

# National Volunteering Guide Part 4

## Volunteer safety

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# Part 4

## Volunteer safety

# Volunteer safety

## This part covers:

- ▶ negligence laws and volunteers
- ▶ health and safety of volunteers in the workplace
- ▶ child safety
- ▶ managing safety risks, and
- ▶ volunteer insurance



**This part of the guide covers a range of issues faced by community organisations regarding safety and volunteers.**

Many community organisations rely on the support of their volunteers to effectively pursue their stated purpose.

Understanding your community organisation's legal obligations in relation to safety is crucial to protect this valuable resource.



## **The National Strategy for Volunteering**

### **On the strategic objective to ensure volunteering is not exploitative:**

*Like paid work, volunteering activities can be hazardous. However, safeguards for volunteers are often less robust than those offered to paid workers. Volunteers may face pressure to undertake duties they do not want to undertake, are not qualified for, or that should be paid.*

*Exploitation may come in various forms, such as deploying volunteers in roles that should be paid, pressuring people to volunteer when they do not want to, asking volunteers to do more when they do not have capacity, and asking volunteers to undertake duties they feel unsafe or uncomfortable carrying out.*

*Volunteers give their most precious resource: their time. In return they should be able to expect that the environments they volunteer in are safe and they are protected from physical and psychological harm.*

(page 46 of the strategy)

This part of the guide considers the two primary sources of 'safety' law that your organisation will need to be aware of when engaging and working with volunteers:

- negligence law, and
- work health and safety (or occupational health and safety) laws



### Caution

Your community organisation's obligations come from various sources. It's important to make sure you understand which laws apply to your organisation. This can sometimes be a complex legal issue and you may need legal advice for your specific issue.



### Checklists in the annexure

Checklists to help organisations understand when they may or may not be liable for a volunteer's actions are included in the annexures to this part of the guide.



### National Standards for Volunteer Involvement

Volunteering Australia's National Standards for Volunteer Involvement have two standards that relate to the safety of volunteers. These are:

- **Standard 5: Volunteers are supported and developed** – Volunteers understand their roles and gain the knowledge, skills and feedback needed to participate safely and effectively.
- **Standard 6: Volunteer safety and wellbeing is protected** – The health, safety and wellbeing of volunteers is protected and volunteers understand their rights and responsibilities.

Understanding your legal obligations and implementing practices to ensure the safety of volunteers will help your organisation demonstrate it is meeting these standards and complying with the relevant legislation.

## Negligence

Not-for-profit community organisations have safety obligations under

- the common law (judge-made law) of negligence, and
- the negligence provisions in state and territory legislation



### Note

These obligations extend to both the safety of the volunteer and the safety of the people that your volunteer interacts with.

If your organisation is found to be negligent (that is, it failed to meet its obligations) the court will order that a remedy be provided to the person who has suffered damage as a result of the organisation's actions (or

failure to act). In some circumstances, your organisation may also be held liable, that is 'legally responsible' for the negligent actions (or any failures to act) of its volunteers.

Volunteer involving organisations should understand their duty of care, and the standard of care they need to meet so they can protect their volunteers, their organisation and the people that their organisation interacts with.

## The two sides to safety

When considering your obligations under negligence laws, your community organisation needs to consider the two sides to safety:

- its duty of care, and the standard of care it needs to meet to prevent volunteers from suffering damage, and
- its duty of care, and the standard of care it needs to meet to prevent the people your volunteers interact with (such as clients, other 'workers', or the public) from suffering damage (discussed in further detail below)

## Negligence laws

Your organisation has safety obligations under the common law (judge-made law) of negligence and under the negligence provisions in state and territory legislation.

If your organisation:

- owes a duty of care (to the volunteer, or the person that the volunteer is interacting with), and
- breaches this duty, and
- the breach is the cause of damage to a person to which the duty is owed,

it may be found liable (legally responsible) for the damage caused.

**Your organisation should ask the following questions:**



### Duty of care

Generally, a person or organisation will only be held liable for the damage caused to another person if they were under a duty to prevent such injury or loss from occurring – that is, if they had a 'duty of care'.

In short, your community organisation unequivocally owes a duty of care to any person it employs.

Although dependent on the circumstances of the case, you should also assume that your organisation owes a duty of care to its volunteers, to the people it assists (including people who rely on any material it might publish) and to people who enter its premises.



### Note – an organisation's duty of care regarding children

In New South Wales, Victoria, Western Australia, Queensland, South Australia and Tasmania, an organisation has a duty of care to take reasonable precautions to prevent the physical or sexual abuse of children by individuals associated with the organisation while the child is under the care, supervision or authority of the organisation (this includes volunteers, board members, employees and independent contractors).

Similar provisions will apply in the Northern Territory by March 2024. The ACT has broader provisions relating to institutional child abuse.

## Standard of care

If your organisation owes a 'duty of care' to a person or category of person, such as a volunteer, your organisation needs to treat those people with an appropriate standard of care.

Essentially, in all the states and territories, the standard of care expected is the standard of 'the reasonable person' in the same position and with the same knowledge as the person being judged.

So, in any negligence proceedings, your organisation will be judged by reference to a reasonably competent and prudent organisation, in the same position, and with the same knowledge as your organisation.

The legislation in both South Australia and the Australian Capital Territory includes a definition of 'standard of care', which is used as a starting point to determine if particular conduct is negligent. The other states and territories rely on the common law rule (described above), which is essentially the same.

## Breach of duty

If your organisation doesn't meet the applicable standard of care, it will be considered to have 'breached its duty'.

In every state and territory (other than the Northern Territory whose legislation doesn't address breach of duty), the starting point for determining whether there has been a breach of duty is the legislation.

These statutory provisions are basically an expression of the pre-existing common law principles. So, the same general principles apply in the Northern Territory.

The relevant provisions in the various states and territories are virtually identical, and set out general principles which can be summed up as follows for the purposes of your community organisation –

**Your organisation will be considered negligent for failing to take precautions against a risk if:**

**1.**

the risk was one your organisation should have known about

**2.**

the risk was 'not insignificant', and

**3.**

a 'reasonable' organisation in the same position as yours would have taken precautions against the risk

**In deciding whether a reasonable organisation would have taken precautions against the risk, a court will consider (among other things):**

### The social utility of the organisation's conduct that created the risk

For example, did the incident happen during meal preparation in your organisation's soup kitchen? If so, the court will consider the benefit of your work to your community when determining whether there was a breach of duty.

The court doesn't want to discourage people from participating in important work of this kind.

### The burden for the organisation of taking precautions to avoid the risk

Was there an easy and inexpensive way to prevent the incident from happening, such as putting up a cautionary sign to prevent a slip on a wet floor?

If so, it's more likely that you breached your duty of care. If the only way for your organisation to avoid the risk was to install expensive equipment, which your organisation could not afford, you are less likely to have breached your duty by failing to do so.

### The gravity of the risk

Was the risk that your organisation failed to mitigate one that could result in serious harm?

If so, your duty would involve going to greater lengths to avoid that harm eventuating than it would were the potential consequences of your conduct less serious.

### The seriousness of the harm

If the risk of harm is 'not insignificant' then your organisation should have done something to prevent it (including making the decision not to follow through with the activity).

Generally, if someone is injured, the risk is likely to be found as significant.



## In summary

Whether your organisation will be found to have breached its duty will involve a detailed assessment of what was reasonable conduct in all the circumstances of the case.

The standard of care expected of your organisation is that of a reasonably competent and prudent organisation, in the same position, and with the same knowledge as your organisation.

So, if your organisation acts in accordance with an established practice in the community sector, you will be less likely to be found to have breached your duty of care regarding volunteers or the public interacting with volunteers.

## Damage and causation

Your organisation can't be found negligent unless someone has suffered some type of damage recognised by the law as giving rise to a cause of action – if no legally recognised damage is suffered, there will be no negligence, even if your organisation has not conducted itself appropriately.

The most common categories of damage in negligence are personal injury, property damage and financial loss.

In addition to 'damage recognised by the law', your organisation can't be found negligent unless its failure to take reasonable care has actually caused the damage complained of (referred to as 'causation'.) The person who has suffered damage carries the burden of establishing that the negligence caused their damage.

To establish causation it must be shown that the negligence was 'a necessary condition of the occurrence of the harm'. The question to ask here is whether the damage would have occurred 'but for' your organisation's conduct.



### Example

Matthew, a volunteer at a community-based organisation cleaned the floors of its premises and, contrary to policy, forgot to put up the sign to caution people that the floors were slippery. Unaware of the slippery floors, Simon, a regular client of the organisation, tripped and broke his back. If Simon can establish that, had the sign been up, he would not have walked across the floor (and therefore would not have slipped), causation will be established.

If, however, there is evidence that Simon routinely ignored such cautionary signs, and he would likely have walked across the slippery floor regardless, he will find it difficult to establish that, 'but for' the organisation's negligence, Simon would not have been injured.

Your organisation will generally be legally responsible for the actions of volunteers, but not in all cases. This is discussed in greater detail below.

## Consequences of liability

If your organisation is found negligent or vicariously liable for the actions of a volunteer (see below), the court will order that a remedy be provided to the person who has suffered damage because of the relevant conduct. This remedy is almost always in the form of monetary compensation, with the aim being to put the person who has suffered damage (personal injury, property damage or financial loss) in the position they were in before the act (or failure to act) occurred.

If a person has suffered non-monetary loss (in particular, personal injury) it's impossible to put the injured person back into her original position, but best attempts will be made by the court to provide 'full and adequate' compensation, which caters for an injured person's past and future needs. Compensation will be assessed by the court on a 'once and for all' basis, and your organisation will be ordered to pay a lump sum that cannot be revised at a future date.

## Proportionate liability

In some cases, damage can be caused by the negligent conduct of multiple people or organisations.

All the states and territories have 'proportionate liability' provisions in legislation, which, in claims for financial loss or property damage, may limit the liability of any one wrongdoer to the proportion which reflects their responsibility for damage suffered.



### Example

If your organisation is one of three organisations that negligently caused damage to property, provided certain conditions are met, you will only need to contribute to the sum of damages awarded by the court – a percentage which is considered to reflect your share of the responsibility.

The proportionate liability provisions do not apply to claims for personal injury. Where a person has been injured by the negligent conduct of multiple people, each wrongdoer is 'jointly and severally liable' for the whole loss. This means that an injured person can recover the whole award of damages from any one person or organisation found to have caused or contributed to their injury. This shields injured persons from the risk of being short-changed if some of those responsible for their injury are unable to pay the damages.

This is a complex area of the law and your organisation will require legal assistance if this situation arises.



## National Standards for Volunteer Involvement

Volunteering Australia's National Standards for Volunteer Involvement, **Standard 5: Volunteers are supported and developed** – Volunteers understand their roles and gain the knowledge, skills and feedback needed to participate safely and effectively.

- 5.1** Volunteers are provided with relevant induction and training.
- 5.2** Volunteers' knowledge and skills are reviewed to identify support and development needs.
- 5.3** Volunteers are engaged with throughout their time and provided with supervision and training that enables them to participate fully.
- 5.4** People with responsibility for volunteers have sufficient time and resources to engage with and provide proper support to volunteers.
- 5.5** Changes to the role of a volunteer are fair and consistent and achieved through engaging with the volunteer.

See this standard for examples of evidence of meeting this criteria.

Providing volunteers with support and development so that they understand their safety obligations and are adequately supervised is one way to help organisations meet their safety obligations under negligence law.

### Your organisation's legal responsibility for actions of its volunteers

As discussed above, your organisation will need to consider the two sides to safety – the duty to the volunteer, and the duty to the people that your volunteer interacts with.



### What is vicarious liability?

Vicarious liability is the responsibility an organisation has for the actions of their employees or volunteers in the course of their work



### Note

In some circumstances, your organisation may be held liable, that is 'legally responsible' for the negligent actions (or any failures to act) of its volunteers.

This is because each state and territory has legislation that sets out a special protection for volunteers from personal civil liability for anything done or not done in good faith when performing community work for a community organisation.

Civil liability refers to liability arising out of a civil proceeding, which is a legal action between two citizens. For example, compensation for personal injury, property damage or financial loss as a result of negligence.

A volunteer will only be protected if they satisfy all the tests under the relevant state or territory legislation (see below).

Generally – if a volunteer (who is protected by the relevant legislation) has caused personal injury, property damage or financial loss to a person as a result of the volunteer's own action or failure to act, the volunteer

will not be personally liable to pay any compensation to that person. Instead, if harm is caused by a volunteer, the community organisation may be liable rather than the volunteer individually.



### Caution

The position in NSW and Queensland may differ.

In NSW a volunteer will not be liable for their acts or omissions, done in good faith, while doing community work organised by a community organisation or as an office holder of a community organisation unless they fall into an exception in the legislation, and where a volunteer is not liable, the organisation will ordinarily not be vicariously liable for the volunteer's acts or omissions.

In Queensland, legislation protects volunteers from liability but, unlike NSW, the protection is not extended to the organisation. Queensland courts may be willing to extend protection to the organisation from liability from its volunteers' acts and omissions, but the position is uncertain.

Our summaries of the negligence laws in NSW and Queensland below provide more information.

Despite this protection, there are still circumstances where an organisation could be liable, including where it has been negligent.



### Example – volunteer patient transport driver

Natalie is a volunteer patient transport driver for a not-for-profit organisation which transports clients to and from medical appointments and on outings to do their shopping.

Natalie has recently separated from her husband and generally suffers from anxiety and is not coping well with the separation. She has confided in her supervisor about her increased intake of alcohol since the separation. Natalie's supervisor has noticed that Natalie sometimes appears to be drowsy when she reports for volunteering duties. Instead of requiring Natalie to undergo breath testing in accordance with the organisation's drug and alcohol policy, Natalie's supervisor dismisses her concerns as Natalie is a long-standing volunteer with a good record and is just 'going through a rough patch'.

After again reporting for volunteer duties in a drowsy state, Natalie has a car accident while transporting an elderly client. Natalie drove through a red traffic light and crashed into a mother walking her two primary school-aged children to school. The mother and one of the children were killed. The other child survived but has severe injuries which will take many months to heal and will require ongoing rehabilitation. The client in Natalie's car also suffered cuts and abrasions as well as severe shock. Natalie was breath tested at the scene and found to have a blood alcohol level more than the legal driving limit. News of the accident was widely reported on the television, in newspapers and on the internet.

In this case, in addition to breaking criminal laws, Natalie has been negligent by breaching her duty of care to her passenger and other road users. Although the state in which Natalie and the organisation operates has legislation protecting volunteers (and the organisation) from civil liability, the fact that she was under the influence of alcohol at the time of the accident means that that protection is no longer available to her or the organisation.

Therefore, as Natalie was doing volunteer work for the organisation, the organisation will be vicariously liable for Natalie's negligence. The organisation has also breached its duty of care to the client and other road users by failing to take reasonable steps to prevent a reasonably foreseeable incident from occurring. As a result, the organisation is exposed to claims from the client, the family of the deceased mother and child, the injured child and, potentially, onlookers who suffered psychological damage from seeing the accident and its aftermath. In addition, the organisation itself has suffered reputational damage because of negative publicity generated by the incident. This has impacted its funding and ability to attract workers, volunteers and clients.

The state and territory laws on negligence are summarised below.



### Caution – unincorporated community organisations

Unincorporated community organisations should seek legal advice about the application of state and territory laws to them.

## Australian Capital Territory

The *Civil Law (Wrongs) Act 2002 (ACT)* (**ACT Wrongs Act**) sets out special protection which provides that volunteers are generally not personally liable (legally responsible) for civil liability which arises as a result of anything they have done (or not done) honestly and without recklessness, while carrying out community work for a community organisation.

If a volunteer is protected under the ACT Wrongs Act (that is, all the tests have been met), the volunteer will not be personally liable to pay any compensation for personal injury, property damage or financial loss caused by their own actions or failures to act. Instead, if harm is caused by a volunteer, the community organisation (the legal entity) may be liable rather than the volunteer individually.

**More information:** To work out whether a volunteer might gain the benefit of protection under the ACT Wrongs Act, or whether an exception to the protection applies, see the '**Checklist:** Are our volunteers protected against personal liability under the ACT Wrongs Act?' in the annexure to this part of the guide.

## New South Wales

The *Civil Liability Act 2002 (NSW)* (**NSW Civil Liability Act**) sets out special protection for volunteers which provides that volunteers are generally not personally liable (legally responsible) for any act they have done (or not done) in good faith while doing community work that is organised by a community organisation or as an office holder of a community organisation.

In most other Australian states and territories, civil liability incurred by a protected volunteer is automatically transferred to the community organisation (so that the organisation itself would have to pay any compensation). In NSW, there is no such automatic transfer. The NSW Civil Liability Act operates to the effect that if a volunteer is protected under the Act, then the community organisation is also protected and does not take on the volunteer's liability.

However, a community organisation in NSW may nevertheless be liable for damage caused by a volunteer who was acting in good faith if the community organisation was in breach of a 'non-delegable duty of care' – which is a common law duty owed by the community organisation itself, rather than the volunteer, to the person who suffered the damage. This may include providing adequate training, equipment or supervision to volunteers. So, for example, if a volunteer causes an injury to another person because the organisation failed to give the volunteer appropriate safety training, the organisation may be liable to pay compensation to the injured person.

This is a complicated area of law and your organisation should seek legal advice about any potential liability in these circumstances.

**More information:** To work out whether a volunteer might gain the benefit of protection under the NSW Civil Liability Act, or whether an exception to the protection applies, see the '**Checklist:** Are our volunteers protected against personal liability under the NSW Civil Liability Act?' in the annexure to this part of the guide.

## Northern Territory

The *Personal Injuries (Liabilities and Damages) Act 2003 (NT)* (**NT Personal Injuries Act**) sets out special protection which provides that volunteers are generally not personally liable (legally responsible) for personal injury caused by any act they have done (or not done) in good faith and without recklessness, while doing community work for a community organisation.

If a volunteer is protected under the NT Personal Injuries Act (that is, all the tests have been met), the volunteer will not be personally liable to pay any compensation for personal injury caused by their own actions or failures to act. Instead, if harm is caused by a volunteer, the community organisation (the legal entity) will be liable rather than the volunteer individually.

In this context, civil liability refers to liability arising out of a civil proceeding for personal injury.

**More information:** To work out whether a volunteer might gain the benefit of protection under the NT Personal Injuries Act, or whether an exception to the protection applies, see the '**Checklist:** Are our volunteers protected against personal liability under the NT Personal Injuries Act?' in the annexure to this part of the guide.

## Queensland

The *Civil Liability Act 2003 (QLD)* (**QLD Civil Liability Act**) sets out special protection which provides that volunteers are generally not personally liable (legally responsible) for civil liability which arises as a result of any act they have done (or not done) in good faith and without recklessness, while doing community work that has been organised by a community organisation.

In most other Australian states and territories, civil liability incurred by a protected volunteer is automatically transferred to the community organisation (so that the organisation itself would have to pay any compensation). In Queensland however, there is no such automatic transfer. The QLD Civil Liability Act is, in fact, silent on whether the organisation itself takes on the volunteer's liability and there is no clear case law on this, so the legal position is not yet settled. It's possible that liability might transfer from the volunteer to the organisation under the legal principle of 'vicarious liability', where one party becomes liable for the actions of another (the usual example is that an employer is vicariously liable for its employees), but it's not clear whether this principle applies in the volunteering context.

However, regardless of this lack of clarity, the community organisation could be liable for damage caused by a volunteer who was acting in good faith if the organisation was in breach of a 'non-delegable duty of care' – which is a common law duty owed by the organisation itself, rather than the volunteer, to the person who suffered the damage. The organisation's duty of care may include providing adequate training, equipment or supervision to volunteers. So, for example, if someone is injured by a volunteer because the organisation failed to give the volunteer appropriate safety training, the organisation could be liable to pay compensation to the injured person.

This is a complicated area of law and your organisation should seek legal advice about its own potential liability in such circumstances.

**More information:** To work out whether a volunteer might gain the benefit of protection under the QLD Civil Liability Act, or whether an exception to the protection applies, see the '**Checklist:** Are our volunteers protected against personal liability under the QLD Civil Liability Act?' in the annexure to this part of the guide.

## South Australia

The *Volunteers Protection Act 2001 (SA)* (**SA Volunteers Act**) sets out special protection which provides that volunteers are generally not personally liable (legally responsible) for civil liability which arises as a result of any act they have done (or not done) in good faith and without recklessness, while doing community work for a community organisation.

If a volunteer is protected under the SA Volunteers Act (that is, all the tests have been met), the volunteer will not be personally liable to pay any compensation for personal injury, property damage or financial loss caused by their own actions or failures to act. Instead, if harm is caused by a volunteer, the community organisation (the legal entity) will be liable rather than the volunteer individually.

**More information:** To work out whether a volunteer might gain the benefit of protection under the SA Volunteers Act, or whether an exception to the protection applies, see the '**Checklist:** Are our volunteers protected against personal liability under the SA Volunteers Act?' in the annexure to this part of the guide.

## Tasmania

The *Civil Liability Act 2002 (Tas)* (**Tas Civil Liability Act**) sets out special protection which provides that volunteers are generally not personally liable (legally responsible) for civil liability which arises as a result of any act they have done (or not done) in good faith, while doing community work.

If a volunteer is protected under the Tas Civil Liability Act (that is, all the tests have been met), the volunteer will not be personally liable to pay any compensation for personal injury, property damage or financial loss caused by their own actions or failures to act. Instead, if harm is caused by a volunteer, the community organisation (the legal entity) will be liable rather than the volunteer individually.

**More information:** To work out whether a volunteer might gain the benefit of protection under the Tas Civil Liability Act, or whether an exception to the protection applies, see the **Checklist:** Are our volunteers protected against personal liability under the Tas Civil Liability Act?' in the annexure to this part of the guide.

## Victoria

The *Wrongs Act 1958 (Vic)* (**Vic Wrongs Act**) sets out special protection which provides that volunteers are generally not personally liable (legally responsible) for civil liability which arises as a result of any act they have done (or not done) in good faith while doing community work that is organised by a community organisation.

If a volunteer is protected under the Vic Wrongs Act (that is, all the tests have been met), the volunteer will not be personally liable to pay any compensation for personal injury, property damage or financial loss caused by their own actions or failures to act. Instead, if harm is caused by a volunteer, the community organisation (the legal entity) will be liable rather than the volunteer individually.

**More information:** To work out whether a volunteer might gain the benefit of protection under the Vic Wrongs Act (or whether an exception to the protection applies), see the **Checklist:** Are our volunteers protected against personal liability under the Vic Wrongs Act?' in the annexure to this part of the guide.

## Western Australia

The *Volunteers and Food and Other Donors (Protection from Liability) Act 2002 (WA)* (**WA Protection Act**) sets out special protection which provides that volunteers are generally not personally liable (legally responsible) for civil liability which arises as a result of any act they have done in good faith while doing community work for a community organisation.

If a volunteer is protected under the WA Protection Act (that is, all the tests have been met) the volunteer will not be personally liable to pay any compensation for personal injury, property damage or financial loss caused by their own actions or failures to act. Instead, the liability of a protected volunteer will be transferred to the organisation the volunteer was performing the community work for, and the injured party would be able to sue the community organisation (rather than the volunteer) for any injury, damage or loss caused by the volunteer.

**More information:** To work out whether a volunteer might gain the benefit of protection under the WA Protection Act, or whether an exception to the protection applies see the **Checklist:** Are our volunteers protected against personal liability under the WA Protection Act?' in the annexure to this part of the guide.



### Note – operating in multiple states or territories

If your organisation has volunteers operating in another state or territory, generally they will be subject to the laws in that state. It doesn't matter that the volunteer is resident in the one state or territory or that the community organisation is registered in a particular state or territory. Determining which law a volunteer will be subject to can be complicated and may require legal advice.

## Can your organisation get volunteers to agree to reimburse you for compensation payable because of their actions?

### Australian Capital Territory

The ACT Wrongs Act doesn't explicitly prohibit these kinds of agreements (known as indemnity agreements), under which a volunteer agrees to reimburse the organisation for any compensation which may be payable due to their actions. However, protection provided by legislation can't generally be 'waived', so any such agreement is very unlikely to be valid.

### New South Wales

The NSW Civil Liability Act doesn't explicitly prohibit these kinds of agreements (known as indemnity agreements), under which a volunteer agrees to reimburse the organisation for any compensation which may be payable due to their actions. But it does contain general provisions which allow parties to enter a contract which makes 'express provision for their rights, obligations and liabilities'. However, if your organisation asks a volunteer to sign an indemnity agreement, note that it may not protect your organisation from liability in all circumstances, especially where there has been gross negligence or breaches of specific laws.

### Northern Territory

The NT Personal Injuries Act specifically states that these kinds of agreements (known as indemnity agreements) have no effect. Your organisation can't try to 'contract out of' the volunteer protection provisions to avoid being legally responsible for volunteers' actions.

### Queensland

The QLD Civil Liability Act is silent on the effect of these types of agreements (known as indemnity agreements), but contains a general provision which allows parties to enter a contract which makes 'express provision for their rights, obligations and liabilities'. However, if your organisation asks a volunteer to sign an indemnity agreement, note that it may not protect your organisation from liability in all circumstances, especially where there has been gross negligence or breaches of specific laws.

