

CURRENT ISSUES INFORMATION SHEET 2002/2

South Australian Volunteers Protection Act 2001

South Australia has become the first jurisdiction in Australia to follow the American example of affording volunteers some protection from legal liabilities. Every US state now has a variation of such laws and a covering federal statute enacted by President Clinton in 1997. The South Australian Act was given assent on 6 December 2001, but was not yet in operation at the time of writing and requires regulations to accompany the Act. The good news is that volunteers receive a measure of protection from legal liability and the fear of being caught up in legal costs. The bad news is that any liability of the volunteer is transferred to the volunteer's organisation.

The purposes of the Act are set out in its preamble. It states:

- "1. The Parliament recognises that volunteers make a major contribution to the South Australian community and seeks to foster and encourage volunteering in the community by all possible means.
2. The Parliament recognises, however, that a major disincentive to volunteering is the prospect of incurring -
 - (a) serious personal liability for damages; and
 - (b) legal costs in proceedings for negligence.
3. The Parliament seeks to achieve a reasonable and expedient balance between the need to protect volunteers against personal liability and the interests of those who suffer injury, loss or damage in the following ways:
 - (a) by limiting the personal liability for negligence of a volunteer who works for a community organisation and transferring the liability that would apart from this Act attach to the volunteer to the community organisation;
 - (b) by limiting the right to bring proceedings against the volunteer personally and hence reducing the risk to a volunteer of incurring legal costs as a result of the voluntary work."

Explanation of clauses

Clause 1: Short title (formal)

Clause 2: Commencement (formal)

Clause 3: Interpretation

This clause contains definitions of terms used in the Act. In particular, a **community organisation** is defined as a body corporate that directs or co-ordinates the carrying out of community work by volunteers. This definition specifically includes the Crown as a community organisation. **Community work** means work for any one or more of the following purposes:

- ◆ for a religious, educational, charitable or benevolent purpose;
- ◆ for promoting or encouraging literature, science or the arts;
- ◆ for looking after, or providing medical treatment or attention for, people who need care because of a physical or mental disability or condition;
- ◆ for sport, recreation or amusement;
- ◆ for conserving resources or protecting the natural environment from harm;
- ◆ for preserving historical or cultural heritage;
- ◆ for a political purpose;
- ◆ for protecting or promoting the common interests of the community generally or a particular section of the community.

Other work may, by regulation, be classified as community work, or excluded from community work, for the purposes of this measure. Note that "unincorporated associations" appear not to be included in the definition and volunteers who are connected with such organisations will not be able to take advantage of this Act's provisions.

A **volunteer** is a person who carries out community work on a voluntary basis and a person works on a voluntary basis if the person -

- ◆ receives no remuneration for the work; or
- ◆ is remunerated for the work (but within limits fixed by regulation for the purposes of this particular definition).

A person who carries out community work under the order of a court or a condition of a bond is not to be regarded as working on a voluntary basis.

Clause 4: Protection from liability

Subject to the following exceptions, a volunteer incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in the course of carrying out community work for a community organisation. The exceptions are as follows:

1. The immunity does not extend to a liability that falls within the ambit of a scheme of compulsory third-party motor vehicle insurance or a liability for defamation.
2. The immunity does not operate if the volunteer's ability to carry out the work properly was, at the relevant time, significantly impaired by a recreational drug.
3. The immunity does not operate, in the case of a volunteer who works for a community organisation, if -
 - (a) the volunteer was acting, and knew or ought to have known that he or she was acting, outside the scope of the activities authorised by the community organisation; or
 - (b) the volunteer was acting, and knew or ought to have known that he or she was acting, contrary to instructions given by the community organisation.

Organisations will find it important to clearly make known to its volunteers their authorized scope of activities and instructions about their activities.

Clause 5: Application of doctrine of 'respondeat superior' to volunteers

If a volunteer works for a community organisation, a liability that would, but for this Act, attach to the volunteer attaches instead to the community organisation. A person (the injured person) who suffers injury, loss or damage as a result of the act or omission of a volunteer may not sue the volunteer personally unless -

- ◆ it is clear from the circumstances of the case that the immunity conferred by this measure does not extend to the case; or
- ◆ the injured person brings an action in the first instance against the community organisation but the community organisation then disputes, in a defence filed to the action, that it is liable for the act or omission of the volunteer.

This clause is designed to prevent volunteers being included in legal proceedings and incurring ruinous legal defence costs.

Clause 6: Regulations

The Governor may make regulations for the purposes of this measure. It is anticipated that the regulations will cover the amount of honorarium a person may receive and still be a volunteer, activities disentitled from the definition of "community service".

It is believed that the South Australian Government to further support the volunteer community in understanding this Act will arrange a comprehensive, free, risk management campaign for the volunteer community as an integral part of the implementation the Act.

Further Resources:

A Seminar AT QUT on 14 February, 2002 on these issues - register on <http://cpns.bus.qut.edu.au>

US Volunteer Protection Act <http://ahec.msu.montana.edu/volclin/pl105-19.html>

South Australian Volunteers Protection Act 2001 <http://www.parliament.gov.au>

South Australian Volunteer Protection Legislation Discussion Paper <http://www.environment.sa.gov.au/volunteers/protection.html>

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