

Community volunteers: Risk and liabilities for community-led disaster response



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Acknowledgement of Country

We acknowledge the Traditional Custodians of the lands and waters on which we are all meeting from today. For the presenters, that is the Turrbal and Jagera people. We pay our respects to their Elders, past, present and emerging, and extend that respect to any First Nations people joining with us today.

Image credit: Yaegl visual artist, Frances Belle Parker, 'Wilaarrawa Dugulaarra' (Growing Together).



Purpose of this presentation

To identify the lack of statutory protection afforded to Community Volunteers responding to an environmental disaster in Queensland, and discuss reform opportunities

To share our experience in providing disaster legal assistance and discuss steps to preparedness

Defined terms



Community Volunteers are civilian volunteers or Good Samaritans who are not Authorised Persons or Authorised Volunteers. Community Volunteers may be known or previously unknown to the persons they are assisting.



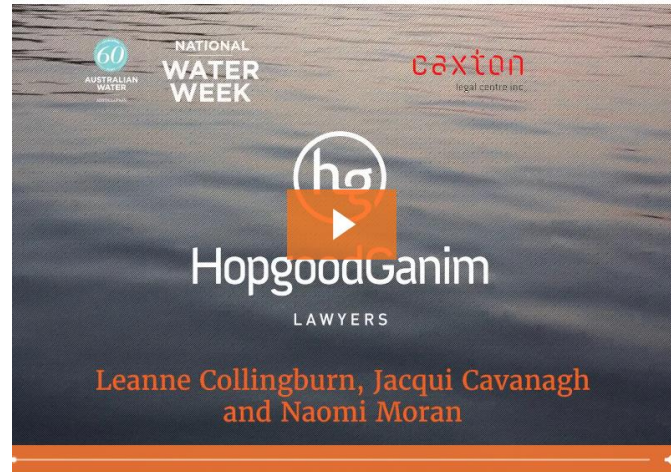
Authorised Persons are persons authorised under law to undertake an emergency rescue, first aid or provide services during or in the immediate aftermath of an environmental disaster and, by way of example, includes (among others) ambulance officers, the SES, the Queensland Fire and Emergency Services (QFES) etc..



Authorised Volunteers are persons authorised under law to assist with an emergency response and/or first aid. For example, where legislation permits an Authorised Person to deem another person to have the necessary expertise to assist in a situation or otherwise are directed by an Authorised Person to assist.

Where did this project come from?

- For National Water Week 2022, in collaboration with Caxton Legal, we hosted a [Justice in Focus: Water Story Series](#) to bring together individuals from multiple disciplines to share their stories on how flooding and other environmental disasters have impacted them and their community.
- Guest speakers included:
 - [Naomi Moran, General Manager, Koori Mail](#)
 - [Joe Hedger, Partner, Indigenous Service Group, Deloitte](#)
 - [Julie Brook, RPIA, Principal, Meridian Urban](#)
 - [Bill Mitchell OAM HonLLD, Principal Solicitor, Townsville Community Law](#)
 - [Andrew Gissing, Chief Executive Officer, Natural Hazards Research Australia](#)
- **Key takeaways from that series:**
 - Environmental disasters are increasing in scale & intensity
 - Governments increasingly lack the appropriate resources to respond
 - Communities are the key to better environmental responses



Where did this project come from cont'd?

We asked ourselves:

- If governments are struggling to appropriately respond to these disasters because they are just too frequent and too intense, and
- If we all agree that communities are the key to better environmental disaster response,

then, what legal risks do they face and what legal protections are available?



A 3D-rendered red flag on a silver pin is stuck into a map of a city street grid. The map shows a network of streets in light grey and tan, with some green areas representing parks or fields. The flag is positioned in the upper left quadrant of the map.

Identified the issues
and key legislation
& risks (Queensland
focus)

**Mapped out actions/
services, applicable
legislation & key legal risks**

- **emergency rescue**
- serving food
- psychological & physical first aid
- operating outside of normal business

What current legislative protections do Authorised Persons & Authorised Volunteers have for emergency rescues?

