12. Employment

This chapter looks at the committee’s obligations to each of the groups that may undertake work on a reserve: employees, contractors, volunteers, tenants and agencies.

## 12.1 Hiring people as employees

Not all committees will need to hire employees. Generally, larger reserves that have a need and the revenue base to support it, for example foreshore camping grounds, will hire staff. The labour needs of many reserves will be met satisfactorily by volunteers or contractors.

If a committee decides to employ staff (ongoing or casual, full time or part time) it becomes an employer, with all of an employer’s obligations. The committee itself is the employer, not DELWP or the state government. Therefore, it is each committee’s responsibility to ensure that all legal requirements are met.

All employers are required by law to keep time and wages records for seven years from the time the records are first made. Committees must keep all the information needed to determine whether the provisions of an award or agreement are being met.

Maintaining good records is a key aspect of managing the committee's duties and obligations as an employer.

Employer obligations in relation to employee records and pay slips are contained in part 3-6, division 3 of the *Fair Work Regulations 2009*.

Many awards operate in Victoria. Generally, people hired by committees of management are employed in the personal and other services industry. For further information on award rates and conditions, contact the [Fair Work Ombudsman](http://www.fairwork.gov.au/Pages/default.aspx).

Rather than hiring an employee under an award, a committee may choose to hire someone under an employment contract. This might be used when a position is required for a specific length of time. The contract must detail the length, terms and conditions of employment, and be clear that it is an employment contract, not a general contract, in which there is a fee for service arrangement and the contractor pays wages and all overheads.

When the contract expires, the employment relationship ends. However, if required, an employment contract may be renewed for another agreed term.

Although not a legislative obligation, a committee can help itself by ensuring that good workplace practices are followed in addition to meeting its other obligations. One good workplace practice is written job descriptions. A job description is a statement that includes:

* the title of the job
* the reporting and accountability requirements
* the main duties involved
* the skills required.

This is a useful document for the employer and the employee because it provides both parties with a record making clear the expectations of the position.

## 12.2 Working with contractors

A contractor is a person, a business or a company hired by the committee to undertake works or services for a predetermined fee, usually based on a quotation for service. The work may be for a particular project (for example, building a playground) or for ongoing works (for example, mowing lawns).

Generally, the difference between a contractor and an employee is that a contractor is paid a fee for service and is responsible for all employment overheads, such as sick leave and superannuation, whereas an employee is paid a wage and all employment overheads are the responsibility of the employer (in this case, the committee).

Generally, a contractor submits an invoice on completion of a service or task, or at agreed intervals if it is a longer term contract. Payment of the final invoice effectively ends the relationship between the contractor and the committee.

Before hiring a contractor:

* detail the work required
* obtain an appropriate number of quotes for a service and its anticipated value to ensure the best price for the service required. The higher the value, the more quotes are recommended.

When hiring a contractor:

* do not use an open ended contract. The contract should specify the task, term, fee and completion date.
* the committee still has a responsibility to provide the same safe working environment for the contractor on the reserve as would be provided to an employee or volunteer.
* A contractor’s job description is their contract. This can be a formal contract document or acceptance of the contractor’s quotation for work. For further information on contractors go to the [Australian Government’s Business Resource](http://www.business.gov.au/contractors).

## 12.3 Working with volunteers

Committee members or other members of the community can volunteer to do some work on a reserve. The committee may choose to reimburse volunteers for out of pocket expenses, but any additional payment will turn that volunteer into an employee.

Committees have a duty of care to provide as healthy and safe a working environment for volunteers as would be provided to an employee or contractor. Keeping records makes it clear who are committee-approved volunteers, the date and time the volunteers worked and the work undertaken.

Chapter 11 ‘Insurance’ provides an example of a volunteer attendance register which can be used to record volunteer activities on the reserve for administrative and reward and recognition purposes. For privacy reasons volunteers' contact details should be kept separately to this register.

