

National Volunteering Guide

A guide for community organisations

Oct 2025



Contents

Part 1	4
Introduction	5
About this guide	5
What this guide covers	6
Volunteer, employee or independent contractor?	7
Volunteering Australia and the National Strategy for Volunteering	7
National Standards for Volunteer Involvement	8
Part 2	10
The volunteer relationship	11
Recruitment of volunteers	11
Volunteer role description	12
Sample volunteer role description	15
Volunteer screening as part of the recruitment process	16
Recruitment and discrimination law	19
When might discrimination be lawful in recruitment?	22
Inducting your volunteers	23
Checklist – volunteer induction	23
Sample volunteer induction checklist	24
Volunteer agreement	25
Deed of agreement – intellectual property and confidential information	29
Managing the performance of volunteers	31
Organisational performance management plan	31
Performance management procedures and process	33
Managing volunteer grievances	35
Volunteer grievance policy	36
Ending the volunteer relationship	37



The process of ending the volunteer relationship	39
Part 3	42
Volunteer safety	43
Negligence	44
Duty of care	45
Standard of care	45
Breach of duty	45
Damage and causation	46
Consequences of liability	47
Proportionate liability.....	47
Your organisation’s legal responsibility for actions of its volunteers.....	48
State and territory laws on negligence.....	50
Health and safety in the workplace	76
Harmonised WHS Laws	77
Victorian OHS Laws	88
Working remotely.....	97
Safety of children.....	98
Managing risk.....	101
Risk management strategy	101
Insurance.....	103
Volunteer personal accident insurance	105
Workers Compensation	106
Part 4	109
Other legal issues relevant to volunteers	110
Intellectual property.....	111
Copyright	112
Trade marks, patents and designs	114
What are moral rights?	115
Confidential information.....	116
Accusations of infringement	118
Who owns the intellectual property?.....	118
Privacy	121
Record keeping.....	131



Part 1

Introduction

Introduction

This part of the guide covers:

- ▶ the key legal areas addressed in the guide
- ▶ the National Strategy for Volunteering
- ▶ the National Standards for Volunteer Involvement



Disclaimer

This guide provides general information about involving volunteers. This information is a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Refer to [the full disclaimer](#) that applies to this guide.

Volunteers are a vital resource to most community organisations.

Most volunteers provide their services because they want to contribute to their community in a useful and meaningful way.

The relationship between an organisation or group and the volunteer should be managed in a way that is mutually respectful, safe and healthy.

Adopting 'best practice' principles around the involvement of volunteers will help volunteer involving organisations attract, manage, retain and recognise volunteers, and improve the volunteer experience.

About this guide



What does this guide do?

One way your organisation can ensure its relationship with its volunteers is meaningful, and managed in a respectful, safe and healthy way is by understanding the legal issues around the involvement of volunteers.

This guide aims to strengthen your understanding of these legal issues.

What this guide covers



Note – this guide mostly deals with formal volunteering

This guide is intended for volunteer involving organisations engaging ‘formal volunteers’.

Formal volunteers are people who give their time willingly for the common good and without financial gain to an organisation (including institutions and agencies) in a structured way.

This is distinguished from ‘**informal volunteering**’ which is also time willingly given for the common good and without financial gain, but which takes place outside the context of a formal organisation or group and excludes one’s own family members.

Sometimes community organisations attract ‘spontaneous volunteers.’

Spontaneous volunteers are people without a formal association with a volunteer involving organisation who seek out or are invited to help with various volunteering opportunities, often in connection with a community response to disasters. These informal volunteers create certain challenges for organisations. For more information on spontaneous volunteers, see [part 3 of this guide \(volunteer safety\)](#).

This guide is designed for use by volunteer involving organisations across Australia and provides an overview of the key legal obligations of volunteer involving organisations.

The guide has four parts:

Part 1.	Introduction
Part 2.	The volunteer relationship – Recruiting, inducting, managing performance, managing grievances and ending the relationship
Part 3.	Volunteer safety – Responsibility regarding negligence, work health and safety, managing risk, insurance and child safe standards
Part 4.	Other relevant legal issues – Intellectual property, privacy and record-keeping

This guide includes practical tools (for example, checklists and tips) and links to other reliable sources of information which you may find helpful.



For useful information published by Volunteering Australia, explore the [Volunteering Resource Hub](#), which includes a guide to volunteer management.



Volunteer, employee or independent contractor?

It's important for your community organisation to know which category of 'worker' is doing work in your organisation because, depending on whether the worker is a volunteer, employee or an independent contractor, different legal entitlements and obligations apply.

Many laws that protect employees' rights and entitlements apply differently to volunteers or, in some instances, don't apply to them at all.

It can be difficult to assess if someone at your organisation would be considered a 'volunteer'. Seek legal advice if you are unsure.



For more information, see [our guide 'Employee, contractor or volunteer?'](#) which covers:

- different categories of working relationships, and
- legal obligations community organisations owe to different kinds of workers

Volunteering Australia and the National Strategy for Volunteering



Who is Volunteering Australia?

[Volunteering Australia](#) is the national peak body for volunteering, working to advance volunteering in the Australian community.



Note

This guide is informed by Volunteering Australia's [National Strategy for Volunteering 2023-2033](#) (**National Strategy for Volunteering**).

The [National Strategy for Volunteering](#) was funded by the Australian Government Department of Social Services, led by Volunteering Australia, and co-designed in collaboration with the entire volunteering ecosystem.

The National Strategy for Volunteering has three focus areas:

Focus area 1

Individual potential and the volunteer experience

Aim – Volunteering is safe, inclusive, accessible, meaningful and not exploitative. The strategic objectives to achieve this aim:

- focus on the volunteer experience
- make volunteering inclusive and accessible
- ensure volunteering is not exploitative

Focus area 2

Aim – The diversity and impact of volunteering is articulated and celebrated. The strategic objectives to achieve this aim:



Community and social impact	<ul style="list-style-type: none"> • diversify the understanding of volunteering • reshape the public perception of volunteering • recognise the inherent value of volunteering • enable a community-led approach
Focus area 3 Conditions for volunteering to thrive	<p>Aim – The right conditions are in place for volunteering to be effective and sustainable. The strategic objectives to achieve this aim:</p> <ul style="list-style-type: none"> • make volunteering a cross-portfolio issue in government • build strong leadership and shared accountability • commit to strategic investment • recognise the importance of volunteer management



The National Strategy for Volunteering

Volunteering activities take place across all domains of public life in Australia. Volunteers are involved in a myriad of services and activities including the arts, aged care, mental health, disability support, animal welfare, food and emergency relief, environment, sports, education, international development, and more.

In many cases, the contributions of volunteers are crucial to the survival of the sectors they volunteer in.

(page 56 of the strategy)

National Standards for Volunteer Involvement

This guide also refers to the [National Standards for Volunteer Involvement \(Standards\)](#) developed by Volunteering Australia.

The Standards are a best practice framework to guide volunteer involvement that:

- help improve the volunteer experience and ensure that the wellbeing of volunteers is supported and their contributions are valued, and
- provide best practice guidance and benchmarks to help organisations attract, manage and retain volunteers and support effective risk and safety practices

Where relevant, throughout this guide we refer to the Standards, recognising that 'best practice' sits alongside and in addition to the legal issues that volunteer involving organisations need to consider.



National Standards for Volunteer Involvement

Volunteering Australia's [National Standards for Volunteer Involvement](#) include two Standards that are particularly relevant to the overall management of a volunteer program:

Standard 1: Volunteering is embedded in leadership, governance and culture – The governing body and organisation leaders promote volunteering and implement effective management systems to support volunteer participation.

Standard 2: Volunteer participation is championed and modelled – Commitment to volunteer participation is set out through vision, planning and resourcing, and supports the organisation's or group's strategic direction



State and territory peak bodies

In addition to Volunteering Australia, each state and territory has peak bodies which facilitate volunteer opportunities and support volunteer involving organisations:

- [VolunteeringACT](#)
- [The Centre for Volunteering \(NSW\)](#)
- [Volunteering Queensland](#)
- [Volunteering SA & NT](#)
- [Volunteering Tasmania](#)
- [Volunteering Victoria](#)
- [Volunteering WA](#)



Part 2

The volunteer relationship

The volunteer relationship

This part of the guide covers:

- ▶ the recruitment process
- ▶ inducting your volunteers
- ▶ managing the performance of your volunteers, and
- ▶ ending the volunteer relationship



Recruitment of volunteers

Volunteers are essential to the success of community organisations.

The profession of volunteer management

The [National Strategy for Volunteering](#) emphasises the skills that underpin volunteer management.



The National Strategy for Volunteering

On the strategic objective to recognise the importance of volunteer management:

Volunteering does not 'just happen'. Instead, it requires deliberate and ongoing strategic investment underpinned by adequate resourcing. Leading and managing volunteers is more than just administration; it requires time, talent, and skill.

Those responsible for leading, managing, and coordinating volunteers, whether paid or unpaid, are the gatekeepers to positive volunteering experiences and impactful volunteering outcomes. Elevating the profession of Volunteer Management and investing in infrastructure to reduce the burdensome administration associated with volunteer involvement is critical to any serious effort to futureproof volunteering'.

(page 62 of the strategy)

The volunteer experience



The National Strategy for Volunteering

On the strategic objective to focus on the volunteer experience:

Focusing on the volunteer experience is likely to reduce barriers to volunteering. For example, recruitment messages that appeal to one's primary motivations for volunteering are proven to be more effective and persuasive.

Volunteers need a degree of choice and freedom in how they carry out their role, they need opportunities to develop meaningful relationships in their volunteering, and they need the ability to demonstrate and improve their skills. An increased desire for flexibility from volunteers may increase the prevalence of online volunteering in the future, which is attractive for both its convenience and accessibility. Creating more flexible opportunities is also identified as the most important factor that could motivate more people over the age of 70 to volunteer

(page 43 of the strategy)

Your organisation should recruit its volunteers in a fair and non-discriminatory way.

Volunteer involving organisations should:

- use a volunteer role description when recruiting volunteers that focuses on the specific requirements of the role, and
- conduct some level of screening of volunteers, carefully balanced with the requirements of the role, even where there is no legislative or contractual requirement that checks be performed

Volunteer role description

Importance of a volunteer role description

We recommend that you use a volunteer role description for all volunteer positions in your organisation.

The volunteer role description:

- should focus on the specific requirements of the role – being the skills or qualifications needed for the role (and not the attributes of a person), and
- can help your organisation understand what it needs and shape your advertisement

A volunteer role description will also help your organisation make decisions about what skills are required to perform the role and what checks might be necessary for the role. (Conducting unnecessary checks could lead to an allegation of discrimination).

A volunteer role description will also help:

- manage a volunteer's expectations about the role as it will set out the volunteer's roles and responsibilities
- your organisation manage the volunteer's performance and deal with any grievances as the description will be a record of what the volunteer has agreed to contribute to the organisation
- if necessary, consider whether a volunteer was acting outside the scope of their role – in particular, where injury, loss or harm has resulted from the actions or inaction of the volunteer (generally, your organisation will not be held liable if the volunteer has acted outside the scope of the work organised by the organisation or contrary to any instructions given by the organisation to the volunteer)



National Standards for Volunteer Involvement

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

- **Standard 3: Volunteer roles are meaningful and tailored** – Volunteers are engaged in meaningful roles which contribute to the organisation's or group's purpose and meet volunteer interests and preferred style of participation.

This standard outlines important considerations for the way volunteer roles are designed and ways to meet both the needs of contemporary volunteering and the objectives of the organisation.

- **Standard 4: Recruitment is equitable and diversity is valued** – Volunteer recruitment and selection strategies meet the needs of the organisation and volunteers; they facilitate and value diversity and ensure equity and accessibility.

This standard describes the recruitment policies, including appropriate screening, that ensure organisations are effective in attracting suitable volunteers while also building diversity, inclusivity, and accessibility principles into recruitment activities.

Sample volunteer role description

A volunteer involving organisation should prepare a volunteer role description for each volunteer in the organisation. A sample volunteer role description is provided below.



Caution

The sample volunteer role description has been developed as an example only and should be changed to meet the needs and circumstances of your organisation.



Note

A key aspect of a genuine volunteer relationship is that either the volunteer or organisation can walk away from the arrangement at any time (see 'ending the volunteer relationship' below). You should, therefore, be careful how you frame the relationship.

Similar to the sample volunteer agreement (below), a volunteer role description should be clear and consistent in the use of language. Avoid using 'employment' type language.

For example:

- ✓ use terms such as 'volunteer', 'we would be pleased if you would', 'help to', 'provide assistance'
- ✗ avoid terms such as 'job', 'work', 'you must', 'required', 'responsible for'



Tips

- Discuss the volunteer role description as part of the induction process (discussed below).
- Give a copy of the volunteer role description to the volunteer and keep a copy with your other records on your volunteer.
- A volunteer role description should be reviewed from time to time (for example, as part of any volunteer performance review process) and, if necessary, amended.

For more information on volunteer record keeping, see [part 4 of this guide \(other legal issues relevant to volunteers\)](#).



National Standards for Volunteer Involvement

As outlined above, [Volunteering Australia's National Standards for Volunteer Involvement](#) have two standards that relate to recruitment of volunteers, including:

Standard 3: Volunteer roles are meaningful and tailored – Volunteers are involved in meaningful roles that contribute to the organisation's or group's purpose and meets volunteer interests and preferred style of participation.

- 3.1** Volunteer roles are designed and negotiated with volunteers, considering the needs and interests of volunteers.
- 3.2** Volunteer roles contribute to the organisation's purpose, goals and objectives.
- 3.3** Volunteer roles are defined documented and communicated.
- 3.4** Volunteer roles are reviewed regularly including through feedback and engagement with volunteers about their experience



Sample volunteer role description

Volunteer Client Enquiry Officer

Purpose

The Volunteer Client Enquiry Officer helps provide an effective and efficient response to client enquiries.

Supervision

[Name of supervisor] will supervise volunteers, and provide ongoing support, with focused supervision to be provided by the social workers co-ordinating the task being undertaken by the volunteer.

Volunteer duties and responsibilities

As a Volunteer Client Enquiry Officer at **[Name of organisation]**, you will help by performing the following duties:

- answer phone calls from members of public
- record client personal information in database
- liaise with relevant staff and social workers about client inquiries
- provide clients with general information only, in accordance with social workers instructions
- sit in on client interviews social workers and assist with note-taking
- drafting client correspondence under social workers supervision
- filing and other administrative duties related to client files and
- other duties as directed social workers volunteer coordinator or **[Name of organisation]** staff

Skills, qualifications or experience required (or desirable) for role

We are looking for a volunteer with the following skills, qualifications or experience to fill this volunteer role:

- social workers, social work graduates, or 3-5th year social work students
- an understanding of the issues experienced by people who are marginalised and disadvantaged
- ability to deal with challenging client behaviours
- a demonstrated interest in social issues in Australia or internationally
- an understanding of issues of client confidentiality and the sensitive nature of clients' personal and health information
- experience in an office or client service environment – particularly a charitable organisation, and
- attention to detail and the ability to follow directions carefully

Background checks for role

[Name of organisation] is very serious about its duty to provide clients with a professional service and to providing all people working at **[Name of organisation]** with a safe and healthy working environment. We are a child safe organisation. We are committed to recruiting dedicated, professional volunteers who have the skills and experience appropriate for this role.

For this reason, if you are interested in this role, we will need to collect the following information before you begin the role **[insert details such as resume, a qualification check, a Working with Children Check, police check]***.

You will only have to provide this information following the initial meeting with the volunteer manager, and, if required, we will help to arrange for checks or help you apply for them.

If you have any questions about these background checks, please don't hesitate to contact **[insert contact information]**. Please note that we treat all information as sensitive and handle it in accordance with privacy laws. You can access a copy of our privacy policy **[here]** (or we can provide you with a copy).

Also note that we will require you to sign the attached volunteer agreement**

* These checks are discussed below at 'volunteer screening'

** Volunteer agreements are discussed below at 'volunteer agreement' where a sample volunteer agreement is provided



Volunteer screening as part of the recruitment process

It's important that volunteer involving organisations screen potential volunteers in a systematic way.

Certain background screening checks are required by law (under legislation or contract) and others are optional.

When deciding what checks your organisation requires to minimise risks associated with your volunteers, consider whether the volunteer's role and responsibilities will include contact with vulnerable clients or children, access to sensitive information, handling money, or operating certain machinery (including vehicles).

This consideration should already be completed as part of the preparation of a role description (discussed above) as the first step of the recruitment process and the subsequent advertising for volunteers.

