

Negligence

Legal information for Australian community organisations

This fact sheet covers:

- ▶ when an organisation may be liable for negligence
- ▶ responsibility for the actions of employees and volunteers
- ▶ compensation and shared responsibility, and
- ▶ practical steps to reduce negligence risks



Your organisation must consider the duty of care it owes to employees, volunteers, clients and members of the public when providing services or carrying out activities.



Disclaimer

This fact sheet provides general information about negligence and a community organisation's duty of care. It is intended as 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 [our full disclaimer](#) that applies to this fact sheet.

Negligence and legal responsibility



What is negligence?

Negligence is a failure to take reasonable care to avoid causing harm to another person.

An organisation may have a duty to protect its employees, volunteers, clients and members of the public from personal injury, property damage or financial loss. This duty may arise under common law, which is law developed through court decisions, or under state and territory legislation dealing with negligence and civil liability.

Generally, an organisation will only be liable in negligence if:

- it owed a duty of care to a person
- it breached that duty
- the person suffered legally recognised harm, and
- the breach caused the harm



See the list at the end of this fact sheet for the principal state and territory legislation governing negligence.

Duty of care

A person or organisation will generally only be liable in negligence if they owed the person who suffered harm a duty of care.



What is a duty of care?

A duty of care is a legal obligation to take reasonable care to avoid causing reasonably foreseeable harm to another person.

Courts have recognised that a duty of care exists in many established relationships. These include relationships between an employer and employee, a host employer and labour hire worker, an occupier of premises and people entering the premises, a landlord and tenant, a service provider and customer, a health practitioner and patient, road users, and a school and its students.

Outside established categories, whether a duty of care exists can be a complex question. A court may consider whether the harm was reasonably foreseeable, the person's vulnerability and ability to protect themselves, and the organisation's control over the circumstances creating the risk.

Your organisation will owe a duty of care to its employees. Depending on the circumstances, it may also owe a duty of care to volunteers, clients, service users, visitors, program participants, event attendees and people who rely on information or advice it publishes.

An organisation should not assume that it owes no duty merely because a person is not an employee or does not pay for its services.

Psychological harm

An organisation's duty of care can extend to reasonably foreseeable psychological harm.

For example, an organisation that supports people who have experienced trauma should consider whether the work exposes employees or volunteers to a risk of psychological injury. Relevant precautions may include appropriate training and supervision, safe systems of work, manageable workloads, procedures for high-risk situations and access to suitable support.

The precautions required will depend on the organisation's work and the likelihood and potential seriousness of the harm.

Organisational child abuse

Specific legislation dealing with organisational child abuse applies in several states and territories. Depending on the jurisdiction, an organisation may be presumed to have breached a duty of care unless it proves that it took reasonable precautions to prevent abuse by a person associated with the organisation.

The people covered by these laws may include employees, volunteers, office holders and contractors. The precise duty, the organisations covered and the available defences differ between jurisdictions.

Organisations working with children should identify and manage child safety risks and comply with applicable requirements concerning child safe standards, screening, training, supervision, complaints and reporting.

The standard of care

If an organisation owes a duty of care, it must meet the standard of care required in the circumstances.

The standard is generally the care that a reasonable organisation in the same position, and with the same knowledge, would have exercised. This does not require an organisation to prevent every possible injury or eliminate every risk. It requires the organisation to act reasonably, taking account of the circumstances known or reasonably knowable at the time.

What is reasonable will depend on all the circumstances, including the organisation's activities, the people it serves, its knowledge of the risk and any applicable legislation, standards or accepted sector practices. The likelihood and potential seriousness of harm are also relevant.

Limited resources may be relevant to what precautions were reasonable. However, a lack of resources will not necessarily justify exposing people to a serious and foreseeable risk of harm.

Professional services

State and territory legislation contains specific provisions concerning the standard of care expected of professionals.

If your organisation provides professional services, such as legal, health, financial or engineering services, the conduct of its professional workers may be assessed against widely accepted competent professional practice.

The applicable test and any exceptions differ between jurisdictions. Your organisation should seek legal advice if a complaint or claim concerns professional services.



See the list at the end of this fact sheet for the principal state and territory legislation governing negligence.

Breach of duty

An organisation breaches its duty of care if it fails to meet the standard of care required in the circumstances.

In most jurisdictions, legislation provides that a person is not negligent for failing to take precautions against a risk unless:

1. the risk was foreseeable
2. the risk was not insignificant, and
3. a reasonable person in the same position would have taken precautions

The Northern Territory legislation takes a different form, but common law principles continue to apply.

Reasonable precautions

When deciding whether a reasonable organisation would have taken precautions, a court may consider the following matters:

- **Likelihood of harm**

How likely was it that harm would occur if the organisation did not take precautions?

A risk that is relatively unlikely may still require precautions if the possible consequences are very serious.

- **Likely seriousness of the harm**

How serious could the harm have been?

An organisation may be expected to take more extensive precautions where a risk could result in death or serious physical or psychological injury.

- **Burden of taking precautions**

How difficult, costly or disruptive would it have been to address the risk?

