

INSURANCE & RISK MANAGEMENT FOR CORPORATE VOLUNTEERS



ExxonMobil



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Disclaimer

This booklet is based on a paper prepared by Freehills and considers the liability issues related only to volunteers participating through a corporate community program (**corporate volunteers**). Freehills have reviewed the statements of law in this booklet.

This paper provides general information and does not include specific information on individual state or territory laws. It is intended to raise awareness and be used as a guide only. Further detailed advice on the requirements of each jurisdiction or in relation to specific issues should be obtained.

Freehills are providers of commercial legal advice for corporations across Australia and South-East Asia.

Insurance and Risk Management for Corporate Volunteers has been produced with support from ExxonMobil.

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ExxonMobil, which operates in Australia as Esso Australia and Mobil Oil Australia, actively supports the community in areas where it operates. ExxonMobil's community programs include an employee volunteer program, employee volunteer grants and a contributions program that targets health, education, environment, community support and the arts.

ExxonMobil congratulates Volunteering Australia on developing this resource for companies and not-for-profit organisations involved in corporate volunteering. The booklet provides good advice on how to handle insurance and risk issues, together with practical guidance on defining responsibilities and setting agreements.

In addition to **Insurance and Risk Management for Corporate Volunteers** ExxonMobil and Volunteering Australia have worked together on initiatives that promote volunteering including:

- Volunteering Week.
- Corporate Shares Community Profits. A guide to engaging your employees.
- Corporate Shares Community Profits. A guide to engaging corporate volunteers.

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CORPORATE VOLUNTEERING & SOUND RISK MANAGEMENT

Sustainable corporate volunteering programs

The corporate social responsibility movement has resulted in a number of companies developing programs for their employees to volunteer for not-for-profit organisations. While many not-for-profit organisations rely on volunteers to deliver their services, maintaining volunteer programs can be resource- and time- intensive. Despite this, not-for-profit organisations have embraced the chance to recruit new volunteers through corporate volunteering programs.

Corporate volunteering will be sustainable in the long term if it remains a mutually beneficial arrangement for both the employer and the not-for-profit organisation. Lack of authoritative information regarding insurance issues can result in an overly cautious approach and a decline in corporate volunteering activity. Volunteering Australia encourages both parties to accept a share of the responsibility for the corporate volunteering activity, and aims to reduce any barriers to corporate sector engagement arising from concerns about insurance and risk management.

Sharing responsibility helps to ensure that not-for-profit organisations are not unduly burdened by their involvement with corporate volunteers, and that company employees, in their capacity as volunteers, are protected.

Shared responsibilities of the employer and not-for-profit organisation

The potential liabilities of the employer and the not-for-profit organisation overlap and there can be considerable confusion as to whether the employer, the not-for-profit organisation or the corporate volunteer is liable. The aim of this publication is to minimise the risks involved for all parties by clarifying responsibilities and liabilities.

Both the employer and the not-for-profit organisation should accept that in undertaking corporate volunteering programs, they each have responsibilities. **Both** parties should ensure that:

1. volunteers are working within safe environments;
2. ambiguity about where responsibility lies is reduced as far as is practical **prior** to the volunteers' actual involvement;
3. there is adequate training and supervision for volunteers, and that appropriate policies are in place and made available to the volunteers; and
4. there is adequate insurance coverage for volunteers.

In addition, **employers** should consider the protection of their employees in undertaking volunteering work and either structure the program so that the volunteering activity clearly falls 'within the course of employment' (this term is explained in the following section) or consider giving the not-for-profit organisation an indemnity to reduce any additional burden connected to taking on corporate volunteers.

VOLUNTEERING 'WITHIN THE COURSE OF EMPLOYMENT'

Employers' liability for their employees

Workers' compensation legislation provides that employers are liable for injuries to employees where the employee is acting 'within the course of employment'. Not-for-profit organisations and the corporate volunteers often presume corporate volunteers are covered by workers' compensation but this may not always be the case.

Defining 'within the course of employment'

The employer needs to be clear about whether the employees undertaking volunteering activities via its volunteering program are acting '*within the course of employment*'.

There is no single test for determining whether an act is 'within the course of employment'. This will be a **question of fact based on the particular circumstances of each case**. As a general rule, an act is 'within the course of employment' if the act is integral to what the employee is employed to do.

The box below provides factors that may indicate whether a corporate volunteer is acting in the course of employment.

When the situation is hard to define

Sometimes the legal interpretation of whether or not an activity is 'within the course of employment' is inconclusive, and it cannot be resolved by the employer stating that it is, or is not.

In these cases, we recommend that the employer either restructures the activity to be clearly 'within the course of employment', or confirms with its insurer that the insurer considers the activity as being 'within the course of employment'. The course of action may depend on the activity. An example might be a weekend sporting fundraising event, such as a fun run, in which some employees wish to participate in response to promotion by the community program. The employer may wish to make it clear to the employees that it does not consider this activity to be 'within the course of employment'. If this is the case, the employer should then ensure that its own promotion and encouragement of the event does not lead to the event coming 'within the course of employment'.

Outside the course of employment

If the activity is clearly **not** 'within the course of employment', the employer should:

1. inform its employees and the not-for-profit organisation;
2. check that the not-for-profit organisation has adequate personal accident insurance; and
3. if it is not adequate, either pay additional premiums or take out its own additional insurance.

