

When the Incorporated Societies Act 1908 is replaced (in 2017?) those governing societies such as woodturning and woodworking guilds will face new statutory responsibilities, and I will write about that legislation in a future issue.

However, the new requirements under the Vulnerable Children Act 2014 and the Health and Safety at Work Act 2015 already add significantly to the burdens placed on community organisations to which readers belong. Writing this article has been difficult, and if a lawyer finds it challenging to explain the law it is probably fair to say that many (most?) community organisations will struggle to understand and comply with their obligations. Readers should refer to the two websites mentioned below and seek to understand what is required.

Protection of vulnerable children

The Vulnerable Children Act 2014, defines a “child” as a person under the age of 18 who is not married or in a civil union, while “vulnerable children” are defined as “children of the kind or kinds (that may be or, as the case requires, have been and are currently) identified as vulnerable in the setting of Government priorities under section 7 of the Act. No-one wants children to be at risk, but minimising that risk creates an administrative nightmare for community organisations, and where woodturning or woodworking guilds are involved in teaching under 18 year old children or running recreational or holiday programmes for the this law applies! According to a Departmental publication (“Children’s worker safety checking under the Vulnerable Children Act 2014” available at <http://www.childrensactionplan.govt.nz/assets/CAP-Uploads/childrens-workforce/Childrens-worker-safety-checking-under-the-Vulnerable-Children-Act-RC-v1-02.pdf>):

The Government’s Children’s Action Plan includes a commitment to implement legislation for the vetting and screening of the children’s workforce – these “children’s worker safety checks” became law in the Vulnerable Children Act 2014 (the VCA), and came into force for new workers in core children’s workforce roles on 1 July 2015.

The VCA requires safety checking of all paid employees and contractors, employed or engaged by government-funded organisations, who work with children. The requirements for safety checking also apply to people undertaking unpaid children’s work as part of an educational or vocational training course.

Businesses, unfunded non-government organisations, and voluntary organisations are not covered by the requirements, but are encouraged to also adopt the new standards voluntarily.

The VCA also contains a restriction on the employment of people with convictions for certain offences in some children’s worker roles, subject to a government-run exemptions process.

That this explanatory publication extends to 29 pages illustrates the fact that these new requirements are detailed. There is insufficient space in this article to discuss those requirements, but all not-for-profit organisations dealing with children need to come to grips with what is now required of them. In essence:

- Children’s worker safety checking is intended to help identify the small number of people who pose a risk to children.
- From 1 July 2015, new Regulations under the Vulnerable Children Act are being phased in requiring all paid employees and contractors who work with children for organisations “funded (whether wholly or partly, and whether directly or indirectly) by a State service to provide regulated service(s)” to be safety checked. Regulated services are identified in Schedule 1 of the Vulnerable Children Act 2014 as including a range of health, welfare, justice and education services, specifically including “social or support services, including (but not limited to) victim support services, drug and alcohol rehabilitation services, and childcare services,” “mentoring and counselling services,” “youth services and youth work,” “out-of-school care and recreational services,” education services provided by a trades academy, a service academy, or an alternative education provider for or on behalf of a school,” and “education services provided at any off-site location for or on behalf of a registered school or early childhood service, including teen parent units, school camps, and learning centres.”
- The Regulations apply to people doing unpaid (voluntary) work with children (i.e. trainees or students) as part of an educational or vocational training course.
- Identity checking is required by reference to an electronic identity credential or by checking an original primary identity document (with confirmation that the person being checked is that “identity” by reference to an identity document that contains a photo, or by using an identity referee), checking that the “identity” has not been claimed by anyone else, followed by an interview with the “identity,” checking the “identity’s” work history over the previous 5 years, obtaining and considering information from at least one independent referee, seeking information from any relevant professional organisation, licensing authority, or registration authority, obtaining and considering information from a New Zealand Police vet (such checks currently take months to obtain), and then evaluating all of that “information to assess the risk the potential children’s worker would pose to the safety of children if employed or engaged, taking into account whether the role is a core children’s worker or non-core children’s worker role.”

Yes, that’s all very complicated, but the good news (!) is that the checks for an existing children’s worker and the required periodic rechecking (every three years) are slightly less onerous.

