Qld Checklist for Volunteers

This checklist is designed to assist you in determining if you are protected from incurring personal civil liability 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 you and your organisation before acting on the content of this publication.

SECTION A

Do you meet the requirements for protection?

To gain the benefit of the protection given by the legislation you must meet a number of threshold requirements. These requirements are listed below.

Question 1

To be entitled to protection you must be performing community work organised by a community organisation. Community work is work that is not performed for direct private financial gain and is performed for any of the purposes listed below.

Were you performing work for one of the following purposes?

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

Refer: s 38 (1).

If ANY apply continue to question 2
If NONE apply go to section D

Question 2

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

(a) A community organisation must organise the doing of community work. Does the organisation you work for organise the doing of community work by volunteers?
(b) The community organisation must be one of the following bodies:

- 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 department or agency)
- Government owned corporation
- Local council
- Public authority created under an Act of Parliament

Refer: ss 34, 38 (1).

Question 3

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 you organised, directed or supervised by the community organisation?

For example, if you were trained by the community organisation to operate a machine and were directed by the organisation to use it, you will be performing work organised by the community organisation. If you started working without approval or direction from the community organisation, you would not be performing work organised by the organisation.

- Yes
- No

If YES continue to question 4
If NO continue to question 3 (b)

OR

(b) Did you perform community work in the capacity of a volunteer office holder?

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

- Yes
- No

Refer: ss 38 (1), s 39.

If YES continue to question 4
If NO go to section D
Question 4

Were you working on a voluntary basis? You are working on a voluntary basis if one of the following apply:

- You receive no remuneration for doing the work; or
- You receive only reasonable expenses incurred in doing the work (for example, travel and meal costs)

Refer: s 38 (2).

If EITHER applies continue to question 5
If NONE apply go to section D

Question 5

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

- Yes
- No

Refer: s 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 you for any of the following types of harm?

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

Refer: s 4.

If ANY apply continue to question 7
If NONE apply go to section D

Question 7

Community work that is performed under a court order is not entitled to protection. Were you performing community work under a court order?

- Yes
- No

Refer: s 38 (2) (a).

If NO continue to question 8
If YES go to section D
Question 8

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

- Yes
- No

Refer: s 2.

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

SECTION B

When does protection not apply to volunteers?

You are not automatically protected if you satisfy the threshold requirements listed in section A. There are specific situations where protection will not apply.

Question 9

Certain acts of the volunteer will exclude their ability to claim protection. Were you at the relevant time:

- 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 you 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 question 10
If ANY apply go to section D

Question 10

Certain types of liability are excluded from protection. Do your acts amount to any of the following liabilities?

- a liability required to be insured against by State law
- a liability covered by compulsory third party motor vehicle insurance

Refer: ss 43, 44.

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

Question 11

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, the injured person was
an employee who suffered a broken finger while at work) □
• a dust-related condition □
• an injury that resulted from the use of tobacco products or tobacco smoke □

Refer: s 5.

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

SECTION C

Did you enter into 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 you freely enter into a contract of indemnity to compensate the community organisation for any loss incurred by them as a result of your actions?

• Yes □
• No □

Refer: s 7 (3).

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

SECTION D

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

A volunteer is protected from civil liability where an individual who was injured by the volunteer was engaged in criminal conduct at the time they suffered the injury. A volunteer may be protected under this provision of the legislation despite not meeting the required threshold requirements under the volunteer protection provisions.

Question 13

(a) Was the person injured by you 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 significant factor in causing the injury?
• Yes
• No

Refer: s 45.

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

SECTION E

You may be protected, what does this mean?

This means you cannot incur personal civil liability for claims for personal injury, property damage and economic loss as a result of your performing community work organised by your community organisation.

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SECTION F

You may not be protected, what does this mean?

You may be personally liable for your actions unless some other form of protection outside the volunteer protection provisions of the Civil Liability Act 2003 (Qld) applies to your situation.

This means that you may either be sued individually, or joined to an action against your community organisation, for your acts and omissions while performing community work.

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