

Inquiry into volunteering in Queensland

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Local Government, Small Business and Customer Service Committee
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Dear Committee Secretary

Inquiry into volunteering in Queensland

Thank you for the opportunity to contribute to the committee's inquiry into volunteering in Queensland.

The Queensland Law Society (QLS) is the peak professional body for the state's legal practitioners. We represent and promote over 14,000 legal professionals and increase community understanding of the law. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by the QLS Not for Profit Law Committee, whose members have substantial expertise in this area. Our committee members regularly advise and assist organisations with significant volunteer resources.

Queensland's legal profession plays a significant role in volunteering, with QLS members generously donating their time and expertise to serve their communities. Many of our members contribute through pro bono legal services, ensuring access to justice for vulnerable individuals. Others serve in honorary positions on the boards of community organisations and charities, providing governance, legal guidance, and advocacy to support the not-for-profit sector while many volunteer extensively in their communities. This culture of service within the legal profession reflects a deep commitment to public good, fairness, and social responsibility.

Introduction

Volunteers are the heart of Queensland communities, dedicating their time, skills, and compassion to support emergency response, social services, health services, sports and recreation, environmental conservation, cultural programs and countless other essential programs. Their contributions strengthen resilience, connection, and well-being across the state, often filling gaps that would otherwise go unaddressed.

Yet, despite their immeasurable value, volunteers in Queensland face legal uncertainties that create unnecessary risks and barriers to participation. Gaps in civil liability protections, workplace rights, and coverage for government volunteers may leave many individuals exposed to personal legal and financial consequences, while inconsistent legal definitions create confusion for volunteers and the organisations that rely on them. This submission examines these key areas of concern and proposes targeted legislative reforms to strengthen Queensland's support for volunteers.

The areas of concern and suggested ways to strengthen the current legislative framework for volunteer safety and protection are outlined below.

1. Civil Liability Protection

Under Part 3 Division 2 of the *Civil Liability Act 2003 (Qld)* (**CLA (Qld)**), protection from liability is provided for food donors and volunteers performing "community work."¹ However, there are several gaps and inconsistencies in the Act which require consideration.

A. Incorporating a clear legislative statement on volunteer protection in Queensland

Unlike South Australia, which has embedded a formal legislative statement on volunteering within its *Volunteer Protection Act 2001*, Queensland lacks a clear legislative acknowledgement of the importance of volunteers and the need to protect them from legal liability. Instead, Queensland's legal protections for volunteers remain fragmented and unclear, creating uncertainty for both volunteers and the organisations that rely on them. The lack of clear acknowledgement of volunteer protection from legal liability may discourage individuals from volunteering.

A formal legislative statement in Queensland would serve two key purposes:

- (i) Publicly affirm the value of volunteers and Queensland's commitment to fostering and encouraging volunteering.
- (ii) Provide clear legislative intent regarding volunteer liability protections, ensuring that volunteers are not unfairly exposed to legal risks.

Adopting a formal legislative statement could be achieved by including a preamble or principles statement in the CLA (Qld) or through the introduction of a standalone Volunteer Protection Act, as is the case in South Australia and Western Australia.²

¹ Under section 3B of the CLA (Qld) "community work" means work that is not for private financial gain and that is done for a charitable, benevolent, philanthropic, sporting, recreational, political, educational or cultural purpose, and includes making donations of food if the donations are not for private financial gain and are done for a charitable, benevolent, philanthropic, sporting, recreational, political, educational or cultural purpose.

² *Volunteer Protection Act 2001 (SA)*; *Volunteers (Protection from Liability) Act 2002 (WA)*

B. Question of liability of community organisations assuming the liability of volunteers

In relation to volunteers generally, the CLA (Qld) does not explicitly state whether a community organisation assumes liability for a volunteer's actions, creating uncertainty for organisations.

In other Australian jurisdictions, two different approaches have been taken to provide community organisations with certainty.

The relevant legislation in Victoria,³ Tasmania,⁴ and Western Australia⁵ explicitly states that where a volunteer is protected, liability is transferred to the community organisation.

On the other hand, NSW⁶ has taken an approach where the community organisation does not automatically assume liability, but can still be found liable if it breaches its non-delegable duty of care (e.g., inadequate training or supervision).⁷

The Australian Capital Territory has a provision allowing the Territory to assume the liability of a community organisation, at the discretion of the Minister, where they are carrying out a 'recognised government responsibility', despite being a private body. This allows a community organisation to pass their liability on to the Territory Government in certain circumstances. The Minister administering the legislation is also given the power to issue written directions to community organisations about the taking out of insurance, or adoption of risk management plans, in relation to liabilities that may be incurred by the transfer of liability of a volunteer to the community organisation under the Act. We understand this provision is unique to the Australian Capital Territory.

