



Legal implication of HS@W legislation, the Rural fire fighters perspective

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The current law

- *Health and Safety in Employment Act 1992 (NZ).*
- Most volunteers are treated as if they are employees (s 3C).

Employers are required

- To take all practicable steps to ensure the safety of volunteers (s 6);
- To identify and eliminate, isolate or minimise hazards (ss 7, 8, 9 and 10);
- To provide information to volunteers (ss 11 and 12).

Volunteers must take all practicable steps to ensure

- a) Their own safety while at 'work' by, inter alia, using PPE and issued safety equipment;
- b) That nothing they do, or fail to do, causes harm to anyone else (s 19).



Volunteers

- Can be criminally liable for offences under the Act (Part 4).

The *Health and Safety at Work Bill*

- “The new regime is based on the Australian Model Work Health and Safety Act, with modifications to take account of differences in the New Zealand context...”
- The *Work Health and Safety Act 2011* (Cth) is a model Act that has been adopted across most of Australia (Victoria and Western Australia excepted).

General duties legislation

- A person conducting a business or undertaking (a PCBU) is to assess and manage risk (s 22).
- Must consult with workers (s 27).
- In Australia, the most significant change was to include *volunteers* in the definition of ‘worker’ (s 14(1)(h)).

The Act will impose obligations upon workers (ss 40 and 41):

While at work, a worker 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

And

(c) comply, as far as the worker is reasonably able, with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with this Act; and

(d) co-operate with any reasonable policy or procedure of the PCBU relating to health or safety at the workplace that has been notified to workers.

Breach of a HS@W duty is a criminal offence

- There are *many* HS@W duties (ss 30-41) but...
- A volunteer can *only* be prosecuted for breach of ss 40 or 41.
- But will they be? Unlikely. Consider ...
Cahill's case [2005] NSWIRComm 33.

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Cahill v NSW Police [2005] NSWIRComm 33.

So what's new?

- The HSE Act said ss 6-12, 19 and Part 4 applied to *most* volunteers.
- It did not include requirements for 'employee participation' (Parts 2A and 2B).
- The HS@W Act applies the whole Act to all volunteers, including Part 3 'Engagement, worker participation, and representation'.

What is ‘reasonably practicable’?

That which is reasonably able to be done ...
taking into account and weighing up all
relevant matters, including

(a) the likelihood of the hazard or the risk
concerned occurring; and

(b) the degree of harm that might result from
the hazard or risk; and

(c) what the person concerned knows, or ought reasonably to know, about the risk and ways of eliminating or minimising the risk; and

(d) the availability and suitability of ways to eliminate or minimise the risk; and

(e) the cost associated with eliminating or minimising the risk...

The death of Allison Hume 2008

“For a rescue to be achieved, some imagination, flexibility, and adaptability were necessary. There was clearly a balance to be struck between the interests and safety of the rescuers, and those of the casualty they were there to rescue. .. what presents as a danger to the rescuer, when set against the need to rescue the casualty, can be a matter of fine judgement.”

“The core consideration of a risk assessment is a question of whether or not the risks to be taken are proportionate to the benefits gained. That must be an objective consideration.”

Fatal Accident Inquiry under the *Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976* by Sheriff Desmond J Leslie, Esquire, 2011.

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Questions? Comments?

- See you again at 3.45pm!