

The Good Samaritan Act

Victoria's Volunteer Protection Legislation

In 2002, the Victorian Government passed the *Wrongs and Other Acts (Public Liability Insurance Reform) Act* which introduced into legislation a new Volunteer Protection clause to help protect volunteers from being held personally liable for an incident that may have led to injury.

Under the provisions of the Act, a volunteer will not be held personally liable in any civil proceedings for anything done in relation to community work organised by a community organisation in cases where the volunteer acted in good faith, and within the boundaries of their roles and responsibilities.

Under the definitions of the Act, community work is any work done, or to be done for:

- religious, educational, charitable or benevolent purpose;
- the purpose of promoting or encouraging literature, science or the arts;
- **the purpose of sport, recreation, tourism or amusement;**
- the purpose of conserving or protecting the environment;
- the purpose of establishing, carrying on or improving a community, social or cultural centre;
- a political purpose;
- the purpose of promoting the common interests of the community generally or of a particular section of the community; or
- any purpose specified in the regulations.

Under the provisions of the Act any liability resulting from the actions of a volunteer acting or failing to act in good faith that would normally attach to the volunteer instead attach to the organisation.

It is important to note there are a number of exceptions to protection of volunteers. Volunteers will not be protected by the Act if they knew, or if it is considered they should reasonably have known, that at the time of the incident:

- they were acting outside the scope of the community work organised by the community organisation; or
- they were acting contrary to instructions given by the community organisation in relation to the service they were providing ; or
- their ability to provide the service in a proper manner was, at the relevant time, significantly impaired by drugs or alcohol.

In addition, the legislation will not apply in respect of any claim to recover damages for defamation.

Under the definitions of the ACT, a volunteer is defined as an individual who provides a service in relation to community work on a voluntary basis. A person is still considered to be a volunteer even if, in providing a service, he or she receives:

- (a) reimbursement for out-of-pocket expenses incurred in relation to their volunteer work;
- (b) remuneration that would have been received regardless of whether or not he or she provided that service.

What does your organisation need to do?

In today's litigious society many volunteers have become increasingly concerned about their personal liability risks. While this Volunteer Protection legislation quite rightly does not protect volunteers in cases where their actions have been grossly negligent, it does help protect volunteers from being held personally liable in cases where they acted appropriately, and in good faith.

It is vital both your organisation and your volunteers are fully aware of the terms and conditions of the Volunteer Protection clause and your rights and responsibilities in relation to this legislation. To help ensure your volunteers are fully protected, and to encourage volunteers to continue to provide their invaluable support to the sport and recreation sector it is recommended your organisation:

- Provide copies of this information to all volunteers and paid staff and make sure they fully understand the implications of the Volunteer Protection legislation.
- Develop appropriate position descriptions for your volunteer roles to ensure your volunteers are fully aware of their roles and responsibilities, and the boundaries within which they are expected to act.
- Ensure your volunteers are fully aware of the exceptions to the legislation and circumstances under which they will not be covered including:
 - acting outside the boundaries of their role
 - acting contrary to instruction given by the organisation
 - acting under the influence of drugs or alcohol
 - in cases where damages include claims for defamation
 - in cases where their actions are considered negligent

Note: The Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002 forms part of Victoria's State legislation. The information contained in this document is relevant in the State of Victoria only. Organisations outside of Victoria should consult their relevant State Government Department for further information on legislation relevant to their state.

Further Information:

For further information on the Volunteer Protection clause of the Wrongs and Other Acts legislation contact the Legal Policy Division of the Department of Justice 9651 0731.

A full copy of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002** can be found in the "Statute Book/Acts 2002" section of the Parliament website at www.dms.dpc.vic.gov.au