Health and safety

The Health and Safety at Work Act 2015 came into effect on 4 April 2016, and “The changes to the Bill’s provisions on volunteers recognise that volunteers contribute greatly to New Zealand communities and will ensure the new law will not negatively affect volunteering,” according to a Departmental website (“Health and Safety at Work Act” available at <http://www.business.govt.nz/worksafe/about/reform/6-volunteers>). That might encourage readers to think that this new law will not apply to community organisations to which they belong, but that assumption could well be wrong. According to the website:

Under the [Act], a Person Conducting a Business or Undertaking (PCBU) has the primary duty to ensure the health and safety of its workers and others, so far as is reasonably practicable. A purely volunteer organisation where volunteers work together for community purposes and which 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. A volunteer organisation which has one or more employees is a PCBU and will have the same duties as a PCBU to ensure, so far as reasonably practicable, the health and safety of its workers and others.
... What the volunteer organisation will have to do is what is reasonably practicable for it to do, and what is within its influence and control.

However, the same website advice states:

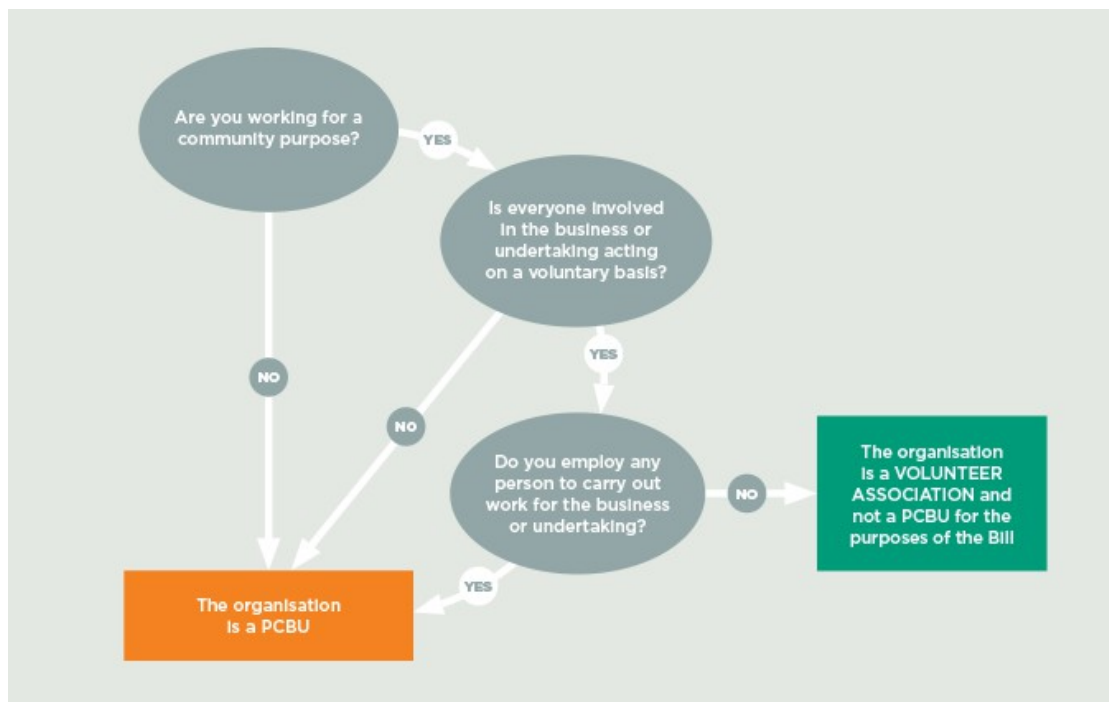
Where volunteers carry out work for a PCBU, the [Act] distinguishes between casual volunteers and volunteer workers. Volunteer workers are people who regularly work for a PCBU on an ongoing basis and are integral to the PCBU’s operations. . . .
PCBUs will owe a duty to ensure, so far as reasonably practicable, the health and safety of volunteer workers as if they were any other worker. This ensures that these volunteers are afforded the protection of having the appropriate training, instruction or supervision need to undertake their work safely – just like any other worker.
Are your volunteers doing certain activities which means they are excluded from the “volunteer worker” definition under the new law?
People volunteering for the following activities will not be volunteer workers under the new law:

- > Participation in a fundraising activity
- > Assistance with sports or recreation for an educational institute, sports or recreation club
- > Assistance with activities for an educational institution outside the premises of the educational institution.
- > Providing care for another person in the volunteer’s home.

