

# Primary Times

Supporting nurses in primary healthcare

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Nurses as 'Good Samaritans'

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# Nurses as 'Good Samaritans'

Have you ever witnessed a car accident, or stood on the sidelines to see a child suffer a serious injury on the sports field? Have you had to decide whether to step forward to render assistance? Have you hesitated in that moment, wondering later, if you could be held liable for not doing so?

Each Australian state and territory has Good Samaritan provisions as part of civil liability legislation. A Good Samaritan is someone who comes forward to render assistance in a medical emergency without expectation of being paid, and is not liable for any damage caused by their well-intentioned acts or omissions. Further, a medical practitioner (or in Tasmania and Victoria, anyone) who provides advice on how to treat an injured person is not liable for any error or omission in that advice. Models are reasonably consistent across the jurisdictions, with the exception of Queensland. The Queensland law only provides protection from civil liability for nurses, doctors and members or employees of listed organisations such as the volunteer emergency services.

Generally, you do not have to help in an emergency. However, there is an expectation that health professionals will render assistance when they are aware assistance is required. In some circumstances failure to do so may lead to civil liability or professional discipline. Civil liability does not apply to a nurse on their way home from work, but it may apply, for instance, to a nurse travelling in car marked 'home nursing service' where someone flags them down and asks for assistance. If you do render assistance, the common law requires you to act as the reasonable person with the same skills and training would act – the reasonable nurse, the reasonable paramedic, the reasonable doctor. Even so, the law does not require that you guarantee a good outcome, and you will not be liable should the patient not fully recover. Your duty is to not make the situation worse than if you had not been there at all.

The common law has been supplemented by Good Samaritan legislation. These laws replace the notion of 'reasonable care' with 'good faith'. To be protected by these laws you need to act with a genuine desire to help and using common sense, i.e. not doing anything plainly stupid or because you see a chance to practice a procedure you saw on television.

Fear of legal liability when stopping to assist in an emergency is a common myth. No medical professional (or anyone else) has been sued in that circumstance – though one doctor has been sued, and another disciplined for not providing assistance, though that finding was overturned on appeal. In any accident it is easier and more productive for the injured person to sue the person who caused the accident, not their rescuer. The law has said where there is negligence by the rescuer, the person who originally caused the accident is liable for the entire damage. Further, when assessing whether or not a rescuer was negligent – whether a nurse, a doctor or a layperson – all of the circumstances must be taken into account. Circumstances include the urgent and unusual nature of emergencies, even for health practitioners (at least those who do not usually provide roadside emergency assistance).

In summary:

## Is there a duty to attend?

Generally speaking, no.

## Will you be liable if you assist and the patient does not fully recover?

No, liability could only begin to be an issue if you make the situation worse so the person would have been better off if you had not turned up at all.

## What is the standard of care?

Where the Good Samaritan statute applies the relevant test is, 'did you act in good faith?' Otherwise, the test is, 'was your conduct reasonable in the circumstances?' This includes the circumstances of the emergency.

## The law in your jurisdiction

- In the Australian Capital Territory refer to Civil Law (Wrongs) Act 2002 (ACT) s 5
- In New South Wales refer to Civil Liability Act 2002 (NSW) ss 55-58
- In the Northern Territory refer to Personal Injuries (Liabilities and Damages) Act 2003 (NT) s 8
- In Queensland refer to Law Reform Act 1995 (Qld) ss 15 and 16
- In South Australia refer to Civil Liability Act 1936 (SA) s 74
- In Tasmania refer to Civil Liability Act 2002 (Tas) ss 35A-35C
- In Victoria refer to Wrongs Act 1958 (Vic) ss 31A-31D
- In Western Australia refer to Civil Liability Act 2002 (WA) ss 5AB and 5AD

This discussion can be found on Australian Emergency Law, a blog authored and maintained by Associate Professor Michael Eburn addressing legal issues affecting the emergency services in Australia. Read the extended version of this article and complete references to precedent at <https://emergencylaw.wordpress.com/2014/03/22/nurses-as-good-samaritans>.



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