- We looked at:
 - *Disaster Management Act 2003* (Qld)
 - *Disaster Management Regulation 2014* (Qld)
 - *Public Safety Preservation Act 1986* (Qld)
 - *Police Service Administration Act 1990* (Qld)
 - *Fire and Emergency Services Act 1990* (Qld)
 - *Ambulance Services Act 1991* (Qld)
 - *Public Service Act 2008* (Qld)
 - *Law Reform Act 1995* (Qld)
 - *Civil Liability Act 2003* (Qld)
 - *Defence Act 1902* (Cth).
- Authorised Persons & in many instances, Authorised Volunteers have **broad powers** when responding to environmental disasters.
- Where, in the exercise of their powers, their actions or omissions cause damage, they are generally protected from personal liability if their actions/ omissions are in:
 - good faith and without reckless disregard
 - good faith and without gross negligence / & not for fee or reward
 - honestly and without negligence
- In some instances, the Crown will also have immunity from liability provided standard met
- These protections through **do not generally extend to Community Volunteers** who step up to assist their local communities, friends & families even in situations where Authorised Persons & Authorised Volunteers not available to assist.



Example Qld provisions:

Disaster Management Act 2003 (Qld)

- The DMA provides for declared disaster powers & rescue powers which are in addition to and do not limit the powers persons have under another Act.
- Part 9 of the DMA contains provisions which authorise a person to exercise **rescue powers in an emergency situation if they have the necessary expertise or experience** (Authorised Person) and that person may, among other things (and in certain situations) **require someone else to give them reasonable help to exercise the powers** (Authorised Volunteer).
- **Compensation is payable to a person who suffers loss or damage** because of the exercise of that power (if not recoverable by insurance or if the conduct of the person contributed to the loss or damage or if it would have occurred irrespective of the exercise of that power (s120(1)(2)).
- Authorised Persons & Authorised Volunteers **will not attract civil liability for acts done or not done in good faith without reckless disregard** for the possible occurrence of personal injury or loss or damage to property (s144)

...Compare with similar NSW provision

- ***State Emergency and Rescue Management Act 1989 (NSW)***
- Parts 2, 3 & 4 set out the powers and responsibilities persons have during states of emergency (including power to enter premises, power to evacuate or take other steps concerning persons, powers to take other safety measures).
- Part 3 Division 5 provides for protection from any action, liability, claim or demand for accredited rescue units, authorised volunteers and **casual volunteers** for anything done or omitted to be done, **in good faith in connection with a rescue operation or otherwise in response to an emergency** (s59).
- **Casual volunteer** is defined to mean ‘a person who assists, **on his or her own initiative**, in a rescue operation, or otherwise in response to an emergency in circumstances in which the assistance was reasonably given’.
- NB: s41 also provides exculpation from liability for the Crown, a Minister or any body or person acting in the execution of Division 4 (State of emergency) for any damage, loss, death or injury sustained because of anything done or omitted to be done in good faith ... during a state of emergency,

General civil liability in Queensland

- **s 16 Law Reform Act 1995 (Qld)**

Liability at law shall not attach to a **medical practitioner, nurse or other person prescribed under a regulation** in respect of an act done or omitted in the course of rendering medical care, aid or assistance to an injured person in circumstances of emergency...

- **ss 26 & 27 Civil Liability Act 2003 (Qld)**

Civil liability does not attach to a person (or prescribed entity) in relation to an act done or omitted in the course of rendering first aid or other aid or assistance to a person in distress if the first aid or other aid or assistance is given by the person while **performing duties to enhance public safety for an entity prescribed under a regulation** that provides services to enhance public safety

- **s 39 Civil Liability Act 2003 (Qld)**

A volunteer does not incur any personal civil liability in relation to any act or omission done or made by the volunteer in good faith when doing community work (a) **organised by a community organisation**; or (b) as an **office holder of a community organisation**. *Note some exceptions including if acting outside scope of activities or instructions, intoxicated etc.*