Three components of a successful partnership

Partnerships succeed when there is:

clarity as to where potential liability lies (this will involve determining if the activity is 'within the course of employment'),

agreement as to which party accepts liability and in what circumstances, and

risk minimisation by spelling out the employer's requirements for the safety, privacy, equal opportunity, training and supervision of their employees while engaged in volunteering activities.

Risk management is part of Volunteering Australia's National Standards for Involving Volunteers. Applying systematic risk management processes and practices is part of best practice in volunteer management. Identifying the risks involved when engaging volunteers, or sending company employees out to a place of work which is outside their usual working arrangements, can help reduce the risk of liability.

When is an activity 'within the course of employment'?

The following factors would be taken into account when determining whether an activity could be considered 'within the course of employment'. Answering 'yes' to only one factor may not definitively indicate that the activity falls 'within the course of employment' although, depending on all the facts, one factor could be sufficient. It is always a question of fact and degree.

Does the employer allow activities for the not-for-profit organisation to be carried out during normal working hours or grant time in lieu?

Does the employer pay the employee for the time spent for the not-for-profit organisation?

Has the employer encouraged the employee to participate in the activities for the not-for-profit organisation or were they undertaken at the employee's own instigation?

Has the employer arranged specific events and actively encouraged the employees to participate, or has the employer merely facilitated a meeting between its employees and the not-for-profit organisation so that the organisation can promote itself?

Has the employer provided company-branded clothing, hats, or equipment for the employee undertaking the volunteering activity?

Has the employer promoted and advertised participation in the volunteering activities as part of a structured program?

Has the employer provided the premises, equipment and facilities necessary for the volunteering activity?

Have the employer and the not-for-profit organisation entered into an agreement (written or oral) regarding the provision of employees to provide services to the not-for-profit organisation?

WAYS TO REDUCE RISK AND LIABILITY: A SUMMARY

The table on these pages outlines the general categories of liability that may arise in the course of corporate volunteering activity. Determining which of the parties the liability will fall to, and the extent of the liability, is rarely straightforward and the facts of each individual situation will need to be taken into account.

Legal Basis for Liability	Employer's Potential Liability	Not-for-Profit Organisation's Potential Liability
<p>Negligence of volunteer causing damage to property or injury to a third party <i>While undertaking volunteering activities, a corporate volunteer through his or her negligence may cause damage to property or injury to another person.</i></p>	<p>The employer may be vicariously liable for the wrongful acts of its employees. Where the employer has effectively given control over the employee to another organisation, the employer could argue that the liability rests with the organisation.</p>	<p>The corporate volunteer is under the control and supervision of the not-for-profit organisation. As such the not-for-profit organisation could be liable. Legislation exists in all states and territories in Australia which protects volunteers from being sued and the not-for-profit organisation from seeking indemnity from the volunteer (see Appendices). However, the volunteer will not be protected from personal civil liability in some circumstances.</p>
<p>Occupational Health & Safety (OH&S) <i>The workplace is not restricted to the physical environment, but relates to all aspects of the circumstances in which work is being performed. A working environment must also be without risk to an employee's mental health. Minimising OH&S risks is the shared responsibility of both the employer and the not-for-profit organisation.</i></p>	<p>The employer will be liable for any breaches under state or federal OH&S legislation if they fail to take all reasonably practicable measures to ensure that the workplace is safe. This may include working environments in which corporate volunteering activities take place, if those activities are 'within the course of employment'.</p>	<p>The not-for-profit organisation will also be liable for any breaches if they have failed to take reasonably practicable measures to ensure a safe workplace for all members of the public generally.</p>
<p>Injury to corporate volunteer <i>Injury to the corporate volunteer may occur while they are undertaking their volunteering activity (including travel to and from the volunteering destination).</i></p>	<p>Where the employer has structured the volunteering activities to arise 'within the course of employment', and has confirmed this with its insurer, it will be liable for workers' compensation.</p>	<p>Under common law (or any relevant statutes), the not-for-profit organisation may be liable for injury to volunteers if the organisation has been negligent.</p> <p>If the not-for-profit organisation's negligence has caused or contributed to the injury of a corporate volunteer, then the workers' compensation insurer may claim a contribution from the not-for-profit organisation's insurer.</p> <p>If the employee is not covered by workers' compensation, then the not-for-profit organisation's personal accident insurance may cover liability.</p>

Strategies to Minimise Risk

Employers	Not-for-Profit Organisations
<p>Ensure that it is made clear to the employee and the not-for-profit organisation that the employees are under the control and supervision of the not-for-profit organisation.</p> <p>If there is a team leader from the employer, clarify responsibilities.</p>	<p>Ensure the corporate volunteers are adequately selected, supervised, instructed and trained.</p> <p>Obtain adequate insurance coverage for all volunteers.</p>
<p>The employer will have to be able to demonstrate that it took all measures reasonably practicable to meet its duties under the OH&S legislation. This involves making sure that all volunteers are adequately supervised, trained and instructed regarding their tasks.</p> <p>Appoint a team leader to visit the site prior to the activity taking place, to assess potential risks, investigating the not-for-profit organisation's policies and procedures.</p> <p>Refuse participation if the not-for-profit organisation does not comply.</p>	<p>The not-for-profit organisation will have to be able to demonstrate that it took all measures reasonably practicable to meet its duties under the OH&S legislation. This involves having adequate procedures and policies in place and making sure that all volunteers are adequately supervised, trained and instructed regarding their tasks.</p> <p>Ensure that adequate training, supervision and instruction regarding health and safety risks are provided to volunteers.</p> <p>Provide safe equipment and maintain safe systems of work.</p>
<p>Check that the workers' compensation insurance will cover employees during volunteering activities in the course of employment.</p> <p>To protect employees during activities which are not covered by the employer's workers' compensation insurance, the employer should obtain separate insurance that covers its employees.</p>	<p>Ensure that your organisation has insurance that covers injury to volunteers that arises as a result of the not-for-profit organisation's actions or omissions.</p> <p>Seek an indemnity from the employer to cover the not-for-profit organisation against any injuries suffered by the employee while engaged in voluntary activities.</p>

WAYS TO REDUCE RISK AND LIABILITY: A SUMMARY (cont.)

