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# for the love of it

The hazardous environment that thousands of volunteers in Queensland confronted when they donated their time to assist in the clean-up effort in January's devastating floods highlights a number of OHS responsibilities that persons conducting a business or undertaking (PCBU) will face when engaging volunteers under the Model WHS Act.

**A**lthough current OHS legislation is designed to protect volunteers, the rights and responsibilities of volunteers and 'employers' in similar circumstances will be given new life under the Model Work Health and Safety Act (Model WHS Act). The Queensland volunteers certainly gave new meaning to the term 'volunteer', as reflected in an article in *The Sydney Morning Herald* titled 'Tens of thousands roll up their sleeves to help make it better':

- There was 'an army of volunteers carrying buckets and shovels ... helpers from all walks of life turning up at Brisbane's four volunteer hubs'.
- 'As each batch of recruits queued, waiting for government

- buses to take them to work sites, busloads of weary, mud-splashed veterans marched past them for a brief rest.'
- The work being performed was 'back-breaking ...' they had been 'ripping up carpets and floorboards, just carrying the whole contents of houses out on to the street...'
- 'The big issue has been finding the right jobs for people at the right time.'
- 'Volunteers ... were given food, water, gloves, Aerogard and goggles.'
- Volunteers '... were told to stay away from oil, chemicals, electrical wiring and asbestos, then it was on to the buses and to work'.
- '...hundreds of tonnes of rotting carrots, tomatoes, ▶

pumpkins and other produce were being piled into heaps, sometimes six metres high, for disposal...

• A '...warehouse looked like a cyclone had been through it, ripping down walls and collapsing a section of the roof'.

The situations highlighted in the *SMH* article give rise to a number of PCBU obligations under clause 19 of the Model WHS Act. In particular, a PCBU would need to ensure the following provisions, so far as is reasonably practicable.

### Many of the volunteers... were inexperienced and unlikely to... identify the serious risks...

**A WORK ENVIRONMENT WITHOUT RISKS TO HEALTH AND SAFETY.** This is a broad obligation and is relevant to how a PCBU would manage 'an army of volunteers' upon their arrival at the 'volunteer hubs', particularly when their arrival is unexpected and unannounced. It is also relevant in assessing the environment in which the volunteers are to be deployed and doing all that is 'reasonably practicable' to address the hazards that present in those environments.

**SAFE PLANT AND STRUCTURES.** The volunteers were required to use plant and structures and were told to 'take care with electrical equipment during the floods and the subsequent clean-up to avoid further tragedies'. While it is not apparent from the article what plant or structures were

provided, this obligation would include the maintenance of the 'buses to take them to work sites'.

**SAFE SYSTEMS OF WORK.** This is an obligation that PCBUs would carry out broadly but that would also be relevant to work described as being 'back-breaking' – in particular, physical aspects such as 'ripping up carpets and floorboards' and 'carrying the whole contents of houses out onto the street'. The *SMH* article makes no mention of whether the volunteers were instructed in correct lifting techniques or warned of the hazards associated with demolition work.

**SAFE USE, HANDLING AND STORAGE OF PLANT, STRUCTURES AND SUBSTANCES.**

A PCBU would need to consider whether simply instructing volunteers to 'stay away from oil, chemicals, electrical wiring and asbestos' was 'as much as was reasonably practicable' to ensure they dealt with the risks arising from exposure to those substances. Some websites provided more comprehensive advice: for example, by recommending that persons 'err on the side of caution by assuming asbestos was present and by wearing protective gear, keeping the material damp and handling it with care...' and stating, 'No matter where you live, if you have any doubts or questions, you should contact your local council about how it can help dispose of suspect materials'. A PCBU would also need to consider and manage the risks of volunteers entering 'structures' such as the 'warehouse [that] looked like a cyclone had been through it'.

#### Who is a volunteer?

Clause 7 of the Model WHS Act adopts a broad definition of worker that extends beyond the traditional employment relationship to include any person who works in any capacity in, or as part of the business or undertaking, including as a volunteer.