- **Prescribed entity examples:**

A list of prescribed entities providing services to enhance public safety, and therefore protected under the Civil Liability Act is included in Schedules 1 and 2 of the Civil Liability Regulation 2014. They include, among others:

- *Brisbane City Council.*
- *CareFlight*
- *Queensland Ambulance Service*
- *Queensland Fire and Emergency Service*
- *Royal Flying Doctor Service Queensland*
- *A rural fire brigade*
- *The State Emergency Service*
- *St John Ambulance Australia*
- *Surf Life Saving Queensland*

Compared with *Civil Liability Act 2002* (NSW)

- Part 9 addresses civil liability of volunteers, providing that a volunteer does not incur any personal civil liability in respect of any act or omission done or made by the volunteer in good faith when doing community work for a community organisation
- ***Part 8 provides that a good samaritan does not incur personal civil liability in respect of any act or omission done or made by the good samaritan in an emergency when assisting a person who is apparently injured or at risk of being injured.***
- *'good samaritan' is defined as a person who, in good faith and without expectation or payment or reward, comes to the assistance of a person who is apparently injured or at risk of being injured.*



What about the current Queensland disaster policies?

- We looked at:
 - *Queensland Disaster Management – 2016 Strategic Policy Statement*
 - *Emergency Management Assurance Framework*
 - *Standard for Disaster Management in Queensland*
 - *Queensland State Disaster Management Plan*
 - *Queensland prevention preparedness response and recovery disaster management guideline (Guideline)*
 - *Queensland Strategy for Disaster Resilience 2022-2027*
 - District Disaster Management Plans
 - Local Disaster Management Plans
- The policy framework is generally underpinned by four principles of **public safety**, **leadership**, **partnership** and **performance**
- These policies:
 - prioritise the safety of people and property
 - acknowledge the need to empower and support local communities
 - acknowledge the need for strong partnerships with all stakeholders
 - acknowledge that responses need to be scalable & adaptable
- Yet they do not include Community Volunteers and in some instances expressly exclude them:

“The scenario of ‘people helping people’ who know and trust each other does not require formal coordination processes, and accordingly, the Guideline does not further consider the management of this cohort”. Guideline

Why does this matter?

Environmental disasters are increasing in frequency and severity

There is often insufficient Government capacity to respond to environmental disasters

Formal Volunteerism is declining


Community Volunteerism is inevitable

Community Volunteerism saves lives

Responding to environmental disasters involves risk

Community Volunteers are protected in other Australian jurisdictions

There is confusion in Queensland about protections for Community Volunteers



Environmental disasters increasing in frequency & intensity

- Queensland specifically is the most disaster impacted state in Australia. Queensland has endured more than 97 environmental disaster events since 2011 and nearly every town in Queensland has been adversely impacted by one or more disaster events in that time. Queensland Strategy for Disaster Resilience 2022-2027 (n 89) page 14.
- Also note IPCC projection:
 - In Central Queensland, heavy rainfall set to increase;
 - In Northern Queensland, cyclones set to decrease in frequency, but increase in severity;
 - Throughout Australia, the intensity, frequency and duration of fire events are projected to increase/

Insufficient government capacity to respond

- *“At about 11.00 pm, a flood evacuation order was issued. The water was frightening and so too was the amount of rain. I have poor physical visibility and I rang SES straight away. I had just received the evacuation order and I had a place to go to. My friend would come and pick me up and my dog. The SES told me to stay where I was and they would pick me up. They didn’t come. It was extremely difficult and traumatising...At about 2.00 am, SES said that they wouldn’t come. I told the SES that they have put my life in danger and that a friend could have picked me up. The SES told me to get up as high as I can. They also told me that if I could walk out that I should. Water started to enter the ground floor of my home at about 3.00 am. I was abandoned...I was on the roof for a long time and I could not move. I could only sit tight. I resigned myself to being there for a very long time. No one had adequate time...I became aware of a noise around the back of my house. The back lane was like a river...I saw a guy in a red canoe pulling people out of the water...Red canoe man eventually took me from the roof...Thank you, Red Canoe Man and Tinnie Army.” Naomi Worrall – community member”.*
- NSW Independent Flood Inquiry Volume 1 (n 105) page 45.





