

## **CURRENT ISSUES INFORMATION SHEET 2003/1**

### **Queensland Volunteer Protection**

In April 2003, the Queensland Parliament passed legislation as part of a package of measures to address the affordability and availability of insurance. This was driven by an increase in insurance premiums and an apparent increase in civil liability claims. State and Federal governments considered the issues by producing reports, the Federal Report (Ipp) forming the basis of a plan of action. The *Civil Liability Act 2003* contains provisions to address these issues. Similar, but not identical, legislation is being introduced in other States and Territories. There is also Federal legislation, but it is limited to volunteering for Federal departments and agencies.

The Act contains provisions relating to the liability of volunteers that commence on 9 April 2003. Note that some parts of the Act are retrospective to 2 December 2002.

#### **The Old Law**

A community organisation owes a duty of care to its engaged volunteers.

*For example: A community organisation may be liable for an injury suffered by a volunteer due to an unsafe workplace.*

A volunteer has the same duty of care as an ordinary person in their dealing with the public, fellow volunteers or employees of a community organisation.

*For example: A volunteer is engaged to prepare food to be eaten by elderly persons. The volunteer fails to wash their hands. They infect the food, which results in illness. The volunteer may be liable for the injury caused due to their negligence to those who have suffered harm. This is because they have been careless and it is foreseeable that people could suffer injury as a result of their actions.*

A community organisation is also liable to persons injured by the negligence of its employees, and possibly volunteers. The community organisation is liable even if it is not at fault. The liability arises because it was in a position to supervise the employee or volunteer. This is an example of vicarious liability.

It may be that the employee/volunteer and the organisation will be jointly named in legal proceedings. In many instances, the organisation will bear the cost of any damages because it has the assets to satisfy the damages or it has insurance. The employee/volunteer may also have legal costs in defending the action and be responsible for part of the damages awarded.

#### **The New Law**

A *volunteer* does not incur any personal civil liability for any act or omission done in good faith when doing *community work* that is

(a) organised by a community organisation;

**OR**

(b) as an office holder of a community organisation.

There are some definitions to take note of in the new law:

*Volunteer* means a person who does community work on a voluntary basis. A volunteer can be reimbursed their reasonable expenses in doing their work without affecting their volunteer status.

*Organised* includes directed or supervised.

*Community Work* means work that is not for private financial gain and is done for a charitable, benevolent, philanthropic, sporting, recreational, political, educational or cultural purpose. Reimbursement of a person's reasonable expenses in doing the work will not disqualify them from being a volunteer.

*Community Organisation* means a corporation, a trustee, a church or other religious group, a registered political party or a government agency, local authority or public authority. The definition of corporation would include an incorporated association and a company limited by guarantee. An unincorporated association would not be included under the definition of 'corporation', but such a body might qualify as a 'church or other religious group or a registered political party'.

## What is Excluded?

The Act does not apply to:

- any claim occurring before the provisions commenced on 9 April 2003.
- community work done under an order of a Court.
- any civil claim for damages for personal injury if the harm resulting from the breach of duty owed to the claimant is or includes an injury as defined under the *Workcover Queensland Act 1996*.
- any claim where it is established on the balance of probabilities that at the time of the act or omission the volunteer was engaged in conduct that constitutes an offence (criminal act).
- any claim where the volunteer was intoxicated when doing the work and failed to exercise due care and skill when doing the work. The meaning of intoxicated includes a person under the influence of alcohol or a drug to the extent that a person's capacity to exercise proper care and skill is impaired.
- any claim where the volunteer did not act in good faith.
- any claim where the volunteer knew, or ought reasonably to have known, that they were acting outside the scope of activities authorized.
- any claim where the volunteer knew, or ought reasonably to have known, that they were acting contrary to instructions of the community organisation.
- any claim where a policy of compulsory third-party motor vehicle insurance applies.
- any claim where State law requires a policy of insurance in relation to the volunteer work.
- any claim that is a dust-related condition.
- any claim resulting from smoking or other use of tobacco products or exposure to tobacco smoke.

