

PROTECTION FOR VOLUNTEERS IS HERE!

The *Volunteers (Protection from Liability) Act 2002* was proclaimed on 1 January 2003.

What does this mean for the volunteer?

Through the *Volunteers (Protection from Liability) Act 2002*:

- Someone who is volunteering for an organisation and operates in good faith when doing community work and within the organisation's guidelines has protection from liability.
- The intent is that the liability will transfer to the community organisation with which they are involved.

This means that volunteers cannot be sued for something they did or failed to do, if they are acting within the scope of the work and directions given to them by the community organisation.

What is the definition of voluntary work?

The **definition of a volunteer** for the purpose of the *Act* means:

“... a person who does community work on a voluntary basis if they receive no remuneration other than what they may receive whether or not they did the voluntary work or for reasonable expenses they may incur undertaking the community work. “

What type of organisations?

- An organisation that is either a:
 - body corporate,
 - local government authority,
 - State agency, or
 - An incorporated organisation, such as many sport and recreation groups.

What are the exclusions?

The legislation does not protect volunteers who may undertake voluntary work for:

- an organisation that is not incorporated,
- informal or individual volunteers who are not linked to an incorporated organisation, or
- volunteers who work for a Commonwealth agency. The Commonwealth Government has separate legislation.

How will this legislation impact upon community organisations?

In reality, there will be little impact; so long as organisations have informed the volunteers of appropriate protocols and make every effort to ensure that volunteers adhere to these protocols.

The Act will preserve existing protection from liability that a community organisation may already have, arising for example, from contractual arrangements with a third party.

What if a volunteer has signed an agreement or waiver to indemnify the community organisation?

Such an agreement will have no effect.

Any agreement, undertaking or arrangement entered into by a volunteer that aims to exempt the community organisation from any suits that may arise from the individual's participation as a volunteer with the organisation will have no effect.

What if more than one organisation is involved in organising an event involving volunteers?

If more than one community organisation is involved in organising community work then the community organisation, or **organisations**, that **principally** organise that work will be liable for the actions of the volunteers undertaking the work.

What protection does the *Associations Incorporation Act 1987* provide incorporated organisations?

- Incorporation creates a legal entity (the organisation) that is separate from the individual members.
- The *Associations Incorporation Act 1987* protects an **individual member** from being sued for the action of **another member** of the association.
- The Act **does not protect** a member of an association from being sued for their own actions, eg negligence or wrongful acts committed by them.
- Members and committee or board members of **unincorporated bodies** can be sued as individuals.
- Any association is eligible to be incorporated if it has more than five members and is formed for any of the purposes listed in the *Associations Incorporation Act 1987*. These purposes are reflected in Clause 3.1 of the *Volunteers (Protection from Liability) Act 2002*.

What if a volunteer acts outside the scope of the community work organised by the community organisation?

Volunteers will not be protected by the *Act* if they knew, or ought to have known, that they were acting outside the scope of the community work organised by the community organisation, or contrary to instructions.

- The *Act* refers to community work which is organised by the community organisation.
- This means that volunteers who may be directed by the community organisation to undertake a particular type of voluntary community work, should not undertake other voluntary duties without liaising with the community organisation to gain further direction.

How does this Act impact on volunteer directors/committee members? Does this mean there is now no need for Directors and Officers Liability Insurance, as these volunteer office bearers are now protected by the Act?

It is recommended that organisations still take out Directors and Officers Liability and the other insurance coverage for coaches, officials. Keep in mind also, that some of these positions do receive some compensation for their roles in the organisation, therefore may/may not be deemed as "volunteers" as defined under the Act.

The Act will particularly assist cover for those people who will mainly assist on the weekend: ie the parents who may normally not be covered by insurance.

In addition, the legislation also provides a certain "peace of mind" for many volunteers. So as long as a volunteer operates within the instructions of the club and to the best of their ability, they are "protected".