Decline in formal volunteerism

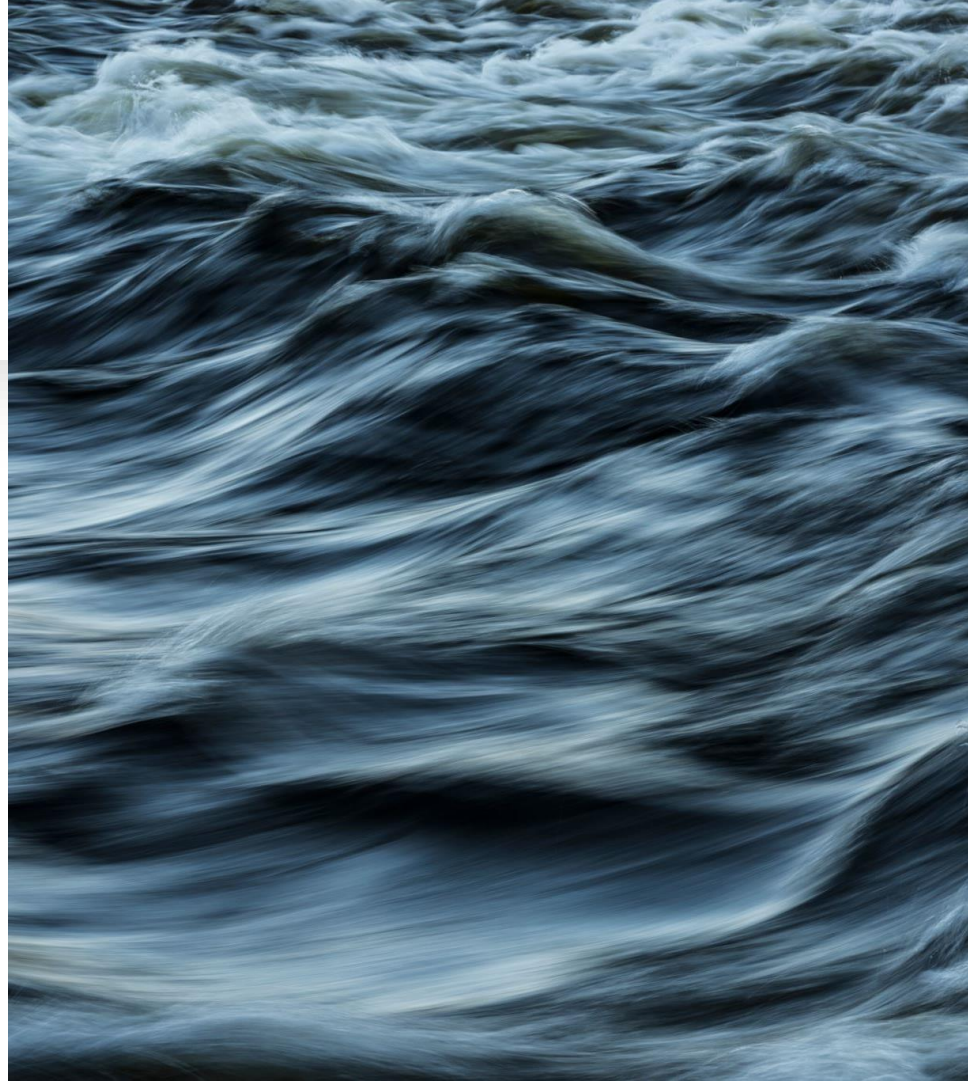
- **According to The National Strategy for Volunteering 2023:**
 - The rate of formal volunteering in Australia has been steadily declining, from about 1 in 3 in 2010, to only 1 in 4 in 2022.
 - **According to the State of Volunteering in Queensland 2021 Report:**
 - 30.3% of all Queensland volunteers donated their time exclusively in informal contexts.
 - 55.5% of all Queensland volunteers donated time both formally and informally.
 - *Note: The report indicates that no trends should be inferred from the data reported given the atypical impact of the COVID pandemic.*
-