### South Australia

The SA Volunteers Act is silent on the effect of these types of agreements (known as indemnity agreements), under which a volunteer agrees to reimburse the organisation for any compensation which may be payable due to their actions. However, protection provided by legislation can't generally be 'waived', so any such agreement is very unlikely to be valid.

### Tasmania

The Tas Civil Liability Act specifically states that these kinds of agreements (known as indemnity agreements) have no effect. Your organisation can't try to 'contract out of' the volunteer protection provisions to avoid being legally responsible for volunteers' actions.

### Victoria

The Vic Wrongs Act specifically prohibits these kinds of agreements (known as indemnity agreements). Your organisation can't try to 'contract out of' the volunteer protection provisions to avoid being legally responsible for volunteers' actions.

## Western Australia

The WA Protection Act specifically states that these kinds of agreements (known as indemnity agreements) have no effect. Your organisation can't try to 'contract out of' the volunteer protection provisions to avoid being legally responsible for volunteers' actions.

## What if your organisation (or a volunteer) makes an apology or expresses regret?

### Australian Capital Territory

Under the ACT Wrongs Act, a volunteer or community organisation may make an apology to another person about an incident without fearing it will be construed as an admission of liability in a claim or proceeding arising out of the incident.

The ACT Wrongs Act specifies that an apology is an oral or written expression of sympathy or regret, or of a general sense of benevolence or compassion in relation to an incident, whether or not the expression admits or implies fault or liability in relation to the incident. The ACT Wrongs Act expressly states that an apology:

- is not (and must not be taken to be) an express or implied admission of fault or liability by the person in relation to the incident
- is not relevant to deciding fault or liability in relation to the incident, and
- is not admissible in any civil proceeding as evidence of the fault or liability of the person in relation to the incident

### New South Wales

The NSW Civil Liability Act specifies that an apology is an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter, whether or not the apology admits or implies an admission of fault in connection with the matter.

In a civil proceeding to which the Civil Liability Act applies, an apology:

- does not constitute an express or implied admission of fault or liability by the person in connection with that matter, and
- is not relevant to the determination of fault or liability in connection with that matter

In addition, evidence of an apology is not admissible in any civil proceedings as evidence of the fault or liability of the person in that matter.

### Northern Territory

The NT Personal Injuries Act specifies that an expression of regret can be an oral or written statement by a person that expresses regret for an incident that is alleged to have caused personal injury and does not contain an acknowledgement of fault by that person.

An expression of regret about a personal injury that is made at any time before the start of a proceeding relating to that injury is not admissible as evidence in the proceeding, meaning that it can't be used as evidence of an admission of liability or to prove that the person was at fault.

## Queensland

The QLD Civil Liability Act specifies that an apology is an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter, whether or not it admits or implies an admission of fault in relation to the matter.

The QLD Civil Liability Act expressly states that an apology:

- does not constitute an express or implied admission of fault or liability by the person in connection with the matter
- is not relevant to the determination of fault or liability in connection with that matter, and
- is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter

Note that there are some exceptions to this, such as in cases of defamation, unlawful sexual misconduct and unlawful intentional acts causing a person injury.

## South Australia

The SA Volunteers Act is silent on the effect of an apology, but under the Civil Liability Act 1936 (SA) (**SA Civil Liability Act**), a person may make an apology to another person about an incident without fearing it will be construed as an admission of liability in a claim or proceeding arising out of the incident.

The SA Civil Liability Act specifies that an apology is an expression of sympathy or regret, or a general sense of benevolence or compassion, whether or not the apology admits or implies an admission of fault in connection with the matter.

The SA Civil Liability Act expressly states that an apology:

- does not constitute an express or implied admission of fault or liability by the person in connection with the matter
- is not relevant to the determination of fault or liability in connection with that matter, and
- is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter

Note that an apology may influence liability in respect of defamation.

## Tasmania

The Tas Civil Liability Act specifies that an apology is an expression of sympathy or regret, or of a general sense of benevolence or compassion by a person that does not contain an admission of fault.

In a civil proceeding of any kind to which the Tas Civil Liability Act applies, an apology:

- does not constitute an express or implied admission of fault or liability by the person in connection with the matter, and
- is not relevant to the determination of fault or liability in connection with that matter

Evidence of an apology made by or on behalf of a person is not admissible in any civil proceeding as evidence of the fault or liability of the person.

## Victoria

The Vic Wrongs Act specifies that an apology is an expression of sorrow, regret or sympathy that does not contain a clear acknowledgement of fault.

In a civil proceeding where death or injury is an issue or relevant to an issue of fact or law, an apology does not constitute:

- an admission of liability for the death or injury, or
- an admission of unprofessional conduct, carelessness, incompetence or unsatisfactory professional performance, however expressed, for the purposes of any Act regulating the practice or conduct of a profession or occupation

An apology is not an admission of liability whether or not it:

- was made in writing or orally, or
- is made before or after the civil proceeding was in contemplation or started

Note that the above only applies in cases of personal injury or death, or where death or injury is relevant to the issues in the case, and not to civil liability generally (other types of damage or loss) or in other proceedings.

## Western Australia

The WA Protection Act is silent on the effect of an apology but the [Civil Liability Act 2002 \(WA\)](#) specifies that an apology is an expression of sorrow, regret or sympathy by a person that does not contain an acknowledgment of fault by that person.

In a civil proceeding of any kind to which the [Civil Liability Act 2002 \(WA\)](#) applies, an apology:

- does not constitute an express or implied admission of fault or liability by the person in connection with that incident
- is not relevant to the determination of fault or liability in connection with that incident, and
- is not admissible in any civil proceeding as evidence of the fault or liability of the person in connection with that incident



### Checklists in the annexure

To work out whether:

- a volunteer might be protected under state or territory legislation, or
- an exception to the protection applies,

see the checklists in the annexure to this part of the guide.

# Health and safety in the workplace

Not-for-profit community organisations are required by law to make sure they provide a safe workplace for their employees and volunteers.



## Examples of health and safety of volunteers in the workplace

**A volunteer drives a client to an appointment** – it's important to make sure the vehicle is road-worthy, has appropriate insurance and the volunteer has been trained in proper lifting and handling techniques if the client requires assistance in and out of the vehicle. The volunteer may also need training in relation to dealing with medical emergencies that may arise while transporting the client.

**A volunteer collects roadside donations** – the safety risks for volunteer collectors include injuries caused by vehicles, tripping or slipping, sunburn, heat exhaustion, fatigue and verbal abuse which may potentially result in psychological harm. The organisation should provide a comprehensive briefing about the potential safety risks and strategies for their avoidance.

Different laws exist in each state and territory.

New South Wales, South Australia, Queensland, the Northern Territory, Tasmania and most recently Western Australia have 'harmonised' their work health and safety laws by enacting similar legislation, based on an agreed 'model' Work Health and Safety Act (**Model Laws**).

This means that in most states and territories and at the Commonwealth level, work health and safety laws impose similar obligations. The harmonised work health and safety laws (**Harmonised WHS Laws**, or **WHS Law**) are considered below.

Victoria has not adopted the Model Laws and has retained its own legislation – the Occupational Health and Safety Act 2004 (Vic) and Occupational Health and Safety Regulations 2017 (Vic) (**Victorian OHS Law**, or **OHS Law**). The Victorian OHS Law is considered below.

**If either the Harmonised WHS Laws or Victorian OHS Laws apply to your organisation, compliance with the relevant laws is important.**

If your not-for-profit community organisation doesn't comply with these laws it risks incurring substantial fines. Directors and officers risk further fines and imprisonment if they don't exercise due diligence in relation to work health and safety of volunteers.

### Due diligence includes taking reasonable steps to:

- acquire and keep up-to-date knowledge of work health and safety matters
- gain an understanding of the nature of the operations of the organisation and generally of the hazards and risks associated with those operations
- ensure that the organisation has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out
- ensure that the organisation has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information
- ensure that organisation has, and implements, processes for complying with any duty or obligation under the Model Laws

Alongside legislation, there are also common law duties to provide employees with a safe workplace. Under the common law, all employers have a legal duty to take reasonable care to avoid exposing employees to reasonably foreseeable risks of injury. These obligations are not exhaustively covered in this part of the guide and independent advice should be sought in relation to a question about these common law duties.



## National Standards for Volunteer Involvement

Volunteering Australia's National Standards for Volunteer Involvement, **Standard 6: Volunteer safety and wellbeing is protected** – The health, safety and wellbeing of volunteers is protected and volunteers understand their rights and responsibilities.

- 6.1** Effective working relationships with employees, and between volunteers, are facilitated.
- 6.2** Organisations and groups meet their legal and ethical obligations to protect volunteers from harm.
- 6.3** Processes are in place to protect the health, safety and wellbeing of volunteers in their capacity as volunteers, including relevant insurances, such as personal injury and liability.

See this standard for examples of evidence of meeting this criteria.

## Harmonised WHS Laws

The harmonised WHS Laws apply in Queensland, New South Wales, Australian Capital Territory, South Australia, Northern Territory, Tasmania and now Western Australia.

**To determine whether and how the Harmonised WHS Laws apply to your volunteers, organisations in these states and territories need to:**

<b>1.</b>	• work out whether the Harmonised WHS Laws apply to the organisation
<b>2.</b>	• consider who holds a duty under the Harmonised WHS Laws
<b>3.</b>	• consider the two sides to safety of volunteers under the Harmonised WHS Laws
<b>4.</b>	• understand the key WHS Law duties, and
<b>5.</b>	• understand who may be liable, that is legally responsible, if there is a breach of the WHS Law duties



### Caution

Despite harmonisation of WHS laws in most Australian states and territories, some differences between the application of the WHS Laws in each jurisdiction remain, so it's important to check the laws in each state or territory that your organisation operates in (see table below).

For a summary of the key differences between each state and territory see our guide '[Community organisations and work health and safety laws](#)'.

**The table below lists the state and territory legislation that make up the Harmonised WHS Laws, together with the relevant regulators.** The Commonwealth legislation, which generally applies to Commonwealth government employers and authorities, is also included in the table. In addition to the Acts

and Regulations listed below, codes of practice published by the relevant regulators may also have legal force.

Jurisdiction	Legislation	Regulations	Regulator
<b>Commonwealth</b>	<a href="#"><i>Work Health and Safety Act 2011 (Cth)</i></a>	<a href="#"><i>Work Health and Safety Regulations 2011 (Cth)</i></a>	<a href="#"><u>Comcare</u></a>
<b>Tasmania</b>	<a href="#"><i>Work Health and Safety Act 2012 (Tas)</i></a>	<a href="#"><i>Work Health and Safety Regulations 2022 (Tas)</i></a>	<a href="#"><u>WorkSafe Tasmania</u></a>
<b>Northern Territory</b>	<a href="#"><i>Work Health and Safety (National Uniform Legislation) Act 2011 (NT)</i></a>	<a href="#"><i>Work Health and Safety (National Uniform Legislation) Regulation 2011 (NT)</i></a>	<a href="#"><u>NT WorkSafe</u></a>
<b>South Australia</b>	<a href="#"><i>Work Health and Safety Act 2012 (SA)</i></a>	<a href="#"><i>Work Health and Safety Regulations 2012 (SA)</i></a>	<a href="#"><u>SafeWork SA</u></a>
<b>Australian Capital Territory</b>	<a href="#"><i>Work Health and Safety Act 2011 (ACT)</i></a>	<a href="#"><i>Work Health and Safety Regulation 2011 (ACT)</i></a>	<a href="#"><u>WorkSafe ACT</u></a>
<b>Queensland</b>	<a href="#"><i>Work Health and Safety Act 2011 (QLD)</i></a>	<a href="#"><i>Work Health and Safety Regulation 2011 (QLD)</i></a>	<a href="#"><u>WorkSafe QLD</u></a>
<b>New South Wales</b>	<a href="#"><i>Work Health and Safety Act 2011 (NSW)</i></a>	<a href="#"><i>Work Health and Safety Regulation 2017 (NSW)</i></a>	<a href="#"><u>SafeWork NSW</u></a>
<b>Western Australia</b>	<a href="#"><i>Work Health and Safety Act 2020 (WA)</i></a>	<a href="#"><i>Work Health and Safety (General) Regulations 2022 (WA)</i></a>	<a href="#"><u>WorkSafe WA</u></a>



In this part of the guide we only consider the Harmonised WHS Laws as they relate to volunteers. For more information on how the Harmonised WHS Laws apply to your organisation more broadly (for example to employees), see our guide ['Community organisations and work health and safety laws'](#)

## Do the Harmonised WHS Laws apply to your not-for-profit organisation?

To work out whether the Harmonised WHS Laws apply to your organisation, you will need to consider whether your organisation is a 'Person conducting a business or undertaking' and not a 'volunteer association'.

If the Harmonised WHS Laws apply to your organisation, it will have duties under WHS Law. These duties are discussed in greater detail below.

### Is your organisation a 'person conducting a business or undertaking'?

The WHS Laws apply to a 'person conducting a business or undertaking' (**PCBU**). Organisations should consider whether they fall within the definition of a PCBU to determine whether they will need to comply with the WHS Laws.

The WHS Laws do not define what a 'business or undertaking' is. A 'business or undertaking' will typically involve some sort of organised operation or enterprise that is ongoing in nature.

An organisation will be considered to be conducting a business or undertaking whether or not that business or undertaking is:

- conducted for profit or gain
- conducted by an individual or a group of people, or
- structured as a partnership, incorporated association (such as a company limited by guarantee, or state based incorporated association) or unincorporated association

The definition of a 'business or undertaking' is very broad and may capture many not-for-profit organisations.



#### Note

Both unincorporated and incorporated organisations can be a person conducting a business or undertaking (**PCBU**). See below for more information about the difference in liability (legal responsibility) between these two types of organisational structures.

For more information on what it means to be 'unincorporated' see our webpage ['What does incorporation mean and should you incorporate?'](#)



### What is a volunteer association?

A volunteer association is a group of volunteers working together for a community purpose where none of the volunteers, (whether alone or jointly with any other volunteers) employs any person to carry out work for the volunteer association.

### Is your organisation a 'volunteer association'?

The Harmonised WHS Laws apply to all community organisations that have employees. However, they don't apply to an organisation which **only** engages volunteers (a 'volunteer association').

A 'volunteer association' is taken not to be conducting a business or undertaking and therefore is not subject to the requirements of the WHS Laws.

This means that only not-for-profit community groups which consist solely of volunteers (and not employees or contractors) are exempt from WHS Laws. If your organisation employs anybody (whether casually, part-time or as a contractor), it's not a volunteer association and must comply with WHS Laws.

Note that payments made to volunteers for direct out-of-pocket expenses (such as travel and meals) when carrying out volunteer work will not be regarded as wages or salary. However, if other payments for carrying out volunteer work are made they may constitute a wage or salary and mean that the person is being 'employed' by the organisation.



### Note

Even though a 'volunteer association' is taken not to be a person conducting a business or undertaking under the harmonised WHS laws, volunteers working for volunteer associations still have duties and obligations as 'workers' under the legislation (see below for more information).



For more information about reimbursing volunteers, see part 2 of this guide.

### What if your organisation doesn't fit into the definition of PCBU or is a volunteer association?

If your community organisation doesn't fit into the definition of PCBU or is a volunteer association, this doesn't mean you can ignore health and safety altogether. Your organisation may not have to comply with WHS Laws but will still need to take reasonable care to make sure that volunteers and members of the public who come in to contact with the organisation and its activities are safe.

Remember that under the common law of negligence (established by the courts), not-for-profit organisations owe a duty of care to their volunteers to take reasonable steps to avoid foreseeable harm, injury or loss. This is discussed above under 'Negligence' above. If you are unsure about how these obligations might apply to your organisation, you should seek independent legal advice.

### Who holds a duty under the Harmonised WHS Laws?

The duty owed by each person is different, and the Harmonised Laws are quite prescriptive in what the duty requires.

The table below sets out an overview of the different duties.

Duty holder	Duty
<b>Person conducting a business or undertaking (PCBU)</b>	The PCBU has a duty to ensure, so far as is reasonably practicable, the health and safety of workers (including volunteers) and other people who might be affected by the work (known as the primary duty of care) while the workers are at work in the business or undertaking. This includes eliminating, or minimising as far as reasonably practicable, any risks to health and safety.
<b>Officer</b>	Officers have a duty to exercise due diligence to ensure that the PCBU complies with its WHS duties. The Harmonised Law outlines particular actions an officer should take to fulfil the duty to exercise due diligence. See 'Liability of directors and officers' below for more information.
<b>Workers (including volunteers)</b>	Workers (including volunteers) have a duty to take reasonable care for their own health and safety, and for the health and safety of anyone who might be affected by their actions or omissions. Workers also have a duty to comply, so far as they reasonably can, with any reasonable instruction given by the PCBU to allow it to comply with the Harmonised Law and to cooperate with any reasonable policy or procedure of the PCBU which relates to work health and safety and that has been notified to workers.
<b>Other people</b>	Other people (whether or not the person has another duty, for example as an officer) have a duty to take reasonable care for their own health and safety, take reasonable care that their acts or omissions do not adversely affect the health or

safety of other people and, so far as they reasonably can, comply with any reasonable instruction given by the PCBU to allow the person to comply with the Harmonised Law.

## Volunteers and the two sides to safety under Harmonised WHS Laws

As discussed above, under the Harmonised WHS Laws, volunteers are classified as ‘workers’ and accordingly are entitled to certain protections and have certain obligations.

This means that when engaging volunteers, your community organisation will need to consider the two sides to safety in the workplace:

- your obligation to ensure, so far as is reasonably practicable, the health and safety of volunteers carrying out work as part of the organisation, and
- the volunteer’s obligation to take reasonable care for their own health and safety, take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons and to comply and co-operate with reasonable instruction, policy and procedure relating to health and safety



### Note – working from home

A volunteer’s obligation to take reasonable care for their own health and safety can extend to a volunteer working from their own home.



### Who is a volunteer? Who is a worker?

A volunteer is a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses). Under the Harmonised WHS Laws, a volunteer is classified as a ‘worker’.

‘Worker’ has a broad definition and includes a person carrying out work in any capacity for a person conducting a business or undertaking (PCBU), including work as an employee, a contractor or subcontractor, an employee of a contractor or subcontractor, an employee of a labour hire company, an outworker, an apprentice or trainee, a student gaining work experience, or a volunteer.



### Tip

To help volunteers comply with their obligation to take reasonable care for their own health and safety, it’s a good idea to include information about this obligation in any volunteer training, induction and policies.

Some practical steps volunteers can take to make sure they are meeting their duty include:

- understanding and complying with WHS policies and procedures
- engaging with the organisation on WHS issues, and
- taking proactive steps to perform work safely and make sure other workers are performing their work safely



## National Standards for Volunteer Involvement

Volunteering Australia's National Standards for Volunteer Involvement, **Standard 5: Volunteers are supported and developed** – Volunteers understand their roles and gain the knowledge, skills and feedback needed to participate safely and effectively.

- 5.1** Volunteers are provided with relevant induction and training.
- 5.2** Volunteers' knowledge and skills are reviewed to identify support and development needs.
- 5.3** Volunteers are engaged with throughout their time and provided with supervision and training that enables them to participate fully.
- 5.4** People with responsibility for volunteers have sufficient time and resources to engage with and provide proper support to volunteers.
- 5.5** Changes to the role of a volunteer are fair and consistent and achieved through engaging with the volunteer.

See this standard for examples of evidence of meeting this criteria.

Providing volunteers with support and development so they understand their safety obligations and are adequately supervised is one way to help organisations meet their safety obligations under work health and safety law.



### Example – organisation's obligations to others under WHS laws

Natalie is a volunteer patient transport driver for a not-for-profit organisation which transports clients to and from medical appointments and on outings to do their shopping.

Natalie has recently separated from her husband. She generally suffers from anxiety and is not coping well with the separation. She has confided in her supervisor about her increased intake of alcohol since the separation. Natalie's supervisor has noticed that Natalie sometimes appears to be drowsy when she reports for volunteering duties.

Natalie's supervisor recognises that, under WHS Laws, the organisation has a duty to its clients and the general public to ensure that their health and safety is not impacted by Natalie's volunteer activities and so consults the organisation's drug and alcohol policy.

In accordance with the policy, Natalie's supervisor informs Natalie that because she appears to be drowsy when reporting for her duties, she has a reasonable suspicion that Natalie may sometimes be intoxicated. Natalie confesses that she often 'has a few too many' the night before working. Following further discussion, Natalie's supervisor informs Natalie that, to ensure her health and safety, as well as that of others, Natalie will be required to undertake a breath test before starting each shift for at least the next three months.

## If the Harmonised WHS Laws apply to our organisation, what are the specific duties?

The Harmonised WHS Laws impose duties on organisations, which are intended to protect the health and safety of workers.

Three of these legal duties that relate to volunteers are:

1.	• the primary duty of care to ensure the health and safety of workers (which includes volunteers)
2.	• the duty to 'consult' with workers about safety (which includes volunteers)
3.	• the duty to notify the relevant regulator immediately of notifiable incidents and duty to preserve incident sites



These are not the only relevant duties for organisations covered by the Harmonised WHS Laws.

See our guide '[Community organisations and work health and safety laws](#)' for more information about the legal duties organisations are obligated to fulfil under WHS Laws.

Where a duty is imposed on an organisation to ensure health and safety this will require the organisation to eliminate (or minimise) risks to health and safety, so far as reasonably practicable.



### What does 'reasonably practicable' mean?

Reasonably practicable means that something is reasonably able to be done, taking into account and weighing up all relevant matters including:

- the likelihood of the hazard or the risk occurring
- the degree of harm that might result from the hazard or the risk
- what the person concerned knows, or ought reasonably to know, about the hazard or risk, and ways of eliminating or minimising the risk
- the availability and suitability of ways to eliminate or minimise the risk, and
- after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk



For more information about how to determine if something is 'reasonably practicable' see our guide '[Community organisations and work health and safety laws](#)'.



### Tip

The cost of eliminating or minimising risks may be a relevant factor for many community organisations with limited resources. However, if there is an incident in the workplace, it's not a defence to a breach of WHS Laws to claim, 'We're a not-for-profit group and we couldn't afford to reduce that risk'.

To reduce your chance of being found guilty for a breach of WHS Laws, your organisation needs to be able to show (documented proof is best) that it has identified and considered risks and has taken practical steps within its resources to eliminate or reduce those risks. Often these don't need to be expensive measures. For example, if your volunteers are lifting items, you don't have to buy an expensive hydraulic lifting machine – instead, you could train volunteers in safe lifting practices and post reminder notices around the premises to comply with these duties.

## Three legal duties that relate to volunteers

### 1. Primary duty of care to ensure the health and safety of workers

Your organisation must ensure, as far as is reasonably practicable, the health and safety (physical and psychological) of workers – which includes volunteers.

In addition to volunteers, organisations must also ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the organisation (which may include work carried out by volunteers). Other persons may include other workers, clients, customers, tradespeople, and suppliers who visit the workplace.

A 'workplace' is broadly defined under WHS Laws. When your organisation considers the other persons at the workplace to whom it may owe a duty, be sure to think of all places that will be considered to be 'workplaces' for your organisation under WHS Laws, and not just your office or site.

Some activities may not be considered 'work' under WHS Law, if you are unsure if your activity is covered by WHS Law, you should seek legal advice.

In determining what your organisation is required to do to keep volunteers safe, your organisation should consider:

- the type of work being carried out
- the environment in which the work is being undertaken
- any risks associated with the work and the likelihood of an injury or illness
- what can be done to eliminate or minimise those risks
- the resources that will be required to eliminate or minimise those risks



### Example – sausage sizzle fundraiser

A charity, staffed by employees and volunteers, arranges a sausage sizzle to raise money. The event takes place at a local park, where an employee and volunteer are responsible for the set-up of a barbeque. There is a gas leak which results in a minor explosion. The employee, volunteer and a passer-by are injured. As the charity is an employer, it will owe a duty to all three injured parties. Whether or not the charity breached the duty will depend on whether it did all that was reasonably practicable to ensure people weren't exposed to this risk.



### Example – cricket club renovation

A council allowed 21 volunteer members of a cricket club to remove cement render and sheeting from the walls of its premises. Members of the club were exposed to asbestos in the process. Before doing this work, the council failed to make enquiries about the presence of asbestos in the walls of their buildings. The court found that the council failed to ensure that people (volunteer members of a community organisation) were not exposed to risk as a result of an undertaking.



### Example – volunteer driver

A volunteer drives clients to and from medical appointments in their own car. There is a risk the volunteer (and the clients) could be involved in a car accident while driving. There is no way for the organisation to completely eliminate the risk. However, the organisation can minimise the risk by:

- checking the volunteer has a current drivers licence
- making sure the car is insured, well maintained and less than 10 years old, and
- providing training to volunteer drivers on safe driving



### Tip

Your organisation may want to provide volunteers with training on working safely, protective equipment, first aid training, first aid facilities, and training on incident response procedures (for example, fire drills).

## The primary duty of care and psychological health and safety

As a result of changes to the model WHS Laws in 2022, the primary duty of PCBUs to ensure, as far as is reasonably practicable, the health and safety of workers now expressly includes psychological health and safety.

A PCBU must eliminate psychosocial risks in the workplace, or if that is not reasonably practicable, minimise these risks so far as is reasonably practicable.

Examples of psychosocial hazards include job demands, low job control, poor support, bullying, and harassment (including sexual harassment).