A more detailed discussion of these issues, is set out in the article McGregor-Lowndes, Myles & Nguyen, Linh (2005) [Volunteers and the New Tort Law Reform](#). *Torts Law Journal*, 13(1), pp. 41-61.

QLS recommends the Queensland legislation adopt the approach taken in Victoria, Tasmania and Western Australia. Clarifying the Queensland position will provide certainty to organisations.

³ Section 39 *Wrongs Act 1958* (Vic)

⁴ Section 48 *Civil Liability Act 2002* (Tas)

⁵ Section 7 *Volunteers (Protection from Liability) Act 2002* (WA)

⁶ s3C *Civil Liability Act 2002* (NSW) states the Act operates to exclude or limit vicarious liability:

'Any provision of this Act that excludes or limits the civil liability of a person for a tort also operates to exclude or limit the vicarious liability of another person for that tort.'

However, s 5Q provides:

'Liability based on non-delegable duty

(1) The extent of liability in tort of a person (the defendant) for breach of a non-delegable duty to ensure that reasonable care is taken by a person in the carrying out of any work or task delegated or otherwise entrusted to the person by the defendant is to be determined as if the liability were the vicarious liability of the defendant for the negligence of the person in connection with the performance of the work or task.'

⁷ See National Volunteering Guide: content.nfplaw.org.au/wp-content/uploads/2024/06/National-Volunteering-Guide-parts-1-to-6.pdf#page=99.21 page 106

C. Definition of "community work"

The definition of "community work" under the CLA (Qld) is narrower than those in South Australia's *Volunteer Protection Act 2001*⁸ and Western Australia's *Volunteer (Protection from Liability) Act 2002*.⁹

Queensland's definition includes charitable, benevolent, philanthropic, sporting, recreational, political, educational, or cultural purposes, but lacks explicit coverage for several key areas included in legislation in South Australia and Western Australia, including :

- (i) Queensland has no explicit inclusion of environmental conservation which could exclude volunteers engaged in landcare, national parks, conservation, and climate action initiatives. Whereas WA and SA include conserving resources and protecting the natural environment in their definitions of community work.
- (ii) Queensland does not specifically include health-related or disability support volunteering. Although it is recognised these could be covered by the broader terms "charitable or benevolent" it can create uncertainty for volunteers supporting aged care, disability services, or mental health programs. In their specific volunteer protection Acts SA and WA include caring for or treating people with physical or mental disabilities or conditions in their definition of community work.
- (iii) In the Queensland Act there is no explicit inclusion of heritage preservation. While Queensland uses "cultural purpose" as a broad term, it does not explicitly mention heritage conservation. This could cause uncertainty for heritage volunteers working in areas such as museums, archives, and historical restoration projects. On the other hand, WA,¹⁰ ACT¹¹ and SA¹² do include historical and cultural heritage preservation as forming part of the definition of community work.
- (iv) Queensland's definition does not explicitly include volunteers engaged in community centres, neighbourhood programs, community development and social enterprises. WA includes community centres and social or cultural hubs and SA includes protecting or promoting the common interests of the community.
- (v) Queensland uniquely includes food donations in the definition of community work. Whereas other state and territory volunteer protection from liability provisions treat food donations separately to volunteer community work. By incorporating food donations into the broader definition of community work, confusion is created because it intermingles volunteers and food donors, raising questions about whether liability protection is the same for both groups. This is dealt with in more detail below.
- (vi) The CLA (Qld) does not provide a mechanism for expansion of the definition of community work through a specific regulation-making power. This lack of flexibility means new and emerging forms of volunteering (e.g., digital volunteering) are not automatically included.

⁸ Section 3

⁹ Section 3

¹⁰ Section 3 (f) *Volunteers (Protection from Liability) Act 2002* (WA)

¹¹ Section 7(a)(vi) *Civil Law (Wrongs) Act 2002* (ACT)

¹² Section 3(a)(vi) *Volunteer Protection Act 2001* (SA)

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To eliminate ambiguity and ensure comprehensive protection for all volunteers, QLS recommends Queensland's definition be broadened to explicitly include:

- (i) Environmental conservation, covering landcare, national parks, and climate action initiatives.
- (ii) Health-related and disability support volunteering, ensuring clarity for aged care, mental health, and disability services.
- (iii) Heritage preservation, specifically protecting volunteers engaged in museums, archives, and historical restoration.
- (iv) Community centres, neighbourhood programs, and social enterprises.
- (v) A regulation-making power to allow for greater flexibility in recognising new and emerging forms of volunteering, such as digital volunteering.