The [National Strategy for Volunteering](#) contemplates how volunteer screening can hold up the recruitment process and possibly discriminate against potential volunteers. These factors may influence your consideration of whether to conduct screening checks in a particular case. However, see our note below on the importance of conducting some level of screening for volunteers (even when checks are not required by law).



Note

Even when not required, volunteer involving organisations should conduct some level of screening for volunteers. This is because all organisations have a responsibility to make sure they maintain a safe environment for all workers (paid and unpaid) and clients.

Due to this overarching duty of care (which is discussed in more detail in [part 3 of this guide \(volunteer safety\)](#)), organisations should always try to be well informed about the people they choose to be part of their organisations.



The National Strategy for Volunteering

On the objective to make volunteering inclusive and accessible:

Processes such as background checks are not easy or inclusive for those without the requisite identification documents or access to private transport. People with disability identify stigma, unconscious bias, and lack of understanding as the greatest barrier to inclusion. This includes the prevalence of ableism, where people with disability are seen as less capable, less able to contribute, and not valued as much as those without disability.

(page 44 of the strategy)

On the objective to commit to strategic investment:

Other parts of the volunteering infrastructure in Australia such as screening systems are often designed without volunteers in mind, which can cause bottlenecks for volunteer involvement. In Victoria the NDIS Worker Screening Check process has involved manual approval of volunteer fee waivers, causing significant delays as a larger number of volunteers required screening than anticipated. Volunteering should be safe for both volunteers and the people they volunteer with. Ensuring that screening processes, worker checks, and other safeguards that include volunteers are well-resourced and efficient is crucial to effective volunteer engagement.

(page 61 of the strategy)



For more information, see our [webpage on background checks](#), where we have published a comprehensive a screening guide for each state and territory.

Each guide includes information on:

- Working with Children Checks
- Police Checks
- NDIS Worker Screening Checks
- other types of screening checks, and
- child safety laws

People on visas

Work restrictions may apply to the holders of temporary visas, such as tourist and student visas. These may affect whether the visa holder can engage in unpaid work (that is volunteer for your organisation).

Restrictions are indicated by particular visa conditions.



For a full list of visa conditions, see the [Department of Home Affairs 'Immigration and Citizenship' website](#).

When dealing with people who are not permanent residents, it's important to check they don't breach visa conditions due to their involvement with your organisation.

Under the [Migration Act 1958 \(Cth\)](#) (**Migration Act**), penalties apply to organisations that engage an 'illegal worker' (a non-citizen who is working without a valid visa or working or volunteering in breach of a visa condition), unless it can show that reasonable steps were taken at reasonable times to make sure the person was in fact legal.

Under the law, it doesn't matter if the organisation didn't know the person's work rights. Organisations may be penalised for simply having such a person on their premises. Therefore, it's important that organisations verify a person's immigration status and work rights before and during the volunteer work period.

A person is a legal worker if they are:

- an Australian citizen
- an Australian permanent resident
- a New Zealand citizen, or
- a foreign national with a visa with permission to work in Australia (and who is not in breach of their visa conditions, for example, the visa has expired)

To confirm the above, an organisation must:

- sight an Australian or New Zealand passport, or
- conduct a Visa Entitlement Verification Online (**VEVO**) check

Also see [the Department of Home Affairs webpage on working in Australia](#).

If you believe or know that a potential volunteer is in Australia on a visa, then you should check that they have permission to work. These checks are important to avoid inadvertent breaches of visa conditions.



Tips

Carefully check any conditions attached to an applicant volunteer's visa.

We recommend that organisations:

- run a [VEVO check \(online\)](#) of a person's work rights before taking them on as a volunteer if they are not an Australian citizen or permanent resident with unrestricted work rights, and
- seek independent immigration legal advice where required. More information is provided below

Remember this is also important from the volunteer's perspective – they don't want to put their visa at risk either.

The easiest and quickest way for an organisation to take reasonable steps to make sure it's engaging legal workers, is to use the Department's VEVO system. Using this system, your organisation can either:

- register as a VEVO organisation and, with the individual's consent, conduct the search yourself, or
- ask the person to send their current visa details directly from the VEVO Enquiry Form

The VEVO search will reveal the visa status and work entitlements for the visa holder. It will also state whether the person doesn't have permission to work or has work restrictions. If the visa has no work restrictions then the person is free to work and volunteer while they hold a valid visa. However, VEVO checks are only current at the time conducted.

Therefore, it's important to conduct regular checks, track relevant dates (for example, work and expiry dates), and keep records on file confirming the organisation has verified the person's immigration status and work rights.



Caution

It's important that your organisation checks the VEVO results were recently generated and continues to conduct VEVO checks while the person volunteers with your organisation. This is because visa status and work rights may change. It's not enough to view the results of a VEVO search conducted by a third party (unless, completed by a Migration Agent) or a printed copy held by the person as these could be out of date.



Tip

Add VEVO checks to your volunteer recruitment process and include a copy of the VEVO Results in the volunteer's file.



The Department of Home Affairs' website includes information on [engaging legal workers](#), and the [Visa Entitlement Verification Online system](#).

The [Fair Work Ombudsman website](#) features information on unpaid work.



National Standards for Volunteer Involvement

As outlined above, [Volunteering Australia's National Standards for Volunteer Involvement](#) have two standards that relate to recruitment of volunteers, including:

Standard 4: Recruitment is equitable and diversity is valued – Volunteer recruitment and selection strategies meet the needs of the organisation and volunteers; they facilitate and value diversity and ensure equity and accessibility.

- 4.1 Organisations and groups engage volunteers using planned and innovative approaches to attract people with relevant interests, knowledge and skills.
- 4.2 Potential volunteers are provided with information about the organisation, how volunteers contribute to its purpose and vision, available opportunities and the selection process.
- 4.3 Volunteers are selected based on their interests, knowledge, skills and suitability for the role, and consistent with anti-discrimination law.
- 4.4 Diversity, inclusivity and accessibility principles are built into recruitment activities, reflecting and promoting awareness of, and respect for, diversity and inclusion and the inherent value this brings to the organisation.
- 4.5 Screening processes maintain the safety and security of service recipients, employees, volunteers, and the organisation, in line with legal requirements and regulations.

Recruitment and discrimination law

Anti-discrimination law protects workers, including volunteers, in a number of ways.



For detailed information about what constitutes unlawful discrimination and whether volunteers are protected from unlawful discrimination in the workplace, see [our guide to workplace behaviour](#).

Regardless of whether an organisation or its volunteers are covered by anti-discrimination laws, best practice dictates that organisations extend any protections available to employees to its volunteers, including in recruitment.

An overview of discrimination law in the context of recruitment of volunteers is set out below.



What is discrimination?

Under anti-discrimination laws, discrimination occurs when:

- a person is treated unfavourably because of a 'personal attribute' protected by law
- the treatment happens in an 'area of public life' protected by the law
- the treatment causes the person to be disadvantaged, and
- an exception does not apply



There are two types of discrimination:

- **direct discrimination** occurs where someone is treated less favourably because of a protected attribute they have or are assumed to have
- **indirect discrimination** occurs where a condition or requirement applies to everybody, but unfairly disadvantages people with a protected attribute (the condition or requirement must not be reasonable in the circumstances)

Discrimination involving workers can occur in the recruitment process, or in other situations including not being given opportunities that other workers are given.

The particular protected attributes that are covered vary under the different state and federal laws (this is explained further in [our guide to workplace behaviour](#)).

When recruiting volunteers, using a volunteer role description (as discussed above) which focuses on the roles and responsibilities of the position should help your organisation ask questions that focus on the requirements of the role rather than the personal attributes of the potential volunteer.

For example, your organisation should be asking 'Would you need any support to assist in performing this role? This job requires lifting. Is there anything that will prevent you from performing these duties?' Your organisation should **not** be asking 'Do you have a disability? You look a bit old – are you going to be able to lift boxes of donated goods?'



Tip – when recruiting volunteers

An organisation conducting a recruitment process for volunteers, should ask all potential volunteers the same questions and record their responses in writing. This will not only be helpful to compare all potential volunteers but also if an allegation of discrimination is made.



Case example – failure to focus on inherent requirements

In the case of *Mr CG v State of New South Wales (Rail Corporation New South Wales)* [2012] [AusHRC 48](#) the Australian Human Rights Commission investigated a complaint by Mr CG that he was discriminated against on the basis of his criminal record when applying for a job as a market analyst with the Rail Corporation of New South Wales (**RailCorp**).

Mr CG had been convicted of driving after consuming a prohibited amount of alcohol in 2001 and 2008. Around June 2009, Mr CG applied for the job with RailCorp. Although Mr CG met all the selection criteria and was the selection panel's preferred candidate for the Market Analyst role, he was advised that he was not offered employment because of his criminal record.

RailCorp argued that Mr CG could not, considering his criminal record, meet the inherent requirements of the Market Analyst role. The Commission rejected this argument on the basis that Mr CG's criminal offences had no connection with his employment noting that, among other things, Mr CG was not required to drive as part of his employment with RailCorp nor was he required to engage in any safety critical activities related to the provision of rail transport services.

The Commission found that RailCorp had unlawfully discriminated against Mr CG on the basis of his criminal record.



Case example – focusing on personal attributes

In the case of *Smith v Commonwealth of Australia* (2000) EOC 93-077, Smith had applied for a position as a part-time director on the Red Meat Producer Corporation's board. She was shortlisted as one of the 12 best candidates, but her application was ultimately unsuccessful.

Smith lodged a complaint with the Human Rights and Equal Opportunity Commission alleging she had been discriminated against on the grounds of her sex, marital status and pregnancy by the Red Meat Producer Corporation selection committee.

During the interview process, while the selection committee members had asked Smith technical questions about the meat and livestock industry, they also asked if she was married and had children. When Smith confirmed she was married with children, the panel noted the role involved travel and suggested this may conflict with her family commitments. Smith said this would not be a problem.

Smith claimed the personal questions made her uncomfortable, affected her confidence and made it hard for her to stay focussed on industry issues.

The Red Meat Producer Corporation claimed that Smith's application was unsuccessful because there were already five people on the board from NSW, Smith was less experienced than other applicants, and her reference checks had not turned out well.

The Commissioner found that the asking of the interview questions about Smith's family life was a breach of the *Sex Discrimination Act 1984* (Cth) as the questions were not related to Smith's ability to perform as a director. The questions clearly placed her under greater stress and made her uncomfortable and therefore constituted discrimination against Smith on the grounds of her sex and marital status. Smith was awarded \$2,500 in damages.

Anti-discrimination procedures in recruitment

Steps your organisation can take to prevent discrimination include:

- having an anti-discrimination policy with a section on discrimination in recruitment that covers all workers (volunteers as well as paid workers)
- preparing a role description that focuses on the skills required for the volunteer role rather than the personal attributes that may be desirable (for example, 'are you able to commit to volunteering regularly between 8am and 4pm on Tuesdays?')
- considering the language you use in the volunteer recruitment process (as outlined above, avoid focusing on personal attributes such as 'do you have kids; we really need someone reliable')
- using the same language in the role description across advertisements and in the interview process (see the sample volunteer role description above)
- conducting regular training for all volunteers and workers about the policy so that people recognise discriminatory practices and are aware of processes for addressing them

Organisations that have an anti-discrimination policy and procedures (as a matter of best practice, if not otherwise required by law) help protect all their workers from discriminatory behaviour.

These policies and procedures will also help the organisation if a discrimination complaint is made.



Anti-discrimination policy

We recommend that volunteer involving organisations have a policy against discrimination across the whole organisation.

A good anti-discrimination policy should include:	
• a policy statement outlining the organisation's commitment to preventing and addressing discrimination in the workplace	<input type="checkbox"/>
• who is covered by the policy (volunteers as well as paid workers)	<input type="checkbox"/>
• the relevant laws that apply	<input type="checkbox"/>
• what constitutes discrimination (including direct and indirect discrimination and examples of both)	<input type="checkbox"/>
• the attributes that are protected	<input type="checkbox"/>
• when discrimination is lawful (see below for more information)	<input type="checkbox"/>
• what workers should do if they experience or witness unlawful discrimination	<input type="checkbox"/>
• how to make a complaint	<input type="checkbox"/>
• how discrimination complaints will be handled	<input type="checkbox"/>
• the consequences of breaching the policy	<input type="checkbox"/>
• where to go for further information (for example, the Australian Human Rights Commission website and the relevant state or territory anti-discrimination body).	<input type="checkbox"/>

Your organisation should also make sure all its workers (paid and unpaid) have a good understanding of the anti-discrimination policy, which may require organisations to have regular training sessions.

When might discrimination be lawful in recruitment?

Not all discrimination is against the law. Generally, discrimination will be lawful when it doesn't contravene any relevant anti-discrimination legislation.

Discrimination is not against the law if:

- the discrimination is not on the basis of a protected attribute, or
- it is excused or exempted by law



Caution

The discriminatory conduct that is excused or exempted differs between the states and territories. Volunteer involving organisations should be careful relying on exceptions or exemptions and may need to seek legal advice.

For more information about what discriminatory conduct may be excused or exempted, see [our guide to workplace behaviour](#).

Inducting your volunteers

Providing volunteers with a proper induction process is a good way to show your organisation's commitment to its volunteers – it's the first impression the new volunteer will get of your organisation.



What is induction?

Induction is the process of welcoming new volunteers to the organisation and familiarising them with their role, the role of other workers (paid and unpaid) and the workplace more broadly.

All volunteers should complete the induction process before starting any volunteer duties.

After completing induction, volunteers should:

- know where to access your organisation's policies and procedures, and
- have copies of those that are particularly relevant to them and their role (for example, health and safety, privacy and volunteer grievance policies)

Checklist – volunteer induction

We recommend you complete an induction checklist for each new volunteer – a sample checklist is below.



Note – the sample induction checklist

The sample induction checklist may be used generally with volunteers, it is not exhaustive and you should change it to meet the needs of your organisation.

The sample induction checklist doesn't constitute legal advice.

It may be appropriate to have a separate checklist for different volunteer positions.

For example – all your committee members (also called board members or directors) may be volunteers. We recommend that new committee members have an induction to the role of the committee – it's important they understand the role of a committee generally, their specific role on the committee and how that role differs to the roles of other people in the organisation.

Review the checklist to make sure it's consistent with the volunteer role description (for example, if a volunteer is going to be using your organisation's vehicles you may want to make sure that an overview of any relevant vehicle policies and procedures are included as part of the induction process).

Once the induction checklist is completed, give a copy to the volunteer. You should also keep a copy with other records in relation to your volunteer. [Part 4 of this guide \(other legal issues relevant to volunteers\)](#) provides further information on volunteer record keeping.



For more information on the process of inducting new board members see our fact sheets '[Introduction to the board member role for new board members](#)' and '[Board Inductions – bringing on a new board member](#)'.



Sample volunteer induction checklist

Checklist of Items	Who will follow up?	Completed
• Welcomed and introduced to other workers (paid and unpaid)		<input type="checkbox"/>
• Provided background about organisation and overview of organisational structure		<input type="checkbox"/>
• Work station prepared and relevant safety considerations undertaken		<input type="checkbox"/>
• Walk through of the workplace and discussed work premises, facilities and Work Health and Safety (emergency procedures, first aid, safety considerations in the role, reporting health and safety concerns, critical incident policies)		<input type="checkbox"/>
• Discussed volunteer role description, expectations and reporting structure		<input type="checkbox"/>
• Discussed volunteer agreement including important issues like the nature of the relationship, how it can end, reimbursements (and signed)		<input type="checkbox"/>
• Key contact person allocated (to go to with any concerns, feedback or queries about role and duties)		<input type="checkbox"/>
• Policies provided and read by the volunteer (with confirmation in writing):		<input type="checkbox"/>
– Privacy policy		<input type="checkbox"/>
– Workplace behaviour policies (including policies about communications and social media that set out expectations about media, print and email)		<input type="checkbox"/>
– Health and Safety policy		<input type="checkbox"/>
– Volunteer grievance policy		<input type="checkbox"/>
– [Add other key policies and procedures, for example, conflict of interest, working with vulnerable clients, return of property]		<input type="checkbox"/>
• Conducted training in relation to the role, including any machinery and equipment use		<input type="checkbox"/>
• Conducted or scheduled training in relation to workplace behaviour policies and risk management		<input type="checkbox"/>



- Discussed insurance coverage as a volunteer (what cover is available under the organisation's insurance)

Signature of volunteer:

Date:

Signature of volunteer manager:

Date:



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.