...

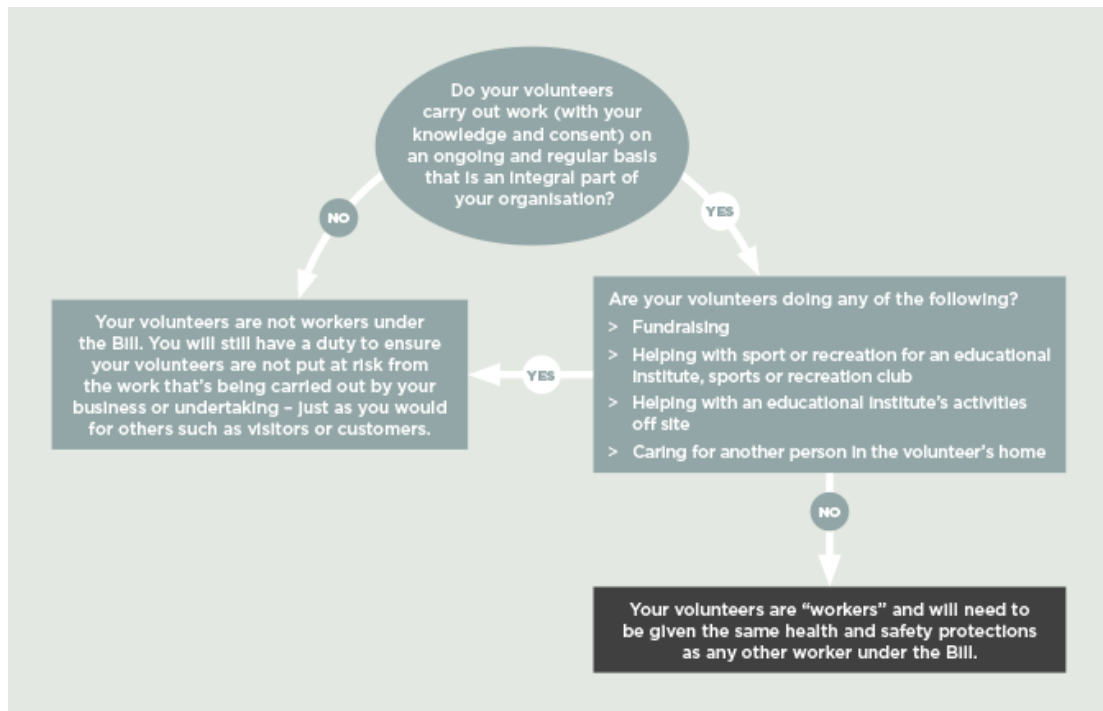
PCBUs will have a duty to others in the workplace (such as customers or visitors), to ensure that their health and safety is not put at risk from the PCBU's work, so far as is reasonably practicable. This duty also applies to casual volunteers who are in the workplace.

Whether the entity is a PCBU or a volunteer association determines whether it has responsibilities under the reforms and the following diagram on the website may help clarify this:



The exception making the organisation a PCBU arises where volunteers are working alongside someone (such as a tradesperson) who is being paid for some work (such as an electrician, plumber, or carpenter).

Volunteer workers for an entity that is a PCBU are afforded the same health and safety protections as other workers under the Act, with some exclusions, and casual volunteers are given the same protections as other people who might be affected by the entity's work such as visitors or customers, and, again, the following website diagram is intended to explain this:



Beware!

Despite the recognition that “volunteers contribute greatly to New Zealand communities” I believe that both these new laws will negatively affect volunteering. In reality, I believe most community organisations will struggle to understand what is required of them and to go through the necessary steps to comply with these new laws. Those that fail to do so may be prosecuted and face stiff penalties. I regret having to say it, but you have been warned!