Legal Basis for Liability	Employer's Potential Liability	Not-for-Profit Organisation's Potential Liability
<p>Equal Opportunity <i>(See Appendices for further information regarding Equal Opportunity legislation as it applies in all states and territories.)</i></p> <p>Liabilities under equal opportunity (anti-discrimination) legislation may be incurred by both the employer and the not-for-profit organisation.</p>	<p>An employer could be directly liable if it failed to take appropriate action in respect of breaches or suspected breaches of equal opportunity legislation.</p> <p>An employer may be vicariously liable for its employee's conduct where that conduct breaches equal opportunity legislation. The employer may have a defence to a claim of vicarious liability if it can show that it took reasonable steps or precautions to prevent the unlawful act occurring.</p> <p>An employer may be liable as an accessory for breaches of equal opportunity legislation if it causes, instructs, aids, permits, or incites another person to do the unlawful act.</p>	<p>A not-for-profit organisation may also be directly liable, vicariously liable, and/or liable as an accessory where there are breaches of equal opportunity legislation by or against volunteers.</p>
<p>Privacy Act <i>The principal legislation governing data protection in Australia is the Privacy Act 1988 (Cth) (Privacy Act). The provisions of the Privacy Act are designed to protect the interests of an individual in respect of his or her personal information by specifying standards for the collection and handling of personal information.</i></p> <p><i>The health records legislation, which is applicable in Victoria, New South Wales and the ACT, protects the privacy of individual's health information by requiring those that handle health information to obtain the consent of the individual regarding the collection, storage, use and disclosure of health information.</i></p> <p><i>See Appendices for further information regarding privacy legislation.</i></p>	<p>In providing volunteers to not-for-profit organisations, employers may be asked to provide information about the employee to the voluntary organisation. The provision of this information may be regulated by Commonwealth and state privacy legislation.</p> <p>If the employer does not comply with Commonwealth and state privacy legislation, the employer may be liable for breaches regarding the use, storage, collection and handling of the information.</p>	<p>The handling of information about volunteers by the not-for-profit organisation will be regulated by Commonwealth and state privacy legislation.</p> <p>If the not-for-profit organisation does not comply with Commonwealth and state privacy legislation, the employer may be liable for breaches regarding the use, storage, collection and handling of the information.</p>

Strategies to Minimise Risk

Employers	Not-for-Profit Organisations
<p>Ensure that equal opportunity (anti-discrimination) policies are in place for both preventing and dealing with discrimination and equal opportunity issues in your own workplace.</p> <p>Provide employees with training on equal opportunity policies and appropriate workplace behaviour.</p> <p>Promptly and appropriately address any conduct issues that arise.</p>	<p>Ensure that equal opportunity (anti-discrimination) policies are in place for both preventing and dealing with discrimination and equal opportunity issues in your own workplace.</p> <p>Provide employees and regular volunteers with training on equal opportunity policies and appropriate workplace behaviour.</p> <p>Ensure that your equal opportunity policies are made accessible to corporate volunteers and that, during their induction, they are briefed on the equal opportunity policies and the behaviours expected of them.</p> <p>Promptly and appropriately address any conduct issues that arise.</p>
<p>Ensure that the not-for-profit organisation obtains the consent of each employee to collect information about the employee, and to provide that information to the not-for-profit organisation.</p> <p>Alternatively, the employer can ask the employee to provide the information directly to the not-for-profit organisation.</p>	<p>Before collecting information about the volunteer, the not-for-profit organisation should obtain the volunteer's signed consent acknowledging that the volunteer knows why the information is being collected, and to whom it will be given.</p> <p>The not-for-profit organisation should ensure that the information is only used for the purpose for which the volunteer has been advised it is collected.</p>

AN OVERVIEW OF INSURANCE

Employers: Protecting your employees

Review the scope of your workers' compensation insurance policy and any other applicable insurance policies for coverage of employees undertaking the activities contemplated.

If it is clear that the activity is outside the course of employment, ensure your employees know that they are not covered by workers' compensation, and that this is clear to the not-for-profit organisation as well. Also check that the not-for-profit organisation's personal accident insurance is adequate.

To offer your employees more comprehensive protection against any losses, damages, or expenses arising out of personal injury to themselves while they are undertaking the volunteering activity, consider offering an indemnity to the not-for-profit organisation. This will also reduce the burden on the not-for-profit organisation.

Frequently asked questions

Why isn't paid leave for volunteering activities considered the same as annual leave, in which the employee would not be entitled to the company's insurance protection?

Volunteering activities which are conducted 'within the course of employment' are considered to be an extension of the employee's regular work activities.

Should employers encourage corporate volunteers to take along family members and friends?

It is not uncommon for employers to encourage employees to involve family members and friends in the volunteering program, as employees will regard this as an additional benefit and a reason to participate in the volunteering program.

