

Response to questions from Volunteering NZ conference participants:

Q What does it mean for a Volunteer Association to 'employ' a person?

The term means employing as an employee, as opposed to engaging as a contractor. The Act does not define 'employ' but it does define 'employee'. That definition refers to the Employment Relations Act 2000 and means 'any person of any age employed by an employer to do any work for hire or reward under a contract of service'. If the association (or any of its members) instead only 'engages' an individual to work for the association under a contract for service (i.e. a 'contractor'), then it would still be a volunteer association and not a PCBU.

Q If it is a contract then the volunteer association is not a PCBU – True or False?

True - as long as the volunteers are working together for a community purpose.

Q Is a registered charity a legal entity under the Health and Safety at Work Act?

The Health and Safety at Work Act does not define legal entities, it only defines a Person Conducting a Business or Undertaking (PCBU). The legal form of a PCBU is not relevant in terms of its coverage by, and duties under, the Health and Safety at Work Act. If an organisation meet the definition of a PCBU it has the duties of a PCBU regardless of its legal construct.

Q When is a volunteer a volunteer worker?

The Act defines a volunteer worker as meaning:

(a) *a volunteer who carries out work in any capacity for a PCBU—*

- (i) with the knowledge or consent of the PCBU; and*
- (ii) on an ongoing and regular basis; and*
- (iii) that is an integral part of the business or undertaking; but*

(b) *does not include a volunteer undertaking any of the following voluntary work activities:*

- (i) participating in a fund-raising activity:*
- (ii) assisting with sports or recreation for an educational institute, sports club, or recreation club:*
- (iii) assisting with activities for an educational institute outside the premises of the educational institution:*
- (iv) providing care for another person in the volunteer's home.*

A volunteer is “a person who is acting on a voluntary basis (whether or not the person receives out-of-pocket expenses”.

A volunteer must meet all three conditions in (a), and not fall within the exclusions in (b), to be regarded as a volunteer worker. If a volunteer is working for the PCBU on an on-going and regular basis but the volunteer’s work not integral to the work of the PCBU or vice versa they would not meet the definition of a volunteer worker. For example, volunteer marshals for an annual race, while integral to the event, would not be volunteer workers as they are not doing work for the organisation on a regular and on-going basis.

Q Can a Volunteer Association be considered to be a PCBU if run by Volunteer Workers?

The relevant question is whether the organisation falls within the definition of a PCBU. If it is a Volunteer Association (a group of volunteers working together for a community purpose, where no member or members employ any person to carry out work for the association) then the association is not a PCBU.

Whether the volunteers meet the test of a ‘volunteer worker’ or not is not relevant. You can only have a volunteer worker if you have a PCBU under the Health and Safety at Work Act. .

Q What is the liability of volunteer board members?

Officers (directors, board members, trustees, Chief Executives), have a duty to carry out due diligence to ensure the PCBU meets its health and safety obligations. The due diligence duty includes taking reasonable steps to keep health and safety knowledge up-to-date, understand the PCBU’s operations and the hazards and risks associated with those operations, and ensure and verify that the PCBU has appropriate resources and processes to meet its duties. Officers can be held liable for a failure to meet this duty. However, **volunteer officers** cannot be held liable for a failure to meet this duty. A volunteer is defined in the Act as meaning a person who is acting on a voluntary basis (whether or not that person receives out-of-pocket expenses).

NB: the PCBU – the organisation - still has a duty of care to ensure, so far as is reasonably practicable, the health and safety of its workers. This is a separate and different duty to the duty of due diligence for individual officers.

Q What, if any, support is WorkSafe providing to the Community Sector about the changes in the Health and Safety legislation and what this means for volunteers?

Once regulations are finalised WorkSafe will be publishing a range of formal guidance on the new Act including information for volunteers. Information on how the Act pertains to volunteers is available on the WorkSafe web site: (<http://www.business.govt.nz/worksafe/about/reform/6-volunteers>). Guidance on Volunteers under the existing Health and Safety in Employment Act can be found on the WorkSafe web site (<http://www.business.govt.nz/worksafe/information-guidance/all-guidance-items/volunteers-pdf-fact-sheet/volunteers.pdf>).