

Checklist: Is our organisation liable for its volunteers under the *Wrongs Act 1958 (Vic)*?

Overview

This checklist is designed to provide a simple guide to assist Victorian community organisations to determine if its volunteers are protected under the provisions of the *Wrongs Act 1958 (Vic)*. Your organisation is advised to refer to relevant sections of the *Wrongs Act* to understand the definitions of the terms used in this checklist.

PilchConnect gratefully acknowledge 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.

Note: The information contained in this fact sheet is intended as a guide only, and is not legal advice. If you or your organisation has a legal problem you should talk to a lawyer before making a decision about what to do. The information in this fact sheet is written for people and organisations resident in, or affected by, the laws that apply in Victoria, Australia and is current at 1 October 2011.

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 *Wrongs Act*. These requirements are listed below.

Question 1

Only volunteers engaged by community organisations are entitled to protection. A body is a community organisation if it is:

- ▶ a corporation (for example, a company limited by guarantee)
- ▶ an incorporated association
- ▶ a State Government Agency or Department
- ▶ a local council
- ▶ a public authority created under an Act of Parliament

Refer: section 34 *Wrongs Act* for definitions of the above bodies.

If ANY apply go to Question 2

If NONE apply go to Section

Question 2

To be entitled to protection the work performed by volunteers must be performed on a 'voluntary basis'. A person will have performed the work on a voluntary basis if they receive:

- ▶ no remuneration for doing the work
- ▶ only remuneration of their reasonable expenses incurred in doing the work (for example, travel and meal costs)
- ▶ payment from their normal employer while they perform community work
- ▶ remuneration within the limits prescribed by the Wrongs Act regulations (no limit prescribed at the time of publication)

Refer: section 35 *Wrongs Act* re "voluntary basis".

If ANY apply go to Question 3

If NONE apply go to Section D

Question 3

The work performed by the volunteer must be community work. Community work is work performed for one or more of the following purposes:

- ▶ Charitable
- ▶ Religious
- ▶ Educational
- ▶ Benevolent
- ▶ Literature, Science or Arts
- ▶ Sporting
- ▶ Recreational
- ▶ Amusement
- ▶ Tourism
- ▶ Conserving or protecting the environment
- ▶ Political
- ▶ Promoting community interests
- ▶ Community , social or cultural centres

Refer: section 36 *Wrongs Act* for definitions of the above activities.

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.

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?

- ▶ Yes
- ▶ No

Refer: sections 34, 37 *Wrongs Act* for definition of organised

If YES go to Question 5

If NO go to Section D

Question 5

Volunteers are only protected if they were providing a service in relation to the community work. Was the volunteer at the relevant time providing a service?

- ▶ Yes
- ▶ No

Refer: ss 37 *Wrongs Act*

If YES go to Question 6

If NO go to Section D

Question 6

The protection is only afforded for civil liabilities. Was the liability incurred by the volunteer for a civil liability (for example, negligence causing physical injury) and not a criminal prosecution (for example, stealing or assault)?

- ▶ Yes
- ▶ No

Refer: section 37 *Wrongs Act* for definition of civil liability.

If YES go to Question 7

If NO go to Section D

Question 7

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 for personal injury due to a motor vehicle accident

Refer: section 38(2) *Wrongs Act*

If EITHER apply go to Section D

If NONE apply go to Question 8

Question 8

The protection is only available after a certain date. Was the liability incurred by the volunteer after 15 March 2003?

- ▶ Yes
- ▶ No

Refer: section 1 *Wrongs Act*

If YES go to Section B

If NO go to Section D

Section B

When does the protection not apply to your 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 Question 9 below.

Question 9

Volunteers who fall under certain categories are not protected. Does the volunteer come under one of the following categories?

- ▶ working under a court imposed order.
- ▶ an officer or member as defined by the *Country Fire Authority Act 1958* (Vic) while exercising power or performing duties imposed under that Act or the *Dangerous Goods Act 1985* (Vic).
- ▶ an officer or member of industry brigade as defined by the *Country Fire Authority Act 1958* while exercising power or performing duties imposed under that Act or the *Dangerous Goods Act 1985*.
- ▶ a volunteer auxiliary worker within the meaning of the *Country Fire Authority Act 1958* engaged in authorised activity under that Act.
- ▶ a person complying with a direction given under the provisions of *Country Fire Authority Act 1958*.
- ▶ a volunteer emergency worker under the *Emergency Management Act 1986* (Vic) engaged in emergency activity within the meaning of that Act.
- ▶ a volunteer emergency worker under the *Emergency Management Act 1986* exercising power or performing duties imposed under the *Victoria State Emergency Services Act 2005* (Vic).

Refer: section 35 Wrongs Act.

If ANY apply go to Section D

If NONE apply go to Question 10

Question 10

Certain acts of the volunteer will exclude their ability to claim protection. Was the volunteer, at the time of the act or omission, acting in any of the following ways?

- ▶ not acting in good faith
- ▶ intoxicated as a result of voluntarily consuming alcohol or a drug that was not for a therapeutic purpose
- ▶ acting outside the scope of activities of the community organisation
- ▶ acting contrary to instructions given by the community organisation

Refer: sections 37, 38(1) *Wrongs Act*.

If ANY apply go to Section D

If NONE apply go to Section C

Section C

Sections A, B & 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 afforded by the legislation is likely to be afforded 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 your community organisation.

Under the *Wrongs Act*, the liability incurred by the volunteer is transferred to the volunteer’s community organisation and the organisation is liable as if it were the volunteer. If your community organisation was involved in a combined undertaking, go to section E.

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

Section D

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

If your volunteers are not protected by the provisions of the *Wrongs 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. It is recommended that you seek legal advice.

If the volunteers fell under the categories outlined in question 8, (that is, the liability was incurred before 15 March 2003) they may be protected under another legislative regime. It is suggested that you examine the laws relevant to these 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.

Section E

Was the community work principally organised by your community organisation?

If more than one community organisation is involved in organising the community work, it is the community organisation that chiefly or mainly organised the work that is liable for the conduct of the volunteer.

Question 11

Was your community organisation the principal/main organiser of the community work?

- ▶ Yes
- ▶ No

Refer: section 39 (2) *Wrongs Act* for definition of 'principally organised'.

If YES the liability incurred by the volunteer is transferred to your community organisation. If NO the liability incurred by the volunteer is transferred to the principal organiser of community work.

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

SECTION F

Is it possible for the State of Victoria to assume the liability of the community organisation?

The State of Victoria may assume the liability of the volunteer that is transferred to the community organisation under the *Wrongs Act*, if the community organisation is:

- ▶ a public authority;
- ▶ an agency within the meaning of the *Public Sector Management and Employment Act* 1998 (Vic); or
- ▶ a person or body acting on behalf of the State.

Refer: section 39 (3) *Wrongs Act*.

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

Related resources

Related PilchConnect fact sheets

Fact sheet : Volunteer civil liability protection in Victoria

Related legislation

Wrongs Act 1958 (Vic)

Transport Accident Act 1986 (Vic)

Country Fire Authority Act 1958 (Vic)

Emergency Management Act 1986 (Vic)

Victoria State Emergency Services Act 2005 (Vic)

Related links

For other online legal information resources for Victorian community organisations about:

- ▶ volunteers see: www.pilch.org.au/volunteers
- ▶ insurance and risk management see www.pilch.org.au/insurance

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