As they are not employees of the company, the employer's insurance will not cover the employee's family and friends. However, the employer may agree to indemnify the not-for-profit organisation for liabilities arising from the non-employee volunteers' participation or offer to pay for any increase in personal accident insurance taken out by the not-for-profit organisation.

If an employer has been substantially involved in organising, training and supervising all the volunteers for the event (effectively running the event), then the employer may be held liable for any injury to or caused by the volunteers, including family and friends.

There should be a clear understanding as to liabilities and insurance between the not-for-profit organisation and the employer in these situations.

What about weekend activities?

A lot of volunteering activities, especially those that involve large numbers of volunteers, such as festivals, take place on weekends. To maximise the number of opportunities available to employees and run a program that is responsive to the needs of not-for-profit organisations, an employer may consider incorporating weekend activities and granting their employees time in lieu. However, the employer would need to make clear the extent of its liability either under workers' compensation or additional insurance cover.

How can companies take a systematic approach to assessing the risk of team versus individual activities?

Team opportunities often require volunteers to participate in activities which are substantially different to their regular jobs, such as gardening, painting, working in kitchens or with animals. These roles involve the use of equipment and a degree of physical exertion and could present more risk than office-based work. This can warrant the employer taking extra precautions, such as undertaking a site visit prior to the event or checking the not-for-profit organisation's OH&S procedures.

However, if employees are encouraged to engage in individual office-based opportunities, the employer may find it onerous to conduct a thorough risk assessment for each assignment. The employer could make available a standard letter of agreement (see next section Seeking Agreement and template in Appendices) outlining that they accept responsibility for the employee's injury, and the not-for-profit organisation should confirm the duties the volunteer will be undertaking, that the volunteer will be supervised and trained, that the organisation follows proper OH&S procedures, and that it has adequate insurance.

Not-for-profit organisations: Protecting your volunteers

Review your public liability, volunteer protection and any other relevant insurance policies to ensure they cover the risks and activities to be undertaken by the corporate volunteers, and disclose any agreements as to respective liability to your insurance broker to check they do not breach any part of your insurance policy.

If you believe that the corporate volunteers will be acting 'within the course of employment', confirm this with their employer and confirm that their employer's insurance will cover its employees for injury when undertaking the volunteering activities.

Frequently asked questions

Why should not-for-profit organisations take out personal accident insurance for volunteers?

Personal accident insurance for volunteers will cover accidental injuries to or death of a volunteer. Volunteering Australia advises all not-for-profit organisations who engage volunteers to take it out.

Is extra coverage needed to protect corporate volunteers?

Additional coverage by the not-for-profit organisation's insurance is only required if necessary to cover the increased numbers, or if the corporate volunteers are engaging in an activity not notified to the current insurer of the not-for-profit organisation. Workers' compensation may provide employees with more compensation or protection than that provided by personal accident insurance. However, workers' compensation will only be available to the corporate volunteers if the volunteering activity is structured so that it is 'within the course of employment'. This is not within the not-for-profit organisation's control but should be clarified by the not-for-profit organisation prior to commencing the arrangement.

Will it cost more for the not-for-profit organisation to expand its personal accident for volunteers insurance to cover corporate volunteers?

It may, if this means the number protected under the existing insurance policy has to be increased, or if the activities are different from those covered by the existing policy. It is acceptable to request the employer to cover any additional cost.

Should not-for-profit organisations take out workers' compensation for corporate volunteers?

Generally, no. In their capacity as volunteers for the not-for-profit organisation, corporate volunteers are not considered to be employees of the not-for-profit.

If the employee is covered by workers' compensation during the volunteering activity, why does the not-for-profit organisation also need to extend personal accident insurance coverage to them?

Workers' compensation will not cover the not-for-profit organisation against claims from the employer's workers' compensation insurer when the injury or death of the employee resulted from the not-for-profit's own actions or omissions. So adequate personal accident insurance should be maintained.

Is it 'fair' or good practice for a not-for-profit organisation to treat corporate volunteers differently to their regular volunteers in relation to insurance coverage?

The not-for-profit organisation is not, in practice, treating the volunteers differently. In effect, the law operates to treat corporate volunteers differently where those corporate volunteers are covered by their employer's workers' compensation insurance. This is an acceptable way for the not-for-profit organisation to obtain additional volunteers.

Why do not-for-profit organisations need public liability insurance?

To be covered against legal actions from third parties arising from damage to property or injury to a third person caused by the volunteer, a not-for-profit organisation should take out public liability insurance. Corporate volunteers may be considered to be under the not-for-profit's supervision and control. This means that under volunteer protection legislation such as the Wrongs Act in Victoria, the corporate volunteer will be personally protected against any legal claims arising from their actions while they were undertaking volunteering work, provided it was done 'in good faith'. (See Appendices for further information regarding volunteer protection legislation across Australia.)

CASE STUDIES

Is the risk to employees unacceptable?

A not-for-profit welfare organisation has an activity which involves volunteers driving to collect donation boxes from businesses within the city. The boxes can be quite heavy and the vehicles the volunteers would be driving belong to the not-for-profit organisation. The organisation puts the proposal to the company. The company seeks agreement in writing that their employees would be covered by the not-for-profit organisation's insurance when driving the vehicles and lifting boxes. The organisation in fact has a policy that states corporate volunteers are treated differently to their regular volunteers in that they are they are not covered by their own personal accident insurance. They seek the agreement of the company that any injuries sustained will be covered instead by the company's workers' compensation.