Evidence of this would include:

- induction requirements for volunteer roles are documented and implemented
- volunteer induction includes information about the organisation, their volunteer role and how it contributes to the organisation's purpose, goals and objectives
- volunteers are made aware of their rights and responsibilities
- where appropriate, volunteers understand and agree to a code of conduct or rights and responsibilities statement

Volunteer agreement

A volunteer agreement is an important part of engaging volunteers, helping to make sure the volunteer understands their rights, role and responsibilities along with those of the organisation.

It's also important in helping your organisation manage its obligations in relation to health and safety.

As set out in [part 3 of this guide \(volunteer safety\)](#), the workplace health and safety (**WHS**) legislation enacted throughout Australia creates obligations for most organisations to ensure the health and safety of their volunteers. In addition to any obligations under the WHS laws your organisation also has a general duty of care towards your volunteers.

There are other reasons in which a volunteer agreement may become important, including clarity on the ownership of intellectual property (discussed below and in [part 4 of this guide \(other legal issues relevant to volunteers\)](#)).



More information – sample volunteer agreement

You can download a sample volunteer agreement with drafting tips from [our volunteer webpage](#).

The sample volunteer agreement may not be appropriate for every volunteer involving organisation. You should change the sample agreement to meet the needs of your organisation using the tips published with the agreement.

The sample volunteer agreement doesn't constitute legal advice. Your organisation may need to consider seeking legal advice on its volunteer agreement.

Once the volunteer agreement has been discussed with your volunteer and signed (see below), you should give a copy to the volunteer.



You should also then keep a copy with your other records in relation to your volunteer. For further information on volunteer record keeping, refer to [part 4 of this guide \(other legal issues relevant to volunteers\)](#).



Tips – volunteer agreement drafting

- be clear that you have engaged the person as a volunteer
- include a statement that the parties don't intend to enter into a legally enforceable contract in relation to the carrying out of the work (refer to 'non-legal nature of the volunteer relationship' below)
- **consider if you need to be extra clear on certain rights and obligations between the organisation and the volunteer** – such as intellectual property and confidentiality (refer to 'non-legal nature of the volunteer relationship' below)
- be clear and consistent in the use of 'non-employment' type language
- use terms such as 'help to' and 'we would be pleased if you would'
- avoid terms such as 'pay, payment, salary, contract, work, appointment' or 'you must'
- be clear that the volunteer will not be receiving payment for work but may receive reimbursement for reasonable expenses and that any other non-monetary benefits provided to the volunteer are done so on a gratuitous basis only and are not payment in lieu of salary
- outline what the volunteer can expect from the organisation (for example, an induction, supervision and applicable insurance coverage)
- outline what the organisation expects from its volunteers (for example, compliance with policies and procedures including WHS, privacy, confidentiality and workplace behaviour), and
- ask the volunteer to notify you if they are unable to attend to any allocated tasks

Volunteer agreement and the non-legal nature of the volunteer relationship



What is a legally binding relationship?

A legally binding relationship is a relationship where the parties have agreed they have legal obligations to each other.

Generally, this means that they intend that the promises made by each party will be binding, and if one party breaches the terms of the agreement, the other one has a right to seek damages against the breaching party or, in some circumstances, force the other party to perform certain obligations under the agreement



Note – the nature of volunteering requires that there is no legally binding relationship between the parties regarding the volunteer work to be carried out

For example, if the organisation doesn't provide the volunteer with work, the volunteer has no recourse against the organisation. Similarly, if the volunteer fails to report for duty as agreed, the organisation has no legal recourse against the volunteer.



For more information the differences between a volunteer and other workers, see [our guide 'Employee, contractor or volunteer?'](#) which covers:

- different categories of working relationships, and
- legal obligations community organisations owe to different kinds of workers



What about intellectual property and confidential information?

There may be situations where a volunteer involving organisation wants to be very clear on certain rights and obligations between the organisation and the volunteer.

For example, if the volunteer is producing or creating material in their role, the organisation may want to be clear with the volunteer about who owns the intellectual property in the material. If the volunteer is exposed to confidential information, the organisation may wish to be clear with the volunteer about their confidentiality obligations.

See [part 4 of this guide \(other legal issues relevant to volunteers\)](#) for more information on intellectual property and confidential information.

Our [sample volunteer agreement](#) makes it clear to the volunteer that they have obligations in relation to intellectual property and confidentiality.

Note that, because the sample volunteer agreement has been drafted as a **non-legally binding agreement**, the organisation may not have legal recourse against the volunteer if something goes wrong (for example, if the volunteer discloses confidential information or decides to keep the intellectual property they created for the organisation and use it for their own personal gain).



It's a risk assessment

Some volunteer involving organisations may conduct a risk assessment and decide that a non-legally binding volunteer agreement is appropriate and provides adequate protection.

Other organisations may be particularly concerned with protecting confidentiality and intellectual property and seek to impose legally binding obligations on the volunteer in relation to these matters. If in doubt, seek legal advice.

Organisations can impose legally binding obligations on the volunteer in relation to these matters by:

- asking their volunteers to enter into separate legally binding agreements regarding intellectual property and confidentiality, or
- amending the sample volunteer agreement below to make it legally-binding

In both cases, the agreements would need to be executed (signed) in a legally binding manner, such as a 'deed' (see below for more information on 'deeds').

Provided the legally binding obligations go no further than this (they are not imposing legal obligations on the volunteer around other tasks or the work), having a legally binding agreement in relation to intellectual property or confidentiality should not, by itself, affect the nature of the volunteer relationship.



Caution

Seek legal advice before asking volunteers to enter a legally binding arrangement in relation to intellectual property or confidentiality.



Note on volunteer agreement being 'executed' (signed) as a deed

If an organisation wishes to create legally binding obligations in relation to intellectual property or confidentiality, you will need to amend the [sample volunteer agreement](#) we have published so that it's executed (signed) as a deed. Seek legal assistance if you wish to alter the sample volunteer agreement and make it a deed.



What is a deed?

A deed is a special type of binding promise or commitment to do something. It's not the same as a contract. A deed doesn't require 'consideration'.

Consideration is one of the four requirements for a contract to be valid and enforceable and generally refers to the exchange of something of value, such as the exchange of labour for payment. This makes deeds useful documents when a promise is being made without anything in return for that promise (such as payment). We explain this in more detail below.



Caution – unincorporated associations

If your organisation is an unincorporated association (which means that it has not formalised its structure through a process of registration with government), it can't enter contracts (including deeds) in its own name. Seek legal advice if your organisation wants to make the volunteer agreement legally binding.

Deed of agreement – intellectual property and confidential information

The non-legal nature of the volunteer relationship

As explained above, the nature of a volunteer relationship requires that there is no legally binding relationship between a volunteer and a not-for-profit organisation regarding the volunteer work to be performed. For example, if the organisation doesn't give the volunteer work, the volunteer has no recourse against the organisation. Similarly, if the volunteer doesn't report for duty as agreed, the organisation has no recourse against the volunteer.

Intellectual property and confidential information

There may be situations where an organisation wants to be very clear on certain rights and obligations between the organisation and the volunteer. For example, if the volunteer is producing or creating material in their role, the organisation may want to make it clear who owns the intellectual property in the material. If the volunteer is exposed to or dealing with confidential information, the organisation may also wish to be clear with the volunteer about their confidentiality obligations.



When is it appropriate to have a legally binding agreement?

Some volunteer involving organisations may conduct a risk assessment and decide that a non-legally binding volunteer agreement is appropriate and adequate. Other organisations may be particularly concerned with protecting confidentiality and intellectual property and seek to impose legally binding obligations on the volunteer in relation to these particular matters.

Organisations can impose legally binding obligations on the volunteer in relation to these matters by asking their volunteers to enter into a separate legally binding agreement, such as a 'deed', regarding intellectual property and confidentiality.

Provided the legally binding obligations go no further than this (that is, they aren't imposing legal obligations on the volunteer around other tasks or the work), having a legally binding agreement in relation to intellectual property or confidentiality should not, by itself, affect the nature of the volunteer relationship.



More information – sample confidentiality and intellectual property deed

You can download a sample confidentiality and intellectual property deed from [our volunteer webpage](#).

Note – the deed published on our volunteer webpage is a generic, sample deed of agreement. It's not legal advice and may not suit your organisation. Your organisation will need to draft a deed of agreement to suit your circumstances and may want to seek legal advice on this.



Caution

A deed is a legally binding document. Seek legal advice before asking volunteers to enter a legally binding arrangement in relation to intellectual property or confidentiality.



What does 'execution' mean?

Execution means signing an agreement and doing this with any required formalities – for example, in some cases, a witness to the signing may be required.

Note – a witness is no longer required for Australian registered companies, which are now allowed to execute documents (including deeds) through an agent or authorised representative without a witness. The witness requirement for execution of a deed may still apply to some entities that are not incorporated under the Corporations Act (for example, some incorporated associations). **You will need to check the signing requirements for your organisation.**

For the signing of a deed (a sample deed is published [on our volunteer webpage](#)), the person signing the deed on behalf of your organisation must be authorised to do this – make sure you check authority before signing the agreement.

If the signing must be witnessed, it should be witnessed by a third person (not the volunteer or the person authorised to sign on behalf of the organisation).

If the volunteer is working remotely, and a witness is not required, they can print and sign the deed and provide the original signed deed to the organisation by post, or a scanned copy by email.

If the volunteer is working remotely, and a witness is required, they can print and sign the deed (provided they have a witness with them, who can witness their signature) and provide the original signed and witnessed deed to the organisation by post, or a scanned copy by email.



What are 'moral rights'?

Moral rights are the right to be credited for your work, not to have your work falsely attributed to another artist and not to have your work treated in a derogatory way. You continue to have these rights even if you transfer your intellectual property rights to someone else.

The moral rights consent requested in the sample Deed means that the volunteer will not enforce these rights against the organisation.

You can find out more information about moral rights [in part 4 of this guide \(other legal issues relevant to volunteers\)](#) and from the [Australian Copyright Council](#).

Managing the performance of volunteers

Managing the performance of volunteers can be problematic if not done correctly. A well-structured performance management system provides benefits both to the volunteer involving organisation and the volunteer.

The benefits of performance management include:

- establishing the volunteer performance objectives and how these objectives align with both the organisation's values, purposes and activities and the volunteer's roles and responsibilities as set out in the volunteer role description
- improved guidance and assistance in developing the potential of the volunteer and their capabilities
- identifying the volunteer's training needs, and
- improved communication and relationships between a volunteer and their manager, including an agreed process for feedback from the volunteer



Example

Sarah, a long-standing volunteer with the organisation, was angry about a misunderstanding and upset a member of staff. Another time, she was short-tempered with a different volunteer in front of peers, shocking them as well.

Her supervisor reviews the organisation's volunteer performance management policy and asks Sarah to attend a volunteer performance management meeting.

The supervisor clearly outlines the two incidents which occurred. Sarah admits that the incidents occurred and is quite upset about her conduct. Sarah apologises to the shift supervisor and says that she is very overwhelmed in her personal life. Sarah acknowledges that she can no longer commit to the organisation as a volunteer. Sarah and the shift supervisor agree to end the volunteer relationship. The shift supervisor took clear notes of the meeting with Sarah. Both Sarah and the shift supervisor signed the notes from the meeting. The organisation provided a letter to Sarah thanking her for her time at the organisation and confirming the volunteer relationship had ended.

Organisational performance management plan

A volunteer involving organisation should have a plan in place for how it will manage the performance of all its workers. Although managing the performance of employees involves risks that don't apply to volunteers (for example, unfair dismissal), best practice dictates that the management of volunteers shouldn't differ significantly from the management of employees. This provides consistency of treatment and gives workers some certainty about the process they may expect when issues come up.

A useful way to think about performance management is to think in terms of both conduct and performance. 'Performance' generally refers to the quality of work. For example, only partly recording a client's contact details in the organisation's systems or failing to collect necessary information from a client.

This differs from 'conduct' which generally refers to the deliberate breaking of workplace rules, such as misuse of the organisation's equipment (for example, using a vehicle without permission or in breach of the organisation's policies), disclosure of confidential information or inappropriate workplace behaviour (for example, bullying or sexual harassment).



National Standards for Volunteer Involvement

Volunteering Australia's National Standards for Volunteer Involvement are relevant to the discussion on performance management.

Standard 7: Volunteers are recognised – Volunteer contribution, value and impact is understood, appreciated and acknowledged.

7.2 Volunteer effort is measured and acknowledged in the organisation's reporting and used to demonstrate impact.

Evidence of this would include:

- volunteers are informed of the organisation's reasons and benefits for involving volunteers
- volunteers are provided with feedback on the impact and value of their contribution to the organisation and its work
- the governing body, employees and volunteers are involved in the evaluation of volunteer participation

Standard 8: Volunteer policies and practices are continuously improved – Effective volunteer involvement results from a system of good practice, regular review and continuous improvement.

8.1 Policies and procedures are designed and implemented to effectively guide all aspects of volunteer involvement.

8.2 Volunteer involvement is regularly reviewed in line with the organisation's evaluation and quality management frameworks.

8.3 The organisation's performance with volunteer involvement is monitored and reported to the governing body, employees, volunteers and other stakeholders.

8.4 Opportunities are available for volunteers to provide feedback on their experience and relevant areas of the organisation's work.



A performance management plan should include:

- **A review of the volunteer's performance after a set period** – although volunteers don't generally have a formal probationary period, it's a good idea for the organisation to set a timeframe following which it will consider whether the volunteer arrangement is working out as expected. If the arrangement is not working out, it's better for the organisation (and potentially its clients), if it addresses this and, if necessary, ends the arrangement.
- **Periodic appraisal of performance** – where possible, this should be a formal and documented process which:

 - set outs aspects of the volunteer's work that is both satisfactory and unsatisfactory and how unsatisfactory aspects of work performance might be improved
 - identifies any training required or desirable, and
 - allows for goal setting for the upcoming appraisal period

Generally, appraisals are carried out at least annually but (depending on the nature of the work) may be more often. Don't confuse periodic performance appraisal with performance management procedures. Performance management procedures address specific performance or conduct issues when they arise.
- **Performance management** procedures – when specific issues that relate to performance or conduct (or both) arise, they should be addressed immediately (see 'performance management procedures and process' below). Failure to do so may result in damage to the organisation's reputation or property, damage or distress to clients, discontent among other volunteers and the creation of vicarious liability for the organisation (see [part 3 of this guide on volunteer safety](#)).
- **Ending the relationship** – when volunteers don't respond appropriately to performance management procedures it may be necessary for the organisation to end the volunteer relationship (see 'ending the relationship' below).

Performance management procedures and process

Your organisation should develop procedures on how it will manage specific issues relating to performance or conduct (or both) that arise. As outlined above, this should be separate to any process in place for performance appraisal.

If an issue relating to performance or conduct arises, notify the volunteer of the issue and arrange a meeting.

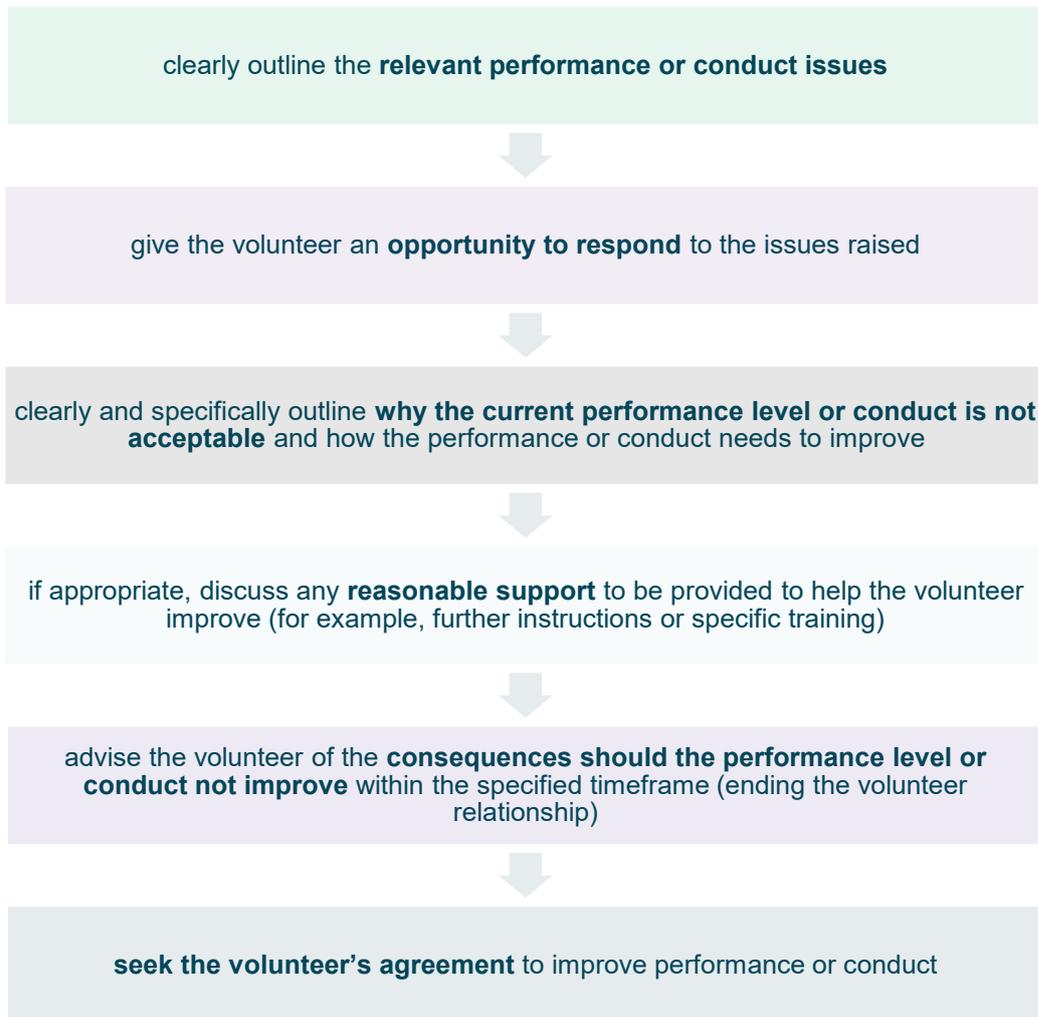
It's good practice to ask the volunteer if they would like to have a support person present at the meeting. Make sure you keep a record that the offer was made (particularly if the offer is declined).

