

Safety, risk management and volunteers

Legal information for Victorian community organisations

This fact sheet covers:

- ▶ your organisation's responsibility for the safety of your volunteers
 - ▶ your organisation's responsibility for the actions of your volunteers, and
 - ▶ ways to minimise the risk to your volunteers and others.
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Your organisation is legally responsible for the safety of your volunteers and may also be legally responsible for the actions of your volunteers that cause injury to others.

Your organisation owes its volunteers certain legal obligations to provide and maintain a safe working environment. 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 and system of work for your volunteers. This arises under common law (established by the courts), and in some cases under specific workplace legislation.

In Victoria, occupational health and safety in the workplace is regulated by the *Occupational Health and Safety Act 2004 (Vic)* and the *Occupational Health and Safety Regulations 2007 (Vic)* (**Victorian OHS Laws**). The Victorian OHS Laws will apply to your organisation if it is an 'employer' and/or an organisation that 'manages or controls a workplace'.

The Victorian OHS Laws set out various duties that organisations and individuals must comply with in the workplace that 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.

If your organisation is covered by Victorian OHS Laws (ie. it is an employer or 'manages or controls a workplace'), you must provide and maintain a working environment that is safe for, and without risk to, the health of your volunteers (as far as is reasonably practicable).

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 its volunteers to take reasonable steps to avoid foreseeable harm, injury or loss. 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 Information Hub fact sheet Occupational health and safety laws 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 Information Hub guide on Negligence at www.nfplaw.org.au/negligence.

2. Legal responsibility for actions of volunteers

In some circumstances, your organisation could be held liable (legally responsible) for the actions of your volunteers. This can come about where harm is caused by a volunteer and the organisation is legally responsible because it failed to provide adequate training and supervision of the volunteer. Legal responsibility for the actions of volunteers can also come about by operation of the *Wrongs Act 1958* (Vic) (**the Wrongs Act**). The Wrongs Act sets out a special protection, meaning that volunteers are not personally liable for anything done (or not done) in good faith while doing community work that is organised by a community organisation. Instead, if harm is caused by a volunteer, the organisation will be liable rather than the volunteer individually.

Does the Wrongs Act apply to transfer legal responsibility for the actions of volunteers to the organisation they are volunteering with?

There are 6 steps your organisation can follow to assess whether or not your organisation may be liable for the actions of its volunteers in a particular circumstance. These steps are outlined in more detail below. In summary, Wrongs Act volunteer protections will apply to your organisation and its volunteers, so that your organisation is responsible for harm caused by volunteers (and not the volunteer themselves) if:

- the work is being done by a 'volunteer'
- 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 in relation to the provision of a service, and
- no exception applies.

If the Wrongs 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 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 February 2016.

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.

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.



NOTE

There are a number of 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. A person doing community work under a court order is also not considered a ‘volunteer’ for the purpose of the Wrongs Act.



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
- a 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.



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, 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 or a section of the community, or
- other purposes specified in the regulations to the Wrongs Act.

The definition of ‘community work’ focuses on the purpose of the activity the volunteer is performing, not the overall purpose of the organisation. Therefore, whether a volunteer is performing ‘community work’ will depend on what work the volunteer is actually doing, rather than the object of the organisation they are doing the work for.

Some of the fields of community work set out above have a technical legal meaning (eg. charitable purposes). You may need to seek legal advice about whether the work falls into one of these categories.

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 protection does not extend to spontaneous acts of volunteers or activities the organisation has not authorised.

EXAMPLE

A person attends an organised event such as a community sports day and starts to help with marshalling participants. An injury occurs as a result of the person’s marshalling activities. It is unlikely the volunteer will be protected under the Wrongs Act as his/her actions were not formally authorised by the community organisation.



However, although the definition of ‘organise’ includes ‘to direct and supervise’, it 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.

STEP 5 - Were the volunteer's actions (or failure to act) done in 'good faith' and in relation to the provision of a service?

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.

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

STEP 6 - Does an exception apply to your organisation?

The Wrongs Act sets out a number of exceptions. In general terms, your organisation will not be liable (and therefore, the volunteer may be personally liable) if:

- you can rely on contractual arrangements with the injured person (eg. possibly via an appropriate warning sign or disclaimer)
- another community organisation is involved in organising the community work performed by the volunteer and that organisation principally organises the work – in this situation the community organisation organising the work will be liable for the actions of the volunteer
- your organisation is also a public body or public entity or local authority (a technical definition applies) – in this situation the State Government will be held liable for the costs of any civil actions brought by an injured person, or
- the volunteer knew, or who 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 (eg. 'ought reasonably to have known', 'drugs', 'alcohol' and 'significantly impaired'). If potentially relevant, your organisation may need to seek legal advice about these issues.

WHERE WRONGS ACT PROTECTIONS FOR VOLUNTEERS DO NOT APPLY

A volunteer will not be protected by the transferring of responsibility set out in 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 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 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?

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 sue the community organisation (rather than the volunteer) for any injury or injuries caused by the volunteer.

In short, any civil liability the volunteer incurs 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. For example, compensation for personal injury, property damage or financial loss as a result of their own negligence.

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 an 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 by a person that does not contain a clear acknowledgement of guilt. In a civil proceeding where death or injury is at issue or relevant to a 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

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.



3. Managing the risk

Your organisation could potentially be liable for the actions of your volunteers and for any injuries that your 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)
- talks to 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 on safety issues
- undertakes regular risk assessments to identify potential risks to health and safety and take steps to eliminate these risks
- clearly defines the role and tasks of your volunteers in a written document (volunteer position description) and specify any prohibited actions (eg. giving clients medical advice), and
- reviews your insurance policies to make sure they adequately cover injuries to and actions of your volunteers.

FURTHER READING

WorkSafe Victoria has 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 checklist covering what to do when an incident or accident happens in your organisation, go to our Not-for-profit Law checklist Incident and Accidents on the Information Hub at www.nfplaw.org.au/negligence



Can we get our volunteers to sign a waiver to indemnify our organisation from any liability resulting from their actions?

The Wrongs Act specifically prohibits these kinds of agreements. Your organisation cannot try to 'contract out of' the volunteer protection provisions to avoid being legally responsible for their 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
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. 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 does not cover injuries to volunteers and the volunteer does not have health insurance to cover the costs of his hospital visit.



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 engage in negotiations 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 our NFP Law fact sheet on "Engaging and working with youth volunteers" at www.nfplaw.org.au/volunteers.



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](#).



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

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