

Checklist: Are our volunteers protected against personal liability under the Civil Liability Act?

Legal information for NSW community organisations



This checklist is designed to provide a simple guide to assist New South Wales community organisations to determine if its volunteers are protected under the provisions of the *Civil Liability Act 2002 (NSW)* (Civil Liability Act). Your organisation is advised to refer to relevant sections of the Civil Liability Act to understand the definitions of the terms used in this checklist.

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

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

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

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

Go through the following questions to assess whether a volunteer, in particular circumstances, is covered by the Civil Liability Act (which may then result in your organisation being legally responsible for any liability arising from the acts or omissions of the volunteer – see Section D below).

Question 1

Only volunteers engaged by 'community organisations' are entitled to protection. Is your organisation capable of being sued in civil proceedings (legal action between two citizens) and does it fit one of the following categories?

- a body corporate (for example, a company limited by guarantee or an incorporated association)
- a church or other religious organisation
- an authority of the State

See section 60(1) of the [Civil Liability Act](#) for definitions of the above bodies.

If ANY apply go to Question 2

If NONE apply go to Section D

Question 2

To be entitled to protection the work must be performed by someone who satisfies the legal definition of 'volunteer'. A person will be considered a volunteer if they do community work on a 'voluntary basis'. The volunteer may receive reimbursement of their reasonable expenses and the work will still be considered as being on a voluntary basis.

Was the community work done on a voluntary basis?

Yes

No

See section 60(1) of the [Civil Liability Act](#) for definition of volunteer.

Note: a person doing work under court ordered volunteering is *not* considered a 'volunteer' under the Civil Liability Act definition (see Section B below).

If YES go to Question 3

If NO go to Section D

Question 3

The work performed by the volunteer must be 'community work'. Community work is not performed for private financial gain and is done for one or more of the following purposes:

Charitable

Benevolent

Philanthropic

Sporting

Educational

Cultural

Work to be declared by the Civil Liability Act regulations (no work declared at time of publication)

Note: The Civil Liability Act regulations can declare that certain work is not community work even if it fits in to the categories above, but no work has been declared at time of publication.

See section 60(1) of the [Civil Liability Act](#) for definition of 'community work'.

If ANY apply go to Question 4

If NONE apply go to Section D

Question 4

The community work performed must be 'organised' by the community organisation or be carried out as an office holder of the community organisation.

For example, if your organisation trains a person to use a machine and directs that person to use it, he/she will be performing work organised by your organisation. A person who starts working without

approval or direction from your organisation would not be performing work organised by your organisation.

Was the work performed by the volunteer:

- Organised, directed or supervised by the community organisation?**
- Carried out by someone acting as an office holder of the community organisation?**

See sections 60 and 61 of the [Civil Liability Act](#) for the definition of 'organised'.

If ANY apply go to Question 5

If NONE apply go to Section D

Question 5

The protection is only afforded for civil liabilities. Was the liability incurred by the volunteer for an act or omission that constitutes a civil liability (for example, negligence causing physical injury) and not an act or omission that would (on the balance of probabilities) constitute a criminal offence (for example, stealing or assault)?

- Yes** – If YES go to Question 6
- No** – If NO go to Section D

See sections 61 and 62 of the [Civil Liability Act](#).

Question 6

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

- Liability for defamation**
- Liability that is required to be insured against by law (eg. insurance required as part of a professional qualification and accreditation, such as doctors, accountants, nurses, or lawyers)**
- Liability for personal injury due to a motor vehicle accident where that liability should have been covered by third-party insurance**

See sections 59(1), 65 and 66 of the [Civil Liability Act](#).

If ANY apply go to Section D

If NONE apply go to Question 7

Question 7

The protection is only available after 20 March 2002. Was the liability incurred by the volunteer after this date?

- Yes** – Go to Section B
- No** – Go to Section D

See section 2 of the [Civil Liability Act](#).

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

A volunteer is not automatically protected by meeting the threshold requirements of the legislation outlined in Section A. There are specific situations where the protection will not apply. These situations are listed in Questions 8 and 9 below.

Question 8

Is the volunteer performing the community work doing so under a court order?

- Yes** – If YES go to Section D
- No** – If NO go to Question 9

See section 60(2)(a) of the [Civil Liability Act](#).

Question 9

Certain acts of the volunteer will exclude their ability to claim protection. Did any of the following apply to the volunteer at the time of the act or omission?

- Not acting in good faith** (dishonestly or fraudulently)
- Volunteer's ability to exercise reasonable care and skill was significantly impaired as a result of voluntarily consuming alcohol or a drug** (whether or not consumed for medication) and they failed to exercise reasonable care and skill
- Acting outside the scope of activities** authorised by the community organisation
- Acting contrary to instructions** given by the community organisation

See sections 61, 63 and 64 of the [Civil Liability Act](#).

If ANY apply go to Section D

If NONE apply go to Section C

Section C: Volunteer protection provisions

If you have answered all questions in sections A, B and C, and the answer does not result in “go to section D”, the protection under the Civil Liability Act is likely to apply to volunteers engaged by your organisation. If you are in doubt, seek legal advice.

What does it mean if your volunteers are protected?

If your volunteers are protected this means they do not incur personal civil liability as a result of performing community work organised by or as an office holder of your community organisation.

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

If your volunteers are not protected by the provisions of the Civil Liability Act, your volunteers remain personally liable for their actions. They may be either sued individually, or joined to an action against your community organisation, for their acts and omissions while performing community work.

RELATED RESOURCES

For more information about safety, risk management and your volunteers, including the circumstances in which your organisation could be legally responsible for the actions of your volunteers, go to our fact sheet 'Safety, risk management and volunteers' on the Not-for-profit Law Information Hub at www.nfplaw.org.au/volunteers.

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



If the volunteers fall under the categories outlined in question 8 (that is, the liability was incurred before 20 March 2002), they may be protected under another legislative regime. It is suggested that you examine the laws relevant to these volunteers.

Resources

Related Not-for-profit Law Resources

- ✔ Volunteers, <http://www.nfplaw.org.au/volunteers>

For more information about safety, risk management and your volunteers, go to our fact sheet 'Safety, risk management and volunteers'.

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

Legislation

- ✔ [Civil Liability Act 2002 \(NSW\)](#)
- ✔ [Motor Accidents Compensation Act 1999 \(NSW\)](#)

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

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