Measures to control such hazards include job (work) design, improving job control, implementing safe work systems and procedures, and engaging in regular consultation with workers about the risks of psychosocial hazards.

To help implement this extended duty, [Safe Work Australia has published a Model Code of Practice for managing psychosocial hazards at work](#).

For the Model Code of Practice to apply in a particular state or territory, it must first be approved as a Code of Practice in that jurisdiction. Not all jurisdictions will implement the Model Code of Practice in the same way.

The extended duty of care:

- now applies in [New South Wales](#) (since 1 October 2022), [Western Australia](#) and [Tasmania](#) (since 4 January 2023), [Queensland](#) (since 1 April 2023), and the [Northern Territory](#) (since 1 July 2023), and
- has not yet been implemented in South Australia or the ACT

Victoria (the only state or territory that is not part of the Harmonised WHS scheme) is developing regulations and a code to address the management of psychosocial risks.



## **The National Strategy for Volunteering**

### **On the strategic objective to ensure volunteering is not exploitative:**

*Psychosocial hazards include factors of work that increase the risk of work-related stress and can lead to psychological or physical harm. Volunteers can often experience overload or burnout in their role. During COVID-19, many volunteers felt that undue responsibility was placed upon them, their workload became unmanageable, and that it became difficult to balance voluntary work with other commitments. Given that there may be a threshold for “too much” volunteering, which reverses wellbeing benefits and creates adverse outcomes for volunteering, it is imperative that the safety risks associated with volunteering are identified and properly managed.*

(page 46 of the strategy)

## **2. Duty to consult with volunteers about safety**

Your community organisation has a duty to consult with workers (which includes volunteers), as far as reasonably practicable, about matters relating to work health or safety that affect them. Workers must be made aware about potential hazards associated with their work and how the organisation endeavours to protect them from such harm.

There is no 'one size fits all' approach to consulting with workers as this will depend on the size of the organisation, the type of work carried out and the length of the worker's engagement. Consultation with workers could be carried out by:

- providing alerts or newsletters by mail or email which provide information on health and safety or updates in procedures
- having a point of contact for volunteers (for example, an email address) to voice concerns or provide suggestions regarding health and safety, and
- holding health and safety meetings

Whatever approach is adopted, your community organisation should talk regularly with workers about doing their work safely. The views of the workers should be taken into account and workers should be advised of the outcome of consultations in a timely matter. Workers should also be made aware of who to talk to about a specific incident of concern relating to work health and safety.



### **Tip**

Include notices around your workplace about incident procedures and who to contact when an incident occurs. Your organisation should hold regular training for volunteers on these issues as well.

## **3. Duty to notify the regulator immediately of notifiable incidents and to preserve incident sites**

While all workplace incidents should be recorded by all community organisations no matter how large or small, there are particular legal obligations on community organisations for the reporting of some types of incidents.

Under the Harmonised WHS Laws, some incidents that occur in the workplace require a special type of response by an organisation. This special response includes:

- immediate notification to the regulator in your state or territory for 'notifiable incidents' (such as death, serious injury or illness or a dangerous incident), and

- so far as is reasonably practicable, preservation of incident sites where notifiable incidents have occurred (to allow inspection of the site, and a full investigation to occur if required)

These duties extend to incidents that occur to volunteers (and any other person, including contractors or clients) while at the workplace. Remember, a 'workplace' is broadly defined under WHS Laws. Be sure to think of all places that will be considered to be 'workplaces' for your organisation under WHS Laws, and not just your office or site.

Only incidents which arise out of the conduct of the business or undertaking are notifiable. For example, the following would not be a notifiable incident:

- a volunteer suffers a heart attack while at work which is unrelated to work or the workplace
- a volunteer driving to work is injured in a car accident (where driving is not part of their work), or
- a volunteer with a known history of epilepsy has a seizure at work



There are significant penalties for employers who fail to follow the correct procedures after a notifiable incident.

See our guide '[Community organisations and work health and safety laws](#)' for more information on:

- what constitutes a 'notifiable incident' under the Harmonised WHS Laws
- when your organisation must notify the relevant state or territory regulator and the notification procedure you must follow
- when and how your organisation may be required to preserve an 'incident site'
- your record keeping obligations, and
- the steps you should take after an incident occurs to prevent a similar incident from occurring in the future

The best and most appropriate response will largely depend on the nature of the incident.

Your organisation may also wish to review its approach to risk management and insurance options – see the section below on insurance and our [guide to risk management and insurance](#).

## Who may be legally responsible under WHS laws?

Your organisation, its directors and officers (who will often be volunteers in community organisations) could be personally liable (legally responsible) for failure to comply with WHS Laws. The state regulators can prosecute companies, organisations and individuals in relation to WHS offences.

### Liability of the community organisation itself

#### • incorporated community organisations

If your community organisation is incorporated (such as an incorporated association or a company limited by guarantee), the organisation itself is considered to be a separate person for the purposes of the WHS Laws and can be found guilty of breaches of WHS legislation.

This means that an incorporated organisation as a whole can be held responsible for breaches of WHS Law by its officers, employees, volunteers or agents, where those officers, employees, volunteers or agents are performing tasks within the scope of their authority.

Not-for-profit community organisations can be prosecuted as severely as commercial enterprises. The regulator may also prosecute the organisation's directors and officers personally (see below for more information on directors and officers of a community organisation).

#### • unincorporated community organisations

If you meet the definition of PCBU and you are not a volunteer association, it doesn't matter that you are an unincorporated community organisation - the WHS Laws will still apply to your organisation.

If your community organisation is unincorporated however, it is not recognised by law and cannot itself be prosecuted for breaches of the WHS Laws.

However, as with an incorporated organisation, the 'officers' of an unincorporated organisation can be held personally liable for a breach of the 'officer' duties and could potentially incur penalties where there has been a serious failure to take adequate care to prevent or report workplace injuries.

### Liability of directors and officers



#### Who is an officer?

Under the WHS Laws, officers of an organisation may include:

- a director or secretary of the organisation
- a person who makes decisions, or participates in making decisions, that affect the whole or a substantial part of the operations of an organisation (for example, a board member or CEO)
- a person who has the capacity to significantly affect the organisation's financial standing, and
- various people who may be involved in an organisation in positions of responsibility such as a receiver, administrator, liquidator or trustee of an organisation

- **volunteer director or officer**

A volunteer director or officer is expected to comply with the duties in WHS Law but can't be prosecuted for failing to comply with those duties. This immunity from prosecution under WHS Law has been designed to ensure that people are not discouraged from taking up voluntary positions in community organisations. However, paid directors have no such immunity and can be personally liable.

A volunteer director or officer also has general work health and safety obligations as a worker under the WHS Law and can be prosecuted for a breach of these duties (see discussion below).

- **paid director or officer**

An officer of an organisation (whether incorporated or unincorporated) may be found personally liable for breach of the WHS Law if:

- they receive payment for their position as an officer in the organisation (that is, they are not a volunteer officer), and
- they fail to exercise due diligence (discussed below) to ensure that the organisation complies with its duties or obligations under the WHS Law



#### Note

'Officers' of any person conducting a business or undertaking (PCBU) who are 'volunteers' can't be prosecuted for a breach of the 'officer duties'. They can, however, be prosecuted as 'workers' or 'other persons' should they breach the obligations owed by those types of duty holders.

**Tip**

A director or officer will still be classed as a volunteer where they receive repayment from the organisation only for out-of-pocket expenses incurred because of their position.

**Liability of volunteers as workers**

Workers (which includes volunteers) have a duty to take reasonable care for their own health and safety and for the health and safety of others to make sure they are not adversely affected by their actions or omissions while at work.

Workers must also comply with the reasonable instructions given by the organisation in relation to compliance with the WHS Act and must cooperate with any reasonable WHS policies and procedures of the organisation.

Workers in an organisation may also be personally liable if they do not comply with the duties that apply to 'workers' under the WHS Law. Regulators can prosecute workers for an offence in respect of breaching their duties.

**Note**

Fines and prosecutions of workers are extremely rare, and there is currently no record of a volunteer being fined or prosecuted under the Harmonised Laws.

**Victorian OHS Laws**

This following information provides people involved in not-for-profit community organisations in Victoria with a basic understanding of Victorian OHS Laws and how they relate to volunteers.

**To determine whether and how the Victorian OHS Laws apply to your volunteers, your organisation will need to:**

<b>1.</b>	•work out whether the Victorian OHS Laws apply to the organisation
<b>2.</b>	•consider who holds a duty under the Victorian OHS Laws
<b>3.</b>	•consider the two sides to safety of volunteers under the Victorian OHS Laws
<b>4.</b>	•understand the key duties under the Victorian OHS Laws that relate to volunteers, and
<b>5.</b>	•understand who may be liable, that is legally responsible, if there is a breach of these duties



In this part of the guide we only consider the Victorian OHS Laws as they relate to volunteers. For more information on how Victorian OHS Laws apply to your organisation more broadly (for example to employees), see our ['Victorian guide to occupational health and safety laws'](#).

## Do the Victorian OHS Laws apply to your organisation?

The Victorian OHS laws will apply to all community organisations that have employees and may also apply to community organisations that are completely volunteer-based where they manage or control a 'workplace'.

To work out whether the Victorian OHS laws apply to your organisation, you will need to consider whether your organisation is an 'employer', or is an organisation that manages or controls a 'workplace'.

If the Victorian OHS Laws apply to your organisation, it will be required to meet obligations discussed below.

### Is your organisation an 'employer'?

The Victorian OHS Laws apply to all 'employers' in Victoria, whether they are not-for-profit or for-profit. Your community organisation will be considered an 'employer' if it:

- employs one or more people under a contract of employment (has at least one 'employee'), or
- employs one or more people under a contract of training (has at least one 'trainee' or 'apprentice')

Therefore, your organisation will not be an employer if it operates exclusively based on assistance provided by volunteers who do not have a contract of employment or training.

To determine whether a community organisation is an 'employer':

- it's not relevant that a community organisation relies heavily on volunteers - if an organisation employs even one person (for example, a part-time bookkeeper), it may be considered an 'employer' under the Victorian OHS Laws and should comply with all the 'employer duties', and
- it's not relevant if your organisation is an unincorporated entity – the OHS Laws also apply to unincorporated bodies who are 'employers', and a breach of the OHS Laws could mean a committee member is personally liable.

### Does your organisation manage or control a workplace?

If your community organisation is not an 'employer', your organisation may still be required to comply with Victorian OHS Laws if it has 'management or control of a workplace'. Under Victorian OHS Laws, a 'workplace' is broadly defined as a place, whether or not in a building or structure, where 'employees or self-employed persons work'.

Therefore, if your community organisation manages or controls a place where employees or self-employed persons work, then the place will be considered a 'workplace', and your organisation may owe a duty of care to ensure that the workplace (and the means of entering and leaving the workplace) is safe and without risks to health.

It is important to note that even if your community organisation has no employees, is completely volunteer-based and does not engage contractors or consultants, it may still be taken to 'manage or control a workplace'. This is because the Victorian OHS Laws do not require that your community organisation be involved in the engagement of those people. All that is required is that your community has a degree of control over the place at which the work is carried out.

This will mean that if the place at which the community organisation carries out its work has contractors or other self-employed persons who attend the workplace from time-to-time, then this place may be a 'workplace' for the purposes of the Victorian OHS Laws and your organisation may owe a duty of care in relation to that workplace.



### Example

A community centre or community hub may have a range of organisations that operate within the same building. Some of the community organisations operating out of the centre may be entirely volunteer-based, whereas others have employees. If this is the case, a volunteer-based organisation with management and control of the centre will still be required to comply with the 'workplace' duties in the OHS Law.



### Note – unincorporated bodies

If your organisation meets the requirements under Victorian OHS Laws (that is, it has control of a workplace as described above) the Victorian OHS Law may apply to your organisation, and a breach of the Victorian OHS Laws could mean a committee member is personally liable.

More information about the difference in liability (legal responsibility) between incorporated associations and unincorporated associations can be found below. For more information on what it means to be 'unincorporated' see our webpage ['What incorporation mean and should you incorporate?'](#)

### What if your organisation doesn't employ people and doesn't manage or control a workplace?

If your community organisation is not an employer and the people involved in your organisation have no contact with a 'workplace' that is managed or controlled by your organisation, the Victorian OHS Laws are unlikely to apply.

If your community organisation is not an employer and doesn't operate in a workplace, this does not mean you can ignore health and safety altogether. Your organisation may not have to comply with Victorian OHS Laws but will still need to take reasonable care to ensure that volunteers and members of the public who come in to contact with the organisation and its activities are safe.

Remember that under the common law of negligence (established by the courts), not-for-profit organisations owe a duty of care to their volunteers to take reasonable steps to avoid foreseeable harm, injury or loss. This is discussed above under 'Negligence'. If you are unsure about how these obligations might apply to your organisation, you should seek independent legal advice.



### Example

An entirely volunteer-run group meets in each other's homes regularly to discuss their organisation's progress and plan for the future. Because there are no employees in the organisation and no employees are present in the various homes, Victorian OHS laws will not apply.

## Who holds a duty under Victorian OHS Laws?

The duty owed by each person is different, and the Victorian OHS Laws are quite prescriptive in what the duty requires.

The table below sets out the different duties.

Duty holder	Duty
<b>Employer</b>	Employers owe a duty to employees, and other persons (including volunteers) who may be affected by the work or activities of the organisation, to ensure so far as is reasonably practicable that employees and other persons are not exposed to risks to their health and safety arising from the organisation's activities.
<b>Persons who manage or control workplaces</b>	Persons who control or manage a workplace must ensure, as far as is reasonably practicable, that the workplace and the means of entering and leaving it are safe and without risks. A breach of this duty is an offence, however, volunteers cannot be fined or prosecuted for a breach of this duty.
<b>Any person at a workplace</b>	Any person at a workplace, including volunteers, must not recklessly endanger another person in the workplace. A breach of this duty is an offence under the Victorian OHS Laws.

## Volunteers and the two sides to safety under Victorian OHS Laws

As discussed above, under Victorian OHS Laws, any person at a workplace can be entitled to certain protections and have certain obligations.

This means that when engaging volunteers in your organisation, your community organisation will need to consider the two sides to safety in the workplace:

- your obligation to ensure, so far as is reasonably practicable, that volunteers are not exposed to risks to their health and safety arising from the organisation's activities, and
- the volunteer's obligation to ensure it does not recklessly endanger another person in the workplace



### Who is a volunteer?

Under Victorian OHS Laws, a volunteer is a person who is acting on a voluntary basis (not being paid for their work). A person will continue to be considered a volunteer despite receiving payment of out-of-pocket expenses from the organisation.



### Tips

To help volunteers comply with their obligation to take reasonable care of their own health and safety, it's a good idea to include information about this obligation in any volunteer training, induction and policies.

Some practical steps volunteers can take to ensure they are meeting their duty include:

- understanding and complying with Victorian OHS policies and procedures
- engaging with the organisation on Victorian OHS issues, and
- taking proactive steps to perform work safely and make sure other workers are performing their work safely



## National Standards for Volunteer Involvement

Volunteering Australia's National Standards for Volunteer Involvement, **Standard 5: Volunteers are supported and developed** – Volunteers understand their roles and gain the knowledge, skills and feedback needed to participate safely and effectively

- 5.1 Volunteers are provided with relevant induction and training.
- 5.2 Volunteers' knowledge and skills are reviewed to identify support and development needs.
- 5.3 Volunteers are engaged with throughout their time and provided with supervision and training that enables them to participate fully.
- 5.4 People with responsibility for volunteers have sufficient time and resources to engage with and provide proper support to volunteers.
- 5.5 Changes to the role of a volunteer are fair and consistent and achieved through engaging with the volunteer.

See this standard for examples of evidence of meeting this criteria.

Providing volunteers with support and development so that they understand their safety obligations, and are adequately supervised is one way to help organisations meet their safety obligations under work health and law.

### If the Victorian OHS Laws do apply to our organisation, what are the specific duties?

Most of the employer's obligations in the Victorian OHS Law relate to 'employees'. Volunteers are not included in the definition of 'employees'. However, there are some obligations to people other than the employer's employees – such as volunteers.

**Four key legal duties that relate to volunteers are:**

1.	•the duty not to expose other persons to risk
2.	•the duty to keep the workplace safe and without risks to health
3.	•the duty not to recklessly endanger persons at workplaces
4.	•the duty to notify regulator immediately of notifiable incidents and duty to preserve incident sites



These are not the only relevant duties for organisations covered by the Victorian OHS Laws. For more information, see our ['Victorian guide to occupational health and safety laws'](#).



## What does 'reasonably practicable' mean?

Many of the duties in the Victorian OHS laws require that employers do what is 'reasonably practicable' in the circumstances to make sure they meet their obligations to provide a safe and healthy working environment.

This standard of care requires the employer to, so far as is practicable, provide and maintain a safe working environment in which the employees are not exposed to hazards.

The following matters must be taken into account to determine if something is (or was at a particular time) 'reasonably practicable':

- the likelihood of the hazard or risk concerned eventuating
- the degree of harm that would result if the hazard or risk eventuated
- what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk
- the availability and suitability of ways to eliminate or reduce the hazard or risk
- the cost of eliminating or reducing the hazard or risk

To meet the requisite standard of care and control over OHS risks, it's recommended that duty-holders conduct the following four-stage process to:

1. identify any hazards within the workplace
2. assess the risks that may result as a consequence of the hazards
3. decide on appropriate control measures to prevent and minimise the level of the risks, and
4. implement, monitor and review those control measures



For more information about how to determine if something is 'reasonably practicable' see our guide '[Community organisations and work health and safety laws](#)'.



## Tip

The cost of eliminating or minimising risks may be a relevant factor for many community organisations with limited resources. However, if there is an incident in the workplace, it's not a defence to a breach of Victorian OHS Law to claim, 'We're a not-for-profit group and we couldn't afford to reduce that risk'.

To reduce your chance of being found guilty for a breach of Victorian OHS Laws, your organisation needs to be able to show (documented proof is best) that it has identified and considered risks and has taken practical steps within its resources to eliminate or reduce those risks. Often these don't need to be expensive measures. For example, if your volunteers are lifting items, you don't have to buy an expensive hydraulic lifting machine – instead, you could train volunteers in safe lifting practices and post reminder notices around the premises to comply with these OHS duties.

## 1. Duty not to expose other persons to risk

Community organisations who are employers must, so far as reasonably practicable, ensure that people are not exposed to risks to their health and safety arising from the conduct of the undertaking of the employer. This will include:

- any activity which is done in the course of carrying on the organisation's activities (for example, holding a fun day at a community kindergarten)
- when performing work or providing services at one or more places (regardless of whether these are carried on within a defined physical boundary), and
- any activity which is ancillary to the organisation's operations (for example, contractors cleaning a premise after hours)

Employers owe this duty to everyone, and therefore the duty extends to volunteers, independent contractors or consultants (and the employees of contractors or consultants), clients and any other members of the public that might be affected by the organisation's activities.



### Example – sausage sizzle fundraiser

A charity, staffed by employees and volunteers, arranges a sausage sizzle to raise money. The event takes place at a local park, where an employee and volunteer are responsible for the set-up of a barbeque. There is a gas leak which results in a minor explosion. The employee, volunteer and a passer-by are injured. As the charity is an employer, it will owe a duty to all three injured parties. Whether or not the charity breached the duty will depend on whether it did all that was reasonably practicable to ensure people weren't exposed to this risk.



### Example – cricket club renovation

A council allowed 21 volunteer members of a cricket club to remove cement render and sheeting from the walls of its premises. Members of the club were exposed to asbestos in the process. Before doing this work, the council failed to make enquiries about the presence of asbestos in the walls of their buildings. The court found that the council failed to ensure that people (volunteer members of a community organisation) were not exposed to risk as a result of an undertaking.



### Note – psychological health and safety

Under the OHS Laws, 'health' includes psychological health.

Victoria is developing regulations and a code to address the management of psychosocial risks.

## 2. Duty to keep the workplace safe and without risks to health

All community organisations that control or manage a workplace to any extent must comply with this duty. This duty requires community organisations to ensure, as far as is reasonably practicable, that the workplace, and the means of entering and leaving it, are safe and without risks to health.

This duty is on the controller or manager of the workplace, which means that it will often be the responsibility of an entity even when it is not the owner of the premises. This means a number of parties who jointly occupy premises might owe duties at the same time under this section.

This duty is not limited to the protection of people employed in the workplace, it also extends to any person who is likely to enter the premises at some stage. This could include volunteers, clients, customers, service providers, contractors and others who enter the workplace.



### Example

A community organisation is leasing office space. The organisation is aware that the front doormat has been damaged and protrudes from the ground, but fails to remove the tripping hazard. A volunteer arrives to help answer the phones and trips on the mat, causing injury. The community organisation may be liable as it was in control of the workplace and the means of entering it at the time, even though it doesn't own the premises.

## 3. Duty not to recklessly endanger persons at workplaces

All community organisations and people at the workplace have a duty not to recklessly engage in conduct that may place another person who is at a workplace in danger of serious injury.

A person will be reckless where they do an act (or omit or fail to do something), knowing that serious injury is foreseeable and a probable consequence of their act or omission. Serious injury includes both physical and mental injuries that are significant and severe (for example injuries which impair the enjoyment of life or ability to work in the future).

This duty is owed to everyone who comes into contact with the workplace, including employees, independent contractors (and their employees), volunteers, clients and any other members of the public who would be affected by the community organisation's conduct.



### Note

The duty not to recklessly endanger persons at workplaces is an example of an obligation that volunteers must also comply with. It's a good idea to include this duty in any volunteer training, induction and policies.



### Example – volunteer driver

An employee of a community organisation directed a volunteer to drive a truck of donated furniture to one of the organisation's stores. The truck that the volunteer was instructed to drive had defective brakes and the employee knew this. While driving to the store, the volunteer attempted to apply the brakes which failed. The volunteer swerved to the left side of the road to avoid traffic and collided with the support column of a road sign. The volunteer died as a result of the injuries sustained in the collision. The employee who directed the worker to drive the truck may be found guilty of an offence under OHS Law in these circumstances.

#### 4. Duty to notify the regulator immediately of notifiable incidents and duty to preserve incident sites

While all workplace incidents should be recorded by all community organisations no matter how large or small, under Victorian OHS Laws, organisations must notify WorkSafe Victoria when particular types of injuries or incidents occur.

Organisations must report an incident that results in:

- the death of a person
- a person requiring medical treatment within 48 hours of exposure to a substance
- a person requiring immediate treatment as an in-patient in a hospital
- a person requiring immediate medical treatment for amputation, a serious head injury, a serious eye injury, the separation of skin from underlying tissue (such as de-gloving or scalping), electric shock, a spinal injury, the loss of a bodily function, or serious lacerations

Organisations must also report incidents involving:

- the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be licensed or registered
- the collapse or partial collapse of all or part of a building or structure
- an implosion, explosion or fire
- the escape, spillage or leakage of any substance including dangerous goods
- the fall or release from a height of any plant, substance or object
- in relation to a mine, the overturning or collapse of any plant, the inrush of water, mud or gas, or the interruption of the main system of ventilation

The Victorian OHS laws require that these incident sites be preserved to allow a full investigation (if required). If a notifiable incident does happen in your organisation, the site should not be disturbed until a WorkSafe inspector arrives at the workplace, unless you have been directed otherwise by WorkSafe.

All community organisations that are employers who have the management and control of a workplace must comply with this duty. Even where there is a manager or supervisor on duty, the ultimate responsibility to report incidents will rest with the employer (the community organisation). Your community organisation should have a clear policy that covers processes for incident notification, either as part of its OHS policy or a separate incident reporting policy.

This duty is owed to all employees, volunteers and members of the general public who are seriously injured or affected by a workplace incident.

A 'workplace' will include any place where volunteers work. This is not limited to a physical building or structure and could include sporting fields, vehicles and any other places that volunteers of your community organisation undertake their duties. When serious incidents occur in these places your organisation may be required to notify WorkSafe Victoria.



### Case example

An organisation operated residential home care sites for the elderly and people with a disability. A resident of the organisation was performing routine exercises on a tilt table under the supervision of his carer. During the exercises another resident called out to the carer for assistance and the carer left the patient on the tilt table in a squatting position. As he left, the carer told the resident he would be back in 5 minutes and gave him the controls. While alone, the resident pressed a button to change the angle of the tilt table. The button he pressed in fact changed the angle of the table so that a significant amount of pressure was placed on his legs. Unable to support his own weight, he fell to the floor and broke both his legs. He required a significant hospital stay after the incident.

The organisation failed to notify WorkSafe immediately after becoming aware of the incident in writing within 48 hours of the incident. The organisation submitted an enforceable undertaking to the regulator. An undertaking to the regulator is generally accepted as an alternative to civil or administrative action where there has been a breach of the law, and it is enforceable in a court. The regulator accepted the organisation's undertaking.

*Victorian WorkCover Authority v Australian Home Care Services Pty Ltd* (Unreported, Moorabbin Magistrates' Court, Clifford M, 11 May 2017)



See our '[Victorian guide to occupational health and safety laws](#)' for more information on:

- what constitutes a notifiable incident under Victorian OHS Laws
- when your organisation may have to report incidents that expose a person (including volunteers) who are in the vicinity to an immediate health or safety risk or dangerous occurrence
- when your organisation must notify WorkSafe Victoria and the notification procedure you must follow
- when and how your organisation may be required to preserve an 'incident site'
- your record keeping obligations, and
- the steps you should take after an incident to prevent a similar incident in the future



### Note

The best and most appropriate response will largely depend on the nature of the incident. Notifiable incidents are just one type of workplace incident that organisations may need to respond to.