The company should make these decisions:

1. Is this activity 'within the course of employment' (or can it be considered as such)?

2. Should the company structure the activity to ensure that it is?
3. Should the company obtain additional insurance cover for its employees?
4. Does this activity expose its employees to an excessive amount of risk?

It is reasonable for the not-for-profit organisation to seek indemnity from the employer but it is the employer's prerogative to decline participating in the activity if they believe that it would expose their employees to an unacceptable amount of risk.

The degree of physical risk that corporate volunteers may be exposed to in the volunteering activity may well be the deciding factor as to whether a company chooses to allow their employees' participation, regardless of whether the not-for-profit organisation had sought an indemnity from the company.

Is the activity 'within the course of employment'? Does the insurer agree?

A company has a corporate volunteering program which promotes a range of volunteering activities. Its volunteering policy allows the managers of the employees to approve activities as being 'within the course of employment'. One employee responded to an advertisement for a volunteer board member of a not-for-profit organisation which she found promoted on the company's intranet site. The position involves a commitment to monthly meetings for at least 12 months, held during the evenings and outside her regular hours of work. When promoting the position on their intranet, the company emphasised that this volunteer activity may not be considered as falling within work hours and the company would not grant time in lieu for it. However, her manager recognises that she will be enhancing her skills through participation on the board and has included it as part of her development plan. The manager has also given her permission to occasionally prepare documents for the meetings during work hours on the company's computer.

The manager has approved the employee's participation in this activity as being part of the corporate volunteering program and as such, it is considered to be 'within the course of employment'. This decision was based on two key factors:

- It presents a low physical risk for the employee.
- The company derives some benefit from the employee's enhanced skills, level of job satisfaction, and goodwill towards her employer.

The manager's decision will not necessarily be binding on the company's insurer in the event of a claim so the manager should also advise the employee to check that the not-for-profit organisation has adequate insurance. The company could also adopt a policy that all positions promoted internally are from organisations which do have adequate insurance.

SEEKING AGREEMENT

Agreeing on where liabilities and responsibilities lie

Once the employer has clarified whether the volunteering activities are 'within the course of employment', the next step is to clarify with the not-for-profit organisation the liabilities and responsibilities.

Agreement should be sought about liabilities and responsibilities to assist both the employer and the not-for-profit to meet their legal responsibilities:

- Third-party damage or injury caused or contributed to by the corporate volunteer.
- Breach of any applicable OH&S obligations.
- Injury to the corporate volunteer.
- Breach of anti-discrimination/equal opportunity laws by the corporate volunteer.
- Acts of unlawful discrimination or breach of equal opportunity laws against the corporate volunteer.
- Breach of privacy laws.

It should also be made clear in the agreement how each party is to benefit from this arrangement and whether any extra costs and expenses will be covered by the employer.

The employer should be clear about its requirements for the safety, privacy, equal opportunity, training and supervision of the employees, and where this requires extra work from the not-for-profit organisation, it is reasonable to expect that the cost of this should be met by the employer.

Furthermore, the parties should clarify who is in control of and responsible for supervising the activity.

In the course of seeking agreement, one contact person from both the employer and the not-for-profit organisation should be identified to ensure effective communication.

Letters of agreement

We recommend that both the employer and the not-for-profit organisation use a letter of agreement, prepared by either party, prior to the engagement of volunteers. Template Letters of Agreement are provided in the Appendices and contain reference to the issues outlined in this booklet. We recommend that any letter of agreement clarifies any ambiguities surrounding potential liabilities.

The letter of agreement should be signed by the company's representative, such as the person responsible for co-ordinating the corporate volunteering program, not the individual volunteer. However, it may be appropriate for individual volunteers to be asked to personally sign the not-for-profit organisation's confidentiality agreements, if applicable.

Both the employer and the not-for-profit organisation should keep records in writing or by email of the arrangement.

Keeping employees informed

Employees should be made aware of the arrangements made between the not-for-profit organisation and their employer as well as the level of coverage they will be entitled to in their capacity as corporate volunteers.

WEIGHING UP THE RISKS

When to say 'no' to a potential partnership

Both the not-for-profit organisation and the company should be clear as to why they are entering into the arrangement and that it is beneficial to both parties.

Neither party should agree to a volunteering partnership if it means they will be assuming risks which outweigh the expected benefits.

Recommendations to not-for-profit organisations

There are many considerations for a not-for-profit organisation when entering into any arrangement but from the viewpoint of risk, Volunteering Australia would recommend against an involvement with a company if it:

- asks you to indemnify it. Be aware that it is not possible for employers to contract out of their obligations under workers' compensation legislation by, for example, having the employee sign an indemnity or release in favour of the employer, or by attempting to pass responsibility to the not-for-profit organisation. Therefore, under an indemnity you may need to provide the same compensation as would be paid under workers' compensation. This may be greater than that you would pay, or be liable to pay, under common law or under a personal accident insurance policy; or
- expects you to tailor opportunities to meet its needs rather than to be of benefit to you, and refuses your request that it meet any additional insurance or other costs; or
- has failed to provide its employees with equal opportunity training or has no policy on equal opportunity and discrimination; or
- has not made it clear to its employees or to the not-for-profit organisation whether the employees are covered by workers' compensation or whether they will need to rely on the not-for-profit organisation's personal accident insurance.

