

## 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.

### **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 Western Australia's occupational health and safety legislation, namely, the *Occupational Safety and Health Act 1984 (WA)* and the *Occupational Safety and Health Regulations 1996 (WA)* (together, **WA OSH Laws**).

The WA OSH Laws set out various duties that organisations and individuals must comply with in the workplace, which are regulated and enforced by a Western Australian government authority known as WorkSafe WA. WorkSafe WA may prosecute organisations or individuals who do not comply with the duties under WA OSH laws.

The WA OSH Laws will apply to your organisation if it is an 'employer'. They do not apply to organisations that only engage volunteers and have no employees or contractors (**volunteer associations**).

However, in addition to WA OSH 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.

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 WA OSH 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](http://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 Information Hub guide on Negligence at [www.nfplaw.org.au/negligence](http://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 and Food and Other Donors (Protection from Liability) Act 2002 (WA)* (**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 that is authorised by a community organisation. Civil liability refers to liability arising out of a civil proceeding, which is a legal action between two citizens. This includes liability arising out of 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, 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 Western Australia or that the community organisation is registered in Western 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 has 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 Volunteers Act)
- your organisation is a 'community organisation'
- the work being done by the volunteer is 'community work'
- the community work being done has been 'organised' by the community organisation
- the volunteer's action (or failure to act) was done in 'good faith', and
- no exception applies.

If the Volunteers Act does not apply, the volunteer may be personally liable for their actions.

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

The Volunteers Act defines a 'volunteer' as an individual who does 'community work' on a voluntary basis. A person does community 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), or
  - reimbursement of reasonable expenses incurred by the person in doing that work, or
- remuneration for the work that is not greater than the amount prescribed by the Volunteers Act regulations – no amount is prescribed by the regulations as at July 2017.

## 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.



There are a number of people who are specifically excluded from the definition of a 'volunteer' under the Volunteers Act, including:

- a person who carries out community work under the order of a court or a condition of a bond, as they are not regarded as working on a 'voluntary basis'

- a person who performs a function under an emergency services Act within the meaning of section 37(1a) of the *Fire and Emergency Services Act 1998 (WA)*, and
- an honorary fisheries officer under the *Fish Resources Management Act 1994 (WA)*, or an honorary wildlife officer, honorary forest officer, honorary ranger or honorary conservation and land management officer under the *Conservation and Land Management Act 1984*.

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

The Volunteers Act defines a community organisation as:

- a State agency or instrumentality or a department of the Public Service or
- an incorporated association under the *Associations Incorporation Act 2015 (WA)*, a local government or other body corporate,

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

### 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 may 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](http://www.nfplaw.org.au/incorporationdecision).



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

Community work is broadly defined as work organised by a community organisation for any of the following purposes:

- religious, educational, charitable or benevolent purposes
- promoting or encouraging literature, science or the arts
- sport, recreation, or amusement
- caring for, treating or otherwise assisting people who need assistance because of a physical or mental disability or condition
- conserving or protecting the environment
- promoting or preserving historical or cultural heritage
- establishing, carrying on, or improving a community, social or cultural centre
- promoting the interests of a local community
- a political purpose, or
- those specified in the regulations to the Volunteers Act. The *Volunteers (Protection from Liability) Regulations 2005* currently include promoting the interests of an ethnic or religious community.

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](http://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 'organised' includes 'directed and supervised', 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 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: the 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'. 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.

##### 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.



#### 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 exceptions set out under the Volunteers 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, or
  - acting contrary to any instructions given by the community organisation in relation to the providing of the service,
- the volunteer's ability to do the community work in a proper manner was, at the relevant time, significantly impaired by alcohol or drugs,
- the volunteer is sued for defamation, or
- a motor vehicle accident causes bodily injury or death to someone, the volunteer was the owner or driver of the vehicle and insurance under the *Motor Vehicle (Third Party Insurance) Act 1943* was required to be and was in force on the vehicle at the time.

## EXAMPLE

A person attends a community sports day and is instructed to assist with refreshments only. The volunteer starts to help with marshalling participants without instructions to do so. An injury occurs as a result of the person's marshalling activities. As the volunteer was acting contrary 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 – including 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 owe a civil liability.

Instead, the civil 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.

## NOTE

Where there are two or more community organisations involved in organising the community work performed by the volunteer, the community organisation that principally organises the work will be liable for the actions of the volunteer.



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

Under the *Civil Liability Act 2002 (WA) (WA Civil Liability Act)*, a person (or someone on their behalf) may make an apology 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 WA Civil Liability Act specifies that an apology is an expression of sorrow, regret or sympathy by a person that does not contain a clear acknowledgement of fault. In a civil proceeding claiming damages, an apology:

- does not constitute an admission of fault or liability
- is not relevant to the determination of fault or liability in connection with that incident, and
- is not admissible as evidence of the fault or liability of the person in connection with 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 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 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 WA has also published [resources relating to workplace safety and minimising risk](#).



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

The Volunteers Act provides that these kinds of agreements (known as indemnity agreements) have no effect. Your organisation cannot try to 'contract out of' the volunteer protection provisions to avoid being legally responsible for a volunteer's 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:

<b>Protects:</b>	<b>Type of insurance:</b>
<b>Volunteers</b>	Volunteer personal accident insurance
<b>Employees</b>	Workers' compensation insurance
<b>Committee members</b>	Directors' and officers' liability insurance
<b>Members of the public</b>	Public liability insurance
<b>Experts or advisors</b>	Professional indemnity insurance
<b>Property and assets</b>	Building and contents/occupiers/fraud insurance
<b>Selling goods or products</b>	Product liability insurance
<b>Vehicles</b>	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 Information Hub at [www.nfplaw.org.au/riskinsurance](http://www.nfplaw.org.au/riskinsurance).



# Resources

---

## Related Not-for-profit Law Resources

- Insurance and Risk [www.nfplaw.org.au/riskinsurance](http://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](http://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](http://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

- [Civil Liability Act 2002 \(WA\)](#)

- [Occupational Safety and Health Act 1984 \(WA\) Occupational Safety and Health Regulations 1996 \(WA\)](#)

- [Volunteers and Food and Other Donors \(Protection from Liability\) Act 2002 \(WA\)](#)

- [Volunteers \(Protection from Liability\) Regulations 2005 \(WA\)](#)

## Other Related Resources

- WorkSafe WA [www.commerce.wa.gov.au/worksafe](http://www.commerce.wa.gov.au/worksafe)

- Safe Work Australia [www.safeworkaustralia.gov.au](http://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](http://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](http://www.nfplaw.org.au)

© 2017 Justice Connect. You may download, display, print and reproduce this material for your personal use, or non-commercial use within your NFP organisation, so long as you attribute Justice Connect as author and retain this and other copyright notices. You may not modify this resource. Apart from any use permitted under the *Copyright Act 1968* (Cth), all other rights are reserved.

To request permission from Justice Connect to use this material, contact Justice Connect at PO Box 16013, Collins Street West, Melbourne 8007, or email [nfplaw@justiceconnect.org.au](mailto:nfplaw@justiceconnect.org.au).