Refer to our guide '[Community organisations and work health and safety laws](#)' for tips on how to respond to a workplace incident more broadly.

Your organisation may also wish to review its approach to risk management and insurance options – see the section below on insurance and our [guide to risk management and insurance](#).

## Who may be legally responsible under Victorian OHS Laws?

There is a possibility that both your organisation and its individual officers (who will often be volunteers in community organisations) could be personally liable (legally responsible) for failure to comply with Victorian OHS laws. WorkSafe Victoria can prosecute the organisation, its officers, or in some circumstances, both.

### Liability of the community organisation itself

- **incorporated community organisations**

If your community organisation is incorporated (such as an incorporated association or a company limited by guarantee), the organisation itself is considered to be a separate person for the purposes of the OHS Laws and can be found guilty of breaches of OHS legislation.

This means that an incorporated organisation as a whole can be held responsible for breaches of the Act by its officers, employees, or agents, where those officers, employees or agents are performing tasks within the scope of their authority.

Not-for-profit community organisations can be prosecuted as severely as commercial enterprises. The regulator may also prosecute the organisation's directors and officers personally (see below for more information on directors and officers of a community organisation).

- **unincorporated community organisations**

If your community organisation is unincorporated, it can't itself be prosecuted for breaches of the Victorian OHS Laws.

However, as with an incorporated organisation, the 'officers' of an unincorporated organisation can be held personally liable for a breach and could potentially incur penalties where there has been a serious failure to take adequate care to prevent or report workplace injuries

### Liability of directors and officers

- **directors and officers**

Under Victorian OHS Law, 'officers' of a community organisation (whether incorporated or unincorporated) will include any of the following:

- a director or secretary
- a person who makes decisions that affect the whole or a substantial part of the operations of a community organisation
- a person who has the capacity to significantly affect the community organisation's financial standing, and
- various people who may be involved in a community organisation as a receiver, administrator, liquidator or trustee of a community organisation

- **volunteer directors and officers**

A volunteer director or officer is expected to comply with the duties in Victorian OHS law but will generally not be held liable for breaches of the Victorian OHS laws for anything done by them in a volunteer capacity, even where they fail to take reasonable care. This immunity from prosecution under the OHS Act has been designed to make sure people aren't discouraged from taking up voluntary positions in community organisations.

Despite this protection under Victorian OHS laws, a volunteer director or officer must act in good faith in that capacity at all times and must not recklessly engage in conduct that may place another person (who is at a workplace) in danger of serious injury in order to avoid potential prosecution. Further, as noted earlier in this guide, a volunteer officer may, in their personal capacity, still owe duties under Victorian OHS Laws as a worker or where they are managing or controlling the workplace at the time of an incident.

- **paid directors and officers**

A director or an officer of a community organisation (whether incorporated or unincorporated), may be found personally liable for a breach of the Victorian OHS laws if:

- they receive payment for their position as an officer in the organisation (that is, they are not a volunteer officer), and

- the organisation they direct contravenes the OHS Act and this has occurred because the director failed to take reasonable care

**Tip**

An officer will still be classed as a volunteer, even where they receive repayment from the organisation only for out-of-pocket expenses incurred because of their position.

## Working remotely

**Should your organisation let its volunteers work from home?**

It depends. Allowing volunteers to work from home may not be sensible in all situations. If your volunteers require high levels of supervision (for example, engaging with difficult or challenging clients), your organisation may need to consider whether it's appropriate to ask your volunteers to work remotely. Remember, you have a duty of care to ensure the safety (physical and psychological) of your volunteers and clients, and this can be difficult to monitor if your volunteers are working remotely.

If it's safe to have your volunteers volunteer remotely, make sure they have the necessary equipment, training, and a safe environment in which to work.

Consider what measures your organisation can put in place to support volunteers. This could include, for example, conducting meetings through video-conferencing and sending work to be reviewed by email.

# Safety of children

When you work with children, you have a legal responsibility to ensure their physical, mental and emotional safety.

In addition to the duty of care your community organisation owes to volunteers and to members of the public, you should consider the special responsibilities you may have in relation to children that your organisation comes into contact with when providing services, or when they are volunteers for your organisation.

## Child Safe Standards

The National Principles for Child Safe Organisations (**National Principles**), endorsed by the Federal Government in 2019, aim to provide a nationally consistent approach to creating organisational cultures that foster child safety and wellbeing.

Although Australian organisations are not legally required to adopt them, the National Principles are considered best practice for fostering child safety and wellbeing culture and practice.

If your organisation interacts with children or youth volunteers, we recommend you use the National Principles as a guide to create a child safe environment. You can then be satisfied that your organisation is taking reasonable steps to protect children from risks to their health and safety. Complying with the National Principles may also assist with taking 'reasonable precautions' to prevent an individual associated with your organisation from perpetrating child abuse (discussed further below).



### National Principles for Child Safe Organisations

**Principle 1:** Child safety and wellbeing is embedded in organisational leadership, governance and culture.

**Principle 2:** Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously.

**Principle 3:** Families and communities are informed and involved in promoting child safety and wellbeing.

**Principle 4:** Equity is upheld and diverse needs respected in policy and practice.

**Principle 5:** People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice.

**Principle 6:** Processes to respond to complaints and concerns are child focused.

**Principle 7:** Staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training.

**Principle 8:** Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed.

**Principle 9:** Implementation of the national child safe principles is regularly reviewed and improved.

**Principle 10:** Policies and procedures document how the organisation is safe for children and young people.

In **Victoria**, organisations that engage youth volunteers (or provide services to children) must comply with the Child Safe Standards as set out in the Child Wellbeing and Safety Act 2005 (Vic).

The Victorian Commission for Children and Young People is the oversight body for the Standards. You can find more information about the Standards, including information about who the Standards apply to on the Commission's website.



## Victorian Child Safe Standards

**Standard 1:** Organisations establish a culturally safe environment in which the diverse and unique identities and experiences of Aboriginal children and young people are respected and valued.

**Standard 2:** Child safety and wellbeing is embedded in organisational leadership, governance and culture.

**Standard 3:** Children and young people are empowered about their rights, participate in decisions affecting them and are taken seriously.

**Standard 4:** Families and communities are informed, and involved in promoting child safety and wellbeing.

**Standard 5:** Equity is upheld and diverse needs respected in policy and practice.

**Standard 6:** People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice.

**Standard 7:** Processes for complaints and concerns are child focused.

**Standard 8:** Staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training.

**Standard 9:** Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed.

**Standard 10:** Implementation of the Child Safe Standards is regularly reviewed and improved.

**Standard 11:** Policies and procedures document how the organisation is safe for children and young people

In **New South Wales**, agencies delivering services to children and young people must comply with [Child Safe Standards](#) adopted by the New South Wales government.

[The Office of the Children's Guardian](#) has responsibility to implement the Standards.



## New South Wales Child Safe Standards

**Standard 1:** Child safety is embedded in organisational leadership, governance and culture.

**Standard 2:** Children participate in decisions affecting them and are taken seriously.

**Standard 3:** Families and communities are informed and involved.

**Standard 4:** Equity is upheld and diverse needs are taken into account.

**Standard 5:** People working with children are suitable and supported.

**Standard 6:** Processes to respond to complaints of child sexual abuse are child focused.

**Standard 7:** Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training.

**Standard 8:** Physical and online environments minimise the opportunity for abuse to occur.

**Standard 9:** Implementation of the Child Safe Standards is continuously reviewed and improved.

**Standard 10:** Policies and procedures document how the organisation is child safe.

In **South Australia**, certain organisations must provide child safe environments and comply with the requirements under the [\*Children and Young People \(Safety\) Act 2017 \(SA\)\*](#) and the [\*Child Safety \(Prohibited Persons\) Act 2016 \(SA\)\*](#).

These organisations must:

- have a child safe environments policy in place
- meet working with children check obligations, and
- lodge a child safe environments compliance statement, which should all cover youth volunteers



Access the National Principles, along with helpful supporting resources, on the [Child Safe Organisations website](#).

The National Office for Child Safety has also published a [Complaint Handling Guide](#).

For more information about the Victorian Child Safe Standards, see the [Commission for Children and Young People's website](#).

For more information about the NSW Child Safe Standards, see the [NSW Office of the Children's Guardian's Child Safe Scheme webpage](#).

For more information about the child safe requirements in South Australia, visit the [Department of Human Services website](#).

## Safety laws, child safety and your duty of care

As discussed above, when considering safety, there are two primary sources of law that your organisation will need to be aware of:

- negligence laws, and
- work health and safety (or occupational health and safety) laws

### Negligence laws

A community organisation may owe children a duty of care under the common law (judge-made law) of negligence or under the negligence legislation.

Under negligence law, fulfilling your legal responsibility to children requires you to meet the standard expected of a reasonably competent and prudent organisation, in the same position and with the same knowledge.

In certain circumstances, your organisation may also be held legally responsible (liable) for the actions of its volunteers, where harm has been caused to someone else, such as a child.

It's important to note that the standard of care expected in relation to children may be generally higher than that owed to others.

If you are dealing with children, you should consider any special measures you may need to take to meet these obligations under specific state and territory negligence laws aimed at protecting children from child abuse (see below).

### Work health and safety laws

In addition to its duty of care to ensure child safety, your organisation may also owe obligations under work health and safety laws – Harmonised Laws or Victorian OHS Laws. These laws are discussed above.

Under work health and safety laws, fulfilling your legal responsibility to children may mean ensuring, as far as reasonably practicable, that the health and safety of children (either volunteers, or children who interact with volunteers) involved with your organisations is protected.

**Note**

It's crucial that your organisation has conducted a careful risk assessment of the activities involving and interactions it has with children, to determine whether it needs to implement any further safeguards and processes to help ensure their safety. One important safeguard to put in place is comprehensive induction and training of workers and volunteers.

**Induction and training**

During induction and training make sure volunteers involved in your organisation understand all the policies you have in relation to child safety, and why they exist.

**To ensure this:**

- |   |                          |
|---|--------------------------|
| highlight policies that are particularly relevant to children, such as social media, privacy, IT, and appropriate workplace behaviour policies  | <input type="checkbox"/> |
| explain the importance of a safe workplace and provide training on how to avoid harmful situations, where possible, and point out any special safety requirements in relation to children | <input type="checkbox"/> |
| set out the reporting lines and process for addressing complaints and concerns about child safety   | <input type="checkbox"/> |
| outline any reporting requirements for child safety that apply to your workers (see discussion below) and the process for reporting within your organisation, and                         | <input type="checkbox"/> |
| foster a culture of open communication by encouraging the people within your organisation to express any concerns regarding child safety  | <input type="checkbox"/> |

**Tip**

If your service engages or works with children, it's important that everyone that works in your organisation (including volunteers) is aware of their reporting obligations and any potential consequences for failing to meet them. Reporting obligations should form a part of your organisation's standard induction, training and ongoing professional development processes, and you should have written policies and procedures in place.



### Case study

The national Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**) found that to keep children safe, an organisation must create and maintain a protective environment that minimises rather than accentuates the risk of abuse. The Royal Commission critically analysed the system errors, failures and oversights of a particular organisation to demonstrate certain ‘unacceptable’ actions of a child safe organisation, including but not limited to:

- a failure to adhere to appropriate background checking procedures
- a failure to implement child protection policies
- the absence of an effective confidential reporting system and, and
- a failure to provide staff with effective training in child protection matters



### Note – Negligence laws and child abuse

In New South Wales, Victoria, Queensland, South Australia, the Northern Territory and Tasmania, under legislation, an organisation has a duty of care to take reasonable precautions to prevent the physical or sexual abuse of children by individuals associated with the organisation (this includes volunteers, board members, employees and independent contractors).

Under these laws, the organisation is taken to have breached the duty unless it took all reasonable precautions to prevent the abuse from happening (the ‘onus of proof’ is reversed). Reasonable precautions could include implementing the policies, procedures and safe-guards discussed in this section.

Western Australia and the ACT are progressing towards legislating this duty.



For more information about your organisation’s obligations under negligence law and work health and safety law, refer to the earlier sections of this guide.

For more information about legal issues relating to youth volunteers, see our fact sheet on [‘youth volunteers’](#)

## Screening checks

There are many circumstances where organisations will need to screen their volunteers because they are working with children.

Screening checks (including Working with Children Checks, National Disability Insurance Scheme Worker Screening Checks, police checks, reference and other background checks) are an important consideration, especially for organisations involving youth volunteers. As children are considered more vulnerable than others working in your organisation, a higher duty of care in respect of their safety may be owed.

Some background screening checks are required by law (either under legislation or contract), while others are optional. Even when a screening check is not required, it’s best practice for organisations to conduct some level of screening to make sure they maintain a safe environment for all workers (paid and unpaid) and clients.

Your organisation will need to think carefully about who will need screening checks. Part 3 of this guide goes through the requirements in further detail.

## Insurance and child safety

Even if your community organisation puts measures in place to avoid or minimise risk in relation to the safety and well-being of children, your community organisation may still want to take out insurance to cover possible harms to children. For example, your community organisation may take out a volunteer personal accident insurance policy that covers volunteers under the age of 18 (if the organisation has child volunteers) or public liability insurance that covers injury to children.



### Caution

Not all insurers, or insurance policies will cover volunteers under the age of 18. If you are concerned, make sure that you speak to your insurer.

It's essential that your community organisation is aware of what is covered by the insurance policy and any exclusions that apply.

For your organisation to satisfy itself of the coverage it holds, we suggest that you review your current policies. If in doubt, ask your insurer the following questions:

- does the policy have any age limits that may affect a claim?
- are actions of children themselves covered?
- are injuries sustained by children covered?
- are there any particular reporting, recordkeeping or other requirements in respect of claims involving children?



For more information about risk and insurance see below, as well as our [guide on risk management and insurance](#).



### Tip

Ask your insurer to confirm the above in writing so that the position is clear to everyone. And if there is any dispute about the policy's coverage, you can refer to this correspondence.

## Litigation involving children

Typically, an action can be brought against a person or entity within six years of the cause of action occurring (for example, a breach of contract or an act of negligence). Therefore, you should keep any legal documents that may be relevant if legal action was to be taken (but is not actual or threatened) for six years.

However, the situation is different where a claim involves a child and your organisation should keep records for a lot longer than six years.

Each state and territory has passed laws which remove the limitation period for bringing a claim for personal injury resulting from child sexual abuse (in some states and territories this extends to other forms of child abuse). This means a person can bring a claim at any point in their lifetime, regardless of how long ago the act causing the harm took place.

Also, generally a person under 18 years of age can bring a claim for personal injury (not relating to child sexual abuse) within:

- 12 years from the date of the act causing injury, or
- six years of the 'discoverable date' - the first day it is known or should have been known that injury has occurred, and it was caused by the fault of the defendant to the claim (whichever is latest)

If the injured child was not in the care of a competent parent or guardian, the limitation period can be extended further. The limitation period may vary from state to state so it is important to seek legal advice on the limitation periods that apply in your state or territory.



### Case study – keeping records

A number of case studies provided by the Royal Commission demonstrate the long-term consequences of an institution's failure to adequately keep documents and records.

The destruction of critical documents or lack of consistent record-keeping meant that, in many circumstances, schools and other institutions weren't able to confirm whether and to what extent investigations in response to allegations of abuse had been conducted, and if so, the outcomes. Further, institutions weren't able to connect pieces of information concerning an offender's behaviour and could not respond adequately to subsequent concerns, years on. Similarly, many young victims weren't able to get answers about the circumstances of the abuse they suffered.

# Managing risk

Your organisation could potentially be liable for the actions of its volunteers and for any injuries that its volunteers experience as a result of their volunteering under both negligence laws and work health and safety laws. While claims against community organisations are relatively uncommon, your organisation should aim to operate in a way that reduces the risk of damage (including personal injury, financial loss or property damage).

Thinking about risks, insurance and related legal issues doesn't have to be a scary or negative process. There are some risks associated with the activities conducted by all community organisations – including ensuring the safety of volunteers and the safety of the people your volunteers interact with.

If your community organisation understands these risks, there are many things that the people involved in your community organisation can do to eliminate risks or minimise the chance of them occurring – this is sometimes referred to as a 'risk management strategy'.

Where the potential risks can't be avoided, your community organisation can look at the insurance options that may be available to protect against those risks. Essentially, insurance is a way of managing risks your organisation can't avoid or minimise, by paying another party (the insurer) to bear the costs if certain risks eventuate. However, as discussed below, some states have specifically legislated against organisations insuring against certain types of risks.

## Risk management strategy

**As a part of your risk management strategy, we suggest that your organisation:**

- creates a safe physical environment and has appropriate safety policies and training in place
- follows a staff and volunteer induction process
- understands obligations you may be under to conduct background checks on the people involved in your organisation, such as Working with Children Checks
- ensures safe procedures when providing goods or services to the public
- implements staff and volunteer safety guidelines, which include incident reporting procedures
- creates safety instruction manuals (where appropriate)
- consults with your volunteers about these safety guidelines and the importance of them sticking to their authorised duties (you can include this in their volunteer agreement and discuss these issues in their induction)
- provides your volunteers with copies of written policies and instruction manuals
- conducts regular training, including refresher training, on safety issues
- conducts regular risk assessments to identify potential risks to health and safety and takes steps to eliminate these risks. Ideally, these risk assessments will be for each different activity undertaken by volunteers and each site where volunteers work. If the work or site changes, any new risks associated with the change should be considered
- clearly defines the role and tasks of your volunteers in a written document (volunteer position description) and specifies any prohibited actions (for example, giving clients medical advice)
- reviews your insurance policies to make sure they adequately cover injuries to and actions of your volunteers, and
- from time to time, checks that the above processes are being implemented. Are your volunteers following these processes? Are these processes being enforced?



### Tip

Your organisation may want to think about including 'risk management' as a standard agenda item at meetings (meetings of the governing body of your organisation as well meetings of the staff or volunteers). This doesn't have to be a long discussion. It may just be a chance for your organisation to discuss ongoing risks and whether the measures your organisation has put in place to manage them are working. It may also be a chance to think about whether new risks have come up which need to be dealt with. For larger organisations, you may want to have a risk management sub-committee of your board or committee of management.



Safe Work Australia (the national WHS policy body) has published resources relating to work health and safety of volunteers, including an [Essential Guide to Work Health and Safety for Volunteers](#).

Some of the state and territory based regulators have published resources relating to workplace safety and minimising risk.

The checklist above includes some of the risk management strategies your organisation could implement. Reading this along with our [insurance and risk management guide](#).

For a sample volunteer position description, see part 3 of this guide.

For a checklist covering what to do when an incident or accident happens in your organisation, see our [incident and accidents checklist](#).



### Note – spontaneous volunteers

Spontaneous offers of assistance and volunteering may arise following an emergency, crisis or issue resulting in significant media coverage. The community response may include donations of goods or money, or offers of physical assistance through volunteering. People may also offer to volunteer on a one-off basis at an event or for a short period of time when the needs of the organisation are high.

Spontaneous volunteers may create challenges for organisations, especially where organisations are already managing significant workloads due to an emergency or other incident – for example:

- managing the scale of volunteers at any given time and their respective roles
- performing appropriate screening and other background checks in a short time frame
- ensuring volunteers have the skills, training or experience to perform the role, and
- difficulty in administering adequate training, safety procedures, guidance and supervision to manage workplace risks



## The National Strategy for Volunteering

### On the strategic objective to reshape the public perception of volunteering:

*There is no 'one size fits all' approach to defining what makes something a volunteering role or activity. Some activities are regular and ongoing whereas others may be one-off, short-term, or project based. All forms of volunteering are important and valuable.*

(page 51 of the strategy)

### On the strategic objective to enable a community-led approach:

*When it comes to spontaneous or emerging needs, communities tend to self-mobilise and self-fund to fill critical gaps. The effectiveness and efficiency of spontaneous helping demonstrates the power of a community led approach. ... The importance of community-led solutions is particularly salient in the context of disaster response and recovery.*

(pages 54 and 55 of the strategy)



## Tips – spontaneous volunteers

We recommend that your organisation reviews its insurance policies to ensure that coverage extends to its spontaneous volunteers. See below for more information about insurance considerations.

We also recommend that your organisation develops a specific policy on whether it will use spontaneous volunteers. If it's open to using spontaneous volunteers, the policy should cover:

- the circumstances where using spontaneous volunteers would be appropriate
- the minimum induction required for spontaneous volunteers, and
- any special risk management protocols to be followed (for example, ensuring that spontaneous volunteers wear identifying information that distinguishes them from fully inducted regular volunteers, and requiring the spontaneous volunteer to sign a declaration about their fitness to volunteer, and a waiver of liability)

## Insurance

Insurance is a way of managing risks your organisation can't avoid or minimise, by paying another party (the insurer) to bear the costs if certain risks eventuate.

Volunteers will often fall between the gaps in an organisation's insurance policy when they suffer injuries in their role unless the organisation holds specific insurance for this purpose – such as volunteer personal accident insurance (this is discussed in greater detail below).

### Common types of insurance for community organisations include:

- volunteer personal accident insurance (protects volunteers)
- directors' and officers' liability insurance (protects volunteer committee members or directors)
- public liability insurance (protects members of the public)
- professional indemnity insurance (protects experts or advisors)
- building and contents, occupiers, and fraud insurance (protects property and assets)
- motor vehicle insurance (protects vehicles)

Your organisation should make sure it has adequate insurance coverage to protect it from liability.

You can't be certain of avoiding liabilities, but you can be certain of having appropriate insurance cover. If your organisation is not sure about the type or extent of cover required, you should contact an insurance broker.

An insurance policy is a contract – a legally binding document between you and the insurance company. This means that your organisation will have to do certain things – for example, provide full and accurate information, notify of incidents – to make sure the contract is and remains valid. Make sure you understand the terms and conditions of the policy so that you know what these obligations are.

If you think your organisation may be exposed to legal action, notify your insurer and seek legal advice as soon as possible about its potential liability (if the action is covered by your insurer, they may do this on your behalf).

In Western Australia and New South Wales, the WHS Laws state that an insurance policy is of no effect to the extent that it would indemnify a person for the person's liability to pay a fine for an offence against the Act. This means that if your organisation is fined under the WA or NSW WHS Act, your insurer is not allowed to pay or reimburse the organisation for the fine. It is an offence against the relevant WHS Act to enter into an insurance policy that purports to indemnify a person for a fine against the WHS Act.

A similar prohibition applies in Victoria, Western Australia, and the ACT under each respective WHS or OHS Law.



### Caution

Insurance should not be the cornerstone of your organisation's risk management strategy.

Ultimately, you should implement other measures with the goal of never having to make a claim and only rely on insurance as a last resort.

Insurance can cover any costs arising from a claim, but it can't restore any damage caused to your organisation's reputation or culture.



### Tip

When your organisation signs an agreement with another party, check whether there is any requirement to take out particular insurance. This is reasonably common, particularly in agreements to provide services.

Insurance is often a complex issue for community organisations, and it's recommended that you contact an insurance broker who has experience in arranging insurance for organisations like yours to make sure the insurance you take out is suited to your particular needs.



For more information on insurance and risk management, including volunteer personal accident insurance, see our [risk management and insurance guide](#).

## Volunteer personal accident insurance

Volunteers often fall between the gaps as they aren't covered by an organisation's insurance policies when they suffer injuries in their role unless the organisation holds specific insurance for this purpose – such as volunteer personal accident insurance.

It's important to remember that:

- workers' compensation insurance doesn't cover volunteers (except in rare circumstances), and

- public liability insurance will usually cover injuries a volunteer causes to others but may not cover injuries caused to volunteers

Volunteer personal accident insurance will cover members and volunteers of a community organisation for expenses incurred in the event of accidental injury, disability or death which occurs while the volunteer is doing work for the community organisation. The insurance is usually (but not always) extended to include cover for loss of income if the volunteer is unable to work as a result of an injury sustained when volunteering for the community organisation.

Unlike workers compensation, it's not compulsory for a community organisation to take out personal accident insurance for volunteers. However, because volunteers are a central part of many not-for-profit community organisations, it's useful to make sure that both the organisation and the volunteers are protected in the event of an accident.



### Example – undercooked chicken

A volunteer serving food at a local fundraiser undercooks the chicken. As a result, a significant number of people contract food poisoning and end up in hospital, including the volunteer. The organisation's public liability insurance will cover members of the public who attended the fundraiser, but not the volunteer.



### Tips

- Check your organisation's existing insurance policies to find out whether your volunteers are covered. If in doubt, pick up the phone to your insurer.
- Consider taking out a volunteer personal accident insurance policy to make sure your volunteers are covered for any injuries they sustain while volunteering.
- Check age limits under your policies and, if necessary, negotiate with your insurer to extend coverage to all your volunteers.
- Understand what is and isn't covered – for example, insurers will only cover non-Medicare medical expenses and will not (and cannot under legislation) cover out of pocket hospital expenses that have Medicare component. Your insurer may not be allowed to cover any fines under the relevant WHS or OHS Act.
- Let all volunteers know what they are and aren't covered for, and the process for making a claim. If there are any extra costs payable, make sure you are clear about whether the organisation or person will have to pay.