## What is the effect?

Using the example above concerning a volunteer and careless food preparation, the volunteer would not be liable as long as none of the exceptions applied and the organisation that they were volunteering for was of the type specified, and for the purposes specified, in the Act.

It is unclear whether the community organisation would be strictly or vicariously liable for the carelessness of the volunteer. In other States the provisions of the legislation make it clear that the organisation will still be liable, even though the volunteer is excused of liability. It is not clear whether the courts would find that there is such strict liability attaching to the organisation when there is no express legislative statement of liability. The law will not be clear on this point until it is amended or a court makes a ruling on the issue.

A volunteer office holder of a community organisation also comes within the provisions.

## Further Information:

### Queensland Legislation

- The Personal Injuries Proceedings Act 2002
  - The Civil Liability Act 2003
- <http://www.legislation.qld.gov.au>

### Queensland Government Insurance Crisis for Community Organisations Web site

- Queensland Government Insurance Task Group Report
  - Queensland Government Community Organisations Group Insurance Scheme
- <http://www.treasury.qld.gov.au/groupinsurance/>

### Sport and Recreation – Queensland Government

- Links to sports insurance reports
- Links to sport risk management

[http://www.sportrec.qld.gov.au/fitness\\_professionals/better\\_skills/public\\_liability\\_insurance.cfm](http://www.sportrec.qld.gov.au/fitness_professionals/better_skills/public_liability_insurance.cfm)

### Queensland Government Risk Management Site

- Assists in basic risk management with an interactive tutorial
- <http://www.riskmanagement.qld.gov.au/>

### Queensland Government Public Liability Insurance Stamp Duty Concession for Community Organisations

- Fact sheet on insurance stamp duty waiver
  - Application form for waiver of stamp duty
- [http://www.osr.qld.gov.au/tax\\_duties\\_public\\_liability.htm](http://www.osr.qld.gov.au/tax_duties_public_liability.htm)

### The Review of the Law of Negligence Final Report (the Ipp Report - Federal)

<http://revofneg.treasury.gov.au/content/home.asp>

## **Frequently Asked Questions:**

### **How will this legislation impact upon community organisations?**

A community organisation's volunteers (including volunteer office bearers) will have some added measure of protection from civil liability. There are conditions and exceptions that apply to this protection.

It will create a "certain peace of mind" for many volunteers and volunteer office holders. Volunteers may feel "protected", if they operate within the limits set by the community organisation.

Community organisations will pay more attention to their systems for authorizing and instructing volunteers. This results from volunteers only being protected from civil liability if they act as instructed by the community organisation within the scope of authorized activities.

There are some doubts about the extent of the legislation and its ramifications. This can only be clarified by amending legislation or court cases that settle unclear issues. It is recommended that community organisations continue to maintain insurance cover as part of a risk management strategy until the situation is clarified.

### **Does this mean that there is now no need for volunteer protection insurance?**

A community organisation should consider a risk management approach to the potential liabilities of their volunteers. Insurance plays just a part in that risk management plan. It assists in managing risks such as where the volunteer is injured.

This legislation does not cover personal injuries suffered by a volunteer. It would be prudent to consider insurance for injury (personal accident) to volunteers.

Unlike other States' volunteer protection acts, the Queensland Act is silent on whether the community association will have vicarious liability for the volunteer's act that causes injury to another. It would be prudent to maintain insurance and other risk management practices until the law is clarified on this issue.

### **Does this mean that there is now no need for Directors and Officers Insurance?**

A community organisation and its office bearers should consider a risk management approach to the potential liabilities. Insurance plays just a part in that risk management plan. The new provisions do not protect against all liabilities that a standard D & O policy would cover.

Unlike other States' volunteer protection acts, the Queensland Act is silent on whether the community association will have vicarious liability for the volunteer office bearer's act or omission. It would be prudent to maintain insurance and other risk management practices until the law is clarified on this issue.

### **Does this mean that there is no need for professional indemnity insurance?**

A community organisation and its volunteers should consider a risk management approach to the potential liabilities. Insurance plays just a part in that risk management plan.