Keep written notes of both the performance or conduct issues and of the meeting itself. It may also be useful to have another person from the organisation in the meeting.

Following the meeting, consider the volunteer's responses to the issues raised and the need for continued monitoring of the volunteer's performance and conduct objectively. In some cases, it may be preferable or appropriate to simply end the volunteering relationship. (See 'ending the relationship' below).



Follow this process at the meeting:



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 support 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.
- 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.

Managing volunteer grievances



Note

Volunteers have the right to express grievances with the volunteer program or your organisation. Your organisation should make sure the volunteer's grievances are heard and dealt with in an appropriate manner.

Grievances occur in most volunteer involving organisations. They can be raised on topics including workload and work distribution, work conditions, and management-volunteer relations.



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.

This standard commits the organisation to protecting volunteer safety and wellbeing and recognises its duty of care to volunteers. Adopting this standard assists the organisation to meet its obligations for the health, safety and wellbeing of volunteers, manage risk and provide a supportive and responsive workplace for volunteers.

- 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.
- 6.4 Volunteers understand and have access to complaints procedures.
- 6.5 Complaints, concerns and safety incidents are analysed to identify causes and inform continuous improvement.

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

To make sure volunteers' grievances are heard and dealt with in an appropriate manner, a volunteer involving organisation should:

- develop and implement a policy for managing volunteer grievances (see 'volunteer grievance policy' below)
- provide the policy to your volunteer (attaching the policy to the volunteer agreement is a good way to make sure the volunteer has a copy, and the policy can also be discussed as part of the induction process)
- make sure all volunteer managers and those involved in supervising volunteers are aware of the policy and understand their roles and responsibilities in relation to the policy
- have a process for making sure grievances are addressed in a fair and appropriate manner, which includes reviewing the outcome of the grievance to make sure appropriate decisions were made



Example

Bill, a volunteer, makes a complaint that the workplace is unsafe. Bill's complaint is that the stairs that lead into the donation shop are very steep and hard to see. He claims that patrons of the donation shop have had near accidents on many occasions.

The workplace supervisor receives the complaint and is immediately concerned for the safety of the volunteers, staff and customers. The workplace supervisor reviews the volunteer grievances policy and refers the complaint to the organisation's workplace health and safety officer. The workplace health safety officer organises a contractor to install a hand rail and to paint the stairs a brighter colour so that they are more easily identifiable.

Bill is informed in writing of the outcome of his complaint. Bill is satisfied with the response of the organisation and doesn't take any further action.

Volunteer grievance policy

A volunteer grievance policy is a written document that sets out the process for making a complaint, how the complaint will be resolved and who is responsible for resolving it. The policy should be short and concise so it's easy to understand and follow.

A volunteer grievance policy should include:

- **Purpose.** A brief description (for example, the purpose of the policy is to provide a framework for the handling of grievances in a fair and timely manner).
- **Scope.** A statement on who the policy applies to. For example, student placements or internships may have slightly different processes which involve the student's school or university.
- **Purpose.** A brief description (for example, the purpose of the policy is to provide a framework for the handling of grievances in a fair and timely manner).
- **Definitions.** What is meant by a 'work related grievance' (for example, any problem, or concern or complaint in relation to the volunteer's work environment, including changes to the volunteer's role, their safety, or the behaviour of others in the workplace).
- **Roles and responsibilities.** The role of managers (and supervisors) to manage a grievance complaint as well as the expectations of the volunteer who made the complaint.
- **How to raise a grievance.** The process the volunteer is to take (for example, raise the complaint with the volunteer's immediate supervisor in the first instance).
- **Procedures.** This should include mechanisms to ensure the fair resolution of the complaint (for example, opportunities to be heard and use of supports).
- **Outcomes of the grievance resolution process.** The volunteer should receive written advice of the outcome of their grievance.
- **Further action.** Options to pursue the grievance through other appropriate internal or external processes.



- **Documentation.** All documentation relating to the grievance should be placed on the volunteer's file (also refer to [part 4 of this guide](#) which deals with the keeping of volunteer records, including the requirements of confidentiality and privacy). □



Caution – when volunteers are also members

Some organisations will have volunteers who are also legal members of the organisation. If your organisation has any volunteers who are also members, it's important to make sure any member's grievances are dealt with under the correct process.

Depending on the subject matter of the grievance, this may be the volunteer grievance procedure or the grievance procedure in your organisation's rules or constitution. If your organisation is an incorporated association, you should check the grievance procedure requirements in your relevant incorporated association legislation.

For more information, see [our webpage on disputes with members](#).

Ending the volunteer relationship

Your organisation may choose to end a volunteer relationship for many reasons.



Note

It's important to manage the process of ending a volunteer relationship well. This will help your organisation avoid any potential legal consequences or reputational damage.

Ending a genuine volunteer relationship is different to ending an employment relationship by termination of an employee (which involves certain legal rights, obligations and processes). It's important that both your organisation and the volunteer understand these differences.

Your organisation should have processes for the ending of a volunteer relationship which include keeping volunteer records once the relationship has come to an end.

It's important your organisation is clear on the nature of the relationships with its workers (both paid and unpaid) as the rights and obligations differ. For example, the 'unfair dismissal' or 'unlawful termination' provisions in the [Fair Work Act 2009 \(Cth\)](#) (**Fair Work Act**) don't apply to volunteers.

Under the Fair Work Act, employees have certain rights, for example, in relation to redundancy or the ability to bring a claim for 'unfair dismissal' or 'unlawful termination'. Because the provisions of the Fair Work Act regarding unfair dismissal don't apply to volunteers, a genuine volunteer can't bring a claim against your organisation for unfair dismissal.

Unlike an employee, your organisation has no legal rights against a volunteer who doesn't turn up, walks out or doesn't return to your organisation.

This is part of the nature of a true volunteer relationship. It's important that organisations that use volunteers and volunteers themselves understand that the protections that apply in an employer-employee relationship are not the same as in an organisation-volunteer relationship.



For more information the differences between a volunteer and other workers, see [our guide 'Employee, contractor or volunteer?'](#) which covers:

- different categories of working relationships, and
- legal obligations community organisations owe to different kinds of workers



For more information on dismissing an employee (if it's appropriate, how to terminate lawfully and fairly) refer to [our webpage on employee termination and resignation](#).



Tips

A good time to make it clear that the volunteer relationship is not an employment relationship is when you discuss your organisation's volunteer agreement with your volunteer.

It will be helpful to explain that this means:

- the protections that apply in an employer-employee relationship are not the same as in an organisation-volunteer relationship, and
- the volunteer or organisation may end the relationship at any time

When talking about ending the relationship you should avoid the terms 'dismiss', 'letting go' or 'fire' as these are more suitable for an employment relationship. 'End' or 'walk away' are better terms to use.

Reasons for ending the volunteer relationship

There may be a number of reasons why a volunteer involving organisation chooses to end a relationship with one of its volunteers. These include:

- there's no longer a need for the volunteer's services
- the volunteer's performance
- the volunteer's conduct is not satisfactory (or has not improved following a review process) or there has been serious misconduct, or
- the volunteer's presence may be detrimental to the health and safety of others in the organisation

As outlined in [part 3 of this guide \(volunteer safety\)](#), a volunteer involving organisation has a duty of care to provide a safe work environment and could be held legally responsible for the actions of its volunteers.

If keeping a volunteer in the organisation is a risk to the health and safety of others (including members of the public), ending the relationship may be necessary to make sure you are acting in accordance with the standard of care required by law.



Caution

There is a tension between anti-discrimination laws and health and safety laws, so make sure you have considered anti-discrimination laws as well. If in doubt, seek legal advice.



Example

Your organisation has soup vans that travel around the Adelaide Hills area feeding people.

You have a loyal volunteer that has been serving soup in the vans for the last 20 years. The volunteer is now in their eighties and recently there have been incidents where their increasing fragility and instability have resulted in soup spills, as well as a minor burn to their hand and to another volunteer.

You are concerned that continuing in the role poses a serious risk to their safety, other volunteers and the public that are being served. You discuss these concerns with the volunteer and explain that you have a duty of care to take steps to minimise risks to health and safety.

There are other suitable roles (for example, calling suppliers and administration work) that you offer the volunteer. The volunteer doesn't accept this as they have their heart set on staying with the soup vans. You suggest that instead of serving, they hand out blankets, cutlery and napkins. They agree this is a sensible compromise and you are now comfortable that you are not placing them or anyone else at risk. However, you should ensure they understand that they are no longer authorised to serve soup under any circumstances.

The process of ending the volunteer relationship

When ending a volunteer relationship, think about your approach:

- **Be aware of other relationships.** As outlined above, and in [our guide 'Employee, contractor or volunteer?'](#), if the person has been engaged by your organisation as a paid worker, your organisation will have different legal obligations including processes to be followed (and the person will have certain legal rights). Also be aware if the person is a member of your organisation as they will continue to have member rights (you should check your organisation's rules or constitution).
- **Be careful about ending a volunteer arrangement if there has been a recent complaint made by the volunteer.** This could be construed as 'victimisation' against the complainant, even if your organisation decided to end the relationship for completely unrelated reasons. For more information about victimisation, see in [our guide to workplace behaviour](#).
- **Make sure the process is as fair and transparent as possible.** You don't need to give reasons why the relationship is ending, however, it is good practice to do so. Think about your organisation's reputation - the former volunteer may tell other volunteers in your organisation who could think you were being unfair and they may stop volunteering. They could also tell family and friends.
- **Confirm the arrangement has come to an end in writing and keep a record of the documentation provided to the volunteer.**
- **Maintain your organisation's obligations of confidentiality and privacy of the volunteer.**
- **Make sure all property of the organisation is returned by the volunteer** (for example, documents and uniforms).
- **Consider if security changes are needed** including to any buildings (access codes), IT systems and other electronic accounts (for example, Facebook login details and email passwords).



See [our fact sheets](#) on members' rights for members of a company limited by guarantee and of incorporated associations (for each jurisdiction) for information on suspending or terminating member rights.

Confirming the end of the arrangement in writing, not only provides finality for the volunteer and organisation, but may be relied on by your organisation to avoid any liability (legal responsibility) that might arise because of the volunteer's future actions. This may be relevant if you need to show they were not a volunteer at the time of their actions and not a representative of your organisation.



Example

The Ocean Voice is an organisation that runs a program providing media and public speaking training for people who are interested in environmental activism. The organisation matches the volunteers with media and speaking opportunities to help raise awareness and change attitudes about environmental issues.

At a recent speaking event, a volunteer called Kylie became violent and harassed a camera person. There were some informal discussions between Kylie and the volunteer manager about ending her involvement in the program while she obtains some care in relation to issues in her personal life. However, Kylie continues to be approached directly by journalists and other organisations for media and public speaking opportunities. Kylie takes up these opportunities and continues to represent that she is a volunteer at Ocean Voice. At one event, she again has a violent episode and physically abuses an interviewer resulting in their hospitalisation. As a result, Ocean Voice's reputation is tarnished and the relationships it has built with the media suffers.

In this example, while the interviewer doesn't make a claim against the organisation, this is a potential outcome where a volunteer causes harm to someone while volunteering. As the ending of the volunteer relationship had not been formalised or documented, it would be difficult to show Kylie was no longer a volunteer, and that Ocean Voice was not therefore liable for her actions.

Volunteer records at the end of the volunteer relationship

While organisations have limited legal obligations to keep specific records relating to volunteers, we recommend that a volunteer involving organisation keep records of its volunteers for at least seven years.

[Part 4 of this guide \(other legal issues relevant to volunteers\)](#) sets out reasons for keeping records in more detail. These include the reason that legal action can generally be brought up to six years after an event to which the legal action relates (for example, a former volunteer alleges your organisation's negligence was the cause of the injury to the person while they were volunteering for your organisation). Some claims have even longer limitation periods. If your organisation is also bound by work health and safety laws, in most jurisdictions these laws generally require certain records be kept for five years.

Keeping volunteer records for seven years is also consistent with any obligations your volunteer involving organisation has under the Fair Work Act in relation to employee records. This obligation does not specifically extend to volunteer records, however, best practice dictates that the management of volunteers should not differ significantly from the management of employees, (including record keeping).



National Standards for Volunteer Involvement

Volunteering Australia's National Standards for Volunteer Involvement sets out that evidence to meet **Standard 1: Volunteering is embedded in leadership, governance and culture** – the governing body and organisational leadership promote volunteering and implement effective systems to support volunteer participation, includes:

- 1.4 Volunteer records are maintained, and volunteers and employees understand their obligations on information sharing, record keeping and privacy.



Part 3

Volunteer safety



Volunteer safety

This part of the guide covers:

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



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 – two sides to safety

When considering your obligations under negligence laws, your community organisation needs to consider both:

- 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

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.

If your organisation is found to be negligent (because, for example, it breached its duty of care to a person and that breach caused injury, loss or damage) the court may 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.

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'.

This is particularly the case where there is a proximate relationship between the organisation and the person.

In all cases, 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.



For more information on **an organisation's duty of care regarding children**, see [our screening checks guide](#) for your state or territory.

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

If your organisation has been found to be negligent, no damages will be payable unless the person has suffered injury, loss or damage.

Unless someone has suffered some type of damage recognised by the law as giving rise to a cause of action, a negligence claim can't be made – even if your organisation has not conducted itself appropriately.

The most common categories of damage in negligence are personal injury (for physical or psychological damage, or both), 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 for the actions of a volunteer, 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 like personal injury the court will attempt to provide 'full and adequate' compensation for their past and future needs. Compensation will be paid out as a lump sum that cannot be changed later.

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.

One of the most common questions not-for-profit organisations ask us is: What happens if our volunteer does something 'wrong'? Will we be legally liable (responsible) for the actions of our volunteers?



What is vicarious liability?

Vicarious liability is a common law principle that one person may be held liable for the wrongful act or omission of another person – for example, where an employer is held liable for the act or omission of its employees.

Liability of organisations for the actions of volunteers was considered in the recent High Court case *Bird v DP (a pseudonym) [2024] HCA 41 (the Bird case)*.

The High Court made it clear that an organisation will not be vicariously liable for the acts of its volunteers in respect of common law claims.



Caution – the law on vicarious liability is evolving

In the Bird case, the High Court found that the Diocese of Ballarat was not vicariously liable for the assault and sexual assault committed by a volunteer parish priest at common law because:

- the priest was not an employee of the Diocese
- the priest was not an agent of the Diocese, and
- the volunteer relationship was not intended to create a legally binding arrangement between the priest and the Diocese akin to that of the relationship between employee and employer

The High Court very clearly rejected the idea that vicarious liability should be extended beyond strict employment relationships to 'relationships akin to employment'. This means an organisation cannot be vicariously liable for the acts of its volunteers in respect of common law claims. However, this decision does **not** mean that a not-for-profit organisation will not be held liable for any wrongful acts or omissions of volunteers.