## Workers Compensation

Workers compensation is a form of insurance payment to employees if they are injured at work or become sick due to their work.

In all states and territories, volunteers will not be considered 'workers' for the purposes of workers compensation unless they are a part of special prescribed class in that jurisdiction. Where volunteers can be covered by workers compensation, it is often voluntary for the organisation to take out workers compensation on behalf of their volunteers (unlike employees where it is compulsory).

It's also important to note that while workers compensation legislation may not apply to volunteers for the purposes of receiving workers compensation, it does create obligations for officers of an organisation including volunteer officers. In most workers compensation legislation, the provisions do not exclude directors, officers or committee members because they are unpaid.

These obligations may include:

- ensuring workers are insured when required



- not charging a worker for compensation or damages for an injury, and
- assisting with a worker's rehabilitation and return to work

Where volunteer emergency service workers are covered by workers compensation that compensation is liable to be paid by the relevant state or territory regardless of whether they are a part of a community organisation.

In the case of religious ministers, the responsibility for workers compensation falls upon the religious body.

**An overview of the workers compensation volunteer provisions in each state and territory follows.**



### Caution

If you have a question about whether workers compensation insurance would apply to one of your volunteers you should talk to your workers compensation insurer. This is a guide only.

## Australian Capital Territory

Workers compensation in the ACT is covered under the [Workers Compensation Act 1951 \(ACT\)](#). For the purposes of the ACT legislation certain volunteers can be considered 'workers'.

If your volunteers are covered by any of the below categories, it's compulsory for a community organisation to take out workers compensation on their behalf:

- a trainee – being a person engaged under an arrangement by which training and on-the-job experience is provided, but not arranged or facilitated by an educational institution, and the trainee must not be an adult with a disability for whom the arrangement is arranged by a disability employment service provider
- a religious worker – being a person declared by the Minister
- a commercial voluntary worker – being a person who works voluntarily for a business, trade or enterprise that operates for the financial benefit of the person carrying on the enterprise, or if the person is a corporation, for the financial benefit of the corporation's members (this excludes not-for-profits), or
- a public interest voluntary worker – being a person engaged in work that is declared by the Minister to be carried out by an entity that is in the interests of public interest



### Example – commercial voluntary workers

The Homeless Trust is an organisation incorporated under statute whose only object is to help the homeless in Canberra. The trust runs an opportunity shop in Tuggeranong, which earns a small profit. The shop is staffed by unpaid volunteers. The shop's profits are used to help the homeless. The shop is an 'enterprise, trade or business', but it's not carried on for the financial benefit of the trust's members. The volunteer staff of the shop are therefore not commercial volunteers.



### Example – public interest voluntary workers

In some circumstance, the Minister may consider that it's necessary or desirable in the public interest that the work of volunteers (who are not 'commercial volunteers') be declared to be public interest voluntary workers.

For example, the annual Big Splash charity event is potentially very dangerous for the volunteer marshals because they must be present in their own boats on Lake Burley Griffin while the participants perform difficult stunts in motorboats and jet skis at high speed nearby. In previous years, volunteer marshals have been seriously injured at the event, and the Minister considers that the club did not take out adequate insurance cover for the work of the marshals. Taking these matters into account, the Minister may consider that it is necessary or desirable in the public interest that the work of the volunteer marshals be declared to be public interest voluntary work.

## New South Wales

Workers compensation in NSW is covered under the [Workplace Injury Management and Workers Compensation Act 1998 \(NSW\)](#), the [Workers Compensation Act 1987 \(NSW\)](#) and the [Workers Compensation \(Bush Fire, Emergency and Rescue Services\) Act 1987 \(NSW\)](#).

In New South Wales volunteers are only covered by workers compensation if they are emergency services workers, volunteer firefighters, or volunteer ambulance officers.

## Northern Territory

Workers compensation in the Northern Territory is covered under the [Return to Work Act 1986 \(NT\)](#).

Emergency services volunteers (who receive nothing more than reasonable travelling, accommodation or other out of pocket expenses) can receive workers compensation.

## Queensland

Workers compensation in Queensland is covered under the [Workers' Compensation and Rehabilitation Act 2003 \(QLD\)](#).

Volunteers are not 'workers', but volunteers may be entitled to workers' compensation if they are:

- a voluntary emergency services or ambulance worker
- a volunteer involved in a religious, charitable or benevolent organisation, or
- a volunteer involved in a not-for-profit organisation, and
- the organisation they are engaged by has an insurance policy that covers such people

However, there are special rules for what specifically volunteers can be insured for and what entitlements they are allowed. If your organisation is unsure you should seek legal advice.

## South Australia

Workers compensation in South Australia is covered under the [Return to Work Act 2014 \(SA\)](#) and the [Return to Work Regulations 2015 \(SA\)](#).

Volunteers are only covered by workers compensation if they are a volunteer state emergency services member, marine rescue worker, or firefighter.



## Tasmania

Workers compensation in Tasmania is covered under the [Workers Rehabilitation and Compensation Act 1988 \(Tas\)](#).

Police volunteers, volunteer fire-fighters, police staff and prescribed volunteers can receive workers compensation.

## Victoria

Workers compensation in Victoria is covered under the [Workplace Injury Rehabilitation and Compensation Act 2013 \(Vic\)](#), [Emergency Management Act 1986 \(Vic\)](#), [Emergency Management Act 2013 \(Vic\)](#), [Police Assistance Compensation Act 1968 \(Vic\)](#) and the [Victoria State Emergency Service Act 2005 \(Vic\)](#). Volunteers are only covered if they are engaged by particular government agencies or for particular government related work, such as:

- voluntary emergency and state emergency services workers
- jurors
- volunteer workers in government schools
- volunteers assisting police officers, and
- volunteer firefighters

## Western Australia

Workers compensation is covered under the [Workers' Compensation and Injury Management Act 1981 \(WA\)](#).

Volunteers are not covered by workers compensation in Western Australia.

# Summary: Volunteer safety



## Negligence law

- Community organisations have safety obligations under the common law (judge made law) of negligence and under the negligence provisions in state and territory legislation.
- These obligations extend to both the safety of the volunteer and the safety of the people that your volunteer is interacting with.
- If your organisation is found negligent (that is, it failed to meet its obligations) you may be liable to pay compensation (or other form of remedy).
- A volunteer involving organisation should understand its duty of care, and the standard of care it needs to meet so that it can protect its volunteers, the organisation and the people that the organisation interacts with.

## Determining whether your volunteers are protected from liability

- Each state and territory has legislation that sets out special protection for volunteers from personal civil liability for anything done or not done in good faith when performing community work for a community organisation.
- A volunteer will only be protected if they satisfy all the tests under the relevant state or territory legislation (see the annexure to this part of this guide for checklists that will help organisations determine this).
- In all states but New South Wales and Queensland, if the volunteer is protected, the volunteer will not be personally liable to pay any compensation. Instead, if harm is caused by a volunteer, the community organisation may be liable rather than the volunteer individually. In New South Wales the organisation is protected, and in Queensland the law is unclear.

## Work health and safety laws

- Many community organisations (if they have at least one employee) will be obliged to comply with the work health and safety laws in their state or territory.
- Community organisations have an obligation to ensure, so far as reasonably practicable, the health and safety of people involved in their organisation – this extends to volunteers.

## Child safety

- A community organisation should consider the special responsibilities they may have in relation to children that their organisation comes into contact with – for example, when providing services to children, or when a child volunteers for the organisation.

## Risk management

- Your organisation could potentially be liable for the actions of its volunteers and for any damage that its volunteers experience as a result of volunteering.
- There are many things that the people involved in your community organisation can do to eliminate risks or minimise the chance of them occurring – such as implementing a ‘risk management strategy’.
- Where the potential risks can't be avoided, your community organisation can look at the insurance options that may be available to protect against those risks.



# **Annexure - personal liability protection**

**Protection for volunteers against personal liability under state and territory legislation**

# Victoria – checklist

## Are your volunteers protected against personal liability under the Wrongs Act?

This checklist provides a simple guide to help a Victorian community organisation:

- work out if its volunteers are protected under the Wrongs Act 1958 (Vic) (**Wrongs Act**), and
- understand when it could be held liable (legally responsible) for the actions of its volunteers



Read this checklist together with the information in this part of the guide about safety, negligence, risk management and your volunteers, including the circumstances in which your organisation could be legally responsible for the actions of your volunteers.



### How to use this checklist

To be protected under the Wrongs Act, a volunteer must meet threshold requirements.

These requirements, and questions to help your organisation assess whether a volunteer may be covered, are set out below.

Start by answering the questions in Sections A, B and C. You will then be directed to:

- Section D 'Your volunteers are likely protected; what does this mean?', or
- Section E 'Your volunteers may not be protected; what does this mean?'

Seek legal advice before acting on the information in this annexure.

## Section A – Do your volunteers meet the requirements for protection?

### Question 1 Has the community work been done by a 'volunteer'?

The Wrongs Act defines a 'volunteer' as a person who provides a service in relation to community work on a voluntary basis. The Act says that a person is still considered a volunteer even if they receive:

- remuneration that they would have received whether they provided that service or not (for example, a person who is in paid employment with another organisation, but is released from that employment to undertake voluntary work)
- reimbursement for out-of-pocket expenses incurred in the provision of that service, or
- remuneration for the work not greater than the amount prescribed by the regulations of the Wrongs Act

A volunteer who is paid by their regular employer while they do volunteer work for a community organisation (for example, through a corporate volunteer program) is still considered to be a volunteer for the purposes of the Wrongs Act and a community organisation could be held legally responsible for that volunteer's actions in civil proceedings.

A number of people are specifically excluded from the definition of a 'volunteer' (for example, members of the Country Fire Authority and some Emergency Services personnel) because they are already given immunity from liability under other Victorian laws.



### Example

Fred is employed by B Pty Ltd as a gardener. B Pty Ltd encourages its staff to volunteer their services to Community House Inc (a Victorian incorporated association), which is adjacent to their business premises. B Pty Ltd allows their staff to volunteer for one day a month at Community House Inc on full pay. Fred, as part of the scheme, tends the Community House's garden one day each month while being paid by his employer. Fred is still regarded as a volunteer for the purposes of the Wrongs Act while performing services for Community House Inc. Although he is paid by his employer while he is volunteering at Community House Inc, he would have received this remuneration whether or not he was volunteering.

#### Question 1: check list

To be entitled to protection the work must be performed by someone who satisfies the legal definition of 'volunteer'. Was the community work done on a voluntary basis?

- ☐ Yes – go to Question 2
- ☐ No – go to Section E

**Question 2**  
Is your organisation a 'community organisation'?

For the volunteer to be entitled to the protection, your organisation must meet the definition of 'community organisation' in the Wrongs Act.

Your organisation will meet the definition if it organises the doing of community work by volunteers (see question 3) and it fits into one of the categories listed in the checklist for Question 2 below.



### Caution

The volunteer protection provisions of the Wrongs Act are unlikely to apply to unincorporated community groups. This means there is a strong chance that volunteers who are involved in an unincorporated community group will be liable for their own actions.



For more information on the difference between unincorporated and incorporated community groups see our fact sheet ['What is incorporation and does our group need to incorporate?'](#)



### Question 2: check list

Does your organisation fit into one of the following categories?

- ☐ an incorporated association under the *Associations Incorporation Reform Act 2012* (Vic)
- ☐ a municipal council or other incorporated local government body
- ☐ any other body corporate (such as a company limited by guarantee)
- ☐ any public entity or public service body within the meaning of the *Public Administration Act 2004* (Vic) or other person or body acting on behalf of the State

**If ANY apply go to Question 3**

**If NONE apply go to Section E**

### Question 3

**Is the volunteer providing a service in relation to 'community work'?**

The protection under the Wrongs Act applies to a volunteer when they are doing 'community work' – the focus is on the purpose of the volunteer's activity, not the overall purpose of the organisation. Whether a volunteer is performing 'community work' will depend on what work the volunteer is actually doing, rather than the objects of the organisation they are doing the work for.

Community work is broadly defined as work for any of the purposes in the checklist below. The volunteer protection only applies in relation to a service provided by the volunteer, not the provision of goods (for example, donation to an op shop or clothing for school children).

The Wrongs Act regulations can declare that certain work is not community work even if it fits into the categories above.



### Caution

Some of the fields of community work set out below have a technical legal meaning (for example, charitable purposes). You may need to seek legal advice about whether the work falls into one of these categories. For further information on what types of activities may be considered to be charitable, refer to our webpage on [registering as a charity](#).

### Question 3: check list

Community work is any work that is done, or to be done for:

- ☐ religious, educational, charitable or benevolent purposes
- ☐ promoting or encouraging literature, science or the arts
- ☐ sport, recreation, tourism or amusement
- ☐ conserving or protecting the environment
- ☐ establishing, carrying on or improving a community, social or cultural centre
- ☐ a political purpose, or
- ☐ promoting the common interests of the community generally or a particular section of the community

**If ANY apply go to Question 4**

**If NONE apply go to Section E**

**Question 4**

**Has the community work been 'organised' by a community organisation?**

A volunteer is protected if the community work is 'organised' by the community organisation. The definition of 'organise' includes 'to direct and supervise', but this is non-exhaustive and may extend to situations where there are no specific directions or supervision given, for example, where volunteers are given a general discretion to organise a fundraising event. However, the protection does not extend to spontaneous acts of volunteers or activities the organisation has not authorised (see Section C below).

For example, if your organisation trains a person to use a machine and directs that person to use it, they will be performing work organised by your organisation. A person who starts working without approval or direction from your organisation would not be performing work organised by your organisation.

**Question 4: check list**

The community work performed must be 'organised' by the community organisation. Was the work performed by the volunteer organised, directed or supervised by the community organisation?

- ☐ **Yes – go to Question 5**
- ☐ **No – go to Section E**

## Section B – Has civil liability been incurred?

**Question 5**

**Was the liability incurred a civil liability?**

The protection is only afforded for civil liabilities. A volunteer will not be protected from liability for criminal actions (offences by a person against the state) while volunteering. This includes traffic infringements as well as more serious crimes.

For example, if a volunteer physically assaults someone while they are volunteering, this may result in criminal charges and possible criminal compensation. The Wrongs Act won't protect the volunteer from criminal liability in this situation.

**Question 5: check list**

Was the liability incurred by the volunteer for an act or omission that constitutes a civil liability (for example, negligence causing physical injury) and not an act or omission that would (on the balance of probabilities) constitute a criminal offence (for example, stealing or assault)?

- ☐ **Yes – go to Question 6**
- ☐ **No – go to Section E**

**Question 6**

**Is the civil liability included in the protection provisions?**

A volunteer will not be protected under the Wrongs Act in certain civil proceedings:

- if the volunteer is sued for defamation, or
- if the volunteer has a car accident while volunteering where a claim is brought under the *Transport Accident Act 1986* (Vic)

In this case, any liability for compensation for personal injury to third parties under the *Transport Accident Act 1986* (Vic) is excluded (as this is covered by the compulsory third party insurance that is included in the registration costs of a vehicle).

**Question 6: check list**

Certain types of civil liability are excluded from the protection provisions. Was the liability incurred by the volunteer one of the following types?

- ☐ Liability for defamation
- ☐ A claim under the Transport Accident Act 1986

**If ANY apply go to Section E**

**If NONE apply go Section C**

## Section C – When does the protection not apply to volunteers?

A volunteer is not automatically protected by meeting the threshold requirements of the legislation outlined in Section A and B. There are specific situations where the protection will not apply. These situations are listed below.

**Question 7**

**Is the volunteer performing community work as a part of a court order or fine repayment scheme?**

A person doing community work under an order imposed by a court is not a volunteer under the Wrongs Act definition.

Although work under a fine repayment scheme is not specifically excluded by the Act, it's unlikely that such work would be considered 'voluntary' as the participant will receive a benefit in the form of their debt being cancelled or reduced.

**Question 7: check list**

Is the volunteer performing the community work doing so under a court order or fine repayment scheme?

- ☐ **Yes – go to Section E**
- ☐ **No – go to Question 8**

**Caution**

Organisations working with individuals under court orders or fine repayment schemes will need to carefully manage their own risks. Speak to the relevant government department and advise the individuals to consider whether there is insurance covering their participation.

**Question 8**

**Were the volunteer's actions (or failure to act) done in 'good faith'?**

The volunteer's actions (or failure to act) must have been done in 'good faith'.

To act in good faith has been defined as acting honestly and without fraud. Where a volunteer endeavours to act in the best interests of the community organisation and is not involved in any dishonest or fraudulent behaviour, the volunteer is taken to be acting in good faith. The volunteer protection only applies in relation to a service provided by the volunteer, not the provision of goods (for example, donation to an op-shop or clothing for school children).



### Example – ‘in good faith’

A volunteer attends a community sports day to help with minor first aid. A child falls and fractures their arm, and as a result of the volunteer’s care, their injury is worsened. The volunteer will be acting in good faith if they were trying to help the injured person and believed that was the correct first aid action. However, they will not be acting in good faith if they gave this assistance to impress their friend when they knew they had no knowledge of what first aid action to take.

#### Question 8: check list

At the time of the act or omission was the volunteer acting in good faith?

- ☐ **Yes they were acting in good faith - go to Question 9**
- ☐ **No they were not acting in good faith- go to Section E**

#### Question 9 Does an exception apply?

Certain acts of the volunteer will exclude their ability to claim protection. Even if a person is a volunteer and they have been doing community work organised by a community organisation, there are further exceptions set out under the Wrongs Act.

In general, a volunteer will not be protected where:

- the volunteer knew, or ought reasonably to have known, that at the relevant times they were:
  - acting outside the scope of the community work organised by the community organisation
  - acting contrary to any instructions given by the community organisation in relation to the providing of the service, or
- the volunteer’s ability to provide the service in a proper manner was, at the relevant times, significantly impaired by alcohol or drugs

There are specific legal definitions and interpretations of many of the terms used in these exceptions (for example, ‘ought reasonably to have known’, ‘drugs’, ‘alcohol’ and ‘significantly impaired’). If potentially relevant, your organisation may need to seek legal advice about these issues.



### Example

A person volunteers at a community sports day and is instructed to assist with refreshments only. The volunteer starts to help with marshalling participants without instruction to do so. An injury occurs as a result of the volunteer’s marshalling activities. As the volunteer was acting contrary to instructions, it’s likely that an exception under the Wrongs Act applies and that the volunteer will not be protected from liability.

**Question 9: check list**

Did any of the following apply to the volunteer at the time of the act or omission?

- ☐ volunteer's ability to provide the service was significantly impaired as a result of voluntarily consuming alcohol or a drug (whether or not consumed for therapeutic purpose)
- ☐ acting outside the scope of activities authorised by the community organisation
- ☐ acting contrary to instructions given by the community organisation

**If ANY apply go to Section E**

**If NONE apply go to Section D**

## Section D – Your volunteers are likely protected; what does this mean?

If you have answered all the questions in sections A, B and C, and the answer does not result in 'go to section E', the protection under the Wrongs Act is likely to apply to volunteers engaged by your organisation. If you are in doubt, seek legal advice. The volunteer will need their own, independent legal advice if legal action is started against them.

If your volunteers are protected, they don't incur personal civil liability as a result of performing community work organised by or as an office holder of your community organisation. This means the volunteer, who caused personal injury, property damage or financial loss to a person as a result of the volunteer's own action or failure to act, will not be personally liable to pay any compensation to that person.

Instead, the liability of a protected volunteer will be transferred to the organisation the volunteer was performing the community work for, and the injured party would be able to sue the community organisation (rather than the volunteer) for any injury or loss caused by the volunteer.

## Section E – Your volunteers may not be protected; what does this mean?

If your volunteers are not protected by the provisions of the Wrongs Act, your volunteers remain personally liable for their actions. They may be either sued individually or joined to an action against your community organisation, for their acts and omissions while performing community work.



### **Note – volunteers are critical to the work of community organisations**

Volunteers are a critical element to the work that many not-for-profit community organisations do. The circumstances when a volunteer is found to be personally liable are extremely rare, and in most instances, volunteers are found to be doing the right thing.

The potential for liability should not be a reason not to engage volunteers, and it's most important that organisations are aware of the risks and put measures in place to prevent incidents from occurring.

# New South Wales – checklist

## Are your volunteers protected against personal liability under the Civil Liability Act?

This checklist provides a simple guide to help a New South Wales community organisation:

- work out if its volunteers are protected under the provisions of the Civil Liability Act 2002 (NSW) (NSW Civil Liability Act), and
- understand when it could be held liable (legally responsible) for the actions of its volunteers



Read this checklist together with the information in this part of the guide about safety, negligence, risk management and your volunteers, including the circumstances in which your organisation could be legally responsible for the actions of your volunteers.



### How to use this checklist

To be protected under the NSW Civil Liability Act, a volunteer must meet threshold requirements.

These requirements, and questions to help your organisation assess whether a volunteer may be covered, are set out below.

Start by answering the questions in Sections A, B and C. You will then be directed to:

- Section D 'Your volunteers are likely protected; what does this mean?', or
- Section E 'Your volunteers may not be protected; what does this mean?'

Seek legal advice before acting on the information in this annexure.

## Section A – Do your volunteers meet the requirements for protection?

### Question 1

**Has the community work been done by a 'volunteer'?**

The NSW Civil Liability Act defines a 'volunteer' as a person who does 'community work' (discussed below) on a voluntary basis.

The Act says that a person is considered to work on a voluntary basis if they receive no remuneration for the work other than:

- reimbursement for reasonable out-of-pocket expenses, or
- remuneration within limits prescribed by the regulations of the NSW Civil Liability Act.

### Question 1: check list

To be entitled to protection the work must be performed by someone who satisfies the legal definition of 'volunteer'. Was the community work done on a voluntary basis?

- ☐ **Yes – go to Question 2**
- ☐ **No – go to Section E**

**Question 2****Is your organisation a 'community organisation'?**

For the volunteer to be entitled to the protection, your organisation must meet the definition of 'community organisation' in the NSW Civil Liability Act.

Your organisation will meet the definition if it organises the doing of community work by volunteers (see question 3), it's capable of being sued for damages in civil proceedings and it fits into one of the categories listed in the checklist for Question 2 below.

**Caution**

The volunteer protection provisions of the NSW Civil Liability Act are unlikely to apply to unincorporated community groups. This means there is a strong chance that volunteers who are involved in an unincorporated community group will be liable for their own actions.



For more information on the difference between unincorporated and incorporated community groups see our fact sheet '[What is incorporation and does our group need to incorporate?](#)'

**Question 2: check list**

Does your organisation fit into one of the following categories?

- ☐ a body corporate (for example, a company limited by guarantee or an incorporated association)
- ☐ a church or other religious organisation
- ☐ an authority of the State

**If ANY apply go to Question 3**

**If NONE apply go to Section E**

**Question 3****Is the work being done by the volunteer 'community work'?**

The protection under the NSW Civil Liability Act applies to a volunteer when they are doing 'community work' – the focus is on the purpose of the volunteer's activity, not the overall purpose of the organisation. Whether a volunteer is performing 'community work' will depend on what work the volunteer is actually doing, rather than the objects of the organisation they are doing the work for.

Community work is broadly defined as work that is not for private financial gain that is done for any of the purposes in the below checklist.

The Regulations to the NSW Civil Liability Act can also specify that certain types of work do or do not constitute community work.

**Caution**

Some of the fields of community work set out below have a technical legal meaning (for example, charitable purposes). You may need to seek legal advice about whether the work falls into one of these categories. For further information on what types of activities may be considered to be charitable, refer to our webpage on [registering as a charity](#).



### Question 3: check list

Community work is not performed for private financial gain and is done for one or more of the following purposes:

- ☐ charitable
- ☐ benevolent
- ☐ philanthropic
- ☐ sporting
- ☐ educational
- ☐ cultural

**If ANY apply go to Question 4**

**If NONE apply go to Section E**

### Question 4

**Is the volunteer an office holder or has the community work been 'organised' by a community organisation?**

A volunteer is protected if they carry out the community work as an office holder of the community organisation (for example a director or secretary), or if the community work is 'organised' by a community organisation. The definition of 'organised' includes 'directed or supervised', but this is non-exhaustive and may extend to situations where there are no specific directions or supervision given, for example, where volunteers are given general discretion to organise a fundraising event.

However, the protection does not extend to spontaneous acts of volunteers or activities the organisation has not authorised (see Section C below).

For example, if your organisation trains a person to use a machine and directs that person to use it, they will be performing work organised by your organisation. A person who starts working without approval or direction from your organisation would not be performing work organised by your organisation.

### Question 4: check list

Was the work performed by the volunteer:

- ☐ organised, directed or supervised by the community organisation?
- ☐ carried out by someone acting as an office holder of the community organisation?

**If ANY apply go to Question 5**

**If NONE apply go to Section E**

## Section B – Has civil liability been incurred?

### Question 5

**Was the liability incurred a civil liability?**

The protection is only afforded for civil liabilities. A volunteer will not be protected from liability for criminal actions (offences by a person against the state) while volunteering. This includes traffic infringements as well as more serious crimes.

For example, if a volunteer physically assaults someone while they are volunteering, this may result in criminal charges and possible criminal compensation. The NSW Civil Liability Act won't protect the volunteer from criminal liability in this situation.



### Question 5: check list

Was the liability incurred by the volunteer for an act or omission that constitutes a civil liability (for example, negligence causing physical injury) and not an act or omission that would (on the balance of probabilities) constitute a criminal offence (for example, stealing or assault)?

