

Community Patrols of New Zealand - Health and Safety at Work Act 2015

The Health and Safety at Work Act 2015 came into force on Monday April the 4th 2016. The Act contains a number of requirements that significantly impact on New Zealand business and organisations including volunteers.

The CPNZ Trusty Board has consulted with Kensington Swan Lawyers. Grant Nicholson is a Partner at Kensington Swan Lawyers based in Auckland and is a highly regarded Health and Safety Lawyer and Commercial Insurance Litigator.

It must be noted that the term 'CPNZ' is recognised as the Community Patrols of New Zealand Charitable Trust, effectively the Trust Board and employees of the Trust Board as well as any volunteer working directly for the Trust Board.

Patrols and District Committees that affiliate with CPNZ are categorised separately from the Charitable Trust.

The full effect of the new legislation falls on any person or organisation termed a 'person conducting a business or undertaking (PCBU)'. The advice received from Kensington Swan is clarified as follows;

CPNZ Charitable Trust

CPNZ is 'a person conducting a business or undertaking (PCBU) for the purposes of the Health and Safety at Work Act 2015 (HSW Act). CPNZ does not qualify for the exemption for 'volunteer associations' due to having a number of paid workers. As a result, CPNZ has all the duties imposed on a PCBU under the HSW Act, including the primary obligations to ensure the health and safety of its workers and to ensure the others are not put at risk, such as members of the public.

Members of CPNZ's Trust Board are 'officers' of CPNZ for the purposes of the Act. This means each of them are obliged to undertake ongoing due diligence to ensure CPNZ is complying with its duties.

As a PCBU, the CPNZ Trust Board is required to ensure, so far as is reasonably practicable, the health and safety of all workers (including volunteer workers) they engage or cause to be engaged or whose activities are influenced or directed by them. CPNZ owes a duty to ensure other people are not put at risk from work carried out by CPNZ or patrols.

Specific obligations of CPNZ will include;

- Acquiring and keeping up to date knowledge of health and safety risks faced by the organisation
- Understand the nature and operations of the work carried out by the organisation
- Ensuring all members have and use appropriate resources and processes to eliminate or minimise risk

- Ensuring appropriate processes are in place to receive and assess information about incidents, hazards and risks
- Ensuring processes are in place to comply with overall duties and obligations
- Verify the provisions and use of the relevant resources and processes

Patrol Committees & District Support Committees

CPNZ's affiliated patrols and district support committees are not PCBUs, as they do not employ workers and accordingly fall within the exception for 'volunteer associations' under the HSW Act. These bodies will cease to be volunteer associations if they employ any person.

A volunteer association is defined as a group of volunteers working together for community purposes where none of the volunteers employs any persons to carry out work for the volunteer association.

However, volunteer workers (Patrollers) have obligations under the HSW Act to ensure their own health and safety as well as to ensure they do not cause harm to others. Individual volunteers can be prosecuted for failing to comply with these duties. However, the risk is low as WorkSafe New Zealand's approach is not to prosecute individuals except in exceptional cases where there is wilful misconduct or recklessness.

Volunteer workers (Patrollers) have obligations under the Act to;

- Take reasonable care for his or her own health and safety
- Take reasonable care to ensure that his or her acts or omissions do not adversely affect the health and safety of other persons
- Comply with any reasonable instructions given by CPNZ in order to adhere to the Act
- Cooperate with any reasonable policy or procedure issued by CPNZ relating to health and safety while working on patrol

Liability under the HSW Act

CPNZ

CPNZ (Trust Board) has responsibilities under the Act because it is a PCBU because they employ people. The primary obligation is to ensure the health and safety of its affiliated patrols, their patroller and any other volunteers as well as its paid staff members.

If CPNZ fails to meet its obligations as a PCBU, it will commit an offence under the HSW Act and be liable to enforcement action by WorkSafe New Zealand. The most serious action is a prosecution against CPNZ officers (Trust Board) which could result in criminal convictions and financial penalties.

Patrols & District Support Committees

Patrols and committees are exempt from the provisions of the HSW Act which pertain to PCBUs. As stated previously that obligation sits with the Trust Board of CPNZ.

However, as is currently the law, each volunteer has individual obligations to ensure his or her own health and safety and to ensure they do not cause harm to others. A volunteer can only be prosecuted for failing to comply with the health and safety duties and obligations (Policy and procedures) of CPNZ.

An example of this would be a failure of a patroller to wear his or her Hi-viz jacket while directing traffic at a road scene or a patrol operating with a single patroller in contravention of the organisation's rules.