Organisations should be very wary of making significant changes because:

- the Bird case only relates to the doctrine of vicarious liability at common law and does not alter the situation where organisations may be held liable for the actions of volunteers under statutory law
- the Bird case was decided on particular facts that may not apply in your situation, and
- even though vicarious liability may not apply, organisations may be found to be directly liable at common law or under legislation



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 their actions or omissions, the volunteer will not be personally liable. Instead, the community organisation **may** be liable.



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. 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 children to school. The mother and one of the children were killed. The other child has severe injuries which will take months to heal and will require ongoing rehabilitation. The client in Natalie's car also suffered cuts and abrasions as well as 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.

As a result of the decision in the Bird case, because Natalie was a volunteer and not an employee, it is unlikely that the organisation would be found vicariously liable for Natalie's actions.

However, the organisation could be found liable in negligence because it 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 (ie. failing to administer breath testing to Natalie, including where she appeared drowsy and has disclosed her alcohol intake had increased).

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.

State and territory laws on negligence

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.



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

Under the *Civil Law (Wrongs) Act 2002 (ACT)* (**ACT Wrongs Act**), 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 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.

Meaning of volunteer and voluntary basis

A 'volunteer' is defined to be a person who carries out 'community work' on a 'voluntary basis', which means 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).

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.

Meaning of community work

Whether a volunteer is performing 'community work' will depend on what work the volunteer is actually doing, rather than the overall purpose of the organisation they are doing the work for.

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

Certain types of work may be declared by regulation to constitute, or not to constitute, 'community work'. And 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 is specifically excluded from the definition of community work.

Meaning of community organisation

A 'community organisation' is a corporation that directs or coordinates the carrying out of community work by volunteers. The definition of 'community organisation' 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

Exceptions

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.

Exclusions

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.

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
- 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)

What does it mean if a volunteer is protected under the ACT Wrongs Act?

If a volunteer is protected under the ACT Wrongs Act (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.

What does it mean if a volunteer is not protected under the ACT Wrongs Act?

If a volunteer is not protected by the provisions of the ACT Wrongs Act, they 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.

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

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.

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

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



Example – volunteer under the ACT Wrongs Act

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.



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.



Example – exception under the ACT Wrongs Act

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.



New South Wales

Under the *Civil Liability Act 2002 (NSW)* (**NSW Civil Liability Act**), a 'volunteer' is protected if their action (or failure to act) in good faith took place while they were carrying out '**community work**' that is organised, directed or supervised by a '**community organisation**' or carried out by someone acting as an office holder of a community organisation.

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.

Meaning of volunteer and voluntary basis

A 'volunteer' is defined to be a person who does 'community work' (discussed below) on a 'voluntary basis', which means the 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.

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.

Meaning of community work

Whether a volunteer is performing 'community work' will depend on what work the volunteer is actually doing, rather than the overall purpose 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 following purposes:

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

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

Meaning of community organisation and organised

An organisation will be a community organisation if:

- it organises the doing of community work by volunteers
- it's capable of being sued for damages in civil proceedings, and
- it fits into one of the categories listed below:
 - 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

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 the exceptions 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.

Exceptions

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.

Exclusions

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.

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

What does it mean if a volunteer is protected under the NSW Civil Liability Act?

If a volunteer is protected under the NSW Civil Liability Act (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 or as an office holder of 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.

In most 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.

What does it mean if a volunteer is not protected under the NSW Civil Liability Act?



If a volunteer is not protected by the provisions of the NSW Civil Liability Act, they 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.

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

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.

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

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.



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 – exception under the NSW Civil Liability Act

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.

Northern Territory

Under the *Personal Injuries (Liabilities and Damages) Act 2003 (NT)* (**NT Personal Injuries Act**) a 'volunteer' is protected if their action (or failure to act) took place while they were carrying out 'community work' for a 'community organisation'.

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.

Meaning of volunteer

A '**volunteer**' is defined to be a person doing '**community work**' for a '**community organisation**' 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

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.

Meaning of community work

Whether a volunteer is performing 'community work' will depend on what work the volunteer is actually doing, rather than the overall purpose 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 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

The regulations to the NT Personal Injuries Act can also specify that certain types of work constitute community work.

Meaning of community organisation

An organisation will meet the definition of a community organisation if it:

- organises, directs or supervises '**community work**' done by volunteers, and
- fits into one of the categories listed below:
 - a religious body
 - a body corporate (for example, a company limited by guarantee or an incorporated association)
 - an Agency or department of the Territory

However, a volunteer will not be protected if they acted without authority or contrary to instructions.

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.

Exceptions

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.

Exclusions

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.

Certain types of civil liability are excluded from the protection provisions. A volunteer will not be protected by 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).

What does it mean if a volunteer is protected under the NT Personal Injuries Act?

If a volunteer is protected under the NT Personal Injuries Act (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.

What does it mean if a volunteer is not protected under the NT Personal Injuries Act?

If a volunteer is not protected by the provisions of the NT Personal Injuries Act, they 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.

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

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.

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

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.



Example – volunteer under the NT Personal Injuries Act

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 volunteered or not.



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.



Example – exception under the NT Personal Injuries Act

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.

Queensland

Under the [Civil Liability Act 2003 \(QLD\)](#) (**QLD Civil Liability Act**), a 'volunteer' is protected if their action (or failure to act) took place while they were carrying out 'community work' that is 'organised' by a 'community organisation' or carried out by someone acting as an office holder of a community organisation.

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.

Meaning of volunteer and voluntary basis

A 'volunteer' is defined to be 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.

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.

Meaning of community work

Whether a volunteer is performing 'community work' will depend on what work the volunteer is actually doing, rather than the overall purpose 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 following purposes:

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

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

Meaning of community organisation and organised

An organisation will be a community organisation if it:

- organises the doing of community work by volunteers, and
- fits into one of the categories listed below:
 - 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

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 the exceptions 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.

Exceptions

Certain acts of the volunteer will exclude their ability to claim protection.

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.

Exclusions

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.

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 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

What does it mean if a volunteer is protected under the QLD Civil Liability Act?

If a volunteer is protected under the QLD Civil Liability Act (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 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.

In most 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 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.

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.

What does it mean if a volunteer is not protected under the QLD Civil Liability Act?

If a volunteer is not protected by the provisions of the QLD Civil Liability Act, they 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.

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

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.

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

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.



Example – volunteer under the QLD Civil Liability Act

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 QLD Civil Liability Act while performing services for Community House Inc because the only remuneration he receives is reimbursement for out-of-pocket expenses.



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 – exception under the QLD Civil Liability Act

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.



South Australia

Under the *Volunteers Protection Act 2001 (SA)* (**SA Volunteers Act**) a **'volunteer'** is protected if their action (or failure to act) took place while they were carrying out **'community work'** for a **'community organisation'**.

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.

Meaning of volunteer and voluntary basis

A **'volunteer'** is defined to be 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

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 SA Volunteers 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.

Meaning of community work

Whether a volunteer is performing 'community work' will depend on what work the volunteer is actually doing, rather than the overall purpose of the organisation they are doing the work for.

Community work is broadly defined as work for any 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

The Volunteers Regulations can also specify that certain types of work is not community work.

Meaning of community organisation

An organisation will meet the definition of a community organisation if it:

- directs or co-ordinates the doing of **'community work'** by volunteers, and
- fits into one of the categories listed below:
 - a body corporate (such as a company limited by guarantee or an incorporated association)
 - the Crown (a government body)



However, a volunteer will not be protected if they acted without authority or contrary to instructions.

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.

Exceptions

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 SA Volunteers 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.

Exclusions

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.

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

What does it mean if a volunteer is protected under the SA Volunteers Act?

If a volunteer is protected under the SA Volunteers Act (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.

What does it mean if a volunteer is not protected under the SA Volunteers Act?

If a volunteer is not protected by the provisions of the SA Volunteers Act, they 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.

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

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.



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

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.



Example – volunteer under the SA Volunteers Act

Fred is employed as a gardener. Fred volunteers his services to Community House Inc (an 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.



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.



Example – exception under the SA Volunteers Act

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.



Tasmania

Under the [Civil Liability Act 2002 \(Tas\)](#) (**Tas Civil Liability Act**) a **'volunteer'** is protected if their action (or failure to act) took place while they were carrying out **'community work'** for a **'community organisation'**.

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

Meaning of volunteer and voluntary basis

A **'volunteer'** is defined to be a person who does community work on a voluntary basis.

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

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 Tas Civil Liability 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.

Meaning of community work and organised

Whether a volunteer is performing 'community work' will depend on what work the volunteer is actually doing, rather than the overall purpose 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 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

Regulations to the Tas Civil Liability Act can also specify that certain types of work do or don't constitute community work.

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.

Meaning of community organisation

An organisation will meet the definition of a community organisation if it:

- **'organises'** the doing of **'community work'** by volunteers, and



- fits into one of the categories listed below:
 - 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)

However, a volunteer will not be protected if they acted without authority or contrary to instructions.

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.

Exceptions

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 Tas Civil Liability 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 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.

Exclusions

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 Tas Civil Liability Act won't protect the volunteer from criminal liability in this situation.

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
- 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)

What does it mean if a volunteer is protected under the Tas Civil Liability Act?

If a volunteer is protected under the Tas Civil Liability Act (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.

What does it mean if a volunteer is not protected under the Tas Civil Liability Act?



If a volunteer is not protected by the provisions of the Tas Civil Liability Act, they 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.

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

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.

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

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.



Example – volunteer under the Tas Civil Liability Act

Fred is employed by B Pty Ltd as a gardener. B Pty Ltd encourages its staff to volunteer their services to Community House Inc (an 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 Tas 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.



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 – exception under the Tas Civil Liability Act

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.



Victoria

Under the Wrongs Act 1958 (Vic) (**Vic Wrongs Act**) a '**volunteer**' is protected if their action (or failure to act) took place while they were carrying out '**community work**' organised by a '**community organisation**'.

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).

Meaning of volunteer and voluntary basis

A '**volunteer**' is defined to be a person who provides a service in relation to community work on a voluntary basis. 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 Vic 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.

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

Although work under a fine repayment scheme is not specifically excluded by the Vic Wrongs 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.

Meaning of community work

Whether a volunteer is performing 'community work' will depend on what work the volunteer is actually doing, rather than the overall purpose of the organisation they are doing the work for.

Community work is broadly defined as work for any of the following purposes:

- 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

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

Meaning of community organisation and organise

An organisation will be meet the definition of a community organisation if it:



- ‘organises’ the doing of ‘community work’ by volunteers, and
- fits into one of the categories listed below:
 - 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

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.

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.

Exceptions

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 Vic Wrongs 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
 - 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.

Exclusions

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 Vic Wrongs Act won’t protect the volunteer from criminal liability in this situation.

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
- 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).

What does it mean if a volunteer is protected under the Vic Wrongs Act?

If a volunteer is protected under the Vic Wrongs Act (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.

What does it mean if a volunteer is not protected under the Vic Wrongs Act?

If a volunteer is not protected by the provisions of the Vic Wrongs Act, they 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.

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

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.

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

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.



Example – volunteer under the Vic Wrongs Act

Fred is employed by B Pty Ltd as a gardener. B Pty Ltd encourages its staff to volunteer their services to Community House Inc (an 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 as an employee, this is not linked to his volunteering at Community House Inc. He would be paid whether he volunteered or not.



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 – exception under the Wrongs Act

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.

Western Australia

Under the *Volunteers and Food and Other Donors (Protection from Liability) Act 2002 (WA)* (**WA Protection Act**), a **'volunteer'** is protected if their action (or failure to act) took place while doing **'community work'** for a **'community organisation'**.

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.

Meaning of volunteer and voluntary basis

A **'volunteer'** is a person who carries out community work on a **'voluntary basis'**.

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)

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.

Meaning of community work

Whether a volunteer is performing 'community work' will depend on what work the volunteer is actually doing, rather than the overall purpose of the organisation they are doing the work for.

Community work is broadly defined as work for any 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)*

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.

Meaning of community organisation



An organisation will meet the definition of a community organisation if it:

- organises the doing of **'community work'** by volunteers, and
- fits into one of the categories listed below:
 - 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)

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

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.

Exceptions

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 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
 - 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.

Exclusions

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.

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
- 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 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)

What does it mean if a volunteer is protected under the WA Protection Act?

If a volunteer is protected under the WA Protection Act (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.

What does it mean if a volunteer is not protected under the WA Protection Act?

If a volunteer is not protected by the provisions of the WA Protection Act, they 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.

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

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?

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



Example – volunteer under the WA Protection Act

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 WA Protection Act while performing services for Community House Inc because the only remuneration he receives is reimbursement for out-of-pocket expenses.



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 – exception under the WA Protection Act

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.



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.

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 now Western Australia have 'harmonised' their work health and safety laws by enacting similar legislation, based on an agreed 'model' Work Health and Safety Act (**Harmonised WHS Laws**).

This means that in most states and territories and at the Commonwealth level, work health and safety laws impose similar obligations.

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 Laws**).

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 criminal conviction, and potentially 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.

Exercising due diligence in relation to the work health and safety of volunteers 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 the organisation has, and implements, processes for complying with any duty or obligation under work health and safety laws



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 Western Australia.

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

1. work out whether the Harmonised WHS Laws apply to the organisation
2. consider who holds a duty under the Harmonised WHS Laws
3. consider the two sides to safety of volunteers under the Harmonised WHS Laws
4. understand the key WHS Law duties, and
5. 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.

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



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 determine if the Harmonised WHS Laws apply to your organisation, you will need to consider whether your organisation is a 'Person conducting a business or undertaking' (**PCBU**) 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 PCBUs. 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 is 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 \(the volunteer relationship\)](#) and [our guide 'Employee, contractor or volunteer?'](#).

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 WHS Laws are quite prescriptive in what the duty requires.

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

Duty holder	Duty
Person conducting a business or undertaking (PCBU)	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.
Officer	Officers have a duty to exercise due diligence to ensure that the PCBU complies with its WHS duties. The Harmonised WHS Laws outline particular actions an officer should take to fulfil the duty to exercise due diligence. See 'Liability of directors and officers' below for more information.
Workers (including volunteers)	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 WHS Laws 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.
Other persons	Other persons (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 WHS Laws.



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. For more information, see [our webpage ‘Working from 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. Consider all the places volunteers perform work, not just your office or site. This may include people's homes, vehicles and other offices or sites where your volunteers go to perform work.

Some activities may not be considered 'work' under WHS Law. If you are unsure whether 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 barbecue. 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

The model WHS Laws were amended in 2022 to make it expressly clear that PCBU's must identify reasonably foreseeable psychosocial risks to health and safety and to eliminate or minimise these, 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 duty, [Safe Work Australia has published a Model Code of Practice for managing psychosocial hazards at work](#). This code of practice is now implemented in all the states and territories except Victoria.

Victoria (the only state or territory that is not part of the Harmonised WHS scheme) will implement regulations to address the management of psychosocial risks from 1 December 2025.



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, 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**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

**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

**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 (including volunteers) must take reasonable care for their own health and safety and the health and safety of others. They must ensure their actions or omissions do not harm others 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:

1. work out whether the Victorian OHS Laws apply to the organisation
2. consider who holds a duty under the Victorian OHS Laws
3. consider the two sides to safety of volunteers under the Victorian OHS Laws
4. understand the key duties under the Victorian OHS Laws that relate to volunteers, and
5. 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 does 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
Employer	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.
Persons who manage or control workplaces	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.
Any person at a workplace	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



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



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 barbecue. 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.



See our ['Victorian guide to occupational health and safety laws'](#) for more information on notifiable incidents under Victorian OHS Laws.



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. For more information, see [our webpage 'Working from home'](#).

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 employees, volunteers, clients and possibly members of the public, you may have special responsibilities regarding children that your organisation comes into contact with when providing services, or when they are volunteers for your organisation.

When considering child safety, your organisation needs to be aware of its duty of care under:

- the common law (judge-made law) of negligence
- child safe standards, and
- relevant legislation

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.

Screening checks

If your community organisation works with children or has child volunteers, adult volunteers need to go through Working with Children Checks . 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 including mandatory reporting requirements.

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 2 of this guide \(the volunteer relationship\)](#) considers these requirements in further detail.



For more information about an organisation's duty of care to children under negligence laws, child safe standards and other relevant legislation, see our [webpage on background checks](#), where we have published a comprehensive a screening guide for each state and territory.

Each guide includes information on:

- Working with Children Checks
- Police Checks
- NDIS Worker Screening Checks
- other types of screening checks, and
- child safety laws

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

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.

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 the information below and 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.



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 2 of this guide \(the volunteer relationship\)](#).

