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.

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 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 New South Wales, health and safety in the workplace is regulated by the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2011 (NSW) (NSW WHS Laws). The NSW WHS Laws apply to ‘persons conducting a business or undertaking’ (a ‘PCBU’), essentially, organisations that have employees. They do not apply to organisation that only engage volunteers and have no employees or contractors (‘volunteer associations’).

TIP

Even if your organisation is a volunteer association and is exempt from the NSW WHS Laws, it is a good idea to comply with the general WHS duties under the WHS Act. Australian courts have recognised that volunteers are owed a general duty of care by the organisations that they are engaged by. Complying with the Act will help to ensure this duty is satisfied.

The NSW WHS Laws set out various duties that organisations and individuals must comply with in the workplace that are regulated and enforced by a NSW government authority known as SafeWork NSW (SafeWork). SafeWork may prosecute organisations that breach (do not comply with) these duties.

If your organisation is covered by NSW WHS Laws (i.e. it is a PCUB), its primary duty of care is to ensure the health and safety of workers, which includes volunteers.
In addition to NSW 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. 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 NSW WHS Laws apply to your organisation, key duties under these laws and what is required of your organisation, see Not-for-profit Law’s Information Hub factsheet on Work health and safety laws 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

**What could our organisation be liable for based on Civil Liability Act provisions?**

The **Civil Liability Act 2002** (NSW) (**Civil Liability Act**) sets out a special protection which provides 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.

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 Civil Liability Act.

If a volunteer is protected (that is, all of the tests set out below have been met) under the Civil Liability Act, 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.

In some other states and territories, the liability incurred by the volunteer is automatically transferred to the volunteer’s community organisation and the organisation is liable as if it were ‘standing in the shoes’ of the volunteer (known as the doctrine of ‘vicarious liability’).

However, in NSW this does not occur and, instead, under the Civil Liability Act, an organisation is provided the same protection as the volunteer and therefore cannot be held vicariously liable (ie. responsible) for the volunteer’s acts or omissions covered by the Civil Liability Act.
Despite the general protection available to NSW community organisations under the Civil Liability Act, organisations should be aware that there may still be certain circumstances where an organisation may be legally responsible for the acts or omissions of its volunteers including in the following instances:

- the volunteer binds the organisation to a contract with another person (by acting as an agent of the organisation) and there is a breach of that contract (eg. a volunteer leads a person to believe that he or she is authorised to enter into a supply agreement on behalf of the organisation and the organisation cannot pay the fee stated in the contract), or
- it can be shown by a person bringing a claim that the organisation was negligent as it breached a duty of care owed to that person (eg. it failed to take reasonable care in selecting, training, equipping or supervising volunteers and, as a result, the person suffered harm).

**Liability under the Civil Liability Act**

There are 6 steps your organisation can follow to work out whether or not a volunteer might gain the benefit of protection under the Civil Liability Act and therefore whether your organisation has the potential to be liable for the actions of its volunteers. These steps are outlined in more detail below. In summary, a volunteer will gain protection if:

- the work is being done by a ‘volunteer’ (as defined under the Civil Liability 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 or done as an office holder of the community organisation
- the volunteer’s action (or failure to act) was done in ‘good faith’, and
- no exception applies.

If the Civil Liability 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 Civil Liability 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:

- reimbursement for out-of-pocket expenses, or
- remuneration for the work not greater than the amount prescribed by the regulations of the Civil Liability Act – there is no amount prescribed by regulation as at September 2016.

A person doing work under court ordered volunteering is not considered a volunteer under the Civil Liability Act definition.
STEP 2 - Is your organisation a ‘community organisation’?

The Civil Liability Act defines a community organisation as:

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

that organises the doing of ‘community work’ (discussed below) by volunteers and is capable of being sued for damages in civil proceedings.

CAUTION

The volunteer protection provisions of the Civil Liability 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 (‘any activity’) that is not done for private financial gain and that is done for any of the following purposes:

- charitable
- benevolent
- philanthropic
- sporting
- educational, or
- cultural.

