

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 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 Victorian work health and safety legislation, namely, the *Occupational Health and Safety Act 2004 (Vic)* and the *Occupational Health and Safety Regulations 2007 (Vic)* (together, **Victorian OHS Laws**).

The Victorian OHS Laws set out various duties that organisations and individuals must comply with in the workplace, which are regulated and enforced by a Victorian government authority known as the Victorian WorkSafe Authority (**WorkSafe**). WorkSafe may prosecute organisations that breach (do not comply with) these duties.

The Victorian OHS Laws apply to employers and those who manage or controls a workplace. They do not apply to organisations that only engage volunteers and have no employees or contractors (**volunteer associations**).

However, in addition to Victorian OHS 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 so is not covered by Victorian OHS Laws, 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 Victorian OHS 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 *Wrongs Act 1958* (Vic) (**the 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) in good faith while doing community work that is organised by 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 their own negligence.

There are 6 steps your organisation can follow (set out below) to work out whether or not a volunteer might gain the benefit of protection under the Wrongs Act. If a volunteer is protected under the 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 other states, generally they will be subject to the laws in that state. It does not matter that the volunteer is resident in Victoria or that the community organisation is registered in Victoria. Determining which law a volunteer will be subject to can be complicated and may require legal advice.



Liability under the 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 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' (as defined under the Wrongs Act)
- your organisation is a 'community organisation'
- the volunteer is providing a service in relation to 'community work'
- the community work 'organised' by the community organisation
- the volunteer's action (or failure to act) was done in 'good faith', 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 Wrongs Act defines a 'volunteer' as an individual who provides a service in relation to community work on a voluntary basis.

The Act says that a person is considered to work on a voluntary basis if he or she 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 out-of-pocket expenses, or
- remuneration for the work not greater than the amount prescribed by the regulations of the Wrongs Act – there is no amount prescribed by regulation as at October 2017.

A volunteer who is paid by their regular employer while they do volunteer work for a community organisation (e.g. 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 person doing work under court ordered volunteering is not a volunteer under the Wrongs Act definition.

There are a number of other people who are specifically excluded from the definition of a 'volunteer', such as members of the Country Fire Authority or some Emergency Services personnel, because they are already given immunity from liability under other Victorian laws.

EXAMPLE

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 Victorian 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 by his employer while he is volunteering at Community House Inc, he would have received this remuneration whether or not he was volunteering.

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

The Wrongs Act defines a 'community organisation' as:

- an incorporated association under the *Associations Incorporation Reform Act 2012* (Vic)
- a municipal council or other incorporated local government body
- any body corporate such as a company limited by guarantee, or
- 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,

that organises the doing of 'community work' (discussed below) by volunteers.

CAUTION

The volunteer protection provisions of Victoria's 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 Not-for-profit Law Information Hub at www.nfplaw.org.au/incorporationdecision.

STEP 3 - Is the volunteer providing a service in relation to '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
- sport, recreation, tourism or amusement
- conserving or protecting the environment
- establishing, carrying on or improving a community, social or cultural centre
- a political purpose

- promoting the common interests of the community generally or a particular section of the community, or
- other purposes specified in the regulations to the Wrongs Act.

The protection under the 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 'organised' by a community organisation?

A volunteer is protected if the community work undertaken is 'organised' by the community organisation. 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. (See also the exceptions at Step 6 below: a volunteer will not be protected if he or she acted contrary to instructions or outside the scope of the work organised by the organisation.)

STEP 5 - Were the volunteer's actions (or failure to act) done in 'good faith'?

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.

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.

The volunteer protection only applies in relation to a service provided by the volunteer, not the provision of goods (e.g. donation to an op shop or clothing for school children).

STEP 6 - Does an exception apply to your organisation?

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 Wrongs Act. In general, a volunteer will not be protected where:

- the volunteer knew, or ought reasonably to have known, that at the relevant times they were:

- acting outside the scope of the community work organised by the community organisation
- acting 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 (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.

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 acting contrary to instructions, it is likely that an exception under the Wrongs Act applies and that the volunteer will not be protected from liability.



WHERE WRONGS ACT PROTECTIONS FOR VOLUNTEERS DO NOT APPLY

A volunteer will not be protected under the Wrongs Act 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 *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).

A volunteer will not be protected from liability for criminal actions (actions between a person and 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 Wrongs Act won't protect the volunteer from criminal liability in this situation.

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

To summarise, the 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 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 or loss caused by the volunteer.

