

Checklist: Is our organisation liable for the actions of its volunteers under the *Wrongs Act 1958 (Vic)*?

Legal information for Victorian community organisations



This checklist is designed to provide a simple guide to assist Victorian community organisations to determine whether they are liable (legally responsible) for the actions of their volunteers under the *Wrongs Act 1958 (Vic)* (Wrongs Act). Organisations are advised to refer to relevant sections of the Wrongs Act to understand the definitions of the terms used in this checklist.

This checklist is designed to be completed after reading Not-for-Profit Law's fact sheet on Safety, risk management and volunteers available at www.nfplaw.org.au/volunteers.

Not-for-profit Law gratefully acknowledges the work of Professor Myles McGregor-Lowndes from the Australian Centre for Philanthropy and Nonprofit Studies, Queensland University of Technology, on which much of this checklist is based.

Section A: Do your volunteers meet the requirements for protection under the Wrongs Act?

There are a number of threshold requirements to be met before a volunteer may gain the benefit of the protection set out in the Wrongs Act. These requirements are listed below.

Go through the following questions to assess whether a volunteer, in particular circumstances, is covered by the Wrongs Act (resulting in your organisation being liable for any liability arising from the acts or omissions of the volunteer).

Question 1

Only volunteers engaged by community organisations are entitled to protection. Check that your organisation fits one of the following categories:

- a corporation (for example, a company limited by guarantee)
- an incorporated association under the *Associated Incorporation Reform Act 2012 (Vic)*
- a local council or other incorporated local body
- a public entity or public service body within the meaning of the *Public Administration Act 2004 (Vic)*, or
- a person or body acting on behalf of the State

See section 34 of the Wrongs Act.

Question 2

To be entitled to protection the work performed by volunteers must be performed on a 'voluntary basis'. A person will have performed the work on a voluntary basis if they receive any of the following:

- no remuneration for doing the work
- only remuneration of their reasonable expenses incurred in doing the work (for example, travel and meal costs)
- payment from their normal employer while they perform community work, or
- remuneration within the limits prescribed by the Wrongs Act regulations (no limit prescribed at the time of publication)

See section 35 of the Wrongs Act.

If ANY apply go to Question 3

If NONE apply go to Section D

Question 3

The work performed by the volunteer must be community work. Community work is work performed for one or more of the following purposes:

- Charitable
- Religious
- Educational
- Benevolent
- Promoting and encouraging Literature, Science or Arts
- Sporting
- Recreational
- Amusement
- Tourism
- Conserving or protecting the environment
- Political
- Promoting community interests
- Community , social or cultural centres

See section 36 of the Wrongs Act for the definition of "community work".

If ANY apply go to Question 4

If NONE apply go to Section D

Question 4

The community work performed must be organised by the community organisation.

For example, if your organisation trains a person to use a machine and directs that person to use it, he/she 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.

Was the work performed by the volunteer organised, directed or supervised by the community organisation?

Yes - If YES go to Question 5

No - If NO go to Section D

See sections 34 and 37 of the Wrongs Act.

Question 5

Volunteers are only protected if they were providing a service in relation to the community work. Was the volunteer at the relevant time providing a service in relation to the community work?

Yes - If YES go to Question 6

No - If NO go to Section D

See section 37 of the Wrongs Act.

Question 6

The protection is only afforded for civil liabilities. Was the liability incurred by the volunteer for a civil liability (for example, negligence causing physical injury) and not a criminal prosecution (for example, stealing or assault)?

Yes - If YES go to Question 7

No - If NO go to Section D

See section 37 of the Wrongs Act.

Question 7

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

Liability for defamation - Go to Section D

Liability for personal injury due to a motor vehicle accident - Go to Section D

If NONE apply go to Question 8

See section 38(2) of the Wrongs Act.

Question 8

The protection is only available after a certain date. Was the liability incurred by the volunteer after 15 March 2003?

Yes - If YES go to Section B

No - If NO go to Section D

See section 1 of the Wrongs Act.

Section B: When does the protection not apply to volunteers?

A volunteer is not automatically protected by meeting the threshold requirements of the legislation outlined in Section A. There are specific situations where the protection will not apply. These situations are listed in Question 9 below.

