

## 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 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 Northern Territory work health and safety legislation, namely, the *Work Health and Safety (National Uniform Legislation) Act 2011* (NT) and the *Work Health and Safety (National Uniform Legislation) Regulations 2011* (NT) (together, **NT WHS Laws**).

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

The NT 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 NT 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 NT 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 laws 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 Negligence guide on the Information Hub 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 *Personal Injuries (Liabilities and Damages) Act 2003* (NT) (**the Personal Injuries Act**) sets out a special protection which provides that volunteers are not personally liable (legally responsible) for personal injury caused by anything they have done (or not done) in good faith and without recklessness, while doing community work that is organised, directed or supervised by a community organisation. In these circumstances, any civil liability the volunteer incurs for personal injury is transferred to the community organisation. Civil liability refers to liability arising out of a civil proceeding, which is a legal action between two citizens (in this context, proceedings for personal injury).

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 Personal Injuries Act. If a volunteer is protected under

the Personal Injuries 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 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 the Northern Territory or that the community organisation is registered in the Northern Territory. Determining which law a volunteer will be subject to can be complicated and may require legal advice.



## Liability under the Personal Injuries 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 Personal Injuries 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 Personal Injuries Act)
- your organisation is a 'community organisation'
- the work being done by the volunteer is 'community work'
- the volunteer is doing the community work for the community organisation
- the volunteer's action (or failure to act) was done in 'good faith' 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 Personal Injuries Act defines a 'volunteer' as a person doing community work for a community organisation (these terms are discussed below) who 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 for reasonable out-of-pocket expenses, or
- remuneration for the work not greater than the amount prescribed by the regulations of the Personal Injuries Act – there is no amount prescribed by regulation as at October 2017.

## 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 Territory registered body corporate), 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 Personal Injuries Act while performing services for Community House Inc. Although he is paid as an employee, this is not linked to his volunteering at Community House Inc. He would be paid whether or not he volunteered.



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

The Personal Injuries Act defines a 'community organisation' as:

- a religious body
- a body corporate, or
- an Agency or department of the Territory,

that organises, directs or supervises 'community work' (discussed below) done by volunteers.

## 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
- sport, recreation or amusement
- conserving or protecting the environment
- establishing, carrying on or improving a community, social or cultural centre
- promoting the interests of a local community, or
- a political purpose.

The regulations to the Personal Injuries Act can also specify that certain types of work constitute community work, but there are no such regulations as at October 2017.

The protection under the Personal Injuries 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).

## NOTE

A person doing work under a court order is not doing 'community work' under the Personal Injuries Act definition, which means they do not get the benefit of protection under the Act.



## STEP 4 - Was the volunteer doing community work for the community organisation?

A volunteer is protected if their action (or failure to act) took place whilst they were doing 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, the volunteer is taken to be 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, directed or supervised by a community organisation, there are exceptions set out under the Personal Injuries Act. In general, a volunteer will not be protected where:

- the volunteer knew, or ought reasonably to have known, that he or she was acting outside the scope of his or her authority, or contrary to the instructions of the community organisation, or
- the volunteer did the act (or failed to act) while intoxicated.

There are specific legal definitions and interpretations of many of the terms used in these exceptions (e.g. 'ought reasonably to have known' and 'intoxicated'). 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 Personal Injuries Act applies and that the volunteer will not be protected from liability.



### WHERE PERSONAL INJURIES ACT PROTECTIONS FOR VOLUNTEERS DO NOT APPLY

A volunteer will not be protected under the Personal Injuries Act in certain civil proceedings for personal injury if the volunteer has a car accident while volunteering. In this case, any liability for compensation for personal injury to third parties under the *Motor Accidents (Compensation) Act 1979* (NT) 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 Personal Injuries Act won't protect the volunteer from criminal liability in this situation.

## What could our organisation be liable for based on Personal Injuries Act provisions?

To summarise, the Personal Injuries 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 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 injuries caused by the volunteer.

### What happens if our organisation (or a volunteer) expresses regret?

Under the Personal Injuries Act, a volunteer or community organisation may express regret about an incident that may have caused personal injury to someone, without fearing it will be construed as an admission of liability in a claim or proceeding arising out of the incident.

The Personal Injuries Act specifies that an expression of regret can be an oral or written statement by a person that expresses regret for an incident that is alleged to have caused personal injury and does not contain an acknowledgement of fault by that person.

An expression of regret that is made at any time before the commencement of a proceeding relating to that injury is not admissible as evidence in the proceeding, meaning that it cannot be used as evidence of an admission of liability or to prove that the person was at fault.

## 3. Managing the risk

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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](#).

NT WorkSafe has also published numerous resources relating to workplace safety and minimising risk available at [www.worksafe.nt.gov.au/SafetyAndPreventions/Pages/default.aspx](http://www.worksafe.nt.gov.au/SafetyAndPreventions/Pages/default.aspx).



## RELATED RESOURCES

For a Sample Volunteer Position Description, go to the Information Hub at [www.nfplaw.org.au/volunteers](http://www.nfplaw.org.au/volunteers).



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

The Personal Injuries Act specifically states 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 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:

<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 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

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## 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

- [\*Work Health and Safety \(National Uniform Legislation\) Act 2011 \(NT\)\*](#)

- [\*Work Health and Safety \(National Uniform Legislation\) Regulations 2011 \(NT\)\*](#)

- [\*Personal Injuries \(Liabilities and Damages\) Act 2003 \(NT\)\*](#)

- [\*Personal Injuries \(Liabilities and Damages\) Regulations 2003 \(NT\)\*](#)

## Other Related Resources

- NT WorkSafe [www.worksafe.nt.gov.au](http://www.worksafe.nt.gov.au)

- 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)

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