For a checklist covering what to do when an incident or accident happens in your organisation, see our [injuries, incidents 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

For more information, see [our webpage 'Managing spontaneous volunteers'](#).



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)

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).



Note – indemnities

An indemnity is an obligation contained in a document, contract, agreement or legislation which requires a person or organisation to pay for potential losses or damages suffered by another party.

An indemnity is often intended to provide comfort to volunteers acting as office holders in incorporated associations as the association must reimburse them when they incur liabilities in good faith.

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, ask 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 a 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 circumstances, 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
- 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 \(WA\)](#) and the [Firefighters and Emergency Volunteers Legislation Amendment \(Compensation\) Act 2016 \(WA\)](#).

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



Part 4

**Other legal issues relevant to
volunteers – intellectual property,
privacy and record keeping**

Other legal issues relevant to volunteers

This part of the guide covers:

- ▶ intellectual property rights
- ▶ privacy law, and
- ▶ record keeping



This part of the guide covers some additional legal issues relevant to volunteer involving organisations.

For example:

Who **owns photographs** taken by a volunteer for use on our social media sites?

What are our **privacy obligations** towards our volunteers?

Are obligations regarding **use of confidential information** the same for volunteers as they are for employees?

What records need to be kept in relation to volunteers? What about **records involving personal information** (for example, a copy of the volunteer's Working with Children Check)? For how long should we keep these records?



Intellectual property

Intellectual property (or IP) is a legal term used to describe kinds of intangible property which protect outputs of the 'mind'. As part of its activities, your organisation will develop, hold and use intellectual property.

Intellectual property may include:

- your organisation's name, logo and branding (including for services or programs you provide)
- publications and training materials
- photos and other artistic materials (including those used on social media)



Why does intellectual property matter?

It's important to understand how intellectual property is created, who owns it and how ownership can be changed so that:

- your organisation's intellectual property rights are protected, and
- your organisation doesn't infringe another person's intellectual property

Infringement of intellectual property rights, even unintentionally, may lead to undesirable consequences (such as, legal action against your organisation).

There are 'types' of IP, including:

- copyright – protects certain types of works including literary, artistic and musical works
- trade marks – used to signify an association between certain goods or services and a particular trader
- trade secrets and other confidential information
- designs – protect the appearance or 'visual features' of a product
- patents – protect inventions
- plant breeder rights – protect new plant varieties

These forms of intellectual property are all different in what they protect, how they are protected, how they are enforced and exploited, and the duration of the protection provided.

The owner of intellectual property will have certain rights to 'exclude' others from using their asset. For example, the owner of the copyright in a literary work (such as a newsletter or report), has the right to prevent others from publishing that work.

While ownership of intellectual property typically originates with its author or creator, most forms of intellectual property can be assigned to another party. For example, employers will typically own intellectual property created by their employees as a matter of law, while other individuals such as contractors or volunteers can agree to assign intellectual property arising from their work to their organisation.



How is intellectual property protected in Australia?

In Australia, intellectual property rights are protected under Commonwealth legislation (laws passed by the Federal Parliament), as well as by the common law (laws developed by Australian courts).

In some instances, intellectual property protection is automatic and doesn't require any formal registration (for example, copyright), while in other cases, you must formally apply for registration to protect the intellectual property (for example, patents).



Copyright

Copyright is the expression of an original idea in a material form. The expression of the idea is known as a 'work'. Depending on the type of work, different copyright protections may apply. Key categories of works include:

- literary – works reduced to writing (articles, letters, flyers)
- dramatic – works intended to be performed dramatically (dance, choreography)
- artistic – works which have an artistic quality or craftsmanship (painting, prints, photographs, sculptures)
- musical – works involving an auditory element, such as a melody (songs, jingles, musical scores)

In addition, copyright also protects sound recordings, films, broadcasts and published editions of works.

In Australia, copyright is protected under the *Copyright Act 1968 (Cth)* (**Copyright Act**). Works created in Australia are protected by copyright automatically on creation. The copyright in a work does not need to be 'registered'.

Copyright protection only lasts for a certain amount of time, depending on the type of copyright.

Once the copyright protection period ends, the work is no longer protected and can be used by anyone provided it is not also the subject of another intellectual property right (for example, a trade mark registration).

The owner of the copyright has the exclusive right to do certain things with the material.

Depending on the kind of work involved, this will typically include the exclusive right to:

- copy or reproduce the copyright material in any format (for example, scan, print or photocopy)
- publish the material (for example, in hardcopy or electronic form)
- perform the material in public (for example, present it at a conference or training session)
- make an adaptation of the material (for example, translate it into a different language, or update it over the years), and
- communicate the material to the public (for example, publish or broadcast on the internet)

Under the Copyright Act, unless another agreement is made, copyright in a work will be owned by the author of the work. However, the Copyright Act also provides that employers will own copyright in certain works produced by employees in the course of their employment. This exception is unlikely to apply to volunteers or contractors.

The agreements an organisation has with its employees, contractors and volunteers should include terms setting out what works the organisation will own. The agreement will also need to ensure that these works are transferred to the organisation. Generally, the transfer (or assignment) will occur on **creation** of the work.

If an organisation doesn't have an agreement in place with a volunteer or any other third party, the ownership of a work can be transferred later by agreement between the parties. This is done through a document called a 'Deed of Assignment', which transfers ownership from one party to another.

If an organisation doesn't intend to own the works created by its employees or volunteers, it should ensure it has written agreements in place allowing the organisation to use the works.



Example

Justin volunteers at a local environmental protection organisation. He is a keen photographer and takes photographs of trees and other local plants in the area for the organisation to use on its website and social media sites (for example, Facebook and Instagram).

Unless Justin and the organisation have agreed otherwise in writing, Justin owns the copyright in the photographs and has the exclusive right to control how they are used.

However, the organisation can obtain permission from Justin to use the photographs for the purpose of publishing the photographs on the organisation's website and social media sites.



Tip

For more information about deeds of assignment, see [part 2 of this guide \(the volunteer relationship\)](#) which includes a sample Deed of Assignment that covers confidential information and intellectual property.

To use a copyright work owned by another person, permission is required. This permission is referred to as a copyright 'licence'.

Ideally, licence agreements are in writing, providing an explicit understanding of what permissions are being granted, and any associated terms.

Some works may be licensed for use by the public broadly, such as 'Creative Commons' or 'open source' materials. In these cases, it's important to review the terms associated with use of those works, as they may contain limitations. For example, a condition may limit commercial use of a work, which could still prevent use of works by not-for-profit organisations (as the use is not private or domestic).

In some instances your organisation may need to license the use of copyright it owns as part of its arrangements with contractors.



Example – non-exclusive licence

An organisation may engage with an academic to provide pro-bono assistance and prepare a report. It may be agreed that the organisation will own the copyright in the report but the academic will be given permission to use the work on certain terms – such as only publishing the report for academic or research purposes.

This is called a 'non-exclusive licence'.

When licensing copyright and other intellectual property, it's always important to set out the terms of use clearly, including how it can be used, any restrictions and any applicable fees.



Example

Sam drafts an original training manual for a community organisation in 2018, while completing a volunteer placement. Sam assigns the copyright in the works to the organisation as part of his volunteer agreement and later dies in 2021. The work will be protected by copyright, owned by the organisation, until the end of 2092.

A person will infringe another person's copyright if they exercise one of the copyright owner's exclusive rights (such as publication) without the owner's permission.

A person may also be liable for copyright infringement if they are found to have authorised another person to infringe the copyright. 'Authorising' can mean asking someone to infringe copyright or allowing someone working under your supervision to infringe copyright.

Examples of uses of works that may infringe copyright include:

- photocopying, emailing, broadcasting or printing material
- playing music for staff, volunteers or other persons at your organisation without a licence
- recording a video that incorporates music that is subject to copyright protection, and
- communicating material to the public by making it available on a website



There are a limited number of exceptions to copyright infringement, including research and study, parody and satire. However, there is no general exception for not-for-profit community organisations.

If your organisation wants to use the copyrighted work of another person or organisation, you should ensure that you have permission from the copyright owner. This may require you to approach the owner and explain how you will use the works, where you will use the works and for how long your organisation intends to use the works. You may be required to pay a fee, called a 'royalty'. The licence should be documented in writing.

Trade marks, patents and designs

The other main forms of intellectual property are set out below. In all instances, the best way for a volunteer involving organisation to protect these forms of intellectual property is to register them with [IP Australia](#).

Trade marks

A trade mark is a sign used in relation to particular goods or services in order to differentiate them from the similar goods or services of other traders. Common examples include logos and brand names, but trade marks are not limited to words and images, and can be an exclusive right over a phrase, sound, smell, colour, shape or even an aspect of packaging.

In Australia, the [Trade Marks Act 1995 \(Cth\)](#) sets out the criteria for registration, rights of the trade mark owner and other matters such as the length of protection (once registered, 10 years from date the application is filed, renewable indefinitely).

Trade marks are registered in relation to the specific goods or services in respect of which they are to be used. It's possible for marks which are substantially identical to coexist, provided they are registered and used in different industries.

Registration confers certain rights (which are legally enforceable) on the holder of a registered trade mark, including:

- the exclusive right to use and authorise the use of the trade mark in relation to the goods or services for which the trade mark is registered
- the right to seek relief if the trade mark is infringed (for example, an injunction or an order to the infringing person to cease using the trade mark)
- the right to assign or license the trade mark, and
- protection of the trade mark rights being infringed by third parties through the imposition of penalties including criminal penalties (for example, penalties for falsifying a registered trade mark or falsely applying a trade mark)



What about unregistered trade marks?

A trade mark does not necessarily need to be registered before it is used by an organisation, and the common law may provide a degree of protection for unregistered marks.

If a trade mark is not registered, the owner has limited rights if it is misused or infringed and legal action is usually limited to a claim of misleading or deceptive conduct under Australian Consumer Law or 'passing off' under the common law.

However, it's often difficult to enforce an unregistered trade mark, particularly where another trader has a registered trade mark. It's therefore recommended that any trade marks are registered to provide the best protection for the organisation.

A trade mark should be registered in the name of the organisation itself, being the legal entity having ownership of the trade mark, even if a volunteer has assisted in the creation of the trade mark. The legal position is different if the organisation is an unincorporated association (see below).



Note – use of the symbols ® and ™

Once a trade mark is registered, the owner is granted the right to use the ® symbol to denote their rights. This symbol must only be used once a trade mark is registered as it is an offence to falsely represent that a trade mark is registered.

The ‘™’ symbol may be used in relation to any trade mark, whether registered or not..

Patents and designs

A patent is a registered intellectual property right which protects an invention or innovation. In Australia, the relevant law is the *Patents Act 1990 (Cth)*. Once registered with IP Australia, protection lasts up to eight years for an innovation patent, 20 years for a standard patent and 25 years for patent of a pharmaceutical substance.

A design registration can protect the shape, configuration, pattern and ornamentation of a product, which gives a product a unique appearance. In Australia the relevant law is the *Designs Act 2003 (Cth)*. Once registered with IP Australia, protection lasts five years from the filing date of the application to register (the registration can be renewed for an additional period of five years). Designs are only able to be renewed once so a design can only be registered for a maximum of 10 years.

In both cases, a patent or design should be registered in the name of the organisation itself, being the legal entity having ownership of the patent or design, even if a volunteer has assisted in the creation of the patent or design. The legal position is different if the organisation is an unincorporated association (see below).



Note – unincorporated associations

While registration of a trade mark, patent or design will usually be in the name of the organisation, this can't be the case where the organisation is an unincorporated association.

This is because an unincorporated association is not a separate legal entity – it can't own intellectual property in its own name.

In this situation, it's common for registration to be in the name of a member of the governing body of the unincorporated association. In this instance, it's important to document in writing that the member of the governing body doesn't hold the registration for their own benefit but for the benefit of the unincorporated association.



For more information on trade marks, patents and designs, see our [webpage on Intellectual Property](#) or refer to [IP Australia](#).

What are moral rights?

Moral rights are the rights of an individual who creates a work to:

- be given credit as the author of the work
- not have someone else credited as the author of their work, and
- not have something done to their work (such as change the work) that would negatively impact the authors reputation

Moral rights continue to be held by the author even if they have transferred ownership of the copyright to someone else. This may limit the copyright owner's ability to deal with a work in certain ways.



In Australia, you can't assign, sell or waive your moral rights. Instead, the author can give their 'consent' to actions which would otherwise infringe their moral rights.

Depending on how your organisation chooses to deal with copyright, you may need to seek a moral rights consent from volunteers. Some organisations prefer to ensure that the author's moral rights are preserved and will attribute the author at all times. However, if an organisation wishes to be able to use a work without crediting its author, or to be able to unilaterally alter that work, it will need to obtain a moral rights consent. This can be included in an agreement signed at the beginning of the volunteering arrangement (see [part 2 of this guide on the volunteer relationship](#)) or it can occur in writing later.



Example

Kayla volunteers at a local dog rescue home. She writes an article on canine enrichment for adopted dogs for publication on the dog rescue home's website.

Unless Kayla has consented otherwise, she can insist that she be recognised as the author of the article and that the article not be changed in a manner that may negatively affect Kayla's reputation.

Confidential information

Confidential information is any information which your organisation does not want to be public knowledge.

Confidential information is not strictly 'property' – it is a right to have information kept confidential.

To maintain confidentiality, your organisation will need to ensure that any person who receives information is required to keep that information confidential.

Confidential information is often disclosed to employees or volunteers so they can perform their role (for example, an organisation's client and contact lists or funding information). To ensure that employees, contractors and volunteers are required to maintain confidentiality, all agreements with employees, contractors and volunteers should contain appropriate provisions limiting use and disclosure of confidential information.

The best way to make sure people understand they are receiving confidential information is to mark the information as confidential and to make sure the recipient understands it must be treated in confidence. Confidential information should be stored securely with restricted access.

If a person who receives confidential information breaches their duty of confidence, the law may provide a remedy. Often this remedy will be damages (monetary) or an injunction (a court order to stop a person who has threatened to make confidential information public).

Protection of confidential information lasts as long as the information stays confidential. Once confidential information has been disclosed (made public) it will no longer be confidential and can't become confidential again.



Tip

It may be appropriate to include a disclaimer, such as the following example, on sensitive material to help demonstrate that there is no intention to disclose the material publicly, and to remind recipients of the information about its confidential nature:

Important notice:

The information in this document is confidential information of XYZ Community Organisation.

The information in this document is provided only for the purposes of [insert authorised purpose] and must not be disclosed, reproduced, published, performed, communicated to the public or adapted by any person for any other purpose, except with the prior written consent of XYZ Community Organisation.



Using confidentiality agreements

A confidentiality agreement (or non-disclosure agreement) is an agreement between two parties (for example, a volunteer and your organisation) which sets out the terms and obligations that apply to confidential information which is received or shared between the parties.

A confidentiality agreement provides a clear way for your organisation to protect your rights in respect of confidential information. If you expect that volunteers will have access to confidential information, it's a good idea to ask them to sign a confidentiality agreement before they start volunteering.

Terms of confidentiality may be a separate agreement or part of a broader agreement (for example, the volunteer agreement). If an agreement is not put in place before confidential information is disclosed to a volunteer, you should immediately ask the volunteer to enter into an agreement which requires that the volunteer not disclose or use any confidential information received before and after the date of the agreement.

If the volunteer doesn't agree to sign the agreement, your organisation will need to consider if it's appropriate to continue to disclose confidential information to that person.



Example

HealthyHeads is a suicide-prevention charity. It has developed a unique therapy treatment.

Kylie is a volunteer who takes initial phone calls from potential clients. As part of her role, Kylie receives training on how the therapy works. To make sure Kylie can't disclose the workings of its unique therapy, HealthyHeads makes sure her volunteer agreement includes a provision which obliges her not to disclose or use confidential information (including details of the therapy) to anyone outside HealthyHeads.



Tip

A confidentiality agreement should:

- define the information that is considered confidential
- confirm that the confidential information must be kept confidential, and
- clearly define the limited purposes for which the confidential information may be used

Be aware that – even if all steps are taken to protect the confidentiality of information – there are some circumstances in which disclosure can be required by law. For example, courts can impose an obligation that information (including confidential information) be produced to the court through a request (a subpoena) if disclosure of the information is considered to be in the interests of justice.



Tip

For more information about deeds of agreement, see [part 2 of this guide \(the volunteer relationship\)](#) which includes a sample Deed of Agreement that covers confidential information and intellectual property.