D. Intermingling of food donations and volunteer protections creating confusion

The CLA (Qld) aims to protect both volunteers and food donors from liability when acting in good faith and under the authorisation of a community organisation. However, the way in which these provisions are structured creates unnecessary confusion, particularly when a volunteer donates food. The Act intermingles the concepts of volunteers and food donors, making it unclear whether a volunteer who donates food is protected under the volunteer provisions or the food donor provisions, or if they are subject to different requirements altogether.

One source of confusion arises in section 38, which defines "community work" as including the donation of food for charitable or benevolent purposes. At the same time, the Act separately defines a "food donor", stating that a food donor does not include a volunteer. This creates uncertainty about whether a volunteer who donates food is covered as a food donor (under section 38A) or as a volunteer performing community work (under section 39). For example, under section 38A, a food donor is only protected from liability if they meet the following specific requirements:

- The food must be safe to consume at the time of donation.
- If special handling is required, the donor must inform the recipient of the handling requirements.
- If the food has a limited safe consumption period, the donor must inform the recipient of the expiry timeframe.

By contrast, section 39(2) provides volunteers with a separate set of conditions that apply only if they donate food to a community organisation. This raises several questions:

- Why should a volunteer donating food have different protections from a business or individual donating food?
- If a volunteer donates food but does not do so through a community organisation, which liability provision applies?
- Are volunteers expected to meet the same safety and handling requirements as food donors, or do they receive broader protection?

One way to remedy this confusion is to merge volunteer food donation protections (section 39(2)) with food donor protections (section 38A) so all food donors, whether volunteers or not, are treated consistently. Further, it needs to be clearly defined whether a volunteer is considered a food donor or whether a volunteer donating food is classified as a "volunteer" or a "food donor" under the Act, to remove ambiguity. By alleviating this confusion, the Act will ensure equal liability protections by ensuring volunteers who donate food are not subject to different liability standards than businesses or other food donors.

It is noted that WA has parallel legislation to its *Volunteer (Protection from Liability) Act 2002* that covers both volunteers and food donors, namely the *Volunteers and Food and Other Donors (Protection from Liability) Act 2002* (WA). However, this second Act does not necessarily resolve the ambiguity in distinguishing between these two roles. The parallel Act still intermingles volunteer and food donor provisions without clearly defining whether a volunteer donating food is subject to volunteer protections, food donor protections, or both. This demonstrates that a clearer legislative distinction is needed to avoid similar confusion in Queensland's framework.

E. Uncertainty as to the protection of volunteers in an unincorporated association

The CLA (Qld) provides liability protection for volunteers performing "community work" for a community organisation. However, the definition of "community organisation" raises concerns about whether volunteers in unincorporated associations receive the same protection as those volunteering for incorporated entities.

Under section 38 of the CLA (Qld), a community organisation is defined as any entity that organises the doing of community work by volunteers, including:

- a) Corporations (which include incorporated associations and statutory bodies).
- b) Trustees acting in the capacity of trustee.
- c) Religious groups and political parties.
- d) Public authorities and parents and citizens associations.
- e) Any other entity prescribed by regulation.

However, the *Acts Interpretation Act 1954* (Qld) defines "corporation" broadly to include a body politic or corporate, while defining "entity" as an individual or unincorporated association. This raises significant uncertainty as the CLA does not explicitly state that volunteers in unincorporated associations are protected, and it is unclear whether an unincorporated association falls within the scope of a "community organisation" under the Act.

Since unincorporated associations do not have separate legal personality, liability may attach to individual volunteers or committee members, rather than being transferred to the organisation, which creates potential liability risks for volunteers in unincorporated associations. The type of associations that could be affected include neighbourhood and grassroots community groups, sporting clubs and local recreation groups that are not incorporated and cultural and environmental volunteer initiatives that operate informally.

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While the CLA includes a regulation-making power that allows the government to prescribe additional entities as "community organisations" under section 38(1)(g), which theoretically enables the inclusion of unincorporated associations, this approach is less preferable as it places the burden on individual organisations to lobby for recognition.

A more effective solution would be to explicitly amend the CLA (Qld) to include unincorporated associations in the definition of community organisations. Alternatively, protection from liability for volunteers in unincorporated associations could be provided by transferring the liability of volunteers in unincorporated associations to the association itself or by introducing provisions to protect volunteers from personal liability, ensuring that legal claims are directed to the group as a whole, rather than individuals acting in good faith.

QLS notes that unincorporated associations do not exist at law, which raises the issue of how the entity's property is held. Religious groups and political parties are often unincorporated. Understanding the consequences of the unincorporated status is also relevant when assessing the preferred policy approach. Queensland, New South Wales and the Northern Territory make provision for some types of unincorporated association or body of persons to be regarded as community organisations. This is achieved by describing the community organisation by its purpose rather than its corporate legal status. Queensland specifically refers to 'a church or other religious group'¹³ and 'registered political parties'. New South Wales specifies a 'church or other religious organisation'¹⁴ and the Northern Territory¹⁵ specifies 'a religious body'. Other jurisdictions are silent on the issue. Large unincorporated religious organisations in these jurisdictions would account for a great deal of volunteer activity through their community services.

