

LEGAL CONSIDERATIONS FOR FIRST AIDERS



First Aiders are not expected to be perfect, and it is not expected that every incident will turn out perfectly.

But a first aider should be reasonable and prudent and act in good faith for the best interests of the casualty and undertake first aid 'to the best of their ability'.

The 4 main considerations for a first aider are:

- **Consent**
- **Duty of Care**
- **Negligence**
- **Recording**

I. **Consent – 'Obtain permission to give first aid'**

Australian law is based on the premise that a person has control over their body and a person can bring a charge of assault/battery if touched without consent.

An injured and/or ill person has the legal right to refuse any assistance or reject any advice from a first aider, ambulance paramedic, nurse or doctor.

The injured or ill person also has the right to see a doctor of his or her own choice at any time.

Special Note: In an emergency, the law will imply the consent of the injured person if they are unconscious or seriously injured eg. bleeding. This consent will only apply to conditions that imperil the life or future health of that person.



Infants / Small Children

In an emergency situation, a person may take 'reasonable action' even without formal consent, which will be viewed as being acceptable in the normal conduct of life.

Minors – persons below legal age -18

Minors cannot give consent, so if possible the consent of a parent should be obtained. However if this is not possible emergency actions and / or first aid management to preserve life or the long-term future health of that person, should be taken.



2. Duty of Care – ‘When is it your duty to help?’

Under Australian Law a member of the public, or a first aider in the community, usually has no legal duty of care requiring them to stop and render assistance to an injured or ill person. There are, however, instances where the first aider / member of the community is obliged to stop and render assistance.

Examples where duty of care is required:

1. A driver of a motor vehicle involved in a vehicle accident, is required to stop and render assistance to any injured person involved in that accident, to the best of their ability. This is regardless of any first aid training that person may or may not have.
2. If an employee is trained as a first aider and is a first aid officer in a workplace, and is paid for it, that employee would have an obligation to render assistance as needed.
3. When a person trained in first aid has taken responsibility for another individual eg. child-minding.

Note: Once you begin first aid, you cannot walk away half way through.

In the workplace, this duty of care takes precedence over any authority, which an employer may have over the first aid employee, or the injured/ill employee.

Naturally, if an Ambulance Paramedic, Nurse, Doctor or other person with better qualifications than you arrives, it may be sensible to allow them to assist or take over.

All first aiders need to consider is to follow the rules and do so with ordinary skill, and ‘to the best of their ability’ in order to meet their duty of care.

3. Negligence – ‘Didn’t do what they should have done’

A legal case of negligence would be established if **all of the following factors are proved:**

- (i) the first aider owed a ‘duty of care’ to the injured person
- (ii) the standard of care required by that duty was breached
- (iii) further injury was sustained
- (iv) there was some cause-and-effect relationship between the breach and the injuries sustained eg. the first aider has gone beyond his/her level of training causing further injury.



Note: If further injury occurs in the process of removing a patient from an immediate danger/hazard in an attempt to save their life, or even more serious injury, you will have met your duty of care by undertaking a reasonable and prudent act in good faith for the best interests of the casualty.

A first aider with basic training could be expected to:

- use reasonable care in assessing the priorities of the situation in accordance with their training and take steps to call for medical assistance.
- keep the victim stabilised until professional help is available
- follow recommended first aid guidelines
- not misrepresent themselves or take undue risks.

Will I be at risk of being sued?

It's unlikely. Any person who *needs* CPR because they are unconscious, not breathing normally cannot be worse off than that. They are close to death.

A casualty who does **not** receive appropriate emergency medical care (including CPR), will die. If CPR fails to restore life, the victim will be no worse off than before. A victim who survives will have nothing to complain about - even if the CPR caused some physical injury such as broken or dislocated ribs. The alternative was death!

Even some resuscitation authorities suggest that *'any attempt at resuscitation is better than no attempt'* – A.R.C. 2001.

With **'reasonableness'** as the main standard for judging actions, we are not aware of any documented case in British law eg Australian, N.Z., U.K., USA, or Canada where any first aider has been successfully sued after giving emergency first aid.



4. Recording – 'Writing down what was done'

When giving assistance in an emergency, it would be advisable if the first aider made at least a diary note regarding any first aid assistance given by them. Records should be kept fairly simple and clear, listing an accurate and factual account of the first aider's observations only and not any medical conclusions.

The following guidelines may be of assistance in the preparation of a first aid report:

1. Write in ink only
2. Sign & date any alterations
3. Do not use correction fluid - an entry may be crossed out if incorrect, but the entry should still be legible and correctly initialled
4. Keep the contents strictly confidential.

The above information is intended as a guide only, and to answer commonly asked questions about the law. It is also hoped that it will assist in resolving doubts or suspicions as to the possibility of legal action, which may suppress a first aider's natural desire to render assistance.

The first aider has nothing to fear as long as he or she acts reasonably, with caution, and follows recommended first aid principles.