old Boys Club) runs as an entity and has no paid employees it will not be a PCBU and so will not be required to comply with the PCBU duties as set out in the Act.

*(However, practically of course, it would be sensible if the Club did ensure the health and safety of all those involved of the events or runs – but will not be prosecuted under the Act if there is an accident or issue)*

#### **Example #2:**

If the volunteer organization has even **one** paid employee, it will be a PCBU and so is required to comply with the duties under the Act, and importantly so too will its Officers (Board Members or Senior Management) and workers.

### VOLUNTEER WORKERS DEFINED

A volunteer worker means a volunteer who carries out work for any PCBU. So if the organization is not a PCBU – its volunteers will not have the workers' responsibilities as set out in the Act.

A casual volunteer for a PCBU will also not be a 'worker', but if a volunteer carries out work for a PCBU with the knowledge of the PCBU, on an ongoing regular basis and the work is an integral part of the business or undertaking – those 'worker volunteers' have fairly much the same duties as other workers under the Act.

However, certain volunteer workers are excluded from this definition of a worker where they are participating in a fund-raising activity, or assisting with sports and recreation for an educational institute, sports club or recreation club.

So, although the sports club itself may be PCBU (if it employs someone) its volunteers are expressly excluded from the definition of 'volunteer workers'.



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### **What if I am managing funds, memberships and Club fees? Does this make the Club a PCBU?**

Whether or not the volunteer organization manages funds or not, such as membership funds or ticket prices for an event, this does not determine whether or not it is classified as a PCBU. Instead, as a volunteer organization it will be a PCBU as long as it **does not employ any person**.

### **Should a Club move away from having paid employees?**

Organizations should, if possible, ensure they do not employ anyone, if they do not want to be covered under the Act. However, of course if it is recommended they still refer to the Act to guide their operations as far as possible, as they are sensible provisions regarding health and safety considerations.

### **What if the Club has only one paid employee?**

If the club has one person employed as a worker or employee, this will mean the Club is a PCBU and falls under all obligations and liabilities of the Health and Safety at Work Act 2016.