Recommendations to employers

A company should avoid an association with a not-for-profit organisation if it:

- does not have public liability insurance. Volunteering Australia also recommends personal accident insurance to cover damages arising from volunteer injuries as a result of their own actions or omissions or those of the not-for-profit organisation;
- does not provide training or supervision or instruction to corporate volunteers;
- can be judged as not providing a worksite that meets OH&S standards;
- exposes your employees to a high level of risk or liability through the volunteering activity;
- has not trained its employees or regular volunteers in equal opportunity legislation, or not circulated a policy to them;
- unlawfully discriminates in its selection of volunteers. Note that some not-for-profit organisations have exemptions, e.g. services for women or indigenous people;
- uses, stores or collects personal information in a manner contravening the National Privacy Principles and does not request permission from the corporate volunteer or tell them why they collect this information.

Other considerations for the employer when developing a corporate volunteering program

When assessing risk and deciding how to minimise it, the employer may also need to decide whether or not to:

- Include weekend volunteering work.

Disclose to the employees and the not-for-profit organisation whether the weekend activity is 'within the course of employment'. If there is ambiguity, the employer could take out additional insurance.

- Allow friends and family to participate.

Ensure they will be covered by the not-for-profit organisation's insurance and offer to pay additional premiums or indemnify the not-for-profit organisation and take out additional insurance.

- Offer to pay for extra insurance premiums, training or work that is required for the not-for-profit organisation to take on your employee volunteers.
- Allow employees to participate as volunteers for activities that require police checks, which are necessary if volunteers are working with vulnerable clients.
- Work alongside corporate volunteers from other companies.

Some further precautionary steps could include:

- conducting a site inspection and appointing team leaders; and
- providing safety equipment, sunscreen, refreshments, etc.

VOLUNTEER PROTECTION LEGISLATION

All states and territories in Australia have introduced volunteer protection legislation. The intent is to foster and encourage volunteering in the community by protecting volunteers from the risk of being sued for damages. Under these provisions, volunteers cannot be held personally liable for anything done (or not done) in good faith while doing 'community work' that is organised by a 'community organisation' (or not-for-profit organisation). The liability is transferred to the not-for-profit organisation which organised the community work and that organisation will be held liable to injured parties instead of the volunteer.

While each statute defines a volunteer as someone who does not receive remuneration for their voluntary work, except reimbursement to cover costs, the definition of volunteer generally extends to any person who is released from their usual employment to conduct voluntary work but continues to receive a salary from their principle employer.

However, a volunteer will not be protected from personal civil liability by the provisions in each of the acts if:

- (a) they do not act in good faith;
- (b) they act illegally;
- (c) they act outside the scope of the community work or contrary to instruction;
- (d) they do something contrary to instructions given by the community organisation; or
- (e) their ability to carry out the work was impaired by alcohol or recreational drugs.

The list below is a guide only to the volunteer protection legislation in place in each state and mainland territory in Australia. Companies and not-for profit organisations should consult the relevant Acts in relation to specific coverage and exemptions.

Volunteer Protection Legislation

State or Territory	Act
Australian Capital Territory	<i>Civil Law (Wrongs) Act 2002</i>
New South Wales	<i>Civil Liability Act 2002</i>
Northern Territory	<i>Personal Injuries (Liabilities & Damages) Act 2003</i>
Queensland	<i>Civil Liability Act 2003</i>
South Australia	<i>Volunteers Protection Act 2001</i>
Tasmania	<i>Civil Liability Act 2002</i>
Victoria	<i>The Wrongs Act 1958</i>
Western Australia	<i>Volunteers (Protection from Liability) Act 2002</i>

Equal Opportunity Legislation

Jurisdiction	Act
Commonwealth	<i>Age Discrimination Act (Cth) 2004</i> <i>Disability Discrimination Act (Cth) 1992</i> <i>Equal Opportunity for Women in the Workplace Act (Cth) 1999</i> <i>Human Rights and Equal Opportunity Commission Act (Cth) 1986</i> <i>Racial Discrimination Act (Cth) 1977</i> <i>Sex Discrimination Act (Cth) 1984</i>
Australian Capital Territory	<i>Discrimination Act (ACT) 1991</i> <i>Human Rights Act (ACT) 2004</i>
New South Wales	<i>Anti-Discrimination Act (NSW) 1977</i>
Northern Territory	<i>Anti-Discrimination Act (NT) 2004</i>
Queensland	<i>Anti-Discrimination Act (Qld) 1991</i>
South Australia	<i>Equal Opportunity Act (SA) 1984</i> <i>Racial Vilification Act (SA) 1996</i>
Tasmania	<i>Anti-Discrimination Act (Tas) 1998</i>
Victoria	<i>Equal Opportunity Act (Vic) 1995</i> <i>Racial and Religious Tolerance Act (Vic) 2001</i>
Western Australia	<i>Equal Opportunity Act (WA) 1984</i>

PRIVACY LEGISLATION COMPLIANCE

The Federal Privacy Commissioner has developed 'Guidelines to the National Privacy Principles' to help organisations comply with the National Privacy Principles and to avoid interfering with an individual's privacy. These guidelines are advisory only and are not legally binding. A copy can be found at:
<http://www.privacy.gov.au/business/guidelines/index.html#3.2>.

The Federal Privacy Commissioner's office has also produced a number of information sheets on various topics, available at:
<http://www.privacy.gov.au/business/infosh/index.html>

TEMPLATE FOR A LETTER OF AGREEMENT (EMPLOYER)

Date:

To [insert name of not-for-profit organisation]

[Insert introductory words explaining the community program, the reason for wanting to volunteer, acknowledgement of the discussions with the not-for-profit organisation and its objectives in this arrangement.]

