

This fact sheet covers:

- ▶ your organisation's responsibility for the safety of its volunteers
 - ▶ your organisation's responsibility for the actions of its volunteers, and
 - ▶ ways to minimise the risk to volunteers and others.
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Your organisation is legally responsible for the safety of its volunteers and may also be legally responsible for the actions of volunteers that cause injury or loss to others.

Your organisation has a legal obligation to provide and maintain a safe working environment for its volunteers. There are also laws which provide that, in certain situations, your organisation will be held legally responsible for the actions of its volunteers.

Therefore, it is crucial for your organisation to have effective volunteer management practices, policies and insurance in place.

1. Safety of your volunteers

Your organisation has a legal obligation to provide and maintain a safe working environment that is without risk to the health and safety of its workers, including its volunteers, so far as is reasonably practicable to do so.

This obligation is prescribed by Australian Capital Territory work health and safety legislation, namely, the *Work Health and Safety Act 2011* (ACT) and the *Work Health and Safety Regulation 2011* (ACT) (together, **ACT WHS Laws**).

The ACT WHS Laws set out various duties that organisations and individuals must comply with in the workplace, which are regulated and enforced by an Australian Capital Territory Northern Territory government authority known as WorkSafe ACT. WorkSafe ACT may prosecute organisations and individuals who do not comply with WHS duties under the ACT WHS Laws.

The ACT WHS Laws apply to 'people running a business', essentially, organisations that have employees. They do not apply to organisations that only engage volunteers and have no employees or contractors (**volunteer associations**).

However, in addition to ACT WHS Laws, 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. So, even if your organisation is a volunteer association, it has a duty under common law to provide a safe working environment that is without risk to the health and safety of volunteers, so far as is reasonably practicable to do so.

Organisations and officers of those organisations can satisfy their duty by:

- identifying any risks that their volunteers face
- assessing the level of risk they may face, i.e. how likely is it something will happen and how serious is that risk (low, medium, high), and
- implementing a process that will eliminate the risk. If you can't eliminate the risk, implement a process that will minimise the risk.

For more information about risk management, see Section 3 below.

EXAMPLES

Driving a client to an appointment – it is important to ensure 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.

Collecting 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.

RELATED RESOURCES

For more information about whether or not the ACT WHS Laws apply to your organisation, key duties under these laws and what is required of your organisation, go to Not-for-profit Law's Work Health and Safety guide on the Information Hub at www.nfplaw.org.au/OHS. For more information on the common law of negligence and the standard of care your organisation needs to meet, see Not-for-profit Law's Negligence guide on the Information Hub guide at www.nfplaw.org.au/negligence.

2. Legal responsibility for actions of volunteers

When could our organisation be liable for a volunteer's actions?

In some circumstances, your organisation could be held liable (legally responsible) for the actions of its volunteers.

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

There are 6 steps (set out below) your organisation can follow to work out whether or not a volunteer might gain the benefit of protection under the ACT Wrongs Act.

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

Note there are certain exceptions to this special protection, discussed further below (see Step 6).

NOTE

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



Liability under the ACT Wrongs Act

Below are the 6 steps your organisation can follow to assess whether or not a volunteer might gain the benefit of protection under the ACT Wrongs Act and therefore whether your organisation might be liable for the volunteer's actions. In summary, a volunteer will gain protection if:

- the work is being done by a 'volunteer'
- your organisation is a 'community organisation'
- the work being done by the volunteer is 'community work'
- the volunteer is carrying out the community work for the community organisation
- the volunteer's action (or failure to act) was done 'honestly and without recklessness', and
- no exception applies.

If the above steps do not all apply, the volunteer may be personally liable for their actions. Each of the steps is outlined in more detail below.

STEP 1 - Has the community work been undertaken by a 'volunteer'?

The ACT Wrongs Act defines a 'volunteer' as an individual who carries out community work on a voluntary basis. A person is considered to work on a 'voluntary basis' if he or she:

- receives no remuneration for the work, or
- is remunerated for the work but within limits prescribed by regulation. There is no amount prescribed by regulation as at October 2017.