Unlike other States' volunteer protection acts, the Queensland Act is silent on whether the community association will have the vicarious liability for the volunteer office bearer's act or omission. It would be prudent to maintain insurance and other risk management practices until the law is clarified on this issue.

### **Does this mean that there is no need for public liability insurance?**

A community organisation and its volunteers should consider a risk management approach to potential public liabilities. Insurance plays just a part in that risk management plan. The act does not alter the mandatory insurance requirement of incorporated associations 'to insure in respect of damage to property, death or bodily injury occurring upon the property of the incorporated association for a cover of at least \$1,100,000'.

Unlike other States' volunteer protection acts, the Queensland Act is silent on whether the community association will have vicarious liability for the volunteer's act or omission. It would be prudent to maintain insurance and other risk management practices until the law is clarified on this issue.

### **Does this mean that a volunteer can never be sued?**

The protection of a volunteer from civil liability is subject to conditions and exemptions. Volunteers may still be sued if the action falls outside the provisions of the legislation. Volunteers may be sued where the boundaries of the protection are not clear in order to determine whether they fall within the scope of the protections.

### **Does this mean that a volunteer can never be liable?**

The protection of a volunteer from civil liability is subject to conditions and exemptions. Volunteers may still be liable for civil damages, civil or criminal penalties if the act or omission falls outside the provisions of the legislation.

**Does this mean that a voluntary office bearer of an incorporated association can never be sued or liable?**

The protection of a voluntary office bearer from civil liability is subject to conditions and exemptions. Volunteers may still be sued and liable for civil damages and civil or criminal penalties.

**Does this mean that an incorporated association can never be sued or liable?**

No, the protection applies to volunteers and voluntary office bearers, not the community organisation.

**Frequently Asked 'What ifs':**

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

In some States, the community organisation will be vicariously liable for the acts of the volunteer, even though the volunteer is protected. An agreement between a volunteer and a community organisation for the volunteer to indemnify the community organisation for such liabilities is deemed by the legislation to be of no effect. The Queensland provisions are silent on the issue, but such a clause runs the risk of being struck down by the courts on public policy grounds or found not to be a binding agreement because of lack of informed consent.

**What if the volunteer acts outside the scope of the community work authorized by the community organisation?**

The volunteer could not take the benefit of the civil liability protection.

For example: A volunteer was expressly and specifically instructed to act as a volunteer receptionist in a medical centre and not to administer any treatment to patients. The volunteer acts outside their authorized scope if the volunteer treats a patient. They would not be protected from any civil liability arising from their actions in treating a patient.

**What if the volunteer was intoxicated when doing the work and failed to exercise due care and skill?**

The volunteer could not take the benefit of the civil liability protection. 'Intoxicated' means that a person is under the influence of alcohol or a drug to the extent that their capacity to exercise proper skill and care is impaired.

**What if a volunteer has a car accident with a third party?**

The volunteer could not take the benefit of the civil liability protection. The usual motor vehicle third party insurance provisions will apply.

**What if the volunteer commits a criminal act?**

The volunteer will be dealt with under the criminal law. The volunteer cannot take the benefit of the civil liability protection if it is established, on the balance of probabilities, that the volunteer was engaged in criminal conduct at the time.

**What if a volunteer receives reimbursement of expenses?**

Provided that the reimbursement is reasonable and in respect of doing the work, then the person is still a volunteer for the purposes of the provisions. Any other payment of a volunteer (even if not at market rates) runs the risk of putting such a person outside the protections of the legislation.

**What if the act of the volunteer in question occurred before 9 April 2003?**

The provisions only apply after 9 April 2003 and would not cover an act giving rise to liability before that date.

**What if the community organisation operates across the Queensland border into other States?**

The provisions in Queensland, while having some similarity to other jurisdictions, are different in many respects. Volunteers in other States will be subject to that State's laws. It does not matter that the volunteer is resident in Queensland or that the community organisation is registered in Queensland.

Community organisations with a national volunteer force will have to examine how the laws of each State and Territory apply to their volunteers.