

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 good 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 South Australia's work health and safety legislation, namely, the *Work Health and Safety Act 2012 (SA)* and the *Work Health and Safety Regulations 2012 (SA)* (together, **SA WHS Laws**).

The SA WHS Laws set out various duties that organisations and individuals must comply with in the workplace, which are regulated and enforced by a South Australian government authority known as SafeWork SA. SafeWork SA may prosecute organisations and individuals who do not comply with WHS duties under the SA WHS Laws.

The SA WHS Laws will 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 SA 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 an obligation under common law to provide a safe working environment.

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

- identifying any risks that their volunteers face
- assessing the level of risk they may face, that is, how likely it is that something will happen and the seriousness of that risk, and
- implementing a process that will eliminate the risk or, if the risk can't be eliminated, implementing a process that will minimise the risk as far as possible.

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 SA 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 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 *Volunteers Protection Act 2001 (SA)* (**the Volunteers 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) in good faith and without recklessness, while doing 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 Volunteers Act. If a volunteer is protected under the Volunteers 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 jurisdiction. It does not matter that the volunteer is resident in South Australia or that the community organisation is registered in South Australia. Determining which law a volunteer will be subject to can be complicated and may require legal advice.



Liability under the Volunteers 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 Volunteers Act and therefore whether your organisation might be liable for the actions of its volunteers. In summary, a volunteer will gain protection if:

- the work is being done by a 'volunteer' (as defined under the Volunteers Act)
- your organisation is a 'community organisation'
- the work being done by the volunteer is 'community work'
- the volunteer was in the course of carrying out community work for the community organisation
- the volunteer's action (or failure to act) was done in 'good faith' and without recklessness and in relation to the provision of a service, 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 Volunteers Act defines a 'volunteer' as a person who carries out community work on a voluntary basis. A person is considered to work on a 'voluntary basis' if he or she receives no remuneration for the work, or is remunerated within limits fixed by regulation. The *Volunteers Protection Regulations 2004 (SA) (the 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 cannot be subject to PAYG withholding or instalment tax, paid as a consequence of the person's employment, legally required to be paid, or an amount relied upon by the person as a source of income.

EXAMPLE

Fred is employed as a gardener. Fred volunteers his services to Community House Inc (a South Australian incorporated association) for one day a month. After a year of volunteering, Community House gave Fred a \$100 voucher as thank you gift for his assistance. Fred is still regarded as a volunteer for the purposes of the Volunteers Act whilst performing services for Community House Inc.



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 for the purpose of the Volunteers Act, and is therefore not considered a 'volunteer' for the purpose of the special protection.

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

The Volunteers Act defines a 'community organisation' as a body corporate that directs or co-ordinates the carrying out of community work by volunteers, and includes the Crown.

CAUTION

The volunteer protection provisions of the Volunteers 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 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 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
- a political purpose, or
- protecting or promoting the common interests of the community or a section of the community.

The Volunteers Regulations can also specify that certain types of work do or do not constitute community work, but the Regulations are silent on this at the time of publication.

The protection under the Volunteers 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 – Was the volunteer in the course of carrying out community work for the community organisation’?

A volunteer is protected whilst he or she is carrying out community work for the community organisation. This wording is quite 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 in ‘good faith’ and ‘without recklessness’?

The volunteer’s actions (or failure to act) must have been done in ‘good faith’ and ‘without recklessness’. Generally, to act in good faith is to act honestly and without fraud. Where a volunteer endeavours to act in the best interests of the community organisation and is not involved in any dishonest or fraudulent behaviour, it is likely the volunteer is acting in good faith.

The term ‘recklessness’ has an imprecise definition in the law but generally means that a person knew or should have known that their action was likely to cause harm. Your organisation may need to seek legal advice about this if relevant.

EXAMPLE

‘in good faith’

A volunteer attends a community sports day to 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 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 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 person is a volunteer and they have been undertaking community work organised by a community organisation, there are further exceptions set out under the Volunteers Act. In general, a volunteer will not be protected where:

- the act or omission falls within the ambit of a scheme of compulsory third-party motor vehicle insurance (i.e. where the volunteer was involved in a motor accident and the injured person follows the normal procedure for making a claim)
- the act or omission is defamation
- the volunteer’s ability to carry out the work properly was significantly impaired by a recreational drug
- the volunteer knew, or ought reasonably to have known, that at the relevant times they were:
 - acting outside the scope of the community work authorised by the community organisation, or
 - acting contrary to any instructions given by the community organisation.

EXAMPLE

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



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

A volunteer will not be protected from liability for *criminal actions* while volunteering (which are actions between a person and the state – and include 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 Volunteers Act won't protect the volunteer from criminal liability in this situation.

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

To summarise, the Volunteers Act provides that, if a volunteer is protected (that is, all of the tests set out above have been met), the volunteer will not be personally liable to pay any compensation to anyone whom they may have caused personal injury, property damage or financial loss, 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?

The Volunteers Act is silent on the effect of an apology, but under the *Civil Liability Act 1936* (SA) (**the 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 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 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 have an effect on liability in respect of defamation.

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](#).

SafeWork SA has also published numerous resources relating to workplace safety and minimising risk at www.safework.sa.gov.au.



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 Information Hub 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 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 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	Work injury insurance through ReturnToWorkSA
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 Not-for-profit Law's Risk Management and Insurance guide on the Information Hub 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 2012 \(SA\)](#)
- [Work Health and Safety Regulations 2012 \(SA\)](#)
- [Civil Liability Act 1936 \(SA\)](#)
- [Volunteers Protection Act 2001 \(SA\)](#)
- [Volunteers Protection Regulations 2004 \(SA\)](#)

Other Related Resources

- SafeWork SA www.safework.sa.gov.au
- 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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