EXAMPLE

Fred is employed by as a gardener. Fred volunteers his services to Community House Inc (an ACT incorporated association) for one day a month as part of his employer's volunteering scheme. Although Fred is paid by his employer, he is still regarded as a volunteer for the purposes of the ACT Wrongs Act whilst performing services for Community House Inc because he is not remunerated for his volunteer work.



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.

STEP 2 - Is your organisation a 'community organisation'?

The ACT Wrongs Act defines a 'community organisation' as a corporation that directs or coordinates the carrying out of community work by volunteers. This definition allows for-profit entities as well as not-for-profit entities to fall within the definition of 'community organisations'.

The meaning of 'community work' is discussed below, but note that 'community work' does not have to be the organisation's sole activity.

CAUTION

The volunteer protection provisions of the ACT Wrongs Act do not apply to unincorporated community groups. This means volunteers who are involved in an unincorporated community group will be liable for their own actions. If you are an unincorporated group, this may make it more difficult for you to attract volunteers. For more information about the incorporation decision, go to the the Not-for-profit Law Information Hub at www.nfplaw.org.au/incorporationdecision.



STEP 3 - Is the work being done by the volunteer 'community work'?

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
- 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
- a political purpose, or
- 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'. There is no work prescribed by regulation as at October 2017.

Work will not be considered community work under the ACT Wrongs Act if it:

- 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.

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

Some of the fields of community work set out above have a technical legal meaning (e.g. charitable purposes). You may need to seek legal advice about whether the work falls into one of these categories. For further information on what types of activities may be considered to be charitable, refer to Not-for-profit Law's Information Hub page on Registering as a charity at www.nfplaw.org.au/charity.

STEP 4 - Has the community work been 'carried out for' a community organisation?

A volunteer is protected if their action (or failure to act) took place whilst they were carrying out community work for the community organisation. The definition of 'community organisation' as an organisation that directs or coordinates community work 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 undertake but decided to undertake of their own accord. However, see the exceptions at Step 6 below: the volunteer will not be protected if he or she acted without authority or contrary to instructions.

STEP 5 - Were the volunteer's actions (or failure to act) done 'honestly and without recklessness'?

The volunteer's actions (or omissions) must have been done 'honestly and without recklessness'.

A person is reckless about causing harm if there is a substantial risk that harm will occur and he or she ignores the risk. If relevant, your organisation may need to seek legal advice about these issues.

EXAMPLE

'honestly'

A volunteer attends a community sports day to assist 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 genuinely believed that was the correct first aid action. However, they will not be acting honestly if they gave this assistance in order to impress their friend, when they knew they had no idea of what first aid action to take.

'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.

STEP 6 - Does an exception apply?

Even if a volunteer acted honestly and without recklessness while carrying out community work for a community organisation, he or she 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 liability falls within the ambit of a scheme of compulsory third-party motor vehicle insurance
- the liability is for defamation
- 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 he or she was 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 (e.g. 'recreational drug' and 'significantly impaired'). If relevant, your organisation may need to seek legal advice about these issues.

A volunteer will not be protected from criminal liability while volunteering (a criminal offence is an offence against the state and includes traffic infringements as well as more serious offences). 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.

What could our organisation be liable for based on ACT Wrongs Act provisions?

To summarise, the ACT Wrongs Act provides that, if a volunteer is protected (that is, all of the tests set out above have been met) the volunteer will not incur personal civil liability as a result of their own actions or failures to act.

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

What happens if our organisation (or a volunteer) makes an apology?

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.

3. Managing the 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. Therefore, volunteer risk management procedures and insurance are very important risk management strategies.

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
- 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/or instruction manuals
- conducts regular training, including refresher training, on safety issues
- undertakes 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 undertake 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 (e.g. 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?

FURTHER READING

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](#) and an [Essential Guide to Work Health and Safety for Organisations that Engage Volunteers](#).

ACT WorkSafe has also published numerous resources relating to workplace safety and minimising risk. These can be located at www.worksafe.act.gov.au/publication.