- ☐ Yes – go to Question 6
- ☐ No – go to Section E

### Question 6 Is the civil liability included in the protection provisions?

Certain types of civil liability are excluded from the protection provisions. A volunteer will not be protected by the NSW Civil Liability Act in certain civil proceedings:

- if the volunteer is sued for defamation
- liability that would otherwise be covered by third-party insurance under the Motor Accidents Compensation Act 1999 (NSW), such as if the volunteer has a car accident while volunteering, or
- any other personal liability that is required to be insured against by a law of the state

### Question 6: check list

Was the liability incurred by the volunteer one of the following types?

- ☐ Liability for defamation
- ☐ Liability that is required to be insured against by law (for example, insurance required as part of a professional qualification and accreditation, such as doctors, accountants, nurses, or lawyers)
- ☐ Liability for personal injury due to a motor vehicle accident where that liability should have been covered by third-party insurance

If ANY apply go to Section E

If NONE apply go Section C

## Section C – When does the protection not apply to volunteers?

A volunteer is not automatically protected by meeting the threshold requirements of the legislation outlined in Section A and B. There are specific situations where the protection will not apply. These situations are listed below.

### Question 7 Is the volunteer performing community work as a part of a court order or fine repayment scheme?

A person doing community work under an order of a court is not a volunteer under the NSW Civil Liability Act definition. Although work under a fine repayment scheme is not specifically excluded by the Act, it's unlikely that such work would be considered 'voluntary' as the participant will receive a benefit in the form of their debt being cancelled or reduced.

### Question 7: check list

Is the volunteer performing the community work doing so under a court order or fine repayment scheme?

- ☐ Yes – go to Section E
- ☐ No – go to Question 8



### Caution

Organisations working with individuals under court orders or fine repayment schemes will need to carefully manage their own risks. Speak to the relevant government department and advise the individuals to consider whether there is insurance covering their participation.

#### Question 8

**Were the volunteer's actions (or failure to act) done in 'good faith'?**

The volunteer's actions (or failure to act) must have been done in 'good faith'. To act in good faith has been defined as acting honestly and without fraud. Where a volunteer endeavours to act in the best interests of the community organisation and is not involved in any dishonest or fraudulent behaviour, the volunteer is taken to be acting in good faith.



### Example – 'in good faith'

A volunteer attends a community sports day to help with minor first aid. A child falls and fractures their arm, and as a result of the volunteer's care, their injury is worsened. The volunteer will be acting in good faith if they were trying to help the injured person and believed that was the correct first aid action. However, they will not be acting in good faith if they gave this assistance to impress their friend when they knew they had no knowledge of what first aid action to take.

#### Question 8: check list

At the time of the act or omission was the volunteer acting in good faith?

- ☐ **Yes they were acting in good faith - go to Question 9**
- ☐ **No they were not acting in good faith- go to Section E**

#### Question 9

**Does an exception apply?**

Certain acts of the volunteer will exclude their ability to claim protection. Even if a person is a volunteer and they have been doing community work organised by a community organisation, there are further exceptions set out under the NSW Civil Liability Act. In general, a volunteer will not be protected if:

- the volunteer knew, or ought reasonably to have known, that they were acting:
  - outside the scope of the activities authorised by the community organisation, or
  - contrary to any instructions given by the community organisation, or
- the volunteer's ability to exercise reasonable care and skill when doing the work was significantly impaired by alcohol or drugs voluntarily consumed (whether consumed for medication or not), and the volunteer failed to exercise reasonable care and skill when doing the work

There are specific legal definitions and interpretations of many of the terms used in these exceptions (for example, 'ought reasonably to have known', 'drugs', 'alcohol' and 'significantly impaired'). If potentially relevant, your organisation may need to seek legal advice about these issues.



### Example

A person volunteers at a community sports day and is instructed to assist with refreshments only. The volunteer starts to help with marshalling participants without instruction to do so. An injury occurs as a result of the volunteer's marshalling activities. As the volunteer was acting contrary to instructions, it's likely that an exception under the NSW Civil Liability Act applies and that the volunteer will not be protected from liability.

#### Question 9: check list

Did any of the following apply to the volunteer at the time of the act or omission?

- ☐ volunteer's ability to exercise reasonable care and skill was significantly impaired as a result of voluntarily consuming alcohol or a drug (whether or not consumed for medication) and they failed to exercise reasonable care and skill
- ☐ acting outside the scope of activities authorised by the community organisation
- ☐ acting contrary to instructions given by the community organisation

**If ANY apply go to Section E**

**If NONE apply go to Section D**

## Section D – Your volunteers are likely protected; what does this mean?

If you have answered all the questions in sections A, B and C, and the answer does not result in 'go to section E', the protection under the NSW Civil Liability Act is likely to apply to volunteers engaged by your organisation. If you are in doubt, seek legal advice. The volunteer will need their own, independent legal advice if legal action is started against them.

If your volunteers are protected, this means they don't incur personal civil liability as a result of performing community work organised by or as an office holder of your community organisation.

In most other Australian states and territories, civil liability incurred by a protected volunteer is automatically transferred to the community organisation (so that the organisation itself would have to pay any compensation). In NSW, there is no such automatic transfer. The NSW Civil Liability Act operates to the effect that if a volunteer is protected under the Act, then the community organisation is also protected and does not take on the volunteer's liability.

Even if the volunteer is protected, a community organisation in NSW may nevertheless be liable for damage caused by a volunteer who was acting in good faith if the community organisation was in breach of a 'non-delegable duty of care' – which is a common law duty owed by the community organisation itself, rather than the volunteer, to the person who suffered the damage. This may include providing adequate training, equipment or supervision to volunteers. So, for example, if a volunteer causes an injury to another person because the organisation failed to give the volunteer appropriate safety training, the organisation may be liable to pay compensation to the injured person.

This is a complicated area of law and your organisation should seek legal advice about any potential liability in these circumstances.

## Section E – Your volunteers may not be protected; what does this mean?

If your volunteers are not protected by the provisions of the NSW Civil Liability Act, your volunteers remain personally liable for their actions. They may be either sued individually or joined to an action against your community organisation, for their acts and omissions while performing community work.

**Note – volunteers are critical to the work of community organisations**

Volunteers are a critical element to the work that many not-for-profit community organisations do. The circumstances when a volunteer is found to be personally liable are extremely rare, and in most instances, volunteers are found to be doing the right thing.

The potential for liability should not be a reason not to engage volunteers, and it's most important that organisations are aware of the risks and put measures in place to prevent incidents from occurring.

# Queensland – checklist

## Are your volunteers protected against personal liability under the Civil Liability Act?

This checklist provides a simple guide to help a Queensland community organisation:

- work out if its volunteers are protected under the provisions of the [Civil Liability Act 2003 \(QLD\)](#) (**QLD Civil Liability Act**), and
- understand when it could be held liable (legally responsible) for the actions of its volunteers



Read this checklist together with the information in this part of the guide about safety, negligence, risk management and your volunteers, including the circumstances in which your organisation could be legally responsible for the actions of your volunteers.



### How to use this checklist

To be protected under the QLD Civil Liability Act, a volunteer must meet threshold requirements.

These requirements, and questions to help your organisation assess whether a volunteer may be covered, are set out below.

Start by answering the questions in Sections A, B and C. You will then be directed to:

- Section D 'Your volunteers are likely protected; what does this mean?', or
- Section E 'Your volunteers may not be protected; what does this mean?'

Seek legal advice before acting on the information in this annexure.

## Section A – Do your volunteers meet the requirements for protection?

### Question 1

**Has the community work been done by a 'volunteer'?**

The QLD Civil Liability Act defines a 'volunteer' as a person who does 'community work' (discussed below) on a voluntary basis or donates food in certain circumstances.

A person is considered to work on a 'voluntary basis' if they receive no remuneration for the work other than reimbursement for reasonable expenses.



### Example

Fred is employed as a gardener. Fred volunteers his services to Community House Inc (a Queensland incorporated association) for one day a month. Fred drives to Community House and occasionally buys plants for its garden. Community House pays Fred for petrol and the cost of the plants. Fred is regarded as a volunteer for the purposes of the QLD Civil Liability Act while performing services for Community House Inc because the only remuneration he receives is reimbursement for out-of-pocket expenses.



### Question 1: check list

To be entitled to protection the work must be performed by someone who satisfies the legal definition of 'volunteer'. Was the community work done on a voluntary basis?

- ☐ **Yes – go to Question 2**
- ☐ **No – go to Section E**

### Question 2

**Is your organisation a 'community organisation'?**

For the volunteer to be entitled to the protection, your organisation must meet the definition of 'community organisation' in the QLD Civil Liability Act.

Your organisation will meet the definition if it organises the doing of community work by volunteers (see question 3) and it fits into one of the categories listed in the checklist for Question 2 below.



### Caution

The volunteer protection provisions of the QLD Civil Liability Act **may** apply to unincorporated community groups. We recommend seeking legal advice.



For more information on the difference between unincorporated and incorporated community groups see our fact sheet '[What is incorporation and does our group need to incorporate?](#)'

### Question 2: check list

Does your organisation fit into one of the following categories?

- ☐ a corporation (for example, a company limited by guarantee or an incorporated association)
- ☐ a trustee acting the capacity of trustee
- ☐ a registered political party
- ☐ a public or other authority under section 34 of the QLD Civil Liability Act
- ☐ a parents and citizens association
- ☐ a church or other religious group

**If ANY apply go to Question 3**

**If NONE apply go to Section E**



### Question 3

#### Is the work being done by the volunteer 'community work'?

The protection under the QLD Civil Liability Act applies to a volunteer when they are doing 'community work' – the focus is on the purpose of the volunteer's activity, not the overall purpose of the organisation. Whether a volunteer is performing 'community work' will depend on what work the volunteer is actually doing, rather than the objects of the organisation they are doing the work for.

Community work is broadly defined as work that is not for private financial gain that is done for any of the purposes in the below checklist (and includes making donations of food for one or more of the specified purposes).

The QLD Civil Liability Act regulations can declare that certain work is not community work even if it fits in to the categories above.



### Caution

Some of the fields of community work set out below have a technical legal meaning (for example, charitable purposes). You may need to seek legal advice about whether the work falls into one of these categories. For further information on what types of activities may be considered to be charitable, refer to our webpage on [registering as a charity](#).

### Question 3: check list

Community work is not performed for private financial gain and is done for one or more of the following purposes:

- ☐ charitable
- ☐ benevolent
- ☐ philanthropic
- ☐ recreational
- ☐ political
- ☐ sporting
- ☐ educational
- ☐ cultural

**If ANY apply go to Question 4**

**If NONE apply go to Section E**

### Question 4

#### Is the volunteer an office holder or has the community work been 'organised' by a community organisation?

A volunteer is protected if they carry out the community work as an office holder of the community organisation (for example a director or secretary), or if the community work is 'organised' by the community organisation. The definition of 'organised' includes 'directed or supervised', but this is non-exhaustive and may extend to situations where there are no specific directions or supervision given, for example, where volunteers are given general discretion to organise a fundraising event.

However, the protection does not extend to spontaneous acts of volunteers or activities the organisation has not authorised.

For example, if your organisation trains a person to use a machine and directs that person to use it, they will be performing work organised by your organisation. A person who starts working without approval or direction from your organisation would not be performing work organised by your organisation.



#### Question 4: check list

Was the work performed by the volunteer:

- ☐ organised, directed or supervised by the community organisation?
- ☐ carried out by someone acting as an office holder of the community organisation?

**If ANY apply go to Question 5**

**If NONE apply go to Section E**

## Section B – Has civil liability been incurred?

#### Question 5

**Was the liability incurred a civil liability?**

The protection is only afforded for civil liabilities. A volunteer will not be protected from liability for criminal actions (offences by a person against the state) while volunteering. This includes traffic infringements as well as more serious crimes.

For example, if a volunteer physically assaults someone while they are volunteering, this may result in criminal charges and possible criminal compensation. The QLD Civil Liability Act won't protect the volunteer from criminal liability in this situation.

#### Question 5: check list

Was the liability incurred by the volunteer for an act or omission that constitutes a civil liability (for example, negligence causing physical injury) and not an act or omission that would (on the balance of probabilities) constitute a criminal offence (for example, stealing or assault)?

- ☐ **Yes – go to Question 6**
- ☐ **No – go to Section E**

#### Question 6

**Is the civil liability included in the protection provisions?**

Certain types of civil liability are excluded from the protection provisions. A volunteer will not be protected by the QLD Civil Liability Act in certain civil proceedings:

- liability that would otherwise be covered by compulsory third-party insurance under the Motor Accident Insurance Act 1994 (QLD), such as if the volunteer has a car accident while volunteering, or
- any other personal liability that is required to be insured against by a law of the state

#### Question 6: check list

Was the liability incurred by the volunteer one of the following types?

- ☐ Liability that is required to be insured against by law (for example, insurance required as part of a professional qualification and accreditation, such as doctors, accountants, nurses, or lawyers)
- ☐ Liability for personal injury due to a motor vehicle accident where that liability should have been covered by compulsory third-party insurance

**If ANY apply go to Section E**

**If NONE apply go Section C**

## Section C – When does the protection not apply to volunteers?

A volunteer is not automatically protected by meeting the threshold requirements of the legislation outlined in Section A and B. There are specific situations where the protection will not apply. These situations are listed below.

**Question 7**

**Is the volunteer performing community work as a part of a court order or fine repayment scheme?**

A person doing work under an order of a court is not a volunteer under the QLD Civil Liability Act definition. Although work under a fine repayment scheme is not specifically excluded by the Act, it's unlikely that such work would be considered 'voluntary' as the participant will receive a benefit in the form of their debt being cancelled or reduced.

**Question 7: check list**

Is the volunteer performing the community work doing so under a court order or fine repayment scheme?

- ☐ **Yes – go to Section E**
- ☐ **No – go to Question 8**

**Caution**

Organisations working with individuals under court orders or fine repayment schemes will need to carefully manage their own risks. Speak to the relevant government department and advise the individuals to consider whether there is insurance covering their participation.

**Question 8**

**Were the volunteer's actions (or failure to act) done in 'good faith'?**

The volunteer's actions (or failure to act) must have been done in 'good faith'. To act in good faith has been defined as acting honestly and without fraud. Where a volunteer endeavours to act in the best interests of the community organisation and is not involved in any dishonest or fraudulent behaviour, the volunteer is taken to be acting in good faith.

**Example – 'in good faith'**

A volunteer attends a community sports day to help with minor first aid. A child falls and fractures their arm, and as a result of the volunteer's care, their injury is worsened. The volunteer will be acting in good faith if they were trying to help the injured person and believed that was the correct first aid action. However, they will not be acting in good faith if they gave this assistance to impress their friend when they knew they had no knowledge of what first aid action to take.

**Question 8: check list**

At the time of the act or omission was the volunteer acting in good faith?

- ☐ **Yes they were acting in good faith - go to Question 9**
- ☐ **No they were not acting in good faith- go to Section E**

**Question 9****Does an exception apply?**

In general, a volunteer will not be protected if:

- the volunteer knew, or ought reasonably to have known, that they were acting:
  - outside the scope of the activities authorised by the community organisation, or
  - contrary to any instructions given by the community organisation, or
- the volunteer was intoxicated (under the influence of alcohol or drugs) and failed to exercise due care and skill when doing the work

There are specific legal definitions and interpretations of many of the terms used in these exceptions (for example, 'ought reasonably to have known', 'drugs', 'alcohol' and 'intoxicated'). If potentially relevant, your organisation may need to seek legal advice about these issues.

**Example**

A person volunteers at a community sports day and is instructed to assist with refreshments only. The volunteer starts to help with marshalling participants without instruction to do so. An injury occurs as a result of the volunteer's marshalling activities. As the volunteer was acting contrary to instructions, it's likely that an exception under the Civil Liability Act applies and that the volunteer will not be protected from liability.

**Question 9: check list**

Did any of the following apply to the volunteer at the time of the act or omission?

- ☐ volunteer was intoxicated while doing the work and failed to exercise due care and skill
- ☐ acting outside the scope of activities authorised by the community organisation
- ☐ acting contrary to instructions given by the community organisation

**If ANY apply go to Section E**

**If NONE apply go to Section D**

## Section D – Your volunteers are likely protected; what does this mean?

If you have answered all the questions in sections A, B and C, and the answer does not result in 'go to section E', the protection under the QLD Civil Liability Act is likely to apply to volunteers engaged by your organisation. If you are in doubt, seek legal advice. The volunteer will need their own, independent legal advice if legal action is started against them.

If your volunteers are protected, they do not incur personal civil liability as a result of performing community work organised by or as an office holder of your community organisation. This includes when a person suffers harm resulting from the consumption of food donated by the volunteer, in particular circumstances. This means the volunteer, who caused personal injury, property damage or financial loss to a person as a result of the volunteer's own action or failure to act, will not be personally liable to pay any compensation to that person.

The QLD Civil Liability Act doesn't state whether the organisation itself becomes liable on a volunteer's behalf. However, under the common law, if an organisation does not fulfil its own duty of care and this leads to a volunteer causing injury or damage, it could become liable.

## Section E – Your volunteers may not be protected; what does this mean?

If your volunteers are not protected by the provisions of the QLD Civil Liability Act, your volunteers remain personally liable for their actions. They may be either sued individually or joined to an action against your community organisation, for their acts and omissions while performing community work.



### **Note – volunteers are critical to the work of community organisations**

Volunteers are a critical element to the work that many not-for-profit community organisations do. The circumstances when a volunteer is found to be personally liable are extremely rare, and in most instances, volunteers are found to be doing the right thing.

The potential for liability should not be a reason not to engage volunteers, and it's most important that organisations are aware of the risks and put measures in place to prevent incidents from occurring.

# Western Australia – checklist

## Are your volunteers protected against personal liability under the Protection Act?

This checklist provides a simple guide to help a Western Australian community organisation:

- work out if its volunteers are protected under the provisions of the Volunteers and Food and Other Donors (Protection from Liability) Act 2002 (WA) (**WA Protection Act**), and
- understand when it could be held liable (legally responsible) for the actions of its volunteers



Read this checklist together with the information in this part of the guide about safety, negligence, risk management and your volunteers, including the circumstances in which your organisation could be legally responsible for the actions of your volunteers.



### How to use this checklist

To be protected under the WA Protection Act, a volunteer must meet threshold requirements.

These requirements, and questions to help your organisation assess whether a volunteer may be covered, are set out below.

Start by answering the questions in Sections A, B and C. You will then be directed to:

- Section D 'Your volunteers are likely protected; what does this mean?', or
- Section E 'Your volunteers may not be protected; what does this mean?'

Seek legal advice before acting on the information in this annexure.

## Section A – Do your volunteers meet the requirements for protection?

### Question 1

**Has the community work been done by a 'volunteer'?**

A person is considered to be doing community work on a voluntary basis if they receive no remuneration for doing the work other than:

- remuneration that person would receive whether or not they did the community work
- reimbursement of reasonable expenses incurred in performing the community work, or
- remuneration that is not greater than the amount prescribed by the regulations (if any)



### Example

Fred is employed as a gardener. Fred volunteers his services to Community House Inc (a Western Australian incorporated association) for one day a month. Fred drives to Community House and occasionally buys plants for its garden. Community House pays Fred for petrol and the cost of the plants. Fred is regarded as a volunteer for the purposes of the WA Protection Act while performing services for Community House Inc because the only remuneration he receives is reimbursement for out-of-pocket expenses.

#### Question 1: check list

To be entitled to protection the work must be performed by someone who satisfies the legal definition of 'volunteer'. Was the community work done on a voluntary basis?

- ☐ Yes – go to Question 2
- ☐ No – go to Section E

#### Question 2

Is your organisation a  
'community organisation'?

For the volunteer to be entitled to the protection, your organisation must meet the definition of 'community organisation' in the WA Protection Act.

Your organisation will meet the definition if it organises the doing of community work by volunteers (see question 3) and it fits into one of the categories listed in the checklist for Question 2 below



### Caution

The volunteer protection provisions of the WA Protection Act are unlikely to apply to unincorporated community groups. This means there is a strong chance that volunteers who are involved in an unincorporated community group will be liable for their own actions.



For more information on the difference between unincorporated and incorporated community groups see our fact sheet '[What is incorporation and does our group need to incorporate?](#)'



### Question 2: check list

Does your organisation fit into one of the following categories?

- ☐ a state agency or instrumentality
- ☐ a department of the public service
- ☐ an incorporated association (under the *Associations Incorporation Act 2015 (WA)*)
- ☐ a local government
- ☐ another body corporate (such as a company limited by guarantee)

**If ANY apply go to Question 3**

**If NONE apply go to Section E**

### Question 3

**Is the work being done by the volunteer 'community work'?**

The protection under the WA Protection Act applies to a volunteer when they are doing 'community work' – the focus is on the purpose of the volunteer's activity, not the overall purpose of the organisation. Whether a volunteer is performing 'community work' will depend on what work the volunteer is actually doing, rather than the objects of the organisation they are doing the work for.

Community work is broadly defined as work for any of the purposes in the below checklist.

The *Volunteers (Protection from Liability) Regulations 2005 (WA)* can declare that certain work is or is not community work even if it fits in to the categories above.



### Caution

Some of the fields of community work set out below have a technical legal meaning (for example, charitable purposes). You may need to seek legal advice about whether the work falls into one of these categories. For further information on what types of activities may be considered to be charitable, see our webpage on [registering as a charity](#).

### Question 3: check list

Community work is done for one or more of the following purposes:

- ☐ religious, educational, charitable or benevolent
- ☐ promoting or encouraging literature, science or the arts
- ☐ sport, recreation or amusement
- ☐ care, treatment or other assistance for people with a physical or mental disability or condition
- ☐ conserving or protecting the environment
- ☐ promoting or preserving historical or cultural heritage
- ☐ establishing, carrying on or improving a community, social or cultural centre
- ☐ promoting the interests of a local community
- ☐ political purposes
- ☐ for a purpose prescribed by the *Volunteers (Protection from Liability) Regulations 2005 (WA)*

**If ANY apply go to Question 4**

**If NONE apply go to Section E**

**Question 4**

**Was the volunteer carrying out community work for the community organisation?**

A volunteer is protected while they carry out community work for the community organisation. The wording is quite broad and could, in theory, encompass tasks that the volunteer was not asked to do but decided to do of their own accord. However, the volunteer will not be protected if they acted without authority or contrary to instructions (see Section C below).

For example, if your organisation trains a person to use a machine and directs that person to use it, they will be performing work organised by your organisation. A person who starts working without approval or direction from your organisation would not be performing work organised by your organisation.

**Question 4: check list**

Was the work performed by the volunteer in the course of carrying out community work for the community organisation?

- ☐ **Yes - go to Question 5**
- ☐ **No - go to Section E**

## Section B – Has civil liability been incurred?

**Question 5**

**Was the liability incurred a civil liability?**

The protection is only afforded for civil liabilities. A volunteer will not be protected from liability for criminal actions (offences by a person against the state) while volunteering. This includes traffic infringements as well as more serious crimes. For example, if a volunteer physically assaults someone while they are volunteering, this may result in criminal charges and possible criminal compensation.

**Question 5: check list**

Was the liability incurred by the volunteer for an act or omission that constitutes a civil liability (for example, negligence causing physical injury) and not an act or omission that would (on the balance of probabilities) constitute a criminal offence (for example, stealing or assault)?

- ☐ **Yes – go to Question 6**
- ☐ **No – go to Section E**

**Question 6**

**Is the civil liability included in the protection provisions?**

Certain types of civil liability are excluded from the protection provisions. A volunteer will not be protected in certain civil proceedings if:

- the volunteer is sued for defamation, or
- the volunteer has a car accident while volunteering. In this case, any liability for compensation for personal injury to third parties under the *Motor Vehicle (Third Party Insurance) Act 1943 (WA)* is excluded (as this is covered by the compulsory third party insurance that is included in the registration costs of a vehicle)

**Question 6: check list**

Was the liability incurred by the volunteer one of the following types?

- ☐ Liability for defamation
- ☐ Liability for personal injury due to a motor vehicle accident where that liability should have been covered by third-party insurance

**If ANY apply go to Section E**

**If NONE apply go Section C**

## Section C – When does the protection not apply to volunteers?

A volunteer is not automatically protected by meeting the threshold requirements of the legislation outlined in Section A and B. There are specific situations where the protection will not apply. These situations are listed below.

### Question 7

**Is the volunteer performing community work as a part of a court order or fine repayment scheme?**

A person who carries out community work under the order of a court is not regarded as working on a voluntary basis, and is therefore not considered a volunteer.

Work under a fine repayment scheme is not specifically excluded by the WA Protection Act, however, it is unlikely that such work would be considered 'voluntary' as the participant will receive a benefit in the form of their debt being cancelled or reduced.

#### Question 7: check list

Is the volunteer performing the community work doing so under a court order or fine repayment scheme?

☐ **Yes – go to Section E**

☐ **No – go to Question 8**



### Caution

Organisations working with individuals under court orders or fine repayment schemes will need to carefully manage their own risks. Speak to the relevant government department and advise the individuals to consider whether there is insurance covering their participation.

### Question 8

**Were the volunteer's actions (or failure to act) done in 'good faith'?**

The volunteer's actions (or failure to act) must have been done in 'good faith'.