Accusations of infringement

If a volunteer accuses your organisation of infringing their intellectual property:

- try to negotiate with the volunteer to identify what intellectual property they think has been infringed and how
- if feasible, stop using the intellectual property immediately, or come to an agreement with the volunteer to assign the intellectual property to your organisation
- seek legal advice to determine whether the volunteer's claim has merit (that is, whether it's substantial enough that it could be pursued in the courts) and how to resolve the dispute

If you are accused of infringing another person or organisation's intellectual property:

- if you consider the accusation has merit, stop carrying out the allegedly infringing activity as soon as possible, and
- seek legal advice

Who owns the intellectual property?

Understanding the different forms of intellectual property is critical to making sure any intellectual property produced by volunteers is protected.

As outlined above, your organisation can only consider how to best protect the organisation once it understands who owns the intellectual property.

The law in relation to each form of intellectual property and ownership is summarised below.

When the creator or author of the material is a volunteer or an unpaid worker:

Copyright

If an unpaid worker creates copyright material for your organisation, they will own copyright in the material unless there is a written agreement otherwise.

It's important to have an agreement with unpaid workers, including volunteers, about copyright ownership before they create material for your organisation to make sure copyright is owned by the organisation when it's created. However, if this doesn't occur, the unpaid worker can agree in writing to assign copyright ownership to the organisation after its creation.



Trade marks, patents and designs

Trade marks, patents and designs are owned by the individual or entity listed as the owner on the Australian Trade Marks, Patents and Designs registers (unless registered fraudulently).

For this reason, an unpaid worker will not possess any rights in relation to a trade mark, patent or design registered with IP Australia in the name of your organisation. However, if an unpaid worker develops a trade mark (for example, by drawing a logo) the unpaid worker's work may separately be protected by copyright.

Confidential information

The obligation to keep some information confidential may arise in an unpaid worker relationship through a confidentiality agreement (or confidentiality provisions in an agreement). Confidentiality can also arise where information is disclosed to the unpaid worker expressly in confidence, although it's more difficult to enforce.

Moral rights

Unpaid workers will have moral rights in respect of any literary, dramatic, musical or artistic work which they produce. These rights remain with the author of the work at all times, and so consent must be sought for any actions which might otherwise infringe moral rights.



When the creator or author of the material is an employee:

Copyright

It's an implied term of employment that an employer owns copyright in material created by their employees 'in the course of their employment'.

To remove uncertainties, your organisation should make it clear that it is hiring someone as an employee, and always include terms relating to copyright material in your employment agreements.

Trade marks, patents and designs

It's an implied term of employment that an employer owns a trade mark, patent or design created by their employees 'in the course of their employment'.

To remove uncertainties, your organisation should make it clear that it is hiring someone as an employee, and include protections for intellectual property in their employment agreement.

Confidential information

The relationship between an employer and an employee has been recognised by the courts as a special relationship for the purpose of confidential information.

The law requires an employee to maintain the confidentiality of information disclosed in the course of, or acquired as a result of, employment, irrespective of whether there is a confidentiality provision in an employment contract. It's best practice to address confidentiality in an employment agreement.

Moral rights

Employees will have moral rights in respect of any literary, dramatic, musical or artistic work which they produce for their employer, and so consent must be sought for any actions which might otherwise infringe moral rights.



When the creator or author of the material is a contractor:

Copyright

Copyright created by an independent contractor will automatically be owned by the independent contractor unless there is a written agreement otherwise (in a contractor agreement or agreement for services).

The agreement should state that any copyright in material created by the contractor during the provision of services to the organisation becomes the copyright of the organisation when it's created. In the absence of this agreement, the contractor can assign their copyright to the organisation after its creation.

Trade marks, patents and designs

A trade mark, patent or design created by an independent contractor will be owned by an independent contractor unless there is an agreement otherwise.

While these types of intellectual property generally rely on registration with IP Australia, registration by your organisation will not prevent a contractor from making a claim for ownership of intellectual property.

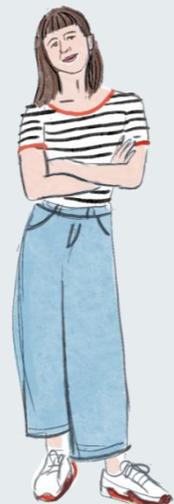
So, to prevent a future dispute about ownership, contractor agreements should provide that any intellectual property created by the contractor as part of their services is owned by the organisation. A contractor can also assign their ownership of intellectual property to an organisation after its creation.

Confidential information

As with a volunteer, a contractor will only be obliged to keep certain information confidential where the information has been communicated in confidence to the contractor or the contractor has agreed to keep the information confidential in their contractor agreement. It's best practice to ensure that agreements with contractors address confidentiality.

Moral rights

As with a volunteer, the individuals working for the contractor will have moral rights in respect of any literary, dramatic, musical or artistic work which they produce for a party to which they are providing services, and so consent must be sought for any actions which might otherwise infringe moral rights.



Privacy



Note

Your organisation is likely to collect, use, store and disclose information about individuals (for example, in the delivery of services or in gathering information about new memberships or volunteers of your organisation).

Under privacy laws, this information will often be classified as 'personal information'. Personal information may include 'sensitive information' and 'health information' – these subcategories of personal information require special treatment.

It's important to consider your legal obligations under privacy laws in all your dealings with personal information, including the sub-categories of sensitive information and health information.

Australia has strict privacy laws regulating how an organisation can collect, use and disclose personal information.

Under these laws, certain organisations must deal with personal information in particular ways to make sure someone's personal information is protected and not misused.



Note

While the privacy laws don't apply to some organisations, these organisations:

- may still have to comply with these laws due to contractual arrangements the organisations have with third parties, or
- may want to follow the privacy laws as a matter of best practice, or by choosing to 'opt-in'.

Your organisation's workers, including volunteers, must understand the organisation's obligations under privacy laws and your organisation must implement policies and practices which reflect those obligations. Workers must be adequately trained to ensure your organisation's ongoing compliance under the privacy laws.

If your organisation is bound by privacy laws (or follows them as a matter of best practice), your organisation should only:

- collect and store personal information (including information about volunteers) with consent from the person involved (unless you have ensured that consent is not required for that collection of information under the privacy laws)
- use or disclose the personal information for the purpose for which it was collected (unless the person has consented to some other use of the information, or you have ensured that the use or disclosure is otherwise permissible under the privacy laws), and
- store personal information securely to ensure there is no unauthorised access

Where an organisation holds information about a person (including a volunteer) the person may have the right to request access to their personal information, and to seek that it be modified or amended to ensure it is correct.

Allowing volunteers to access personal information held by an organisation about other people (for example, information about members of the public assisted by the organisation) may constitute a 'disclosure' of personal information for the purposes of the privacy laws. Organisations should consider



whether this is permissible before providing volunteers with access to personal information, and limit such access to the minimum information required by the volunteers to perform their tasks.



Caution

The information included in this part of the guide is of a generic nature and provides an overview of the Commonwealth and state laws on privacy. It's not intended to replace legal advice. More detailed information is available in our [privacy guide](#).

Privacy laws are complex and are not always easy to apply in practice. If you have any doubts, seek legal advice.

What are the privacy laws?

In this guide, the following legislation is collectively referred to as Privacy Laws:

Commonwealth	<ul style="list-style-type: none"> • Privacy Act 1988 (Cth) (Privacy Act) which includes the 13 Australian Privacy Principles (APPs)
Australian Capital Territory	<ul style="list-style-type: none"> • Information Privacy Act 2014 (ACT) • Workplace Privacy Act 2011 (ACT) • Health Records (Privacy and Access) Act 1997 (ACT)
New South Wales	<ul style="list-style-type: none"> • Privacy and Personal Information Protection Act 1998 (NSW) • Health Records and Information Privacy Act 2002 (NSW)
Northern Territory	<ul style="list-style-type: none"> • Information Act 2002 (NT)
Queensland	<ul style="list-style-type: none"> • Information Privacy Act 2009 (QLD)
South Australia	<ul style="list-style-type: none"> • has no legislative scheme for privacy law, but has an administrative direction on handling personal information that binds the public service: PC012 – Information Privacy Principles (IPPs) Instruction
Tasmania	<ul style="list-style-type: none"> • Personal Information Protection Act 2004 (Tas)
Victoria	<ul style="list-style-type: none"> • Privacy and Data Protection Act 2014 (Vic) • Health Records Act 2001 (Vic)
Western Australia	<ul style="list-style-type: none"> • has no legislative scheme for privacy law, but some privacy principles (dealing with access to information and correction of information) are provided for in the Freedom of Information Act 1992 (WA)

The state and territory privacy legislation applies to agencies of the state and territory governments, but doesn't generally apply to community organisations unless:

- they are required or otherwise agree to be bound by the legislation under a contract (for example, under a funding agreement with a government department), or
- (in some states) they are health service providers



The Privacy Act



Is your organisation bound by the Privacy Act?

The Privacy Act applies to many categories of organisations.

The most relevant categories of organisations are:

- organisations with annual turnover of more than \$3 million in any financial year since 2002
- Commonwealth government agencies
- government contracted services providers, and
- organisations that provide a health service to another individual and hold any health information

There are some exemptions.



Read more about whether your organisation is captured by the Privacy Act in our [privacy guide](#).

The Privacy Act doesn't regulate or apply to all information that an organisation gathers or deals with – it only applies to information about individuals.

To understand if your organisation has obligations under the Privacy Act, consider whether the information you hold (or want to collect) falls into one of the categories of information described below. The Privacy Act applies to these categories of information in different ways.



Personal information

'Personal information' is information or an opinion about an identified person, or about a person who is '**reasonably identifiable**'.

Personal information can be true or false, verbal, written, photographic, recorded or unrecorded.

Examples of personal information include (but are not limited to) a person's name, address, contact details (such as telephone number or email), date of birth, gender, sexuality and race.



When will someone be 'reasonably identifiable'?

Whether someone is 'reasonably identifiable' from the information you hold depends on factors including:

- the nature and extent of the information
- how the information was received
- how the information will be used and who has access to it, and
- whether it's possible for you to identify the person from the resources you hold (including other information available to you)



Under the Privacy Act, personal information does **not** include:

- anonymous information
- aggregated information (for example, data that reflects trends without identifying the sample)
- de-identified information and information about companies or other entities which does not identify individuals
- information about a deceased person

Information can become personal information if, when combined with other information, it becomes possible, to identify an individual.



Example

Consider a car licence plate. Most people wouldn't be able to identify the owner of a car simply from the registration number. So, to most people, knowing a car's licence plate number would not make the owner of the car 'reasonably identifiable'.

But if you work for an agency responsible for car registration, you may be able to identify the owner of the car because you have access to other information. Holding information about the car registration would make the person 'reasonably identifiable' to you from the information you hold, so the registration number would be considered personal information.



Sensitive information

'Sensitive information' is a special category of personal information under the Privacy Act that is subject to stricter legal requirements for collection, storage, use and disclosure.

Information will be considered 'sensitive information' where it's information or an opinion about a person's:

- health, genetics, biometrics
- racial or ethnic origin
- political opinion, membership of a political association
- religious beliefs or affiliations
- philosophical beliefs
- membership of a professional or trade association, membership of a trade union
- sexual preferences or practices

Identifying sensitive information is important as different requirements and thresholds apply to this kind of information under the Privacy Act.



Health information

'Health information' is a type of sensitive personal information under the Privacy Act that includes information or opinion about a person's:

- physical and mental health
- disability (at any time)
- health preferences (including the provision of future health services)
- use of health services
- bodily donations (for example, blood or organs), and
- genetics



Note

When you are collecting, using, storing, or disclosing information that is considered 'health information', be aware that this type of information is generally afforded a higher level of protection under the Privacy Act and some state privacy legislation.



Examples

Health information may include:

- notes of a person's symptoms, diagnosis, or treatment plan
- specialist reports or test results
- appointment and billing details
- dental records
- a person's healthcare identifier when it's collected to provide a health service
- prescriptions and other pharmaceutical purchases, and
- any other personal information (such as information about a person's sexuality, religion, date of birth, gender) collected to provide a health service

Privacy Act obligations

Many of the key obligations of the Privacy Act are set out in the APPs. These APPs set out rules which must be followed by organisations when they collect, hold, use and disclose personal information.

Under APP 5, when an organisation collects personal information, the organisation must take steps to make the person aware of certain mandatory information including:

- the organisation's identity and contact details
- if the organisation collected the information from a third party or the person is otherwise unaware of the collection of their personal information, the fact that the organisation has collected the personal information
- if the collection of personal information is required or authorised by law or a court or tribunal order, the fact that it's so required or authorised (including the name of the law or details about the court or tribunal order)
- the purposes for which the information is being collected



- the main consequences if the personal information is not collected
- any other person or entity to which the organisation may disclose the personal information
- circumstances under which the organisation would disclose the information or be required to disclose the information
- that the organisation's privacy policy has information about how the person may access and correct the information held about them, or otherwise seek correction of the information
- that the privacy policy has information about how someone can make a complaint about a breach of the applicable APPs, and
- whether the organisation is likely to disclose personal information to overseas recipients and, if so, the countries in which those recipients are located (if it's reasonably practical to specify the locations)

An organisation can make the person aware of this information in a number of ways.

Typically, organisations give the person a short privacy notice (sometimes called a 'collection notice') which addresses these matters. A sample collection notice is below.

Although it's not always practical to get a person's consent (nor necessary when collecting non-sensitive personal information), if you get consent, your organisation will generally be allowed to deal with that information under the Privacy Laws in any way that is consistent with the consent provided.

For a person to be adequately informed before giving consent, they need to understand what information the organisation will collect about them, how the organisation will collect it and the purposes for which the organisation is collecting it. This is why an organisation should provide a privacy collection notice which is specific to the activity to each new volunteer.

So that a person has a genuine opportunity to provide or withhold consent, an organisation should obtain separate consent for each matter, rather than bundle consents for multiple collections, uses and disclosures. This can be achieved by having the volunteer select 'yes' or 'no' for each matter that requires consent in a collection notice.

If you refer the person to your privacy policy, make sure your organisation's privacy policy covers the matters listed above in relation to the particular collection of personal information.



Caution

The sample collection notice below is a generic, sample collection notice.

It's not legal advice and may not suit your organisation. Your organisation will need to draft a collection notice to suit your circumstances and may want to seek legal advice on this.

Sample collection notice

Privacy Notice

This notice is provided under Australian Privacy Principle 5 of the *Privacy Act 1988* (Cth).

[Name of Organisation] is collecting your personal information to **[insert purpose, for example, 'assess your eligibility for [program/service]', 'respond to your enquiry', 'process your donation']**.

We may also use it for related purposes, including **[insert any secondary purposes, for example, 'statistical reporting', 'contacting you about future support options']**.

We usually collect information directly from you. In some cases, we may collect personal information from others, such as **[insert source, for example, 'referral partners', 'publicly available records', 'authorised representatives']**, where it is unreasonable or impracticable to collect it from you directly.

Your personal information may be disclosed to:

- **[insert relevant internal teams or service arms, for example, 'caseworkers', 'program coordinators']**



- **[insert third parties, for example, ‘funding bodies’, ‘partner organisations’, ‘IT or cloud service providers’]**
- **[insert any overseas recipients and their locations if known]**

If we are required or authorised to collect information under Australian law or a court or tribunal order, this may include **[insert relevant law or requirement, for example, ‘child protection legislation’, ‘reporting obligations under our funding agreement’]**.

Our Privacy Policy contains further details about how we handle your information, including how you can:

- access or correct your personal information, and
- make a complaint about how we’ve handled your privacy.

You can view our Privacy Policy at **[insert URL]** or request a copy by contacting us.

Where lawful and practicable, you may interact with us anonymously or using a pseudonym. However, this may limit our ability to **[insert limitation, for example, ‘provide you with support services’ or ‘process your request’]**.

For more information, please contact:

Privacy Officer

[Name of Organisation]

[Email] | [Phone] | [Postal Address]

In addition to the APPs, the Privacy Act sets out specific rules governing the handling of information about consumer creditworthiness, as well as procedures that must be followed in the event of any serious data breach event impacting on personal information.



Note

The Privacy Act has stronger protections for the use, collection and disclosure of:

- sensitive information and health information
- personal information (including sensitive and health information) for marketing activities, and
- consumer credit information (such as credit reports)



Summary of the APPs

In summary, the APPs require an organisation to:

- be open and transparent about its management of personal information, which includes having a culture of privacy compliance, effective privacy processes and a clearly expressed and up to date privacy policy
- take reasonable steps to ensure that people are aware it is collecting ‘personal’, ‘sensitive’ or ‘health’ information about them (and in the case of sensitive or health information, obtain consent to that collection)
- notify people about the purposes for which it is collecting the information and who it might share that information with (among other things)
- comply with restrictions on how personal information can be used and who it can be disclosed to, including at any offshore location where the information may be disclosed
- give people the right to access the information held about them and to have that information corrected or modified
- in the event of a data breach involving personal information, follow the steps set out under the Notifiable Data Breaches Scheme



For more information on privacy go to our [webpage on privacy](#).