The regulations to the Civil Liability Act can also specify that certain types of work do or do not constitute community work, but there are no such regulations as at the time of publication of this resource.

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 (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 or done as an office holder of the community organisation?

A volunteer is protected if he or she carries out the community work as an office holder of the community organisation.

If the volunteer is not an office holder, he or she 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 Civil Liability 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 omissions (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 will have acted in good faith. This means that volunteers are protected from civil liability for true ‘accidents’. If the volunteer has acted in ‘bad faith’, they will not receive protection under the Civil Liability Act.

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 further exceptions set out under the Civil Liability Act.

In general, a volunteer will not be protected where:

- 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 provision 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 voluntarily consumed (whether consumed for medical reasons or not), and the volunteer failed to exercise reasonable care and skill when doing the work.
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.

**PROTECTION ONLY APPLIES TO CERTAIN TYPES OF CIVIL LIABILITY**

The volunteer protection applies only to ‘civil proceedings’, that is, legal action between two or more citizens (eg. a claim in negligence or a breach of contract).

However, a volunteer will not be protected in certain civil proceedings:

- if the volunteer is sued for defamation
- 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 1999*(NSW) is excluded (as this is covered by the compulsory third party insurance that is included in the registration costs of a vehicle), or
- any other personal liability that is required to be insured against under law (eg. harm resulting from the actions of a doctor or lawyer).

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 Civil Liability Act won’t protect the volunteer from criminal liability in this situation.

**What could our organisation be liable for based on Civil Liability Act provisions?**

The Civil Liability 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.

In some other states and territories, the liability incurred by the volunteer is automatically transferred to the volunteer’s community organisation and the organisation is liable as if it were ‘standing in the shoes’ of the volunteer (known as the doctrine of ‘vicarious liability’).

However, in NSW this does not occur and, instead, under the Civil Liability Act, an organisation is provided the same protection as the volunteer and therefore cannot be held vicariously liable (ie. responsible) for the volunteer’s acts or omissions covered by the Civil Liability Act.

However, despite the general protection available to NSW community organisations under the Civil Liability Act, organisations should be aware that there may still be certain circumstances where an organisation may be legally responsible for the acts or omissions of its volunteers including in the following instances:

- the volunteer binds the organisation to a contract with another person (by acting as an agent of the organisation) and there is a **breach of that contract** (eg. a volunteer leads a person to believe that he or she is authorised to enter into a supply agreement on behalf of the organisation and the organisation cannot pay the fee stated in the contract), or
- it can be shown by a person bringing a claim that the organisation was negligent as it **breached a duty of care** owed to that person (eg. it failed to take reasonable care in selecting, training, equipping or supervising volunteers and, as a result, the person suffered harm).
NOTE

Under the Civil Liability Act (section 5L), where a person brings a claim in negligence, the person defending the claim brought against them (ie the defendant) will not be liable (ie responsible) if the person has suffered harm as a result of obvious risks of dangerous recreational activities. ‘Dangerous recreational activity’ means (section 5K) a recreational activity that involves a significant risk of physical harm. ‘Recreational activity’ includes any sport or any pursuit or activity engaged in for enjoyment, relaxation or leisure. ‘Obvious risk’:

- is a risk that, in the circumstances, would have been obvious to a reasonable person in the position of that person
- includes risks that are obvious or a matter of common knowledge
- is a risk of something occurring, it can be an obvious risk even though it has a low chance of occurring
- is a risk that can be an obvious risk even if the risk (or a condition or circumstance that gives rise to the risk) is not prominent, conspicuous or physically observable.

EXAMPLE

In the case of Echin v Southern Tablelands Gliding Club [2013] NSWSC 516, Mr Echin (a member of the hang-gliding club) brought a claim in negligence against a number of volunteers connected with the club, for failing to instruct him of the risks and dangers of hang-gliding and instructing him to perform a ‘hangar landing’ in circumstances where he was not sufficiently experienced. Mr Echin was injured after falling around 30 metres to the ground while attempting the landing (which required flying over power lines). Mr Echin had completed several hangar landings prior to the accident.