To act in good faith has been defined as acting honestly and without fraud. Where a volunteer endeavours to act in the best interests of the community organisation and is not involved in any dishonest or fraudulent behaviour, the volunteer is taken to be acting in good faith.



### Example – 'in good faith'

A volunteer attends a community sports day to help with minor first aid. A child falls and fractures their arm, and as a result of the volunteer's care, their injury is worsened. The volunteer will be acting in good faith if they were trying to help the injured person and believed that was the correct first aid action. However, they will not be acting in good faith if they gave this assistance to impress their friend when they knew they had no knowledge of what first aid action to take.

**Question 8: check list**

At the time of the act or omission was the volunteer acting in good faith?

- ☐ **Yes they were acting in good faith - go to Question 9**
- ☐ **No they were not acting in good faith- go to Section E**

**Question 9****Does an exception apply?**

Certain acts of the volunteer will exclude their ability to claim protection. Even if a person is a volunteer and they have been doing community work organised by a community organisation, there are exceptions set out under the WA Protection Act.

In general, a volunteer will not be protected where:

- the volunteer knew, or ought to have reasonably known, that at the relevant times they were acting:
  - outside the scope of the community work organised by the community organisation, or
  - contrary to any instructions given by the community organisation, or
- the volunteer's ability to do the community work in a proper manner was, at the relevant times, significantly impaired by alcohol or drugs

There are specific legal definitions and interpretations of many of the terms used in these exceptions (for example, 'ought reasonably to have known', 'drugs', 'alcohol' and 'significantly impaired').

If potentially relevant, your organisation may need to seek legal advice about these issues..

**Example**

A person volunteers at a community sports day and is instructed to assist with refreshments only. The volunteer starts to help with marshalling participants without instruction to do so. An injury occurs as a result of the volunteer's marshalling activities. As the volunteer was acting contrary to instructions, it's likely that an exception applies and that the volunteer will not be protected from liability.

**Question 9: check list**

Did any of the following apply to the volunteer at the time of the act or omission?

- ☐ volunteer's ability to exercise reasonable care and skill was significantly impaired as a result of voluntarily consuming alcohol or a drug
- ☐ acting outside the scope of activities authorised by the community organisation
- ☐ acting contrary to instructions given by the community organisation

**If ANY apply go to Section E**

**If NONE apply go to Section D**

## Section D - Your volunteers are likely protected; what does this mean?

If you have answered all the questions in sections A, B and C, and the answer does not result in 'go to section E', the protection under the WA Protection Act is likely to apply to volunteers engaged by your organisation. If you are in doubt, seek legal advice. The volunteer will need their own, independent legal advice if legal action is started against them.

If your volunteers are protected (that is, all the tests set out above have been met), they don't incur personal civil liability as a result of performing community work organised by your community organisation. This means a volunteer, who caused personal injury, property damage or financial loss to a person as a result of the volunteer's own action or failure to act, will not be personally liable to pay any compensation to that person.

Instead, the liability of a protected volunteer will be transferred to the organisation the volunteer was performing the community work for, and the injured party would be able to sue the community organisation (rather than the volunteer) for any injury, damage or loss caused by the volunteer.

## Section E – Your volunteers may not be protected; what does this mean?

If your volunteers are not protected by the provisions of the WA Protection Act, your volunteers remain personally liable for their actions. They may be either sued individually or joined to an action against your community organisation, for their acts and omissions while performing community work.



### **Note – volunteers are critical to the work of community organisations**

Volunteers are a critical element to the work that many not-for-profit community organisations do. The circumstances when a volunteer is found to be personally liable are extremely rare, and in most instances, volunteers are found to be doing the right thing.

The potential for liability should not be a reason not to engage volunteers, and it's most important that organisations are aware of the risks and put measures in place to prevent incidents from occurring.

# South Australia – checklist

## Are your volunteers protected against personal liability under the Volunteers Act?

This checklist provides a simple guide to help a South Australian community organisation:

- work out if its volunteers are protected under the provisions of the Volunteers Protection Act 2001 (SA) (**SA Volunteers Act**), and
- understand when it could be held liable (legally responsible) for the actions of its volunteers



Read this checklist together with the information in this part of the guide about safety, negligence, risk management and your volunteers, including the circumstances in which your organisation could be legally responsible for the actions of your volunteers.



## How to use this checklist

To be protected under the SA Volunteers Act, a volunteer must meet threshold requirements.

These requirements, and questions to help your organisation assess whether a volunteer may be covered, are set out below.

Start by answering the questions in Sections A, B and C. You will then be directed to:

- Section D 'Your volunteers are likely protected; what does this mean?', or
- Section E 'Your volunteers may not be protected; what does this mean?'

Seek legal advice before acting on the information in this annexure.

## Section A – Do your volunteers meet the requirements for protection?

### Question 1

**Has the community work been done by a 'volunteer'?**

The SA Volunteers Act defines a 'volunteer' as a person who carries out community work on a voluntary basis. A person is considered to work on a 'voluntary basis' if they receive no remuneration for the work, or are remunerated within limits fixed by regulation. The Volunteers Protection Regulations 2019 (SA) (**Volunteers Regulations**) set these limits as:

- reimbursement for out-of-pocket expenses, or
- a monetary gift made to the person in recognition of the person's work as a volunteer. Such a monetary gift can't be subject to PAYG withholding or instalment tax, paid as a consequence of the person's employment, legally required to be paid, or an amount relied upon by the person as a source of income.



### Example

Fred is employed as a gardener. Fred volunteers his services to Community House Inc (a South Australian incorporated association) for one day a month. After a year of volunteering, Community House gave Fred a \$100 voucher as thank you gift for his assistance. Fred is still regarded as a volunteer for the purposes of the SA Volunteers Act while performing services for Community House Inc.

#### Question 1: check list

To be entitled to protection the work must be performed by someone who satisfies the legal definition of 'volunteer'. Was the community work done on a voluntary basis?

- ☐ **Yes – go to Question 2**
- ☐ **No – go to Section E**

#### Question 2 Is your organisation a 'community organisation'?

For the volunteer to be entitled to the protection, your organisation must meet the definition of 'community organisation' in the SA Volunteers Act.

Your organisation will meet the definition if it directs or co-ordinates the doing of community work by volunteers (see question 3) and it fits into one of the categories listed in the checklist for Question 2 below.



### Caution

The volunteer protection provisions of the SA Volunteers Act are unlikely to apply to unincorporated community groups. This means there is a strong chance that volunteers who are involved in an unincorporated community group will be liable for their own actions.



For more information on the difference between unincorporated and incorporated community groups see our fact sheet '[What is incorporation and does our group need to incorporate?](#)'

#### Question 2: check list

Does your organisation fit into one of the following categories?

- ☐ a body corporate (such as a company limited by guarantee or incorporated association)
- ☐ the Crown (a government body)

**If ANY apply go to Question 3**

**If NONE apply go to Section E**



### Question 3

**Is the work being done by the volunteer 'community work'?**

The protection under the SA Volunteers Act applies to a volunteer when they are doing 'community work' – the focus is on the purpose of the volunteer's activity, not the overall purpose of the organisation. Whether a volunteer is performing 'community work' will depend on what work the volunteer is actually doing, rather than the objects of the organisation they are doing the work for.

Community work is broadly defined as work for any of the purposes in the below checklist.

The Volunteers Regulations can also specify that certain types of work is not community work.



### Caution

Some of the fields of community work set out below have a technical legal meaning (for example, charitable purposes). You may need to seek legal advice about whether the work falls into one of these categories. For further information on what types of activities may be considered to be charitable, see our webpage on [registering as a charity](#).

### Question 3: check list

Community work is done for one or more of the following purposes:

- ☐ religious, educational, charitable or benevolent
- ☐ promoting or encouraging literature, science or the arts
- ☐ looking after, or providing medical treatment or attention for, people who need care because of a physical or mental disability or condition
- ☐ sport, recreation, or amusement
- ☐ conserving resources or protecting the natural environment from harm
- ☐ preserving historical or cultural heritage
- ☐ political
- ☐ protecting or promoting the common interests of the community generally or a particular section of the community

**If ANY apply go to Question 4**

**If NONE apply go to Section E**

**Question 4**

**Was the volunteer carrying out community work for the community organisation?**

A volunteer is protected while they carry out community work for the community organisation. The wording is quite broad and could, in theory, encompass tasks that the volunteer was not asked to do but decided to do of their own accord. However, the volunteer will not be protected if they acted without authority or contrary to instructions (see Section C below).

For example, if your organisation trains a person to use a machine and directs that person to use it, they will be performing work organised by your organisation. A person who starts working without approval or direction from your organisation would not be performing work organised by your organisation.

**Question 4: check list**

Was the work performed by the volunteer in the course of carrying out community work for the community organisation?

- ☐ Yes - go to Question 5
- ☐ No - go to Section E

## Section B – Has civil liability been incurred?

**Question 5**

**Was the liability incurred a civil liability?**

The protection is only afforded for civil liabilities. A volunteer will not be protected from liability for criminal actions (offences by a person against the state) while volunteering. This includes traffic infringements as well as more serious crimes.

For example, if a volunteer physically assaults someone while they are volunteering, this may result in criminal charges and possible criminal compensation. The SA Volunteers Act won't protect the volunteer from criminal liability in this situation.

**Question 5: check list**

Was the liability incurred by the volunteer for an act or omission that constitutes a civil liability (for example, negligence causing physical injury) and not an act or omission that would (on the balance of probabilities) constitute a criminal offence (for example, stealing or assault)?

- ☐ Yes – go to Question 6
- ☐ No – go to Section E

**Question 6**

**Is the civil liability included in the protection provisions?**

Certain types of civil liability are excluded from the protection provisions. A volunteer will not be protected in certain civil proceedings if:

- the act or omission falls within a scheme of compulsory third-party motor vehicle insurance (where the volunteer was involved in a motor accident and the injured person follows the normal procedure for making a claim), or
- the act or omission is defamation

**Question 6: check list**

Was the liability incurred by the volunteer one of the following types?

- ☐ Liability for defamation
- ☐ Liability for personal injury due to a motor vehicle accident where that liability should have been covered by third-party insurance

**If ANY apply go to Section E**

**If NONE apply go Section C**



## Section C – When does the protection not apply to volunteers?

A volunteer is not automatically protected by meeting the threshold requirements of the legislation outlined in Section A and B. There are specific situations where the protection will not apply. These situations are listed below.

### Question 7

**Is the volunteer performing community work as a part of a court order or fine repayment scheme?**

A person who carries out community work under the order of a court or as a condition of a bond is not regarded as working on a voluntary basis, and is therefore not considered a volunteer.

Although work under a fine repayment scheme is not specifically excluded by the Act, it's unlikely that such work would be considered 'voluntary' as the participant will receive a benefit in the form of their debt being cancelled or reduced.

### Question 7: check list

Is the volunteer performing the community work doing so under a court order or fine repayment scheme?

- ☐ **Yes – go to Section E**
- ☐ **No – go to Question 8**



### Caution

Organisations working with individuals under court orders or fine repayment schemes will need to carefully manage their own risks. Speak to the relevant government department and advise the individuals to consider whether there is insurance covering their participation.

### Question 8

**Were the volunteer's actions (or failure to act) done in 'good faith' and 'without recklessness'?**

The volunteer's actions (or failure to act) must have been done in 'good faith' and 'without recklessness'. Generally, to act in good faith is to act honestly and without fraud. Where a volunteer endeavours to act in the best interests of the community organisation and is not involved in any dishonest or fraudulent behaviour, it's likely the volunteer is acting in good faith.

The term 'recklessness' has an imprecise definition in the law but generally means that a person knew or should have known that their action was likely to cause harm. Your organisation may need to seek legal advice about this if relevant.



### Example – ‘in good faith’

A volunteer attends a community sports day to help with minor first aid. A child falls and fractures their arm, and as a result of the volunteer’s care, their injury is worsened. The volunteer will be acting in good faith if they were trying to help the injured person and believed that was the correct first aid action. However, they will not be acting in good faith if they gave this assistance to impress their friend when they knew they had no knowledge of what first aid action to take.

### Example – ‘without recklessness’

A person volunteers their time by running sports sessions for children. An accident occurs due to faulty sports equipment. The volunteer will have acted recklessly if they were aware that there was a problem with their equipment. The volunteer will not be reckless if their equipment had been checked recently and they had no knowledge of the problem.

#### Question 8: check list

At the time of the act or omission was the volunteer acting in good faith and without recklessness?

- ☐ **Yes they were acting in good faith and without recklessness – go to Question 9**
- ☐ **No they were not acting in good faith, or they were acting recklessly – go to Section E**

#### Question 9

**Does an exception apply?**

Certain acts of the volunteer will exclude their ability to claim protection. Even if a person is a volunteer and they have been doing community work organised by a community organisation, there are exceptions set out under the Act.

In general, a volunteer will not be protected where:

- the volunteer knew, or ought to have reasonably known, that at the relevant times they were acting:
  - outside the scope of the activities authorised by the community organisation
  - contrary to any instructions given by the community organisation, or
- the volunteer’s ability to do the community work properly was significantly impaired by a recreational drug

There are specific legal definitions and interpretations of many of the terms used in these exceptions (for example, ‘ought reasonably to have known’, ‘drugs’ and ‘significantly impaired’). If potentially relevant, your organisation may need to seek legal advice about these issues..



### Example

A person volunteers at a community sports day and is instructed to assist with refreshments only. The volunteer starts to help with marshalling participants without instruction to do so. An injury occurs as a result of the volunteer’s marshalling activities. As the volunteer was acting contrary to instructions, it’s likely that an exception applies and that the volunteer will not be protected from liability.

**Question 9: check list**

Did any of the following apply to the volunteer at the time of the act or omission?

- ☐ volunteer's ability to exercise reasonable care and skill was significantly impaired by a recreational drug
- ☐ acting outside the scope of activities authorised by the community organisation
- ☐ acting contrary to instructions given by the community organisation

**If ANY apply go to Section E**

**If NONE apply go to Section D**

## Section D – Your volunteers are likely protected; what does this mean?

If you have answered all the questions in sections A, B and C, and the answer does not result in 'go to section E', the protection under the SA Volunteers Act is likely to apply to volunteers engaged by your organisation. If you are in doubt, seek legal advice. The volunteer will need their own, independent legal advice if legal action is started against them.

If your volunteers are protected (that is, all the tests set out above have been met), they don't incur personal civil liability as a result of performing community work organised by your community organisation.

This means a volunteer, who caused personal injury, property damage or financial loss to a person as a result of the volunteer's own action or failure to act, will not be personally liable to pay any compensation to that person.

Instead, the liability of a protected volunteer will attach to the organisation the volunteer was performing the community work for, and the injured party would be able to sue the community organisation (rather than the volunteer) for any injury, damage or loss caused by the volunteer.

## Section E – Your volunteers may not be protected; what does this mean?

If your volunteers are not protected by the provisions of the SA Volunteers Act, your volunteers remain personally liable for their actions. They may be either sued individually or joined to an action against your community organisation, for their acts and omissions while performing community work.



### **Note – volunteers are critical to the work of community organisations**

Volunteers are a critical element to the work that many not-for-profit community organisations do. The circumstances when a volunteer is found to be personally liable are extremely rare, and in most instances, volunteers are found to be doing the right thing.

The potential for liability should not be a reason not to engage volunteers, and it's most important that organisations are aware of the risks and put measures in place to prevent incidents from occurring.

# Australian Capital Territory – checklist

## Are your volunteers protected against personal liability under the Wrongs Act?

This checklist provides a simple guide to assist an ACT community organisation to:

- work out if its volunteers are protected under the provisions of the Civil Law (Wrongs) Act 2002 (ACT) (ACT Wrongs Act), and
- understand when it could be held liable (legally responsible) for the actions of its volunteers



Read this checklist together with the information in this part of the guide about safety, negligence, risk management and your volunteers, including the circumstances in which your organisation could be legally responsible for the actions of your volunteers.



### How to use this checklist

To be protected under the ACT Wrongs Act, a volunteer must meet threshold requirements.

These requirements, and questions to help your organisation assess whether a volunteer may be covered, are set out below.

Start by answering the questions in Sections A, B and C. You will then be directed to:

- Section D 'Your volunteers are likely protected; what does this mean?', or
- Section E 'Your volunteers may not be protected; what does this mean?'

Seek legal advice before acting on the information in this annexure.

## Section A – Do your volunteers meet the requirements for protection?

### Question 1

**Has the community work been done by a 'volunteer'?**

The ACT Wrongs Act defines a 'volunteer' as a person who carries out community work on a voluntary basis.

A person is considered to work on a 'voluntary basis' if they:

- receive no remuneration for the work, or
- are remunerated for the work but within limits fixed by regulation. The volunteer may receive reimbursement of their reasonable expenses and the work will still be considered as being on a voluntary basis



### Example

Fred is employed as a gardener. Fred volunteers his services to Community House Inc (an incorporated association) for one day a month. Fred drives to Community House and occasionally buys plants for its garden. Community House pays Fred for petrol and the cost of the plants. Fred is regarded as a volunteer for the purposes of the ACT Wrongs Act while performing services for Community House Inc because the only remuneration he receives is reimbursement for out-of-pocket expenses.

#### Question 1: check list

To be entitled to protection the work must be performed by someone who satisfies the legal definition of 'volunteer'. Was the community work done on a voluntary basis?

- ☐ Yes – go to Question 2
- ☐ No – go to Section E

#### Question 2 Is your organisation a 'community organisation'?

For the volunteer to be entitled to the protection, your organisation must meet the definition of 'community organisation' in the ACT Wrongs Act.

Your organisation will meet the definition if it is a corporation that directs or coordinates the carrying out of community work by volunteers (see question 3).

The definition in the ACT Wrongs Act allows for-profit entities as well as not-for-profit entities to fall into the definition of 'community organisations'. The meaning of 'community work' is discussed in question 3 below, but note that 'community work' does not have to be the organisation's sole activity.



### Caution

The volunteer protection provisions of the ACT Wrongs Act **may** apply to unincorporated community groups. We recommend seeking legal advice.



For more information on the difference between unincorporated and incorporated community groups see our fact sheet '[What is incorporation and does our group need to incorporate?](#)'

#### Question 2: check list

Does your organisation fit into the following category?

- ☐ a corporation that directs or coordinates the carrying out of community work by volunteers

**If ANY apply go to Question 3**

**If NONE apply go to Section E**

**Question 3**

**Is the work being done by the volunteer 'community work'?**

The protection under the ACT Wrongs Act applies to a volunteer when they are doing 'community work' – the focus is on the purpose of the volunteer's activity, not the overall purpose of the organisation. Whether a volunteer is performing 'community work' will depend on what work the volunteer is actually doing, rather than the objects of the organisation they are doing the work for.

Community work is broadly defined as work for any of the purposes in the below checklist.

Certain types of work may be declared by regulation to constitute, or not to constitute, 'community work'.

The ACT Wrongs Act also specifically excludes from the definition of community work any work that involves acts or threats of violence or creates a serious risk to the health or safety of the public or a section of the public.

**Caution**

Some of the fields of community work set out below have a technical legal meaning (for example, charitable purposes). You may need to seek legal advice about whether the work falls into one of these categories. For further information on what types of activities may be considered to be charitable, see our webpage on [registering as a charity](#).

**Question 3: check list**

Community work is done for one or more of the following purposes:

- ☐ religious, educational, charitable or benevolent
- ☐ promoting or encouraging literature, science or the arts
- ☐ looking after, or giving attention to, people who need care because of a physical or mental disability or condition
- ☐ sport, recreation, or amusement
- ☐ conserving resources or protecting the natural environment from harm
- ☐ preserving historical or cultural heritage
- ☐ political
- ☐ protecting or promoting the common interests of the community generally or a particular section of the community

**If ANY apply go to Question 4**

**If NONE apply go to Section E**

**Question 4**

**Was the volunteer carrying out community work for the community organisation?**

A volunteer is protected if their action (or failure to act) took place while they were carrying out community work for the community organisation. The definition of 'community organisation' as an organisation that directs or coordinates community work by volunteers indicates a degree of direction, coordination and organisation on the part of the community organisation, but the wording 'carried out for' is broad and could, in theory, encompass tasks that the volunteer was not asked to do but decided to do of their own accord.

However, the volunteer will not be protected if they acted without authority or contrary to instructions (see Section C below).

**Question 4: check list**

Was the work performed by the volunteer carried out for the community organisation?

- ☐ Yes - go to Question 5
- ☐ No - go to Section E

## Section B – Has civil liability been incurred?

**Question 5**

**Was the liability incurred a civil liability?**

The protection is only afforded for civil liabilities. A volunteer will not be protected from liability for criminal actions (offences by a person against the state) while volunteering. This includes traffic infringements as well as more serious crimes.

For example, if a volunteer physically assaults someone while they are volunteering, this may result in criminal charges and possible criminal compensation. The ACT Wrongs Act won't protect the volunteer from criminal liability in this situation.

**Question 5: check list**

Was the liability incurred by the volunteer for an act or omission that constitutes a civil liability (for example, negligence causing physical injury) and not an act or omission that would (on the balance of probabilities) constitute a criminal offence (for example, stealing or assault)?

- ☐ Yes – go to Question 6
- ☐ No – go to Section E

**Question 6**

**Is the civil liability included in the protection provisions?**

Certain types of civil liability are excluded from the protection provisions. A volunteer will not be protected in certain civil proceedings if:

- if the volunteer is sued for defamation, or
- if the volunteer has a car accident while volunteering. In this case, any liability for compensation for personal injury to third parties which falls within the ambit of a compulsory third-party motor vehicle insurance scheme is excluded (as this is covered by the compulsory third party insurance that is included in the registration costs of a vehicle)

**Question 6: check list**

Was the liability incurred by the volunteer one of the following types?

- ☐ Liability for defamation
- ☐ Liability for personal injury due to a motor vehicle accident where that liability should have been covered by third-party insurance

**If ANY apply go to Section E**

**If NONE apply go Section C**



## Section C – When does the protection not apply to volunteers?

A volunteer is not automatically protected by meeting the threshold requirements of the legislation outlined in Section A and B. There are specific situations where the protection will not apply. These situations are listed below.

### Question 7

**Is the volunteer performing community work as a part of a court order or fine repayment scheme?**

Although the ACT Wrongs Act does not specifically exclude a person who carries out community work under a court order, it is unlikely that such a person would be considered to be working on a 'voluntary basis' as there are penalties for failure to comply with a court order.

The *Crimes (Sentence Administration) Act 2005 (ACT)* (see sections 315 to 317) includes provisions that may protect a community organisation against civil liability for conduct engaged in by the offender in doing the community service work. Your organisation should seek further legal advice if you are in this situation. It is also unlikely work under an infringement notice work and development scheme would be considered as being undertaken 'voluntarily' as the participant will receive a benefit in the form of their fine debt being repaid or waived.

### Question 7: check list

Is the volunteer performing the community work doing so under a court order or fine repayment scheme?

- ☐ Yes – go to Section E
- ☐ No – go to Question 8



### Caution

Organisations working with individuals under court orders or fine repayment schemes will need to carefully manage their own risks. Speak to the relevant government department and advise the individuals to consider whether there is insurance covering their participation.

### Question 8

**Were the volunteer's actions (or failure to act) done 'honestly and without recklessness'?**

The volunteer's actions (or omissions) must have been done 'honestly and without recklessness'.

A person is reckless about causing harm if there is a substantial risk that harm will occur and they ignore the risk. If relevant, your organisation may need to seek legal advice about these issues.



### Example – ‘honestly’

A volunteer attends a community sports day to help with minor first aid. A child falls and fractures their arm, and as a result of the volunteer’s care, their injury is worsened. The volunteer will be acting honestly if they were trying to help the injured person and believed that was the correct first aid action. However, they will not be acting honestly if they gave this assistance to impress their friend when they knew they had no knowledge of what first aid action to take.

### Example – ‘without recklessness’

A person volunteers their time by running sports sessions for children. An accident occurs due to faulty sports equipment. The volunteer will have acted recklessly if they were aware that there was a problem with their equipment. The volunteer will not be reckless if their equipment had been checked recently and they had no knowledge of the problem.

#### Question 8: check list

At the time of the act or omission was the volunteer acting honestly and without recklessness?

- ☐ **Yes they were acting honestly and without recklessness - go to Question 9**
- ☐ **No they were not acting honestly, or they were acting recklessly- go to Section E**

#### Question 9 Does an exception apply?

Even if a volunteer acted honestly and without recklessness while carrying out community work for a community organisation, they may not be protected under the ACT Wrongs Act if an exception applies. In general, your organisation will not be liable (and a volunteer may be personally liable) if:

- the volunteer’s capacity to carry out the work properly was, at the relevant time, significantly impaired by a recreational drug
- the volunteer knew, or ought to have known, that they were acting:
  - outside the scope of the activities authorised by the community organisation, or
  - contrary to instructions given by the community organisation

There are specific legal definitions and interpretations of many of the terms used in these exceptions (for example, ‘ought reasonably to have known’, ‘drugs’ and ‘significantly impaired’). If potentially relevant, your organisation may need to seek legal advice about these issues.



### Example

A person volunteers at a community sports day and is instructed to assist with refreshments only. The volunteer starts to help with marshalling participants without instruction to do so. An injury occurs as a result of the volunteer’s marshalling activities. As the volunteer was acting contrary to instructions, it’s likely that an exception applies and that the volunteer will not be protected from liability.