RELATED RESOURCES

We have created a checklist to assist your organisation to determine if its volunteers are protected under the provisions of the Wrongs Act. This checklist can be found at www.nfplaw.org.au/volunteers.



What does the Wrongs Act say about making an apology?

Under the Wrongs Act, a volunteer or community organisation may make an apology to another person about a personal injury incident without fearing it will be construed as an admission of liability in a claim or proceeding arising out of the incident.

The 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 in 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 commenced.

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 (i.e. other types of damage or loss).

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](#).

WorkSafe Victoria has also published numerous resources relating to workplace safety and minimising risk. For example, a [Job Safety Analysis Worksheet](#), will help you to assess your volunteer roles and activities for possible risks and to actions to eliminate these risks.

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 payable as a result of their actions?

The Wrongs Act specifically prohibits these kinds of agreements (known as indemnity agreements). Your organisation cannot try to ‘contract out of’ the volunteer protection provisions to avoid being legally responsible for volunteers’ actions.

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	WorkCover insurance
Committee members	Directors’ and officers’ liability insurance
Members of the public	Public liability insurance

Protects:	Type of 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 (rare exceptions), 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 guide Risk Management and Insurance on the Information Hub at www.nfplaw.org.au/riskinsurance.

For more information on child safety issues, which are not covered in this resource, go to the Child Safety fact sheet on the Information Hub at www.nfplaw.org.au/OHS.

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

- Occupational Health and Safety Act 2009 (Vic)*

- Wrongs Act 1958 (Vic)*

Other Related Resources

- WorkSafe Victoria www.worksafe.vic.gov.au

WorkSafe Victoria has specific resources relating to the [health and safety of volunteers](#).

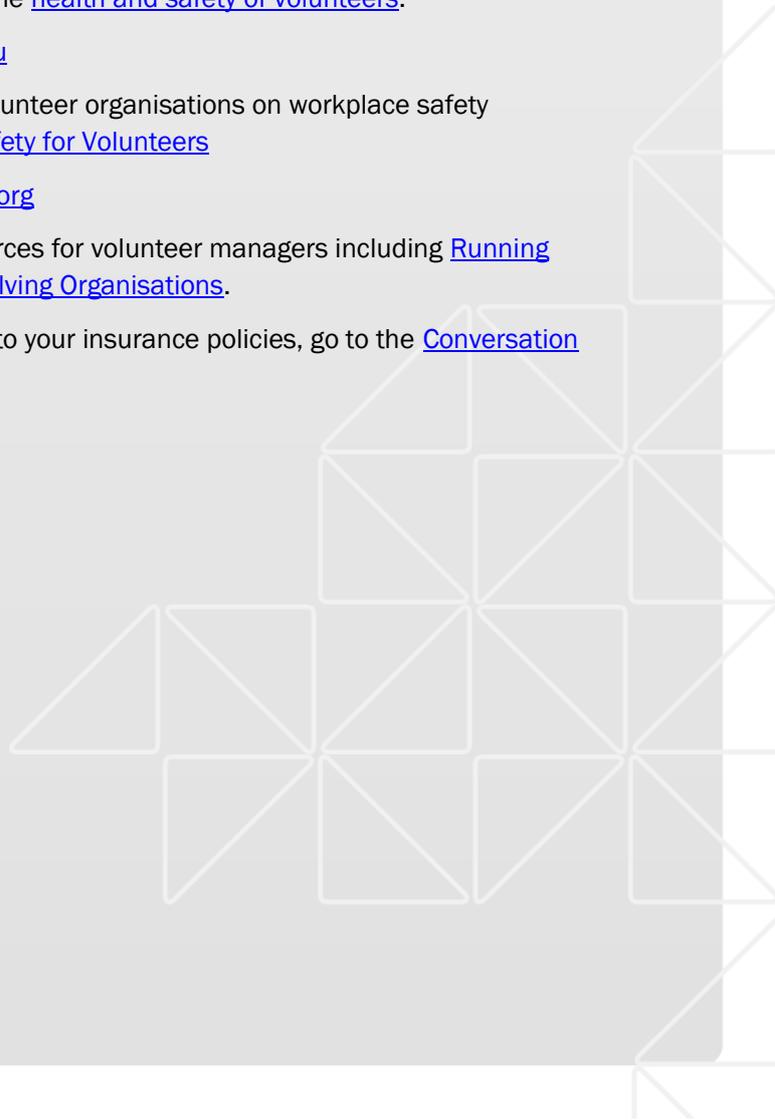
- Safe Work Australia www.safeworkaustralia.gov.au

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](#).



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