Legal Ramifications of Providing 1st Aid in the Public Arena

(And it’s not as bad as you might think)
The issues as I see them...

1. Confidentiality;
2. A duty to treat;
3. Consent;
4. Good samaritan and volunteer protection;
5. And whatever you want to talk about
Confidentiality

• Duty organisers
  – Have an interest in knowing who’s been injured;
  – Have an interest in knowing injury trends.

• Police
  – Have an interest in crime prevention and prosecution;
  – Have an interest in community safety.
Key principle

• Use information for the purpose for which it was given.

• Share information
  – With consent;
  – Where the individual would reasonably expect that the information would be shared.

• Is there a policy? Is there agreement with the duty organiser?
A duty to treat

• There is no duty to rescue a stranger:  
  *Stuart v Kirkland-Veenstra* [2009] HCA 15.

• But what if you are ‘on duty’?  

• And what if the patient isn’t attending the duty?
Consent

‘The fundamental principle, plain and incontestable, is that every person's body is inviolate. It has long been established that any touching of another person, however slight, may amount to a battery’

(Collins v Wilcock [1984] 1 WLR 1172, 1177 (Goff LJ)).
Consent

• For people who can’t consent:
  – Children;
  – The drug affected and the mentally ill?

• What is the principle that allows touching when the person cannot give consent…
It’s NOT implied consent…

‘This exception has been said to be founded on implied consent … Today this rationalisation can be regarded as artificial; and in particular, it is difficult to impute consent to those who, by reason of their youth or mental disorder, are unable to give their consent. For this reason, I consider it more appropriate to regard such cases as falling within a general exception embracing all physical contact which is generally acceptable in the ordinary conduct of everyday life’

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That principle is NECESSITY

‘… to fall within the principle, not only (1) must there be a necessity to act when it is not practicable to communicate with the assisted person, but also (2) the action taken must be such as a reasonable person would in all the circumstances take, acting in the best interests of the assisted person.’

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BUT

‘... intervention cannot be justified when another more appropriate person is available and willing to act;
‘... intervention cannot be justified when another more appropriate person is available and willing to act; nor can it be justified when it is contrary to the known wishes of the assisted person’

‘The principle is one of necessity, not of emergency’. 
Good Samaritans - Civil Law (Wrongs Act) 2002 (ACT) s 5

A good samaritan does not incur personal civil liability for an act done or omission made honestly and without recklessness in assisting, or giving advice about the assistance to be given to, a person who is apparently— (a) injured or at risk of being injured; or (b) in need of emergency medical assistance.
But not if

(a) liability is covered by CTP insurance; or
(b) the good samaritan's capacity to exercise appropriate care and skill was, at the relevant time, significantly impaired by a recreational drug (except where the good samaritan administers naloxone, to a person apparently suffering from an overdose of an opioid drug).
A ‘good Samaritan’ is:

a person who, acting without expectation of payment or other consideration, comes to the aid of a person who is apparently—

(i) injured or at risk of being injured; or

(ii) in need of emergency medical assistance; …
Volunteer protection – Civil Law (Wrongs Act) 2002 (ACT) s 8

A volunteer does not incur personal civil liability for an act done or omission made honestly and without recklessness while carrying out community work for a community organisation on a voluntary basis.
But not if

(a) liability is covered by CTP insurance
(b) the liability is for defamation
(c) your capacity to carry out your duties was significantly impaired by a ‘recreational drug’
(d) you knowingly act (i) outside the scope of authorised activities or (ii) contrary to instructions.
What do you think are the issues?

Thank you for your attention and for the opportunity to contribute to your work.

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Australian Emergency Law: https://emergencylaw.wordpress.com/