Qld Checklist for Community Organisations

This checklist is designed to assist in determining if your organisation’s volunteers are protected under the provisions of the Civil Liability Act 2003 (Qld) (the Act). You should refer to the relevant sections of the Act to understand the definitions of the terms used. This checklist is only a guide and it is recommended that you seek legal advice about the application of the legislation to your organisation before acting on the content of this publication.

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 afforded by the legislation. These requirements are listed below.

Question 1

Only volunteers engaged by community organisations are entitled to protection. Community organisations must have two characteristics.

(a) Your organisation must be one of the following:

- Corporation (for example, an incorporated association or a company limited by guarantee);
- Trustee acting in the capacity of trustee;
- Church or other religious group;
- Registered political party under Queensland or Commonwealth electoral legislation;
- The Crown (for example, a government departments or agency);
- Government owned corporation;
- Local council;
- Public authority created under an Act of Parliament.

Refer: ss 34, 38 (1).

If ANY apply continue to question 1 (b)
If NONE apply go to section D

AND

(b) To be a community organisation you must organise community work. Does your organisation organise the doing of community work by volunteers?

- Yes
- No
Refer: s 38 (1) and question 3.

If YES continue to question 2
If NO go to section D

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; or
- Remuneration of their reasonable expenses incurred in doing the work (for example, travel and meal costs)

Refer: s 38 (2).

If EITHER applies continue to question 3
If NONE apply go to section D

Question 3

The work performed by the volunteer must be community work. Community work has two characteristics.

(a) Community work is work that is not performed for direct private financial gain. The work will be for direct private financial gain if it created a profit that was distributed amongst private individuals. For example, a person being paid a commission for every packet of biscuits sold on behalf of the organisation.

Indirect gain, such as receiving training leading to qualifications in a certain area is not considered direct private financial gain.

Was the community work performed for private financial gain?

- Yes
- No

If NO continue to question 3 (b)
If YES go to section D

AND

(b) Community work is work performed for a purpose listed below. Was the work performed by the volunteer for one of the following purposes?

- Charitable
- Benevolent
- Philanthropic
- Sporting
- Recreational
- Political
- Educational
- Cultural

Refer: s 38 (1).

If ANY apply continue to question 4
If NONE apply go to section D
Question 4

The community work performed must either be organised by the community organisation or performed by a volunteer office holder.

(a) Was the work performed by the volunteer organised, directed or supervised 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.

- Yes
- No

Refer: s 38 (1).

If NO continue to question 4 (b)  
If YES continue to question 5

OR

(b) Was the community work performed by a person in the capacity of a volunteer office holder?

For example, a director, management committee member or secretary is an office holder.

- Yes
- No

Refer: ss 38 (1), s 39

If YES continue to question 5  
If NO go to section D

Question 5

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: ss 39, 40.

If YES continue to question 6  
If NO go to section D

Question 6

Only liability for particular kinds of harm is protected. Was the liability incurred by the volunteer for any of the following types of harm?

- personal injury (for example, a broken limb or a disease); or
- property damage (for example, damage to a building); or
- economic loss (for example, lost income while off work due to a broken arm)

Refer: s 4.
Question 7

The protection is only available after a certain date. Was the liability incurred by the volunteer after 9 April 2003?

- Yes
- No

Refer: s 2.

If YES continue to section B
If NO go to section F

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 below.

Question 8

Community work that is performed under a court order is not entitled to protection. Did the volunteer perform their community work under a court order?

- Yes
- No

Refer: s 38 (2) (a).

If NO continue to question 9
If YES go to section D

Question 9

Particular types of injury are excluded from protection. Did the personal injury sustained by the claimant include any of the following types of injuries?

- an injury as defined under Work Cover legislation where “employment was a significant contributing factor to the injury” (for example, an employee suffers a broken finger while operating a defective machine at work)
- a dust-related condition (for example, silicosis)
- an injury that resulted from the use of tobacco products or tobacco smoke

Refer: s 5.

If NONE apply continue to question 10
If ANY apply go to section D
Question 10

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

- a liability required to be insured against by State law  
  Refer: ss 43, 44.
- a liability covered by compulsory third party motor vehicle insurance

If NONE apply continue to question 11
If ANY apply go to section D

Question 11

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
- engaging in criminal conduct
- intoxicated and failing to exercise due skill and care
- acting outside the scope of the activities they were authorised to perform by the community organisation
- acting contrary to instructions given by the community organisation

Refer: ss 39, 40, 41, 42.

If NONE apply continue to section C
If ANY apply go to section D

SECTION C

Did your volunteers enter a contract of indemnity with your community organisation?

It is possible for volunteers to enter into a contract of indemnity with the community organisation. An indemnity places the primary liability on the volunteer and requires the volunteer to compensate or contribute to any liability the community organisation incurs as a result of the volunteer’s negligence.

Question 12

Did the volunteer freely enter into a contract of indemnity to compensate the community organisation for any loss incurred by the organisation as a result of the volunteer’s actions?

- Yes
- No

Refer: s 7 (3).
SECTION D

What happens if a person is engaged in criminal conduct at the time they suffer the injury?

Your volunteers, employees, and your organisation may be protected from civil liability under a different provision of the legislation where the person injured by the volunteer was engaged in criminal conduct at the time they suffered the injury. This protection will apply despite the volunteer and the organisation not meeting the required threshold requirements under the volunteer protection provisions.

Question 13

(a) Was the person injured by the volunteer at the relevant time engaging in conduct that constituted an indictable offence?

- Yes
- No

If YES continue to question 13 (b)
If NO go to section F

AND

(b) Was that conduct a substantial factor in causing the injury?

- Yes
- No

If YES go to section E
If NO go to section F

SECTION E

Sections A, B & C: Volunteer protection provisions

If you have answered all questions with a response in sections A, B and C, and have not been sent to section F, the protection afforded by the legislation may be afforded to volunteers engaged by your organisation. However, this checklist is only a guide and legal advice is recommended.

Section D: Criminal conduct provisions

If you have answered yes to both questions in section D, your volunteers may be protected under the criminal conduct provisions of the legislation. However, this checklist is only a guide and legal advice is recommended.

What does it mean if your volunteers are protected?

If your volunteers are protected this means they cannot incur personal civil liability for claims for personal injury, property damage and economic loss as a result of performing community work organised by your community organisation.

Currently, it is unclear whether the liability that would have otherwise been incurred by the volunteer will be transferred to the volunteer’s community organisation.

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

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

Your volunteers will remain personally liable for their actions unless a form of protection outside the Civil Liability Act 2003 (Qld) applies to their situation.

This means that they may either be sued individually, or joined to an action against your community organisation, as a result of their acts and omissions while performing community work.

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