The definition of a workplace under the Model WHS Act is broad and includes any place in which work is carried out for a business or undertaking as well as any place where a volunteer goes or is likely to be while they're at work. This is likely to include the natural-disaster zones in which the volunteers found themselves working.

The term 'volunteer' is defined in clause 4 of the Model WHS Act as a person who acts on a voluntary basis, and will be subject to the circumstances of each case irrespective of whether the person receives out-of-pocket

expenses. The reimbursement of out-of-pocket expenses may be relevant, however, and where they are considered to be relevant, will include expenses an individual incurs directly in carrying out volunteer work (such as, for example, reimbursement for direct outlays of cash for travel, meals and incidentals) but not any loss of remuneration.

Volunteers also have obligations to take reasonable care to protect their own health and safety, and to consider their acts or omissions so that they do not adversely affect the health and safety of other persons. Like employees, volunteers have an obligation to comply as far as they are reasonably able to do so, with any reasonable instruction or any reasonable policy or procedure that is given by the PCBU to allow the PCBU to comply with the Model WHS Act.



**ADEQUATE FACILITIES FOR THE WELFARE OF VOLUNTEERS.** This would have been particularly relevant for volunteers who were deployed to areas that were some distance from the 'volunteer hubs' and where there was no guarantee that reliable amenities would be available.

**ANY INFORMATION, TRAINING, INSTRUCTION OR SUPERVISION.** This is necessary to protect all persons from risks to their health and safety. The provision of 'food, water, gloves, Aerogard and goggles' and instructions to 'stay away from oil, chemicals, electrical wiring and asbestos' is unlikely to be considered as much as could reasonably, practicably be done to provide volunteers with instruction; however, taking the trouble to find 'the right jobs for people at the right time' is a good place to start in seeking to identify volunteers who may already be trained or have the relevant expertise or skills to undertake particular duties.


**MONITORING THE HEALTH OF VOLUNTEERS AND THE CONDITIONS AT THE WORKPLACE.** This might include requiring volunteers to take regular breaks and/or to report all injuries or illnesses.

#### Engaging volunteers

With this in mind, when engaging volunteers under the model WHS Act, a PCBU should, where it is reasonably practicable to do so:

- ensure that the skill base of the volunteers it engages is suitable to the work those volunteers will be required to perform. This could be done by requiring pre-registration of all volunteers;
- consider and comply with any relevant codes of practice.

including 'Managing the Work Environment and Facilities', 'How to Manage and Control Asbestos in the Workplace', 'How to Safely Remove Asbestos' and 'Hazardous Manual Tasks';

- consult with volunteers about the risks they are likely to experience while performing the volunteer work. If time prevents consultation in the normal form, PCBUs could consider other reasonable means of 'consulting' with its volunteers, such as providing them with information packs about risks that may be experienced while volunteering for the PCBU;
- ensure volunteers have adequate PPE;
- ensure volunteers are prepared for the duties that they may be asked to perform, including any physical or psychological stresses that may be involved; and
- check whether volunteers can be covered by the PCBU's workers' compensation or public liability insurance cover. 

## Who is a PCBU?

The Model WHS Act will apply to a broader demographic of PCBU and does not include a definition of 'employer'. The primary duty of care will now rest with a PCBU.

A PCBU has a primary duty of care to ensure, as far as is reasonably practicable, the health and safety of its workers (those engaged by the PCBU or whose activities are influenced or directed by the PCBU). This duty of care extends to ensuring that the health and safety of a person is not put at risk as a result of the work carried out.

PCBUs that engage volunteers are generally expected to exercise the same duty of care towards them as they would towards paid employees. Similarly, volunteers are required to take reasonable care of their own health and safety and that of others in the workplace.

Many of the volunteers in the Queensland floods clean-up were inexperienced; it is unlikely many would have been able to identify the serious risks to health and safety that exist when engaged in physical labour such as cleaning and repairing in post-flood conditions.