A court may be more likely to find a breach where a simple and inexpensive precaution could have prevented serious harm. More extensive precautions may still be reasonable where the likelihood or potential seriousness of harm is high.

- **Social utility of the activity**

Did the activity creating the risk provide an important benefit to the community?

A court may consider the social value of an organisation's work. However, the value of the work does not remove the organisation's obligation to take reasonable care.

Assessing whether a duty was breached

Whether an organisation breached its duty requires an assessment of what was reasonable in all the circumstances. The assessment is based on the circumstances existing before the incident. The fact that someone was injured does not, by itself, establish that the organisation was negligent.

Evidence that an organisation followed sound and accepted sector practices may support a finding that it acted reasonably. However, following a common practice will not necessarily be sufficient if that practice does not address an obvious or serious risk.



Case example

A not-for-profit organisation provided support services to a client with a known history of violent and threatening behaviour. An employee was seriously harmed while providing those services.

The court found that the organisation had breached its duty of care because it knew of a foreseeable and serious risk but had not taken reasonable steps to protect the employee. The case highlights the need for organisations to assess known risks and implement appropriate safeguards for employees and other workers.

The Supreme Court decision (*Beven v Brisbane Youth Service Inc* [2016] QSC 163) was upheld on appeal (*Brisbane Youth Service Inc v Beven* [2017] QCA 211)

Damage and causation

A failure to take reasonable care does not, by itself, establish negligence. The person making a claim must also establish that they suffered a type of harm recognised by law and that the organisation's breach caused that harm.

Common categories of harm include:

- personal injury, including some forms of psychological injury
- property damage, and
- financial loss

Different legal rules may apply to different categories of harm. There are also statutory restrictions on the recovery of some kinds of compensation.

Causation

Causation concerns the connection between the organisation's breach and the harm suffered.

Usually, this involves asking whether the harm would have occurred if the organisation had taken reasonable care. This is sometimes described as the 'but for' test.



Example

An organisation fails to display a warning sign after a floor is cleaned. A person walks across the wet floor, slips and is injured. The person may need to establish that an appropriate warning would probably have caused them to avoid the wet area.

If the harm would probably have occurred even if the organisation had taken reasonable care, causation may not be established.

Causation may be particularly complex where several events or people contributed to the harm, the person had a pre-existing condition or the harm developed over time. Legal advice should be sought in these circumstances.

The elements of negligence

For an organisation to be liable in negligence, each of the following questions will generally need to be answered 'yes':

- Did the organisation owe the person a duty of care?
- Did the organisation breach that duty?
- Did the person suffer legally recognised harm?
- Did the breach cause that harm?

Responsibility for employees and volunteers

An organisation may be legally responsible for harm arising from the conduct of an employee or volunteer in several ways. The organisation may be directly liable for its own failure to take reasonable care, vicariously liable for wrongful conduct by an employee, or liable under legislation dealing with a volunteer's conduct.

These are different forms of liability and should not be treated as interchangeable.

Direct liability

An organisation may be directly liable where its own acts or failures contributed to the harm. This may include failures in risk assessment, systems of work, training, supervision, premises, equipment, policies or the organisation's response to earlier incidents and complaints.

An organisation can therefore be liable for its own negligence even if it is not vicariously liable for the conduct of the individual who caused the immediate harm.



What is vicarious liability?

Vicarious liability is a common law principle under which one person or organisation may be held legally responsible for the wrongful conduct of another person.

Vicarious liability for employees

Vicarious liability is a common law principle under which an employer may be held legally responsible for wrongful conduct by an employee in the course of their employment.

An employer may be vicariously liable even if the employee's conduct was unauthorised, expressly prohibited or involved a criminal offence. The relevant question is whether the wrongful conduct occurred in the course of employment, including whether it was sufficiently connected with the employee's duties.

For some intentional wrongdoing, a court may consider the employee's role and whether the employer placed the employee in a position of authority, power, trust or control in relation to the person harmed. The fact that the employment merely provided an opportunity for the wrongdoing will not necessarily be sufficient.



Case example – unauthorised conduct by an employee

In *Starks v RSM Security Pty Ltd* [2004] NSWCA 351 (**Starks' case**), a security guard assaulted a patron while asking the patron to leave a hotel. Although the employer had not authorised the assault, it was held vicariously liable because the guard committed it while carrying out the authorised task of removing the patron.

An organisation will not ordinarily be vicariously liable at common law for the conduct of an independent contractor or the contractor's employees merely because the organisation engaged the contractor. In *Day v The Ocean Beach Hotel Shellharbour Pty Limited* [2013] NSWCA 250, the hotel and licensee were not vicariously liable for an assault by a security guard employed by an independent security company.

Separate laws may make an organisation responsible for bullying, discrimination, harassment and other unlawful workplace conduct. Different legal tests apply to this conduct.



For more information, see [our resources on workplace behaviour laws](#).

For guidance and resources for employers to prevent discrimination and harassment in the workplace, see the [Australian Human Rights Commission Vicarious Liability Fact Sheet](#).

Liability involving volunteers

State and territory legislation provides some volunteers with protection from personal civil liability for acts or omissions connected with community work.

