

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

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

Agency - Safe Work Australia

DEEWR Question No. EW1119_12

Senator Fifield asked on 15 February 2012, Hansard page 83

Question

SWA - Meals on Wheels volunteers and Victorian OH&S laws

Senator FIFIELD: Obviously, the more these sorts of examples can be widely disseminated, the better. I will add to that a scenario which has been raised with me by a number of my constituents in Victoria, and that is the situation of Meals on Wheels volunteers. You would know better than I whether their situation would be changed if Victoria did legislate. Is that something you are able to share at the moment? Ms Ross: We will take that one on notice as well because we need to look into whether they are employers, for a start. Senator FIFIELD: They would have full-time staff. Ms Ross: If they are employers then they are covered by the current Victorian OH&S laws. Senator FIFIELD: No; the people that actually go out and deliver meals are volunteers. Ms Ross: The current Victorian OH&S laws extend to other persons at the work place. Senator FIFIELD: Could you take that on notice and see if there is any change in how they are characterised. Ms Ross: Yes.

Answer

Safe Work Australia has provided the following response.

Meals on Wheels Volunteers (Victoria)

Duties owed to volunteers

The current occupational health and safety legislation in Victoria provides that employers owe duties to persons employed under a contract of employment or contract of training, as well as independent contractors engaged by an employer and any employees of the independent contractors. Duties are also owed to 'other persons' at the workplace, including volunteers (s23 of the Victorian *Occupational Health and Safety Act 2004*).

The model WHS Act 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 model WHS Act, volunteer workers (ie those who carry out work for a PCBU) are required to exercise reasonable care when carrying out that work. This is the case for anyone who works at or visits a workplace, including members of the public.

The model WHS laws provide for *improved* protections for volunteers, including Meals on Wheels volunteers.

Duties owed by volunteers

The current legislation in Victoria places a duty on employees not to recklessly endanger persons at workplaces (s32 of the Victorian *Occupational Health and Safety Act 2004*).

Under the Model WHS Act, volunteers (including Meals on Wheels volunteers) will be obliged to exercise due care in the performance of their duties. Workers, including volunteers, must:

- a) take reasonable care for their own health and safety;
- b) take reasonable care that they do not adversely affect the health and safety of any other person;
- c) comply, so far as they are reasonably able, with any reasonable instruction that is given by their organisation to ensure compliance with the Act; and
- d) co-operate with any reasonable policy or procedure relating to workplace health and safety.

Summary

For those volunteer organisations and volunteers now 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.