Note:

It is advisable that organisations continue with their maximum insurance coverage for the immediate future. Decisions not to retain cover are usually made as cost saving measures and until the full ramifications of changes in legislation are fully realised, it is recommended that full insurance coverage be retained.

If the liability is transferred to the "organisation" - what constitutes the organisation? Is it the board of directors?

The organisation is as defined in the Act. An incorporated organisation and under the Associations and Incorporation Act 1987, this means the Board. The Board is always ultimately responsible for the actions of an organisation's members' actions. Although a person may choose to sue an individual, it is the organisation that carries the responsibility, so long as the individual whose behavior is in question was, acting within the instructions of the organisation.

If a member is acting outside the instructions of the organisation, that member can be sued as an individual and the organisation may not be responsible.

Note:

It is preferable that all measures be taken to prevent members from being sued, rather than waiting for an instance where the courts may have to decide whether a member acted within the instructions of the organisation; or whether a member constitutes a volunteer; or whether a Board member is covered by Directors Liability. If instances arise where decisions need to be made external to the organisation, a great deal of pain and angst is generally generated and this only distracts from the organisations core functions and usually at a financial and personnel cost.

Why have some volunteers been excluded from this Act?

Various categories of volunteers are excluded from the *Act*, such as:

- volunteers in emergency services functions as they are covered under additional legislation; *Fire and Emergency Services Authority of Western Australia Act 1998*.
- honorary fisheries officers within the meaning of the *Fish Resources Management Act 1994*,
- honorary wildlife officers,
- honorary forest officers, honorary rangers or honorary conservation and land management officers within the meaning of the *Conservation and Land Management Act 1984*).

What happens if a volunteer acts illegally?

The *Act* does not cover them.

- The *Act* requires that a volunteer act in good faith. If a person commits a crime they cannot be said to be acting in good faith. Therefore, if a person commits a crime, or an illegal act there is no transfer of liability to the community organisation.

What should community organisations do?

- Increase awareness of the legislation to all members, paid and volunteer.
- Provide very clear and succinct written roles and responsibilities to all paid and volunteer staff.
- Provide adequate training for paid and volunteer staff.
- Develop a process for the management of complaints and document all complaints and outcomes. Retain these records
- Provide adequate training and supervision for all staff and volunteers.

- Ensure that the organisation has adequate risk management strategies in place.
- Ensure that there is adequate insurance coverage for the organisations operations. For example:
 - Personal Accident Volunteers

For volunteers aged twelve and upwards, compensation in varying amounts, is paid for death or bodily injury to a volunteer whilst working for the volunteer agency. This insurance will cover injuries such as total disablement, loss of sight or limbs, broken legs etc. The cover will insure volunteers whilst carrying out voluntary work on behalf of your organisation, including covering travel associated with the voluntary work.
 - Public Liability

This covers the organisation's liability for bodily injury to members of the public and/or damage to public property in connection with the insured organisation's business activities.
 - Professional Indemnity

This covers the organisation for breach of their professional duty as a result of negligent acts, errors or omissions in their conduct. This insurance is particularly important if volunteers are interacting with the public and providing information.
 - Directors and Officers Liability Insurance

An incorporated association may insure its directors and officers against liability to a third person, provided the liability is not for negligent acts or breach of duty.

Be wary of age restrictions. With an ageing population providing an increasingly useful source of volunteers it is important to make sure your insurance company is aware of the age range of your volunteers. There can sometimes be age restrictions on insurance coverage unless this is negotiated.

(Injury Control Council of WA, Volunteer Guidelines)

For more information on the Volunteers (Protection from Liability) Act 2002 visit www.volunteering.communitydevelopment.wa.gov.au

A copy of the Act is also available at www.slp.wa.gov.au

Please Note:

The Department of Community Development Volunteering Secretariat or the Department of Sport and Recreation (DSR) are not able to provide advice regarding individual cases. Volunteers and organisations that may have attracted litigation should seek advice from a member of the legal profession. Neither is the Secretariat or DSR able to provide advice regarding insurance. Organisations are encouraged to discuss their insurance needs with an insurance provider.