RELATED RESOURCES

For a Sample Volunteer Position Description, go to the Information Hub at www.nfplaw.org.au/volunteers. For a checklist covering what to do when an incident or accident happens in your organisation, go to our Not-for-profit Law Incident and Accidents checklist on the Not-for-profit Law website at www.nfplaw.org.au/negligence.



Can we get our volunteers to agree to reimburse our organisation for any compensation due as a result of their actions?

The ACT Wrongs Act does not 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 cannot generally be 'waived', so any such agreement is very unlikely to be valid.

Insurance considerations

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.

Common types of insurance include:

Protects:	Type of insurance:
Volunteers	Volunteer personal accident insurance
Employees	Workers' compensation insurance
Committee members	Directors' and officers' liability insurance
Members of the public	Public liability insurance
Experts or advisors	Professional indemnity insurance
Property and assets	Building and contents/occupiers/fraud insurance
Selling goods or products	Product liability insurance
Vehicles	Motor vehicle insurance

Volunteers often fall between the gaps as they are not covered by an organisation's insurance policies when they suffer injuries in their role unless the organisation holds specific insurance for this purpose. It is important to remember that:

- workers' compensation insurance does not 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.

SCENARIO

A volunteer serving food at a local fundraiser does not properly cook the chicken, which results in a significant number of people contracting food poisoning and ending up in hospital, including the volunteer. The organisation's public liability insurance will cover members of the public who attended the fundraiser, but not the volunteer.



TIPS

- check your organisation's existing insurance policies to find out whether your volunteers are covered. If in doubt, pick up the phone to your insurer.
- consider taking out a volunteer personal accident insurance policy to make sure your volunteers are covered for any injuries they sustain while volunteering.
- check age limits under your policies and, if necessary, negotiate with your insurer to extend coverage to all of your volunteers.
- let all volunteers know what they are covered for and what they are not and the process for making a claim. If there are any extra costs payable, make sure you are clear about whether the organisation or individual will have to pay.



CAUTION

Insurance should not be the cornerstone of your organisation's risk management strategy. Ultimately, it should be relied upon as a matter of last resort and other measures should be implemented with the goal of never having to make a claim. Insurance can cover any costs arising from a claim but it cannot restore any damage caused to your organisation's reputation or culture.



RELATED RESOURCES

For more information on insurance and risk management, including volunteer personal accident insurance, read our Not-for-profit Law's Risk Management and Insurance guide on the Not-for-profit Law website at www.nfplaw.org.au/riskinsurance.



Resources

Related Not-for-profit Law Resources

- Insurance and Risk www.nfplaw.org.au/riskinsurance

For more information on insurance and risk management, read our Risk Management and Insurance guide.

- Negligence www.nfplaw.org.au/negligence

For an overview of the common law of negligence, see our Negligence guide.

For a checklist covering what to do when an incident or accident occurs, go to our Checklist: Incidents and accidents.

- Volunteers www.nfplaw.org.au/volunteers

For more information on child safety issues, which are not covered in this resource, read our fact sheet on Engaging and working with youth volunteers.

Legislation

- [Work Health and Safety Act 2011 \(ACT\)](#)

- [Work Health and Safety Regulation 2011 \(ACT\)](#)

- [Civil Law \(Wrongs\) Act 2002 \(ACT\)](#)

- [Civil Liability \(Wrongs\) Regulation 2003 \(ACT\)](#)

Other Related Resources

- WorkSafe ACT www.worksafe.act.gov.au/health_safety

- Safe Work Australia www.safeworkaustralia.gov.au

Safe Work Australia has published information for volunteer organisations on workplace safety including [The Essential Guide to Work Health and Safety for Volunteers](#)

- Volunteering Australia www.volunteeringaustralia.org

Volunteering Australia has published a suite of resources for volunteer managers including [Running the Risk? A Risk Management Tool for Volunteer Involving Organisations](#).

For information about the question to ask in relation to your insurance policies, go to the [Conversation Guide](#).

A NFP Law Information Hub resource. Access more resources at www.nfplaw.org.au

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