Volunteers are covered by DELWP’s group personal accident insurance policy if they are injured while undertaking voluntary activities organised, authorised and/or under the control of the committee. Any incidents involving volunteers on a reserve which lead to or might have led to serious injury or death must be reported to WorkSafe on 13 23 60, and file notes made and retained for insurance purposes.

## 12.4 Work done by tenants

A committee may issue a lease or a licence for the use of part or all of a reserve subject to the Minister’s approval. The tenant is allowed to undertake work on its tenured area. It may be as part of the tenant’s own activities (for example, a pony club employs a permanent part time instructor), or as a condition of tenancy required by the committee (for example, the pony club employs a painter to paint the clubhouse every five years because that is a condition of its lease).

All employer obligations for work undertaken by tenants reside with the tenant. The committee should ensure that the tenant’s obligations as an employer are written clearly into its tenure contract.

Note: Any developments or improvements done on a reserve by a tenant become the property of the committee and ultimately the Crown. Any tenure agreements that allow development works to be undertaken by a tenant must specify this. The term of the tenure must reflect the amortisation period required by the tenant, that is, the amount of time the tenant requires to gradually write off the initial investment.

## 12.5 Work done by agencies

A committee may enter arrangements with an agency, such as the local council, to undertake work on the reserve. All employer obligations for such work belong to the other agency. The committee should ensure that the other agency's obligations as an employer are clearly written into its contract with the committee.

If work is undertaken by another agency for no fee, or a fee less than the market rate, the details of this must be recorded, including the reasons given for that arrangement. For example, if a local council collects rubbish from a reserve for no fee, this should be recorded. This is to ensure grants by the council to the committee are valued at the market rate of the service provided, and are transparent and accountable.

## 12.6 Employment-related taxes and oncosts

As employment conditions change often, the information in this section is provided as a guide only. A good source of up-to-date information is the [Australian Government Department of Employment](http://employment.gov.au/).

Income tax

Once a committee employs staff, it must register with the [Australian Taxation Office](http://www.ato.gov.au/).

Payroll tax

Payroll tax is paid by employers to the government’s [State Revenue Office](http://www.sro.vic.gov.au/). A committee is liable for payroll tax if it has a monthly wages bill of more than $45,833 or an annual bill of $550,000 or more.

WorkCover

WorkCover is a no fault, compulsory insurance scheme that provides coverage to employers in the event of work-related injury or death to their employees. If a committee employs staff it must have a WorkCover policy. Volunteers of a committee of management are not covered by WorkCover.

Superannuation

All employers are required by law to contribute a percentage equivalent of each employee’s wages into a complying superannuation fund. It may be a company sponsored fund, a fund of the employee’s choice or one of a range of commercial funds that the employer might offer. For further details on superannuation, contact [the Australian Taxation O](http://www.ato.gov.au/)ffice.

## 12.7 Other employment issues

Sexual harassment

A committee and its entire staff must know what constitutes sexual harassment and that it is unlawful in any form. As an employer each committee must provide a work environment that is free from sexual harassment for staff, contractors, volunteers and visitors. The [Australian Human Rights Commission website](http://www.humanrights.gov.au/) contains information for employers on how they can meet their obligations. Recommended reading on this topic is the *Sexual Harassment Code of Practice* and *A Guide to the Sex Discrimination Act*, available on the [Australian Human Rights Commission website](https://www.humanrights.gov.au/publications-home/all).

Discrimination

Equal Opportunity

Victoria’s Equal Opportunity Act *1995* makes it unlawful to discriminate against employees on the basis of age, disability, union membership or activity, sexual practices and orientation, marital or parental status, gender, race, religion or political orientation.

Occupational health and safety

As an employer a committee must provide a safe and healthy workplace. Formal occupational health and safety training is strongly recommended. WorkSafe Victoria can provide employers with information on how to provide a safe and healthy workplace. The Guide to the Occupational Health and Safety Act is available from [WorkSafe Victoria’s website](http://www.worksafe.vic.gov.au/), or phone 9641 1444 or 1800 136 089 (toll free) to arrange to have it posted.