It was accepted that the people involved in the club were in fact ‘volunteers’ within the meaning of the Civil Liability Act and therefore, they were protected from personal legal responsibility and so too was the organisation – the operation of the Civil Liability Act meant the hang-gliding club was provided the same protection as the volunteers and not found to be vicariously liable for these volunteers' actions.

Mr Echin made a secondary claim directly against the hang-gliding club for designing an unsafe runway and allowing under qualified volunteers to supervise the flights. The Court stated that it was possible for the club to be found directly liable for its conduct (irrespective of the volunteers’ conduct) if it breached the duty of care it owed to its members by not supplying an instructor who met the required qualifications to supervise flights. Ultimately, the Court did not find the club liable in negligence, because “there was not a breach of the duty of reasonable care by the Club in its instructions and training given to the Plaintiff in relation to landing in general and particularly landing in the late afternoon” and “the Club was not negligent provided the pilots were made aware of the obstruction and trained to safely land over it.” The Chief Flying Instructor of the club had previously told Mr Echin that he could use runway 28 from east to west but he did not like to use it due to the power lines.

In any event, the Court also found that there was a defence available under section 5L of the Civil Liability Act as hang-gliding and landing over power lines is a ‘dangerous recreational activity’, which would remove any liability in negligence from the club (see Note above).

RELATED RESOURCES

A checklist to assist your organisation to find out if its volunteers are protected under the provisions of the Civil Liability Act can be found 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 organisation before acting on the content of this publication.
What does the Civil Liability Act say about making an apology?

Under the Civil Liability 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 Civil Liability Act specifies that an apology is an expression of sympathy or regret, a general sense of benevolence or compassion, in connection with any matter whether or not the apology admits or implies an admission of fault in connection with the matter. In a civil proceeding, an apology:

- does not constitute an express or implied admission of liability
- is not relevant to determination of fault or liability, and
- is not admissible as evidence of the fault or liability.

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 New South Wales or that the community organisation is registered in New South Wales. 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 including refresher 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.
Can we get our volunteers to sign a waiver to indemnify our organisation from any liability resulting from their actions?

Your organisation might want to consider implementing a waiver. Note that waivers only provide a certain level of protection, and will not necessarily apply where there has been gross negligence or breaches of specific laws. They should be used as part of a broader risk management strategy.

**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:

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<th>Protects:</th>
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<tr>
<td>Volunteers</td>
<td>Volunteer personal accident insurance</td>
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<tr>
<td>Employees</td>
<td>WorkCover insurance</td>
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<tr>
<td>Committee members</td>
<td>Directors and officers liability insurance</td>
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<tr>
<td>Members of the public</td>
<td>Public liability insurance</td>
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<tr>
<td>Experts or advisors</td>
<td>Professional indemnity insurance</td>
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<tr>
<td>Property and assets</td>
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<tr>
<td>Selling goods or products</td>
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<tr>
<td>Vehicles</td>
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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 NRL club 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 (both harm suffered by volunteers themselves and harm suffered by other as a result of your volunteers’ action or inaction). 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 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](http://www.nfplaw.org.au/volunteers).
Resources

Related Not-for-profit Law Resources

  For more information on insurance and risk management, read our Risk Management and Insurance guide.
  For an overview of the common law of negligence, read our Negligence guide.
  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.

Case law and Legislation


Other Related Resources

  New South Wales' workplace health and safety regulator
  Safe Work Australia has published information for volunteer organisations on workplace safety including [The Essential Guide to Work Health and Safety for Volunteers](http://www.safeworkaustralia.gov.au)
- 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](http://www.volunteeringaustralia.org)
  For information about the question to ask in relation to your insurance policies, go to the [Conversation Guide](http://www.safeworkaustralia.gov.au).

A NFP Law Information Hub resource. Access more resources at [www.nfplaw.org.au](http://www.nfplaw.org.au)

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