State and territory-based privacy laws

Australian state and territory IPPs apply to their respective government agencies (including public sector agencies, local councils, courts, state police).

The state and territory IPPs regulate how government agencies may deal with the personal information of individuals in a similar way that the APPs regulate how private entities deal with personal information.

The laws and directions containing the various state and territory IPPs are:

Australian Capital Territory	• Information Privacy Act 2014 (ACT) sets out 13 Territory IPPs in Schedule 1
New South Wales	• Privacy and Personal Information Protection Act 1998 (NSW) sets out 12 IPPs in Part 2, Division 1
Northern Territory	• Information Act 2002 (NT) sets out 10 IPPs in Schedule 2
Queensland	• Information Privacy Act 2009 (QLD) sets out 13 Queensland Privacy Principles (QPP) in Schedule 3
South Australia	• has no legislative scheme for privacy law, but has an administrative direction on handling personal information that binds the public service: PC012 – Information Privacy Principles (IPPs) Instruction
Tasmania	• Personal Information Protection Act 2004 (Tas) sets out 10 IPPs in Schedule 1
Victoria	• Privacy and Data Protection Act 2014 (Vic) sets out 10 IPPs in Schedule 1
Western Australia	• has no legislative scheme for privacy law, but some privacy principles (dealing with access to information and correction of information) are provided for in the Freedom of Information Act 1992 (WA)



Is your organisation bound by the state and territory based privacy laws?

Each set of IPPs is very similar to the APPs under the Privacy Act.

While the IPPs generally only apply to government agencies, it's not uncommon for a funding contract with a state or territory public agency (for example, Department of Health) to require the funding recipient to comply with the relevant IPPs for the purpose of the funded project.

Always check if your organisation is subject to any state or territory based privacy laws.



If your organisation is contractually bound to comply with any of the state or territory IPPs, make sure:

- volunteers are appropriately trained regarding the organisation's obligations under the relevant IPPs and the funding contract, and
- your organisation complies with the requirements of the relevant IPPs when dealing with the personal information of volunteers

Health specific privacy legislation

Private health service providers are also subject to additional privacy legislation in New South Wales, Victoria and the Australian Capital Territory.

The following legislation sets out Health Privacy Principles (HPPs):

Australian Capital Territory	• <u>Health Records (Privacy and Access) Act 1997 (ACT)</u> sets out 12 HPPs in Schedule 1
New South Wales	• <u>Health Records and Information Privacy Act 2002 (NSW)</u> sets out 15 HPPs in Schedule 1
Victoria	• <u>Health Records Act 2001 (Vic)</u> sets out 11 HPPs in Schedule 1

This legislation generally applies to the collection, use, storage and disclosure of health information of people receiving health services from health service providers.

If your organisation is bound by any of the HPPs, it should ensure its volunteers are appropriately trained regarding the organisation's obligations under the relevant health specific privacy legislation.



Tip

Always check contracts with state or territory government bodies to confirm if the organisation is required to comply with the IPPs or HPPs.



Note

This is a short summary of the types of the above information which are relevant to the application and obligations of the privacy laws. However, you should refer to our [privacy guide](#) for more detailed information.

Your organisation, its volunteers and the Privacy Laws

If your organisation is required to comply with Privacy Laws (or chooses to comply as a matter of best practice) and engages volunteers, it will need to take steps to make sure people in the organisation are constantly mindful of their obligations when dealing with personal information.

To embed a culture of privacy, train your organisation's volunteers in privacy compliance and make sure they understand the importance of protecting personal information from the outset.

Specifically, ensure your organisation's volunteers are appropriately trained regarding:

- the organisation's obligations under the Privacy Act and applicable state and territory-based laws in relation to the collection, use, disclosure and storage of personal information and health information (as applicable or as a matter of the organisation's practice)



- how the organisation (and its volunteers) collects, uses, discloses and stores personal information as part of its activities
- the types of information, particularly sensitive and health information, which the volunteer may be required to deal with and the organisation's obligations in respect of that information
- the organisation's policies in relation to privacy, such as a privacy policy, a data breach policy and response plan and the how a person can make a complaint to the organisation in relation to their personal information
- what to do if the volunteer thinks that a data breach may have occurred
- how to direct people to the organisation's privacy policy (which may be required by privacy law to be as available as practically possible, such as on the organisation's website), or how to provide people with a copy of the policy. The Privacy Act requires certain information be contained within the policy including:
 - the kinds of personal information that the organisation collects and holds
 - how personal information is collected and held
 - the reasons why the organisation collects, holds, uses and discloses personal information
 - how an individual can access their information
 - the procedures for collecting, holding, using and disclosing the information, and
 - an explanation of whether personal information will be disclosed overseas



Example

HelpingHands is a large charity that provides outreach services to the elderly. HelpingHands relies on volunteers to conduct welfare checks on their clients. As part of their role, volunteers receive the personal information (such as the name and address) of clients that they then visit.

Before volunteers begin any activities, HelpingHands makes sure:

- it is able to disclose the relevant personal information to the volunteers under the APPs, and
- the volunteers are trained about HelpingHands' obligations under the Privacy Act, including their practices and procedures

Information about your volunteers and the Privacy Laws

Organisations that engage volunteers must treat volunteers' personal information in the same way they are required to treat personal information of any other individuals under the Privacy Act (and the relevant state and territory privacy laws if the organisation is required to comply with these).



Note

Personal information about employees may be exempt from the requirements of the Privacy Act.



Example

Sam volunteers at a shelter. He tells his supervisor, Laureen, that he has tested positive to COVID-19. Both Sam and Laureen must follow the latest government-issued guidance, including any exclusion or self-isolation requirements, to limit the spread.

To the extent that any laws require the shelter to take particular steps, the APPs will not prevent those steps from being taken.

In the absence of any other legal requirements, strict privacy obligations apply when handling this personal health information.

Laureen may only collect, use, store or disclose the minimum amount of Sam's personal information that is required to mitigate risks associated with COVID-19.

When Laureen notifies employees, volunteers and other people who may have had contact with Sam at the shelter of the COVID-19 risk, she should:

- only disclose information that is reasonably necessary to prevent or manage the spread of COVID-19 at the shelter, and
- only reveal Sam's name if this is necessary (for example, by restricting naming Sam to a limited number of people on a need-to-know basis)

Both Laureen and Sam must follow government-issued guidance on whether it is safe for Sam to return to work.



Tip

The [Office of the Privacy Commissioner has published guides and templates](#) on its website that provide practical information about complying with the Privacy Act.

These include:

- Australian Privacy Principles and Information Privacy Principles — Comparison Guide
- APP quick reference tool
- Guide to developing an APP Privacy Policy
- What to look for in developing a Privacy Policy
- Guide to securing personal information
- Handling privacy complaints
- Privacy Management Plan Template (for organisations)
- Privacy for not-for-profits, including charities

Record keeping

While organisations have limited legal obligations to keep records relating to volunteers, in some circumstances, you may be required to keep records of your volunteers.

It may be necessary for your organisation to keep records relating to your volunteers for a number of reasons including for:

- internal organisational reporting (for example, human resources)
- current or anticipated disputes, or legal action (for example a bullying or sexual harassment claim)
- requirements imposed by a government regulator
- requirements under insurance policies, or
- requirements under funding agreements

**Tip**

Check your organisation's insurance policies and funding agreements to determine whether your organisation is under a contractual obligation to retain volunteer files or certain records for a specific period.

Keeping records and for how long

We recommend an organisation keep records relating to its volunteers for at least seven years. This is consistent with some regulator requirements (for example, the Australian Charities and Not-for-profits Commission for registered charities) and is important if any legal action is started against the organisation.

Legal action (civil claims) can generally be brought up to six years after an event to which the claim relates occurred (for example, if a former volunteer alleges your organisation's negligence was the cause of an injury to the volunteer).

**Note**

Some legal claims have even longer limitation periods – such as claims brought in relation to harm suffered by a person when they were a child.

If your organisation works with children or more vulnerable persons, volunteer records should be kept for as long as possible (ideally indefinitely). This is especially the case considering recent child safety reforms and the removal of limitation periods for bringing actions based on child abuse (meaning they can be brought at any time – there is no six year limit).

Your organisation should treat information that it holds about current and former volunteers with care and in accordance with obligations under Australian privacy laws, as discussed above.

**Note**

The obligations for keeping records under the *Fair Work Act 2009 (Cth)*, for seven years, don't apply to volunteers.

As outlined in [part 1 of this guide](#), it's important that your organisation understand the differences between paid workers (employees and independent contractors) and unpaid workers because the law treats them differently in some instances.

Volunteer safety and record keeping

Workplace health and safety (WHS) laws (sometimes referred to as occupational health and safety (OHS) laws) require community organisations to keep certain records in relation to workers, including volunteers. See [part 3 of this guide](#) which deals with volunteer safety, including what WHS or OHS laws apply to your organisation.

Harmonised WHS Laws

Most states and territories – Queensland, New South Wales, Tasmania, the ACT, South Australia, the Northern Territory and Western Australia – have 'harmonised' their work health and safety laws by enacting similar legislation, based on an agreed 'model' Work Health and Safety Act (**Harmonised WHS Laws**).

In these states and territories, organisations to which the model WHS laws apply must notify the relevant regulator immediately after the organisation becomes aware of the occurrence of an incident that is considered a 'notifiable incident'.



Notifiable incident

A notifiable incident is:

- the death of a person
- a serious injury or illness of a person, or
- a dangerous incident

arising out of the conduct of a business or an undertaking at a workplace.

The organisation must keep a record of each notifiable incident that has occurred for at least five years from the day they had notice of the incident. A failure to keep these records may lead to individuals incurring fines of up to \$5,000 and organisations incurring fines up to \$25,000.

The Harmonised WHS Laws also require keeping:

- a 'Register of Injuries' where any workplace incidents or injuries should be recorded no matter how serious they appear to be at the time (there is a penalty for failing to keep a Register of Injuries), and
- records about hazardous substances such as asbestos, lead and carcinogenic materials which may be relevant if volunteers have had any contact with them

Under the Harmonised WHS Laws, volunteers are included in the definition of 'workers'.

Victorian OHS laws

The Victorian OHS law is in many respects reasonably consistent with the Harmonised WHS Laws.

An organisation that is bound by the Victorian OHS laws must, so far as is reasonably practicable, keep information and records relating to the health and safety of its workers. There are penalties for failing to keep these records.

The organisation is required to notify WorkSafe, the Victorian regulator, of certain incidents and must keep a copy of the record for at least five years. There are also requirements to keep records under the Victorian OHS laws regarding asbestos, lead, carcinogenic substances and other hazardous substances.



Note

Even if the Harmonised WHS Laws or the Victorian OHS laws do not apply, your organisation has similar obligations arising under the common law (for example, in relation to negligence).

Keeping records will help you show you are meeting these obligations.

Commonwealth and state regulator record keeping

The Australian Charities and Not-for-profits Commission

The Australian Charities and Not-for-profits Commission (**ACNC**) requests information relating to a charity's volunteers in its Annual Information Statement, which most charities must submit annually.

The requested information is currently limited to the number of volunteers a charity engages in its activities. For this reason, a volunteer involving organisation that is a registered charity should retain records about its volunteers so that it can report accurately.

Under the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)* your organisation is required to keep its financial and operational records for seven years.



The ACNC has detailed information on its website in relation to [record keeping for charities](#). Our [guide to running a charitable CLG](#) also has information about keeping charities' records.

The Australian Taxation Office

The Australian Taxation Office (**ATO**) requires that records be kept for five years. Many of the documents relevant to tax affairs will also be covered by the ACNC's record-keeping requirements, including an organisation's governing documents, financial reports, cash books, tax invoices, employee records, bank records, grant documentation and contracts.

Clear records should be kept if payments are made to volunteers, such as reimbursements. Records of payments will also be important if a volunteer changes their status with an organisation and becomes an employee or independent contractor of the organisation. For more information, see [our guide 'Employee, contractor or volunteer?'](#).

State and territory incorporation regulators

All community organisations incorporated under state or territory law will need to keep documents and records.

Requirements to keep certain documents and records may be set out in your organisation's rules, as well as in the relevant state or territory incorporation legislation.

While incorporated association laws do not explicitly require you to keep specific records about volunteers, in some circumstances the organisation may be legally required to (or otherwise choose to) because of the position held by the volunteer (for example, if every person on the management committee is a volunteer).



For more information, see our [fact sheets on keeping and accessing documents, records and registers for each state and territory](#).

Other incorporation regulators (ASIC and ORIC)

If your organisation is incorporated under a Commonwealth law, such as a company limited by guarantee under the *Corporations Act 2001* (Cth) or an Indigenous organisation incorporated under the *Corporations (Australian and Torres Strait Islander) Act 2006* (Cth), it will need to keep financial documents and records for seven years.

Neither of these laws explicitly require the organisation to keep specific records of its volunteers, although in some cases records about volunteers will be kept by virtue of the position held by the volunteer (for example, where every person on the board of directors is a volunteer).

Fundraising regulators

Fundraisers conducting regulated fundraising activities must meet certain obligations under state and territory fundraising laws. These are usually the same regulators as the state and territory incorporation regulators (see above).

These laws differ in each state and territory (except the Northern Territory which does not have any specific fundraising law).

If your organisation is fundraising in several states or territories, you will need to consider the laws in each of those places and whether they apply. Fundraising laws are complex. You may need to seek legal advice in determining which laws apply to your organisation.

In some circumstances the fundraising laws require you to make and keep records of individuals involved in a fundraising activity, including as a 'collector'.



While your organisation may not be legally obliged to make and keep records of each person involved in a fundraising activity (for example, a collector), such as their name and address and their identifying number (if any), there are many reasons why it's a good idea to keep records (for example, it will help you to demonstrate how you've managed risk and met your governance obligations).

Records of volunteers involved in fundraising should be kept and maintained with the other records of the organisation and with the requirements (if any) set out in the relevant fundraising legislation and, where applicable, other relevant laws (including privacy laws, as discussed above).



Caution

Just because your organisation may be exempt from a requirement to seek permission from the state regulator to fundraise in that state, it doesn't mean your organisation will be exempt in the other states and the ACT.

If you are conducting fundraising activities in other states or the ACT you should check with the local regulator, and if required seek legal advice.



For more information on fundraising Laws in Australia see our [fundraising webpage](#) and for more information on running fundraising events, see our [webpage on holding events](#).



National Standards for volunteer involvement

Volunteering Australia's National Standards for Volunteer Involvement include standards relevant to the matters discussed in this part of the guide. If your organisation complies with its legal obligations as set out in this part (or if not obliged, but does so as a matter of best practice), it will help make sure your organisation meets these standards (and can provide evidence that it does so).

Standard 8: Policies and practices are continuously improved – Effective volunteer involvement results from a system of good practice, review and continuous improvement

- 8.1** Policies and procedures are designed and implemented to effectively guide all aspects of volunteer involvement.

Evidence of meeting this standard includes: all employees and volunteers are made aware of and understand an organisation's policies and procedures relating to volunteer involvement

Standard 1: Volunteering is embedded in leadership, governance and culture – The governing body and organisation leaders promote volunteering and implement effective systems to support volunteer participation.

- 1.3** Policies and procedures applying to volunteers are communicated, understood, and implemented across the organisation or group.

Evidence of meeting this standard includes regular monitoring and improvement of compliance with volunteer policies and procedures

- 1.4** Volunteer records are maintained, and volunteers and employees understand their obligations on information sharing, record keeping and privacy.

Evidence of meeting this standard includes:

- information required to engage volunteers is identified
- information from screening checks for volunteers is documented and secured
- the organisation has documented and implemented processes that comply with privacy legislation for securely managing volunteers personal and confidential information
- records of volunteer contribution, achievements and acknowledgement are maintained
- volunteers understand their obligations relating to information and privacy legislation

Standard 2: Volunteer participation is championed and modelled – Commitment to volunteer participation is set out through vision, planning and resourcing, and supports the organisation's or group's strategic vision.

- 2.1** The organisation publicly declares its commitment to volunteer participation.

Evidence of meeting this standard includes:

- the governing body and leaders publicly communicate the organisation's philosophy, direction and broad objectives for involving volunteers
- key documents are publicly available

