

VOLUNTEER PROTECTION ACT 2001



Volunteer Protection Act 2001

The Volunteer Protection Act 2001 commenced operation within South Australia on 15 January 2002. The intent of this legislation is to provide protection to individual volunteers from personal liability for loss, injury or damage caused as a result of an act or omission on their part while undertaking their volunteering duties on behalf of an incorporated organisation.

It should be noted that there are exclusions to this protection and these are;

- > Defamation
- > Liabilities covered under compulsory third party motor vehicle insurance
- > Volunteers affected by a recreational drug
- > Volunteers acting outside of/or contrary to activities authorised by the community organisation



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What is the purpose?

The purpose of the Act is to encourage people to volunteer their time to community organisations without the fear of litigation for doing their job.

Is there any protection for the community organisation?

There is no protection for the community organisation or parent body under this Act. In fact, the personal liability of the individual volunteer transfers to the parent body. The Act does NOT mean that incorporated organisations no longer require insurance. Organisations should seek professional advice from an insurance broker regarding their insurance needs as part of their risk management strategy.

In what circumstances does the volunteer's protection from liability as outlined under the Act apply?

It is not possible to provide an unqualified response to this question as there are many variables to be taken into account. Consequently, whether or not protection applies to a particular situation will require consideration of the following;

- > The nature of the work being undertaken by the volunteer
- > The basis on which the work was being done
- > The manner in which the work was being carried out by the volunteer
- > What the volunteer was actually doing at the time the damage or injury occurred
- > The nature of the organisation for which the work was being carried out

Community organisations and volunteers should be aware of the content of the Act and seek legal advice should they have any concerns or questions.

Are volunteer board members protected under the Act?

Volunteer board members of community organisations (as per definition outlined in the Act) would be covered by the Act while they are engaged in the community work of the organisation however it does not necessarily apply to them carrying out their responsibilities as board members.

Incorporation offers some protection to board members in that the actions of the board members in carrying out their powers and responsibilities under the Associations Incorporation Act 1985 are deemed to be the actions of the incorporated body and not the individual board members so that they do not bear any personal civil liability.

However, under section 39A of the Associations Incorporation Act, it is stipulated that an officer of an Association must at all times act with reasonable care and diligence in the exercise of his or her powers and the discharge of his or her office. This Act further states that a person who fails to do so is liable to the association for any damage suffered by the association itself as a result of their negligence. In this instance it is not likely that a board member would be able to avoid liability under the Associations Incorporation Act, through the Volunteers Protection Act.

If the incorporated body has little in the way of assets and has no insurance, will liability rest with individual board members?

Unlikely. The benefit of incorporation is that board members are protected from personal liability. However, if the failure to insure is the result of a lack of reasonable care and diligence on the part of board members (refer Section 39A(4) of the Associations Incorporation Act 1985) they may find themselves liable to the association for the loss of assets that have had to be forfeited to pay for an injured party's damages.

Does the Act cover professional organisations?

Yes, a professional organisation should be able to demonstrate that it exists for the purpose of promoting the common interests of the members of that profession who form a particular section of the community. Thus, provided the association is incorporated and involved in directing or coordinating the carrying out of that community work by volunteers, their volunteers would be covered by the Act.

Even though I volunteer for an incorporated body, the work is very informal and I don't receive any instructions. I am concerned that I will not be covered by the Act.

As long as it can be established that the incorporated body directs or coordinates the carrying out of community work by volunteers, the Act would apply. However, it is recommended for the benefit of both the organisation and the volunteer, that volunteers be provided with some direction or outline of duties and areas of responsibility.

Are volunteers working for an unincorporated local club protected if the club is a member of an incorporated state association?

Not automatically. Assuming that the volunteers and organisation meet the definitions outlined under the Act, it would depend upon whether it could be shown that the work undertaken by the volunteers under the authority and instruction of the club is for or on behalf of the incorporated state association. This would be done through review of the incorporated association's constitution and rules to determine whether the connection between the club and incorporated association is close enough to support this.

The Act in practice

Suggestions for Incorporated Community Organisations

- > Talk with your insurance broker about the Act, in relation to your insurance policies
- > Seek legal advice about any specific circumstances of your organisation that concerns you or you are unsure about
- > Be aware of the roles and duties of your volunteers, including those working for affiliated or member groups
- > Ensure volunteers receive appropriate training

Suggestions for Volunteers

- > Check whether the organisation you are volunteering for is incorporated and is involved in directing and coordinating community work by volunteers
- > Seek legal advice if you have any concerns regarding your circumstances
- > Be clear on your role and duties as a volunteer
- > Undertake any training provided for you
- > Remember that the Act doesn't provide you with personal accident cover

Insurance for small clubs and community groups

The Local Government Association has established an insurance service to assist small clubs and community groups in obtaining insurance advice and cover. Local Government Risk Services is able to provide quotes for a broad range of insurance services. Insurance covers offered include public liability, association & officials liability, personal accident insurance for volunteer workers, asset protection against fire & other perils, burglary, and money insurance.

There are certain occupations and organisations which are not covered easily covered for public and products liability. These include:

- Horse and Pony Groups or Clubs
- Horse/Dog Racing, Pacing, Trotting Clubs or Meetings
- Crèches, Kindergartens and other organisations where children are involved
- Fetes and other special events where a large concentration of people are expected
- Parades and Marches

Local Government Risk Services is able to provide advice and source insurance for some of these events. For additional information contact Local Government Risk Services on (08) 8235-6444.

If you have questions about the Act and how it specifically impacts your own community organisation and circumstances you should seek legal advice.

Free or low cost legal advice is available to non profit organisations from Legal Services (1300 366 424) or the Law Society of SA (Telephone 8229 0222).



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