Community volunteerism inevitable & saves lives

- Whether motivated by necessity, because they are first on the scene, or motivated by a strong desire to assist impacted individuals and communities, we know that Community Volunteerism is inevitable.
- Furthermore, those first-hand accounts by rescues during the NSW floods indicate that more people would have died if not for community first responders:
- *“In Lismore, groups including Resilient Lismore, the Koori Mail and 51 Wyrallah Road became a lifeline in a time of crisis for thousands of people... In emergencies of significant scale, ‘self-organising’ in local communities is inevitable... Of particular importance is that, **without community-led rescues, it is likely that more people would have died.**”*

Responding to environmental disasters involves risk

- Emergency events are notoriously unpredictable, and what looks safe can quickly escalate into dangerous conditions.
- In flood water, for instance, a seemingly calm surface can mask a fast-moving powerful body of water below, which may also contain large debris, sharp objects and poisons or sewage.
- Similarly, during cyclone events the QFES note that individuals need to be aware of their surroundings, as there may be fallen trees and power lines, broken water and sewage lines, loose roof sheeting, and other material.
- These risks are the reason why protections exist for Authorised Persons and Authorised Volunteers under the Qld disaster management scheme.





Community volunteers are protected in other jurisdictions

- All other Australian state and territory jurisdictions have enacted provisions providing protection against civil liability for good samaritans.
- The protection offered is reasonably consistent across jurisdictions and generally protects good samaritans who act in emergency situations in good faith and without recklessness, with some exceptions (i.e., where the good samaritan is intoxicated, where the good samaritan caused the injury in the first place etc.).
- On 7 March 2007, the [Civil Liability \(Good Samaritan\) Amendment Bill 2007 \(Qld\)](#) was introduced to the Queensland Parliament. If passed, this Bill would have brought Queensland in line with all other States and Territories, however it was ultimately not enacted.

Confusion in Queensland

- **s 16 Law Reform Act 1995 (Qld)**

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What is the Good Samaritan Act?

The Good Samaritan Act in Queensland, Australia provides legal protection for people who offer emergency assistance, including first aid, at the scene of an accident or emergency. This protection extends to individuals who act in good faith and with reasonable care, preventing them from being held liable for any civil damages that may result from their actions.



It's a concern many people have when faced with a situation where they are required to provide CPR. If they are not qualified and end up hurting the patient, could they be charged?

The short answer is no.

The Good Samaritan Rule states that someone that comes to the aid of someone else in imminent danger or peril cannot be sued for wrongdoing or incorrect practices. This encourages people to act and not stand on the sidelines for fear of persecution.

Opportunity for reform in Qld?

Disaster and emergency services reform in Queensland



- Queensland government is currently delivering one of the most significant bodies of change to Queensland's disaster and emergency managements systems. The reform process began in July 2021, when the Queensland Government commissioned an independent review of the QFES and its associated volunteer service.
- KPMG delivered its report containing 19 recommendations on 2 November 2021 including©
 - *'Recommendation 10: The new agency undertakes a detailed workforce culture assessment, inclusive of volunteers, to improve collaboration, performance and workforce experience, as a basis for establishing reforms to support integration of fire and emergency services activities in a manner that aligns to the requirements of the community articulated through data driven, risk-based service planning.*
 - *'Recommendation 17: ... undertake legislative and policy reform projects ... to examine the role of landholders in relation to prevention, preparation and response activities, with a focus on determining whether additional powers are required for firefighters to address at-risk circumstances and more rapid action as fire events escalate.'*
- Queensland Government accepted 18 of the 19 recommendations.
- Public consultation is to be expected and we think it is a good opportunity to discuss:
 - and make provision for the role of Community Volunteerism in Queensland's broader disaster and emergency management system, to provide much needed surge capacity; and
 - better protect Community Volunteers from liability and risk (for example, by amending the Queensland Civil Liabilities Act to include protections for 'good samaritans' and by expanding the definition of 'Volunteers' in the relevant legislation to include spontaneous Community Volunteers (who act in good faith and without recklessness in response to emergency situations).