This letter is to confirm the arrangements for some of our employees to volunteer with you as follows.

[Insert details relating to the number of employees and the activity or program, including times of the activities, a brief description of the types of activity the employees will be undertaking, the names and contact numbers of the employer's contact person or team leader, and the volunteer supervisor or co-ordinator from the not-for-profit organisation.]

Safety and Supervision

We confirm that prior to our employees commencing the activities you will:

1. advise them of any risks, and of the safety procedures, relevant to the activities; and
2. conduct an information session and training for our employees; and
3. take all reasonably practicable steps to ensure that the workplace is safe and without risks to health and safety.

You will also supervise, manage and co-ordinate the activities and ensure you provide a safe working environment for our employees, as your volunteers.

(In recognition of the extra training and work required in taking on our employees for these activities we will cover your organisation's extra costs, subject to you providing a tax invoice and showing a breakdown of this amount.)

Injury to an employee

Option 1

We will indemnify you if one of our employees is injured while engaging in the activities subject to our right to recover damages from your organisation to the extent of your liability at common law or in statute, for example, where the injury has been caused or contributed to by negligence or breach of statute of your organisation or its employees, contractors or volunteers.

OR

TEMPLATE FOR A LETTER OF AGREEMENT (NOT-FOR-PROFIT ORGANISATION)

Option 2

[If the activities will be regarded as arising 'within the course of employment' for purposes of workers' compensation –]

As we consider this volunteering activity as being 'within the course of employment' for our employees, if one of our employees is injured while engaged in the activities, we will accept liability for workers' compensation.

Third-party injury or damage arising from an employee

If there is damage to property or injury to another person that is caused by or contributed to by the negligence of one of our employees, as your organisation is controlling our employees, your organisation may be liable for the damage to the property or the injury under common law and statute.

Insurance

We have confirmed that your organisation has in place insurance that covers injury to or by volunteers, and public liability insurance.

Equal opportunity

We are aware that both our organisation and your organisation may be liable for any conduct breaching equal opportunity legislation involving our employees throughout the activities.

To minimise the risk that either of our organisations may be liable for unlawful conduct, we both need to take reasonable precautions to prevent unlawful conduct occurring.

We confirm that our employees have *[attended equal opportunity training in the last two years/received a copy of our equal opportunity policy in the last two years/prior to their attendance at the activities]*.

Should an equal opportunity complaint arise, you agree to take all reasonable precautions in response to the complaint (e.g. investigate the complaint, conduct equal opportunity training and/or circulate any equal opportunity policy) and notify us of such complaint and action promptly to minimise any further risk of breaches of equal opportunity requirements.

Privacy

If your organisation requires personal information about the employees participating in the activities, you are likely to be governed by privacy-related legislation. We require that you collect, use, store and manage any personal information about the employees (such as contact details, health information, criminal record information, photographs) in accordance with that legislation. We also encourage you to collect the information direct from the individual employees.

We look forward to working together and to supporting your organisation through these activities.

Yours sincerely

Date:

To [insert name of employer]

[Insert introductory words acknowledging the discussions with the employer and explaining the not-for-profit organisation's objectives in this arrangement.]

This letter is to confirm the arrangements for some of your employees to volunteer with our organisation as follows:

[Insert details relating to the number of employees and the activity or program, including times of the activities, a brief description of the types of activity the employees will be undertaking, the names and contact numbers of the person responsible for co-ordinating the volunteers and the person supervising the volunteers from your organisation, and the name of the person responsible for organising volunteers from the employer's company and the company's designated team leader.]

Safety and Supervision

We confirm that prior to your employees commencing the activities we will:

1. invite a representative from your company to conduct a site inspection or undertake a risk assessment prior to the day of the volunteering activity;
2. advise your employees of any risks, and of the safety procedures, relevant to the activities; and
3. conduct an information session and training for your employees; and
4. take all reasonably practicable steps to ensure that the workplace is safe and without risks to health and safety.

We will also supervise, manage and co-ordinate the activities and ensure that your employees, as our volunteers, will be provided with a safe working environment.

(In recognition of the extra training and work required in taking on your employees for these activities you have agreed to cover our organisation's extra costs, subject to us providing a tax invoice and showing a breakdown of this amount.)

Injury to an employee

Option 1

You will indemnify our organisation if one of your employees is injured while engaging in the activities subject to your right to recover damages from our organisation to the extent of our liability at common law or in statute, for example, where the injury has been caused or contributed to by negligence or breach of statute of our organisation or our employees, contractors or volunteers.

EXAMPLE OF A CONTRACT AGREEMENT (EMPLOYER)

OR

Option 2

As you consider these activities to be arising 'within the course of employment' for purposes of workers' compensation then, if one of your employees is injured while engaged in the activities, you will accept liability.

Third-party injury or damage arising from an employee

If there is damage to property or injury to another person that is caused by or contributed to by the negligence of one of your employees you will be liable to the extent that your employee was acting negligently, outside our instructions, under the influence of drugs or alcohol, or otherwise in a manner beyond our reasonable control.

Insurance

We confirm that our organisation has in place insurance that covers injury to or by volunteers and public liability insurance.

Equal opportunity

We are aware that both our organisation and your organisation may be liable for any conduct breaching equal opportunity legislation involving your employees throughout the activities.

To minimise the risk that either of our organisations may be liable for unlawful conduct, we both need to take reasonable precautions to prevent unlawful conduct occurring.