Question 9

Volunteers who fall under certain categories are not protected. Does the volunteer come under one of the following categories?

working under a court imposed order

an officer or member as defined by the *Country Fire Authority Act 1958* (Vic) (**Country Fire Authority Act**) while exercising power or performing a duty imposed under that Act or the *Dangerous Goods Act 1985* (Vic) (**Dangerous Goods Act**)

an officer or member of industry brigade as defined by the Country Fire Authority Act while exercising a power or performing a duty imposed under that Act or the Dangerous Goods Act.

a volunteer auxiliary worker within the meaning of the Country Fire Authority Act engaged in an authorised activity under that Act.

a person complying with a direction given under the provisions of Country Fire Authority Act

a volunteer emergency worker under the *Emergency Management Act 1986* (Vic) (**Emergency Management Act**) engaged in an emergency activity within the meaning of that Act.

a volunteer emergency worker under the Emergency Management Act exercising a power or performing a duty imposed under the *Victoria State Emergency Services Act 2005* (Vic).

See section 35 of the Wrongs Act.

Note the application of protections to Work for the Dole participants is unclear, see the fact sheet 'Placements, internships, work for the dole, and mutual obligation and court ordered 'volunteering'' on the Information Hub Volunteers page at www.nfplaw.org.au/volunteers.

If ANY apply go to Section D

If NONE apply go to Question 10

Question 10

Certain acts of the volunteer will exclude their ability to claim protection. Was the volunteer, at the time of the act or omission that is of concern, acting in any of the following ways?

- not acting in good faith**
- intoxicated** as a result of voluntarily consuming alcohol or a drug that was not for a therapeutic purpose
- acting outside the scope of the community work** organised by the community organisation
- acting contrary to instructions** given by the community organisation

See sections 37 and 38(1) of the Wrongs Act.

If ANY apply go to Section D

If NONE apply go to Section C

Section C: Volunteer protection provisions

If you have answered all questions in sections A, B and C, and the answer does not result in “go to section D”, the protection afforded by the legislation is likely to be granted to volunteers engaged by your organisation in the circumstances. If you are in doubt, seek legal advice.

What does it mean if your volunteers are protected?

If your volunteers are protected, this means they should not incur personal civil liability as a result of performing community work organised by your community organisation.

Under the Wrongs Act, the liability incurred by the volunteer is transferred to the volunteer’s community organisation and the organisation will be liable as if it were the principal volunteer. If your community organisation was involved in a combined undertaking with another community organisation, go to section E.

It is recommended that you seek legal advice about how this legislation specifically applies to your organisation before acting on the content of this checklist.

Section D: Your volunteers may not be protected, what does this mean?

If your volunteers are not protected by the provisions of the Wrongs Act, your volunteers remain personally liable for their actions. They may be either sued individually, or joined to an action against your community organisation, for their acts and omissions while performing community work. It is recommended that you seek legal advice in this context.

If the volunteers fell under the categories outlined in question 8 (that is, the liability was incurred before 15 March 2003), they may be protected under another legislative regime. We recommend that you examine the laws relevant to these volunteers and how they applied to them at the time any cause of action arose. We recommend that you seek legal advice about how this legislation applies to your organisation before acting on the content of this publication.

Section E: Was the community work principally organised by your community organisation?

If more than one community organisation is involved in organising the community work, it is the community organisation that chiefly or mainly organised the work that is liable for the conduct of the volunteer.

Question 11

Was your community organisation the principal/main organiser of the community work?

- Yes** - If YES, the liability incurred by the volunteer will most likely be transferred to your community organisation.
- No** - If NO, the liability incurred by the volunteer will most likely be transferred to the principal organiser of community work.

See section 39 (2) of the Wrongs Act.

We recommend that you seek legal advice about how this legislation applies to your organisation before acting on the content of this publication.

Section F: Is it possible for the State of Victoria to assume the liability of the community organisation?

The State of Victoria may assume the liability of the volunteer that is transferred to the community organisation under the Wrongs Act, if the community organisation is:

- a public entity or public service body within the meaning of the *Public Administration Act 2004* (Vic), or**
- a person or body acting on behalf of the State.**

See section 39 (3) of the Wrongs Act.

We recommend that you seek legal advice about how this legislation applies to your organisation before acting on the content of this publication.

Resources

Related Not-for-profit Law Resources

🚩 Volunteers www.nfplaw.org.au/volunteers

The Volunteers page on the Information Hub features further information on issues and laws relating to volunteers, including resources on:

- Volunteers and unlawful workplace behaviour
- Engaging and working with youth volunteers
- Safety, risk management and volunteers
- Is our organisation liable for the actions of its volunteers under the *Wrongs Act 1958* (Vic)?
- Visas and Volunteers

🚩 Insurance and risk www.nfplaw.org.au/riskinsurance

This Information Hub page provides resources covering the risks that may arise from operating and interacting with others.

Legislation

🚩 [Wrongs Act 1958 \(Vic\)](#)

Read the full Act at the Australasian Legal Information Institute – www.austlii.edu.au

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