Community volunteering is ongoing

- *At the truck stop town on the Bruce Highway, neighbours are helping neighbours.*
- *"There've been groups ... that have banded together to fight the fire in one property, then move to the next one," publican Mitch Brennan said.*
- *"From what I've been told, they're doing pretty good at it."*
- *One survivor said residents of Tara had donated everything from petrol to escape the fire with, to land to assist animals on.*
- *"We are overwhelmed by the generosity and kindness the people of Tara have mustered," Darrel Cross said.*

ABC Reporters "Queensland braces for extreme fire conditions as strong winds return" 31 October 2023 *ABC News Online*

Andrew Messenger "Sixteen homes destroyed but some relief from Tara bushfire as emergency evacuation order lifted" 26 October 2023 *The Guardian Online*

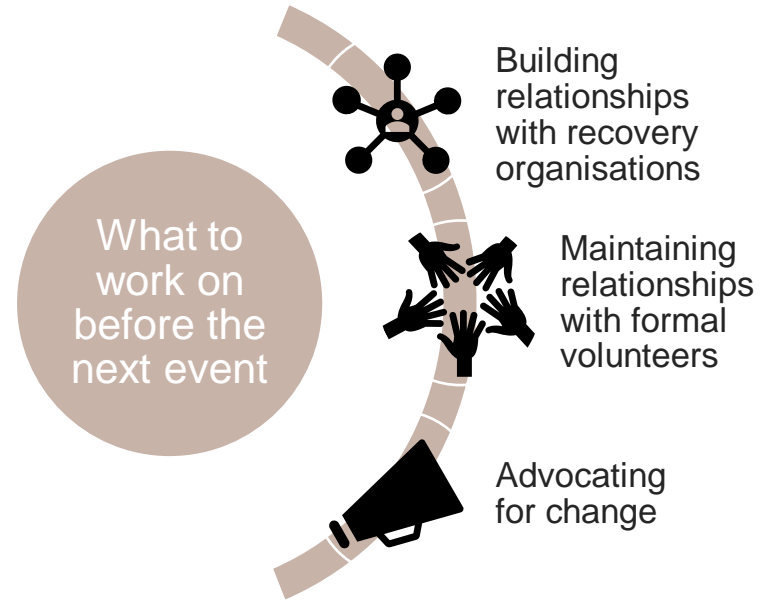


Caxton's experience
providing flood recovery
service

January 2011 floods and February 2022 rain and flood event

Key differences between 2011 and 2022

- Weather events
- Legal issues
- How did clients find us
- How we harnessed the support of our volunteers
- Our ability to provide wrap-around support
- Complexity and number of processes clients had to navigate (for example, both the insurance claim and the Resilient Homes Fund)



Formal preparation



When organisations or community volunteers find themselves outside their usual practice



Our risk management practices



Using targeted toolkits

How can my organisation prepare for a disaster?

As the frequency and intensity of climate change events increases in the coming years, the resilience of our workplaces to withstand climate shocks is now more important than ever.

This Climate Resilience and Adaptive Capacity Checklist [CLCQ Climate Resilience Checklist](#) is a good starting point for CLC organisational risk planning and management for disaster resilience. It is a self-reflection tool designed to help community legal centre staff and management consider their organisational resilience.

Community legal centres can also access many free, online toolkits to help measure and assess their resilience to climate change, disasters and emergencies. The following tools have been developed specifically for the community services sector:

- [ACOSS Resilient Community Organisations Toolkit](#)
- [CSIA Disaster Management, Preparedness and Recovery toolkits](#), including scenario planning tools
- [CSIA Resilience Maturity Framework](#)

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