QLS recommends amending the CLA (Qld) to explicitly include unincorporated associations in the definition of "community organisations." Alternatively, liability for volunteers in unincorporated associations could be transferred to the association as a whole, ensuring individuals are not unfairly exposed to legal consequences.

2. Government volunteers: Coverage and liability

Queensland has strong protections for emergency service volunteers, but non-emergency government volunteers (e.g., those in government agencies, conservation, and cultural institutions) are faced with uncertainty regarding liability and workers' compensation coverage.

Volunteers engaged in non-emergency roles in government agencies (e.g., environmental conservation, cultural programs, advisory services) are not explicitly covered under the *Public Sector Act 2022* or the *Civil Liability Regulation 2014*. This creates uncertainty about whether these volunteers are personally liable for their actions while volunteering for the government. This ambiguity would be resolved if it was made clear that the *Public Sector Act 2022*, the CLA (Qld) and *Civil Liability Regulation 2014* included all non-emergency government volunteers.

¹³ CLA section 38(1)

¹⁴ CLA section 60(1) NSW

¹⁵ NT PILD s 7(7)

In addition, WorkCover arrangements for these volunteers are also unclear, leaving them potentially unprotected in case of injury. A review of the WorkCover coverage for all government volunteers would provide clarity around this issue.

3. Protection Against Bullying & Sexual Harassment

Bullying protections

Under the *Fair Work Act 2009* (Cth) volunteers can access "stop bullying" orders,¹⁶ but only if their organisation is a Person Conducting a Business or Undertaking (PCBU) as defined by the *Work Health and Safety Act 2011* (Qld) (WHS Act).¹⁷ The WHS Act however excludes volunteer-only organisations from the definition of a PCBU, meaning that volunteers in these groups have no legal recourse for work health safety matters.

This gap in protection was highlighted last year in the FWC case of *Anthony Walsh*¹⁸ where the Fair Work Commission dismissed a volunteer's bullying claim because his organisation was a volunteer-only association with no employees. This decision shows the significant legal shortfall affecting volunteers who experience workplace bullying but are unable to access the same protections available to employees and volunteers in PCBUs.

Sexual Harassment Protections

Amendments to the *Fair Work Act 2009* (Cth) in 2021¹⁹ provided respect@work protections for workers, including volunteers, through stop sexual harassment orders. However, these protections only apply where the organisation is a PCBU, leaving volunteers in volunteer-only organisations (i.e., those with no employees) excluded from the Fair Work Commission's jurisdiction.

As a result, volunteers who experience sexual harassment in these organisations must rely on state human rights and anti-discrimination laws to seek compensation. However, accessing these legal pathways can be complex and inconsistent, and many volunteers may not have clear guidance or support in navigating these processes.

4. Work Health and Safety: Ensuring Volunteer Representation

In Queensland, volunteers are legally defined as workers under the WHS Act.²⁰ This recognition affirms that volunteers are entitled to the same duty of care protections as paid workers, ensuring that organisations have clear obligations to provide a safe and healthy environment for volunteers.

¹⁶ Section 789FC *Fair Work Act 2009* (Cth)

¹⁷ Sections 5 (7) and s5 (8) *Work Health and Safety Act 2011* (Qld)

¹⁸ [Anthony Walsh \[2024\] FWC 1514 \(11 June 2024\)](#)

¹⁹ *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021* (Cth)

²⁰ Section 7(h) *Work Health and Safety Act 2011* (Qld)

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The WHS Act also establishes the Work Health and Safety Advisory Board²¹ and Industry Sector Standing Committees (ISSCs)²² to provide strategic advice to the Minister on workplace health and safety matters across various sectors.

While ISSCs include worker representatives, they do not currently include a representative specifically for volunteers. Given the significant role that volunteers play in Queensland's workforce, volunteer perspectives should be formally recognised within workplace health and safety discussions. The Health and Community Services ISSC²³ is the most appropriate committee to include a volunteer representative, as it aligns with the sectors where volunteers are most engaged, including aged care, disability services, community health, and social services.

Accordingly, QLS recommends Queensland should appoint a volunteer representative to the Health and Community Services ISSC (or another appropriate ISSC), to ensure volunteers have a voice in workplace safety matters.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED]

Yours faithfully



Genevieve Dee
President

²¹ Schedule 2 Division 2

²² Schedule 2 Division 5

²³ [Industry Sector Standing Committees | WorkSafe.qld.gov.au](https://www.worksafe.qld.gov.au/industry-sector-standing-committees)