**Question 9: check list**

Did any of the following apply to the volunteer at the time of the act or omission?

- ☐ volunteer's capacity to carry out the work properly was significantly impaired by a recreational drug
- ☐ acting outside the scope of activities authorised by the community organisation
- ☐ acting contrary to instructions given by the community organisation

**If ANY apply go to Section E**

**If NONE apply go to Section D**

## Section D – Your volunteers are likely protected; what does this mean?

If you have answered all the questions in sections A, B and C, and the answer does not result in 'go to section E', the protection under the ACT Wrongs Act is likely to apply to volunteers engaged by your organisation. If you are in doubt, seek legal advice. The volunteer will need their own, independent legal advice if legal action is started against them.

If your volunteers are protected (that is, all the tests set out above have been met), they don't incur personal civil liability as a result of performing community work organised by your community organisation.

This means a volunteer, who caused personal injury, property damage or financial loss to a person as a result of the volunteer's own action or failure to act, will not be personally liable to pay any compensation to that person.

Instead, the liability of a protected volunteer will be transferred to the organisation the volunteer was performing the community work for, and the injured party would be able to sue the community organisation (rather than the volunteer) for any injury, damage or loss caused by the volunteer.

## Section E – Your volunteers may not be protected; what does this mean?

If your volunteers are not protected by the provisions of the ACT Wrongs Act, your volunteers remain personally liable for their actions. They may be either sued individually or joined to an action against your community organisation, for their acts and omissions while performing community work.



### **Note – volunteers are critical to the work of community organisations**

Volunteers are a critical element to the work that many not-for-profit community organisations do. The circumstances when a volunteer is found to be personally liable are extremely rare, and in most instances, volunteers are found to be doing the right thing.

The potential for liability should not be a reason not to engage volunteers, and it's most important that organisations are aware of the risks and put measures in place to prevent incidents from occurring.

# Tasmania – checklist

## Are your volunteers protected against personal liability under the Civil Liability Act?

This checklist provides a simple guide to help a Tasmanian community organisation to:

- work out if its volunteers are protected under the provisions of the Civil Liability Act 2002 (Tas) (**Tas Civil Liability Act**), and
- understand when it could be held liable (legally responsible) for the actions of its volunteers



Read this checklist together with the information in this part of the guide about safety, negligence, risk management and your volunteers, including the circumstances in which your organisation could be legally responsible for the actions of your volunteers.



### How to use this checklist

To be protected under the Tas Civil Liability Act, a volunteer must meet threshold requirements.

These requirements, and questions to help your organisation assess whether a volunteer may be covered, are set out below.

Start by answering the questions in Sections A, B and C. You will then be directed to:

- Section D 'Your volunteers are likely protected; what does this mean?', or
- Section E 'Your volunteers may not be protected; what does this mean?'

## Section A – Do your volunteers meet the requirements for protection?

### Question 1

**Has the community work been done by a 'volunteer'?**

The Tas Civil Liability Act defines a 'volunteer' as a person who does community work on a voluntary basis.

The Tas Civil Liability Act says that a person is considered to work on a voluntary basis if they receive:

- no remuneration for the work other than:
  - remuneration that would have been received whether or not they did that work (for example, a person who is in paid employment with another organisation, but is released from that employment to undertake voluntary work) or
  - reimbursement for reasonable out-of-pocket expenses, or
- remuneration for the work that is not greater than the amount prescribed by regulations of the Tas Civil Liability Act.



### Example

Fred is employed by B Pty Ltd as a gardener. B Pty Ltd encourages its staff to volunteer their services to Community House Inc (a Tasmanian incorporated association), which is adjacent to their business premises. B Pty Ltd allows their staff to volunteer for one day a month at Community House Inc on full pay. Fred, as part of the scheme, tends the Community House's garden one day each month while being paid by his employer. Fred is still regarded as a volunteer for the purposes of the Civil Liability Act while performing services for Community House Inc. Although he is paid as an employee, this is not linked to his volunteering at Community House Inc. He would be paid whether he volunteered or not.

#### Question 1: check list

To be entitled to protection the work must be performed by someone who satisfies the legal definition of 'volunteer'. Was the community work done on a voluntary basis?

- ☐ **Yes – go to Question 2**
- ☐ **No – go to Section E**

#### Question 2 Is your organisation a 'community organisation'?

For the volunteer to be entitled to the protection, your organisation must meet the definition of 'community organisation' in the Tas Civil Liability Act.

Your organisation will meet the definition if it organises the doing of community work by volunteers (see question 3) and you fit into one of the categories listed in the checklist for Question 2 below.



### Caution

The volunteer protection provisions of the Tas Civil Liability Act are unlikely to apply to unincorporated community groups. This means there is a strong chance that volunteers who are involved in an unincorporated community group will be liable for their own actions.



For more information on the difference between unincorporated and incorporated community groups see our fact sheet ['What is incorporation and does our group need to incorporate?'](#)



### Question 2: check list

Does your organisation fit into one of the following categories?

- ☐ a State Service Agency or statutory authority
- ☐ an incorporated association under the *Associations Incorporation Act 1964* (Tas)
- ☐ a council
- ☐ a body corporate (such as a company limited by guarantee)

**If ANY apply go to Question 3**

**If NONE apply go to Section E**

### Question 3

**Is the work being done by the volunteer 'community work'?**

The protection under the Tas Civil Liability Act applies to a volunteer when they are doing 'community work' – the focus is on the purpose of the volunteer's activity, not the overall purpose of the organisation. Whether a volunteer is performing 'community work' will depend on what work the volunteer is actually doing, rather than the objects of the organisation they are doing the work for.

Community work is broadly defined as work organised by a community organisation for any of the purposes listed in the below checklist.

Regulations to the Tas Civil Liability Act can also specify that certain types of work do or don't constitute community work.



### Caution

Some of the fields of community work set out below have a technical legal meaning (for example, charitable purposes). You may need to seek legal advice about whether the work falls into one of these categories. For further information on what types of activities may be considered to be charitable, see to our webpage on [registering as a charity](#).

### Question 3: check list

Community work is done for one or more of the following purposes:

- ☐ religious, educational, charitable or benevolent
- ☐ promoting or encouraging literature, science or the arts
- ☐ sport, recreation or amusement
- ☐ caring for, treating or otherwise assisting people who need assistance because of a physical or mental disability or condition
- ☐ conserving or protecting the environment
- ☐ promoting or preserving historical or cultural heritage
- ☐ establishing, carrying on or improving a community, social or cultural centre
- ☐ promoting the interests of a local community
- ☐ political

**If ANY apply go to Question 4**

**If NONE apply go to Section E**

**Question 4**

**Has the community work been 'organised' by a community organisation?**

A volunteer is protected if they carried out community work that is 'organised' by the community organisation. The definition of 'organised' in the Tas Civil Liability Act includes work that is 'directed' or 'supervised' by a community organisation, but this is non-exhaustive and may extend to situations where there are no specific directions or supervision given, for example, where volunteers are given a general discretion to organise a fundraising event.

However, the protection does not extend to spontaneous acts of volunteers or activities the organisation has not authorised (see Section C below).

For example, if your organisation trains a person to use a machine and directs that person to use it, they will be performing work organised by your organisation. A person who starts working without approval or direction from your organisation would not be performing work organised by your organisation.

**Question 4: check list**

Was the work performed by the volunteer organised, directed or supervised by the community organisation?

- ☐ **Yes - go to Question 5**
- ☐ **No - go to Section E**

## Section B – Has civil liability been incurred?

**Question 5**

**Was the liability incurred a civil offence?**

The protection is only afforded for civil liabilities. A volunteer will not be protected from liability for criminal actions (offences by a person against the state) while volunteering. This includes traffic infringements as well as more serious crimes. For example, if a volunteer physically assaults someone while they are volunteering, this may result in criminal charges and possible criminal compensation. The Civil Liability Act won't protect the volunteer from criminal liability in this situation.

**Question 5: check list**

Was the liability incurred by the volunteer for an act or omission that constitutes a civil liability (for example, negligence causing physical injury) and not an act or omission that would (on the balance of probabilities) constitute a criminal offence (for example, stealing or assault)?

- ☐ **Yes – go to Question 6**
- ☐ **No – go to Section E**

**Question 6**

**Is the civil liability included in the protection provisions?**

Certain types of civil liability are excluded from the protection provisions. A volunteer will not be protected in certain civil proceedings if:

- if the volunteer is sued for defamation, or
- if the volunteer has a car accident while volunteering which results in the death or personal injury of another person. In this case, any liability for compensation for personal injury (including death) to third parties under the *Motor Accidents (Liabilities and Compensation) Act 1973 (Tas)* is excluded (as this is covered by the compulsory third party insurance that is included in the registration costs of a vehicle)



### Question 6: check list

Was the liability incurred by the volunteer one of the following types?

- ☐ Liability for defamation
- ☐ Liability for personal injury (including death) due to a motor vehicle accident where that liability should have been covered by third-party insurance

**If ANY apply go to Section E**

**If NONE apply go Section C**

## Section C – When does the protection not apply to volunteers?

A volunteer is not automatically protected by meeting the threshold requirements of the legislation outlined in Section A and B. There are specific situations where the protection will not apply. These situations are listed below.

### Question 7

**Is the volunteer performing community work as a part of a court order or fine repayment scheme?**

A person doing work under an order imposed by a court is not a volunteer under the Tas Civil Liability Act definition.

Although work under a fine repayment scheme is not specifically excluded by the Act, it is unlikely that such work would be considered 'voluntary' as the participant will receive benefit in the form of their debt being cancelled or reduced.

### Question 7: check list

Is the volunteer performing the community work doing so under a court order or fine repayment scheme?

- ☐ **Yes – go to Section E**
- ☐ **No – go to Question 8**



### Caution

Organisations working with individuals under court orders or fine repayment schemes will need to carefully manage their own risks. Speak to the relevant government department and advise the individuals to consider whether there is insurance covering their participation.

### Question 8

**Were the volunteer's actions (or failure to act) done in 'good faith'?**

The volunteer's actions (or omissions) must have been done in 'good faith'. To act in good faith has been defined as acting honestly and without fraud. Where a volunteer endeavours to act in the best interests of the community organisation and is not involved in any dishonest or fraudulent behaviour, the volunteer is taken to be acting in good faith.



### Example – ‘in good faith’

A volunteer attends a community sports day to help with minor first aid. A child falls and fractures their arm, and as a result of the volunteer's care, their injury is worsened. The volunteer will be acting in good faith if they were trying to help the injured person and believed that was the correct first aid action. However, they will not be acting in good faith if they gave this assistance to impress their friend when they knew they had no knowledge of what first aid action to take.

#### Question 8: check list

At the time of the act or omission was the volunteer acting in good faith?

- ☐ **Yes they were acting in good faith – go to Question 9**
- ☐ **No they were not acting in good faith – go to Section E**

#### Question 9

**Does an exception apply?**

Even if a person is a volunteer and they have been doing community work organised by a community organisation, there are exceptions set out under the Tas Civil Liability Act. In general, a volunteer will not be protected where:

- the volunteer knew, or ought reasonably to have known, that at the relevant times they were acting:
  - outside the scope of the community work organised by the community organisation, or
  - contrary to any instructions given by the community organisation, or
- the volunteer's ability to do the community work in a proper manner was, at the relevant times, significantly impaired by alcohol or drugs.

There are specific legal definitions and interpretations of many of the terms used in these exceptions (for example, 'ought reasonably to have known', 'drugs', 'alcohol' and 'significantly impaired'). If potentially relevant, your organisation may need to seek legal advice about these issues.



### Example

A person volunteers at a community sports day and is instructed to assist with refreshments only. The volunteer starts to help with marshalling participants without instruction to do so. An injury occurs as a result of the volunteer's marshalling activities. As the volunteer was acting contrary to instructions, it's likely that an exception applies and that the volunteer will not be protected from liability.

**Question 9: check list**

Did any of the following apply to the volunteer at the time of the act or omission?

- ☐ volunteer's ability to exercise reasonable care and skill was significantly impaired as a result of voluntarily consuming alcohol or a drug
- ☐ acting outside the scope of community work organised by the community organisation
- ☐ acting contrary to instructions given by the community organisation

**If ANY apply go to Section E**

**If NONE apply go to Section D**

## Section D – Your volunteers are likely protected; what does this mean?

If you have answered all the questions in sections A, B and C, and the answer does not result in 'go to section E', the protection under the Tas Civil Liability Act is likely to apply to volunteers engaged by your organisation. If you are in doubt, seek legal advice. The volunteer will need their own, independent legal advice if legal action is started against them.

If your volunteers are protected (that is, all the tests set out above have been met), they don't incur personal civil liability as a result of performing community work organised by your community organisation.

This means a volunteer, who caused personal injury, property damage or financial loss to a person as a result of the volunteer's own action or failure to act, will not be personally liable to pay any compensation to that person.

Instead, the liability of a protected volunteer will be transferred to the organisation the volunteer was performing the community work for, and the injured party would be able to sue the community organisation (rather than the volunteer) for any injury, damage or loss caused by the volunteer.

## Section E – Your volunteers may not be protected; what does this mean?

If your volunteers are not protected by the provisions of the Tas Civil Liability Act, your volunteers remain personally liable for their actions. They may be either sued individually or joined to an action against your community organisation, for their acts and omissions while performing community work.



### **Note – volunteers are critical to the work of community organisations**

Volunteers are a critical element to the work that many not-for-profit community organisations do. The circumstances when a volunteer is found to be personally liable are extremely rare, and in most instances, volunteers are found to be doing the right thing.

The potential for liability should not be a reason not to engage volunteers, and it's most important that organisations are aware of the risks and put measures in place to prevent incidents from occurring.

# Northern Territory – checklist

## Are your volunteers protected against personal liability under the Personal Injuries Act?

This checklist provides a simple guide to help a Northern Territory community organisation:

- work out if its volunteers are protected under the provisions of the Personal Injuries (Liabilities and Damages) Act 2003 (NT) (**NT Personal Injuries Act**), and
- understand when it could be held liable (legally responsible) for the actions of its volunteers



Read this checklist together with the information in this part of the guide about safety, negligence, risk management and your volunteers, including the circumstances in which your organisation could be legally responsible for the actions of your volunteers.



### How to use this checklist

To be protected under the NT Personal Injuries Act, a volunteer must meet threshold requirements.

These requirements, and questions to help your organisation assess whether a volunteer may be covered, are set out below.

Start by answering the questions in Sections A, B and C. You will then be directed to:

- Section D 'Your volunteers are likely protected; what does this mean?', or
- Section E 'Your volunteers may not be protected; what does this mean?'

## Section A – Do your volunteers meet the requirements for protection?

### Question 1

**Has the community work been done by a 'volunteer'?**

The NT Personal Injuries Act defines a 'volunteer' as a person doing community work for a community organisation (these terms are discussed below) who receives no remuneration for the work other than:

- remuneration that would have been received whether or not they did that work (for example, a person who is in paid employment with another organisation, but is released from that employment to undertake voluntary work)
- reimbursement for reasonable out-of-pocket expenses, or
- remuneration for the work not greater than the amount prescribed by the regulations of the NT Personal Injuries Act



### Example

Fred is employed by B Pty Ltd as a gardener. B Pty Ltd encourages its staff to volunteer their services to Community House Inc (a Territory registered body corporate), which is adjacent to their business premises. B Pty Ltd allows their staff to volunteer for one day a month at Community House Inc on full pay. Fred, as part of the scheme, tends the Community House's garden one day each month while being paid by his employer. Fred is still regarded as a volunteer for the purposes of the NT Personal Injuries Act while performing services for Community House Inc. Although he is paid as an employee, this is not linked to his volunteering at Community House Inc. He would be paid whether he

#### Question 1: check list

To be entitled to protection the work must be performed by someone who satisfies the legal definition of 'volunteer'. Was the community work done on a voluntary basis?

- ☐ **Yes – go to Question 2**
- ☐ **No – go to Section E**

#### Question 2

**Is your organisation a 'community organisation'?**

For the volunteer to be entitled to the protection, your organisation must meet the definition of 'community organisation' in the NT Personal Injuries Act.

Your organisation will meet the definition if it organises, directs or supervises 'community work' (see Question 3) done by volunteers and fits into one of the categories listed in the checklist for Question 2 below.



### Caution

The volunteer protection provisions of the NT Personal Injuries Act are unlikely to apply to an unincorporated community group unless it's a religious body. This means there is a strong chance volunteers who are involved in an unincorporated community group will be liable for their own actions.



For more information on the difference between unincorporated and incorporated community groups see our fact sheet '[What is incorporation and does our group need to incorporate?](#)'



### Question 2: check list

Does your organisation fit into one of the following categories?

- ☐ a religious body
- ☐ a body corporate (for example, a company limited by guarantee or an incorporated association)
- ☐ an Agency or department of the Territory

**If ANY apply go to Question 3**

**If NONE apply go to Section E**

### Question 3

**Is the work being done by the volunteer 'community work'?**

The protection under the NT Personal Injuries Act applies to a volunteer when they are doing 'community work' – the focus is on the purpose of the volunteer's activity, not the overall purpose of the organisation. Whether a volunteer is performing 'community work' will depend on what work the volunteer is actually doing, rather than the objects of the organisation they are doing the work for.

Community work is broadly defined as work organised by a community organisation for any of the purposes listed in the below checklist.

The regulations to the NT Personal Injuries Act can also specify that certain types of work constitute community work.



### Caution

Some of the fields of community work set out below have a technical legal meaning (for example, charitable purposes). You may need to seek legal advice about whether the work falls into one of these categories. For further information on what types of activities may be considered to be charitable, see our webpage on [registering as a charity](#).

### Question 3: check list

Community work is done for one or more of the following purposes:

- ☐ religious, educational, charitable or benevolent
- ☐ promoting or encouraging literature, science or the arts
- ☐ sport, recreation or amusement
- ☐ conserving or protecting the environment
- ☐ establishing, carrying on or improving a community, social or cultural centre
- ☐ promoting the interests of a local community
- ☐ political

**If ANY apply go to Question 4**

**If NONE apply go to Section E**

**Question 4**

**Was the volunteer doing community work for the community organisation?**

A volunteer is protected if their action (or failure to act) took place while they were doing community work for the community organisation. This wording is quite broad and could, in theory, encompass tasks that the volunteer was not asked to do but decided to do of their own accord.

However, the volunteer will not be protected if they acted without authority or contrary to instructions (see Section C below).

For example, if your organisation trains a person to use a machine and directs that person to use it, they will be performing work organised by your organisation. A person who starts working without approval or direction from your organisation would not be performing work organised by your organisation.

**Question 4: check list**

The work done must have been community work for a community organisation. Was the work performed by the volunteer for the community organisation?

- ☐ **Yes - go to Question 5**
- ☐ **No - go to Section E**

## Section B – Has civil liability been incurred?

**Question 5**

**Was the liability incurred a civil liability?**

The protection is only afforded for civil liabilities. A volunteer will not be protected from liability for criminal actions (offences by a person against the state) while volunteering. This includes traffic infringements as well as more serious crimes.

For example, if a volunteer physically assaults someone while they are volunteering, this may result in criminal charges and possible criminal compensation. The NT Personal Injuries Act won't protect the volunteer from criminal liability in this situation.

**Question 5: check list**

Was the liability incurred by the volunteer for an act or omission that constitutes a civil liability (for example, negligence causing physical injury) and not an act or omission that would (on the balance of probabilities) constitute a criminal offence (for example, stealing or assault)?

- ☐ **Yes – go to Question 6**
- ☐ **No – go to Section E**

**Question 6**

**Is the civil liability included in the protection provisions?**

Certain types of civil liability are excluded from the protection provisions. A volunteer will not be protected under the NT Personal Injuries Act in certain civil proceedings for personal injury if the volunteer has a car accident while volunteering. In this case, any liability for compensation for personal injury to third parties under the *Motor Accidents (Compensation) Act 1979 (NT)* is excluded (as this is covered by the compulsory third party insurance that is included in the registration costs of a vehicle).

**Question 6: check list**

Was the liability incurred by the volunteer of the following type?

- ☐ Liability for personal injury due to a motor vehicle accident where that liability should have been covered by third-party insurance

**If ANY apply go to Section E**

**If NONE apply go Section C**



## Section C – When does the protection not apply to volunteers?

A volunteer is not automatically protected by meeting the threshold requirements of the legislation outlined in Section A and B. There are specific situations where the protection will not apply. These situations are listed below.

### Question 7

**Is the volunteer performing community work as a part of a court order or fine repayment scheme?**

A person doing work under a community work order made under the Sentencing Act 1995 (NT), Youth Justice Act 2005 (NT) or Fines and Penalties (Recovery) Act 2001 (NT) is not a volunteer under the NT Personal Injuries Act.

#### Question 7: check list

Is the volunteer performing the community work doing so under a court order or fine repayment scheme?

☐ **Yes – go to Section E**

☐ **No – go to Question 8**



### Caution

Organisations working with individuals under court orders or fine repayment schemes will need to carefully manage their own risks. Speak to the relevant government department and advise the individuals to consider whether there is insurance covering their participation.

### Question 8

**Were the volunteer's actions (or failure to act) done in 'good faith' and 'without recklessness'?**

Certain acts of the volunteer will exclude their ability to claim protection. The volunteer's actions (or failure to act) must have been done in 'good faith' and 'without recklessness'. Generally, to act in good faith is to act honestly and without fraud. Where a volunteer endeavours to act in the best interests of the community organisation and is not involved in any dishonest or fraudulent behaviour, the volunteer is taken to be acting in good faith.

The term 'recklessness' has an imprecise definition in the law but generally means that a person knew or should have known that their action was likely to cause harm. Your organisation may need to seek legal advice about this if relevant.



### Example – ‘in good faith’

A volunteer attends a community sports day to help with minor first aid. A child falls and fractures their arm, and as a result of the volunteer’s care, their injury is worsened. The volunteer will be acting in good faith if they were trying to help the injured person and believed that was the correct first aid action. However, they will not be acting in good faith if they gave this assistance to impress their friend when they knew they had no knowledge of what first aid action to take.

### Example – ‘without recklessness’

A person volunteers their time by running sports sessions for children. An accident occurs due to faulty sports equipment. The volunteer will have acted recklessly if they were aware that there was a problem with their equipment. The volunteer will not be reckless if their equipment had been checked recently and they had no knowledge of the problem.

#### Question 8: check list

At the time of the act or omission was the volunteer acting in good faith and without recklessness?

- ☐ **Yes they were acting in good faith and without recklessness – go to Question 9**
- ☐ **No they were not acting in good faith, or they were acting recklessly – go to Section E**

#### Question 9 Does an exception apply?

Certain acts of the volunteer will exclude their ability to claim protection. Even if a person is a volunteer and they have been doing community work organised, directed or supervised by a community organisation, there are exceptions set out under the NT Personal Injuries Act. In general, a volunteer will not be protected where:

- the volunteer knew, or ought reasonably to have known, that they were acting outside the scope of their authority, or contrary to the instructions of the community organisation, or
- the volunteer did the act (or failed to act) while intoxicated

There are specific legal definitions and interpretations of many of the terms used in these exceptions (for example, ‘ought reasonably to have known’ and ‘intoxicated’). If potentially relevant, your organisation may need to seek legal advice about these issues.



### Example

A person volunteers at a community sports day and is instructed to assist with refreshments only. The volunteer starts to help with marshalling participants without instruction to do so. An injury occurs as a result of the volunteer’s marshalling activities. As the volunteer was acting contrary to instructions, it’s likely that an exception applies and that the volunteer will not be protected from liability.

**Question 9: check list**

Did any of the following apply to the volunteer at the time of the act or omission?

- ☐ volunteer did the act while intoxicated
- ☐ acting outside the scope of authority
- ☐ acting contrary to instructions given by the community organisation

**If ANY apply go to Section E**

**If NONE apply go to Section D**

## Section D – Your volunteers are likely protected; what does this mean?

If you have answered all the questions in sections A, B and C, and the answer does not result in 'go to section E', the protection under the NT Personal Injuries Act is likely to apply to volunteers engaged by your organisation. If you are in doubt, seek legal advice. The volunteer will need their own, independent legal advice if legal action is started against them.

If your volunteers are protected (that is, all the tests set out above have been met), they don't incur personal civil liability as a result of performing community work organised by your community organisation.

This means a volunteer, who caused personal injury, property damage or financial loss to a person as a result of the volunteer's own action or failure to act, will not be personally liable to pay any compensation to that person.

Instead, the liability of a protected volunteer will be transferred to the organisation the volunteer was performing the community work for, and the injured party would be able to sue the community organisation (rather than the volunteer) for any injury, damage or loss caused by the volunteer.

## Section E – Your volunteers may not be protected; what does this mean?

If your volunteers are not protected by the provisions of the NT Personal Injuries Act, your volunteers remain personally liable for their actions. They may be either sued individually or joined to an action against your community organisation, for their acts and omissions while performing community work.

**Note – volunteers are critical to the work of community organisations**

Volunteers are a critical element to the work that many not-for-profit community organisations do. The circumstances when a volunteer is found to be personally liable are extremely rare, and in most instances, volunteers are found to be doing the right thing.

The potential for liability should not be a reason not to engage volunteers, and it's most important that organisations are aware of the risks and put measures in place to prevent incidents from occurring.