We confirm that our employees and volunteers have *[attended equal opportunity training in the last two years/ received a copy of our equal opportunity policy in the last two years]* prior to their attendance at the activities.

We also confirm that your employees will receive a copy of our Equal Opportunity Policy before they commence volunteering.

Should an equal opportunity complaint arise, we agree to take all reasonable precautions in response to the complaint (e.g. investigate the complaint, conduct equal opportunity training and/or circulate any equal opportunity policy) and notify you of such complaint and action promptly to minimise any further risk of breaches of equal opportunity requirements.

Privacy

We confirm that should we need to collect, use, store and manage any personal information about the employees (such as contact details, health information, criminal record information, photographs) we will do so in accordance with the privacy-related legislation. We will not ask your company to supply information regarding your employees.

We look forward to working together and appreciate your company's support of our work through these activities.

Yours sincerely

This Agreement is based on one developed by a company which engages its employees in an annual community participation day. They undertake the following steps:

1. They ask the organisation to sign an agreement (or legal contract) which outlines their expectations and liability. The agreement states that their employees will be covered by workers' compensation as they consider the volunteering to be 'within the course of employment'. The agreement also verifies that the participating volunteers are employees of their company.
2. The team leader will visit the volunteer co-ordinator and conduct a Job Safety Analysis. The team leader is not usually an OH&S expert and if it is their first time as team leader, they may request an employee member from their safety department to accompany them. The analysis is then formally written up.
3. The team leader supplies the organisation with a procedural checklist (start/finish times, toilets, no-go zones, etc.) to help them prepare.

Team Leaders

Team leaders receive induction and training within the company (with a safety focus) and an information kit. It is their responsibility to conduct the Job Safety Analysis and inform the team of any risks.

Additional Precautions

If the project is completed earlier than expected, the team leader instructs employees to go home rather than start another activity that has not been assessed for risks. Similarly, they are advised not to undertake projects if these have changed in any way from when the Job Safety Analysis was conducted.

Families and friends are not permitted to participate in their community days as the company cannot cover them with workers' compensation insurance and considers it too burdensome on the not-for-profit organisation if they are responsible for providing cover for them.

See following page for their standard agreement.

AGREEMENT

THIS AGREEMENT is made the _____ day of _____ (year).

BETWEEN **XXXXXXX**
(the Company)

AND _____ (name)
(the Charity)
_____ (address)

WHEREAS:

Some not-for-profit organisations charge fees for developing special company volunteering days.

Employees from this company are instructed not to undertake any duties which fall outside a work schedule which has received prior job safety approval. Employees are also instructed not to give any professional advice in their capacity as volunteers.

- A. The Company has offered at no cost, and the Charity has accepted, to deploy at no cost a number of the Company's employees to the Charity's nominated site, for the provision of work on a date to be agreed.
- B. The Work to be undertaken by the employees of the Company shall be under the joint supervision of a "Team Leader" nominated by the Company and a representative of the Charity.
- C. The Work shall comprise gardening, cleaning, cooking, renovation, repairs, painting and related tasks and participation in organised activities but shall not include the provision of advice.
- D. The Parties have agreed upon the following terms and conditions:

IT IS AGREED:-

- 1. The Charity shall advise the Company no later than (date) of its preferred:-
 - Site
 - Work
 - Number of employees of the Company
 - Materials and equipment supplied by the Charity
 - Materials and equipment supplied by the Company

The details shall be set out in the Schedule hereto.

The agreement clarifies who will be providing any additional resources to conduct the project.

If the company can supply the required number of volunteers to carry out the project, then they may choose to request that the activity is made exclusive to them.

This company has chosen to minimise the risk to the not-for-profit organisation through its offer to indemnify them, even for personal injury arising from the not-for-profit organisation's negligence. However, because of this, they exclude the participation of employees' family and friends.

- 2. The Company and its employees shall provide only incidental materials and equipment such as boots, sunglasses, and gloves. The Charity shall provide all other materials and equipment for the performance of the Work.
- 3. The Company shall provide lunch for all personnel involved on the day, including the Company's employees and supervisory personnel from the Charity, unless otherwise agreed.
- 4. The Charity shall ensure that no other charitable work of a nature similar to the Work is to be undertaken at the site by others on the same date.
- 5. The Company shall indemnify the Charity against any claims, demands, losses, liabilities, damages or expenses suffered or incurred by the Charity arising out of:
 - personal injury to an employee of the Company (whether arising from negligence or not)
 - personal injury to any other person arising from the negligent performance of the Work by the Company's employees.
 - damage to property and/or environmental harm arising from negligent performance of the Work by the Company's employees
- 6. The Work will occur on (date).

EXECUTED AS AN AGREEMENT:-

Signed for and on behalf)
of **the Company**)
by its duly authorised representative)
in the presence of)

Witness.....

Signed for and on behalf)
the Charity)
by its duly authorised representative)
in the presence of:-)

Witness
.....

State and Territory Volunteering Centre Contacts

Volunteering Australia

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E volaus@volunteeringaustralia.org
www.volunteeringaustralia.org

Volunteering ACT

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T 08 8221 7177
F 08 8221 7188
E volsa@volunteeringsa.org.au

Volunteering Australia Darwin Resource Centre

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21 Knuckey Street
Darwin NT 0800
T 08 8981 2755
F 08 8981 2955
E vol.aust@bigpond.com

For more information about corporate volunteering visit our website at www.volunteeringaustralia.org or telephone 03 9820 4100.