The protection is subject to conditions and exceptions. Depending on the applicable legislation, it may not apply to conduct outside the volunteer's authorised activities, conduct not carried out in good faith, conduct affected by alcohol or drugs, or certain offences.

Where the volunteer is protected, legislation may transfer or attribute liability to the community organisation. The position differs between jurisdictions, particularly in New South Wales and Queensland.

Following *Bird v DP (a pseudonym)* [2024] HCA 41, an organisation will not be vicariously liable at common law merely because the person responsible was its volunteer. However, legislation may make the organisation liable, the organisation may be directly liable for its own negligence, and other legal duties may apply.

Organisations should continue to select, induct, train and supervise volunteers appropriately, define their roles and authority, respond to concerns and maintain suitable insurance.



For more information, see [our National Volunteering Guide](#).

Institutional child abuse liability

Additional statutory and common law rules may apply where a claim concerns abuse of a child in an institutional setting.

In *AA v The Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle* [2026] HCA 2, the High Court considered whether an organisation could owe a non-delegable duty of care in respect of intentional wrongdoing against a child placed in another person's care, supervision or control.

The relationship between this decision, the ordinary law of negligence and state and territory laws dealing with organisational child abuse requires careful consideration. This is a complex and developing area, and an organisation dealing with an actual or potential claim should seek legal advice.



For more information, see [our resources on child safety laws](#), which consider when an organisation will have specific responsibilities in relation to children who engage with its services or participate as volunteers.

Compensation and shared responsibility

Compensation

If an organisation is liable in negligence, it may be ordered to pay compensation for the loss caused.

Depending on the claim and applicable legislation, compensation may cover medical and care expenses, loss of income or earning capacity, property loss, financial loss and some non-financial loss.

The compensation available will depend on the nature and extent of the harm, the applicable state or territory legislation, any statutory thresholds or limits, whether the injured person contributed to the harm and whether other people or organisations were also responsible.

An organisation facing a claim should notify its insurer and seek legal advice promptly.

Contributory negligence

A court may reduce the compensation awarded if the person who suffered harm failed to take reasonable care for their own safety and that failure contributed to the harm.

This is known as contributory negligence. Whether compensation will be reduced, and by how much, depends on the circumstances and the applicable legislation.

Proportionate liability

In some cases, financial loss or property damage results from the conduct of several people or organisations.

State and territory legislation may limit each wrongdoer's liability to the proportion of the loss for which they are responsible. These proportionate liability regimes differ between jurisdictions and are subject to exceptions.

Proportionate liability legislation generally does not apply to personal injury claims. Different rules may allow a person who has suffered a personal injury to recover the full amount from one person or organisation that is liable, subject to rights between those responsible to recover contributions from each other.

This is a complex area. An organisation involved in a claim concerning several potentially responsible parties should seek legal advice.

Reducing negligence risks

A community organisation cannot eliminate every risk, but it can take practical steps to reduce the likelihood of harm and show that it has acted reasonably.

Your organisation should:

- identify, assess and record significant risks
- maintain safe premises, equipment and systems of work
- select, train and supervise employees and volunteers appropriately
- respond to complaints, warnings and earlier incidents
- maintain suitable policies, reporting processes and records, and
- review risks when activities or circumstances change

The precautions required will depend on the nature, likelihood and potential seriousness of each risk.

Responding to incidents

If an injury, incident or accident occurs, your organisation should:

- address immediate safety and medical needs
- record what happened as soon as practicable
- preserve relevant documents and other evidence
- identify and address any continuing risk
- notify its insurer in accordance with the policy
- make any reports required by law or contract, and
- seek legal advice where appropriate



See [our checklist](#) on what to do when an injury, incident or accident occurs.

Insurance

Insurance can help manage the financial consequences of a negligence claim, but it does not remove an organisation's legal duties.

Your organisation should regularly review its insurance arrangements and check that they address its main risks. An insurance broker or adviser can help assess the cover needed.

If circumstances arise that could lead to a claim, notify your insurer as required under the policy. Delays may affect cover.



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

For a step-by-step guide to the risk management planning process (including tools such as a risk register, a risk treatment schedule and a risk action plan), see [Volunteering Australia's Risk Management Guide](#)

Sources of negligence law

Negligence is governed by common law principles and state and territory legislation. The principal legislation includes:

- **Australian Capital Territory:** [Civil Law \(Wrongs\) Act 2002](#)
- **New South Wales:** [Civil Liability Act 2002](#)
- **Northern Territory:** [Personal Injuries \(Liabilities and Damages\) Act 2003](#)
- **Queensland:** [Civil Liability Act 2003](#)
- **South Australia:** [Civil Liability Act 1936](#)
- **Tasmania:** [Civil Liability Act 2002](#)
- **Victoria:** [Wrongs Act 1958](#)
- **Western Australia:** [Civil Liability Act 2002](#)

Other laws may also apply, including those relating to volunteers, child abuse, work health and safety, discrimination, workers' compensation and professional liability.

Organisations should check the relevant legislation and seek legal advice where needed.