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Commonwealth Volunteers Protection Bill 2002

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Commonwealth Volunteers Protection Bill 2002

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Contents

Purpose	1
Background	1
Basis of policy commitment	1
The Ipp Report	2
Commonwealth initiatives on Insurance Reform	2
Insurance and Volunteering	3
Volunteering in Australia: Facts and Figures	4
Main Provisions	5
Concluding Comments	7
Endnotes	8

Commonwealth Volunteers Protection Bill 2002

Date Introduced: 23 October 2002

House: House of Representatives

Portfolio: Treasury

Commencement: A day proclaimed within 6 months of Royal Assent, or if there is no proclamation, the day after that 6 month period.

Purpose

To remove the personal liability of volunteers performing work for the Commonwealth to pay compensation to third parties where, acting in good faith, they may have caused personal injury, property damage or financial loss.

Background

Basis of policy commitment

On 30 May 2002, at the second of the Commonwealth, State and Territory Ministerial Meetings on Public Liability, the Commonwealth agreed that it would, in line with certain other States, introduce legislation to protect volunteers from being sued for negligence.¹ Victoria, Western Australia and South Australia have already introduced legislation to protect volunteers from personal liability for doing work for community organisations.²

At that Ministerial Meeting, the general objectives for law reform in the area were noted as follows:

...Ministers agreed that reform proposals should satisfy one or more of the following objectives:

- cost reduction
- cost containment
- increasing certainty and predictability of costs of claims for insurers which, based on evidence presented by the Insurance Council of Australia, is critical to containing premium increases in the short to medium term, and

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- managing community expectations about personal responsibility and assumption of risk.³

The final objective about the need to manage community expectations about personal responsibility and assumption of risk is particularly relevant here. The Explanatory Memorandum emphasises that it is intended to provide comfort to people performing voluntary work.⁴ The Financial Impact Statement states that in the last five years, there has not been a significant number of claims against volunteers or the Commonwealth and notes that it seems unlikely that the number of claims arising from the activities of volunteers would increase.⁵

In the Second Reading Speech for the equivalent legislation in South Australia, the first State to pass similar legislation, the State Attorney-General noted that no opposition to the principle of protection was voiced in their consultations.⁶

The Ipp Report

A general Review of the Law of Negligence by a Panel chaired by Justice David Ipp (known as the Ipp Report) reported on 2 October 2002. The Panel noted

that it was not aware of any significant volume of negligence claims against volunteers in relation to voluntary work, or that people are being discouraged from doing voluntary work by the fear of incurring negligence liability.⁷

In discussing State provisions to attach liability to organisations rather than individuals, the Panel noted that such provisions create a general exception to the basic rule that vicarious liability attaches only to the relationship of employer and employee, contractors, or agents in the relevant sense (which is often not the case for volunteer workers).⁸ Thus the Panel made no recommendation to provide volunteers as such with protection against negligence liability because it considered that such a move would expand rather than limit the liability for negligence overall.⁹ The Panel concluded that to recommend an exception for volunteers in that context would be contrary to paragraph 3(f) of its terms of reference which required it develop and evaluate options for exempting or *limiting* the liability for not-for-profit organisations from damages claims for death or personal injury.¹⁰

Commonwealth initiatives on Insurance Reform

This Bill forms part of a package of legislation designed to remedy problems with the current operation of the laws relating to insurance liability. Relevant Commonwealth initiatives in this field were identified after the 2 October 2002 Ministerial Meeting:¹¹

- the Commonwealth introduced into Parliament on 6 June 2002 the Taxation Laws Amendment (Structured Settlements) Bill 2002 to remove tax barriers to structured settlements.
- the Trade Practices Amendment (Liability for Recreational Services) Bill 2002 was introduced into Parliament on 27 June 2002. This Bill seeks to amend the

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Trade Practices Act 1974 (TPA) to allow people to sign waivers and assume the risk of participating in inherently risky recreational activities.

- the Minister for Revenue and Assistant Treasurer announced on 2 July 2002 the Review of the Law of Negligence (the Ipp Report). This has been jointly established with the States and Territories. The expert panel has reported on a range of issues including:

professional negligence;

reform of the Trade Practices Act;

limitation periods and reforms to assist not-for-profit organisations;

limiting the liability of public authorities;

self assumption of risk to override common law principles;

proposals to restrict the circumstances in which a person must guard against the negligence of others; and

the replacement of joint and several liability with proportionate liability.

...

- The Australian Competition and Consumer Commission (ACCC) has released their second report assessing the effect reforms have had on premiums and whether cost savings are being passed on to consumers.
- The Australian Prudential Regulation Authority (APRA) is conducting preliminary work on establishing a national claims data set.
- The Productivity Commission has been asked to conduct a benchmarking study into Australian insurers claims management practices against world standards.
- The Attorney-General, through the Standing Committee of Attorneys-General (SCAG), is pursuing legal system reforms.

Insurance and Volunteering

Volunteering Australia has identified the following general reasons for concern:

rising costs of insurance premiums... have potential negative consequences including:

- volunteers becoming concerned about an inadequate level of protection for themselves and/or their organisation, therefore becoming reluctant to participate in volunteer activities.

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- organisations may continue to operate without adequate levels of public liability insurance, thereby exposing innocent third parties to an unacceptable level of risk.
- organisations may reduce the involvement of volunteers in their activities in order to minimise risk, thereby scaling down the level of service provided to the community.
- organisations may cease operating entirely and/or important community events are cancelled.

The reduction in levels of service and/or cancellation of events can have an unfortunate spiralling effect. As services decline, other funding or sponsorship can be harder to obtain.

What is important to understand is that as services decline, activities are cancelled or organisations cease operating altogether, not only are communities deprived of important social, cultural and economic services and activities, but the opportunity for people to contribute to their communities through volunteering is reduced.¹²

Volunteering in Australia: Facts and Figures

In the Second Reading Speech, the Parliamentary Secretary gave examples of the sort of bodies whose volunteers would be protected under this Bill. These include Commonwealth Departments and agencies, as well as organisations such as the Bureau of Meteorology, the Australian War Memorial, the National Gallery of Australia, and the Australian National Botanical Gardens.¹³

The following information is extracted from the Volunteering Australia Website and applies to the volunteer sector generally:¹⁴

Who volunteers

32% of Australians over the age of 18 years volunteered their time and energy to not-for-profit organisations during 2000.¹⁵ This is an increase from 24%, estimated in 1995.¹⁶

Both men (31%) and women (33%) volunteer. The peak age is 35-44 years (40%). Men employed on a full-time basis were found to volunteer at a higher rate (34%) than women employed on a full-time basis (31%).

On average people volunteer for 1.4 hours per week or 72 hours annually. Young people volunteer for an average of 1.1 hours or 60.5 hours per year....

Volunteers contribute approximately 2,200 million hours at a value of \$42 billion per annum¹⁷

Where do people volunteer?

Volunteers are involved in a wide variety of not-for-profit organisations. The sectors in which these organisations operate include: Arts/Culture, Welfare/Community,

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Sport/Recreation, Education and Youth Development, Religious, Health, Environment and Animal welfare.

What do they do?

The most common volunteering activities are fundraising (56%), management (45%), teaching (44%) and administration (41%). Volunteers work in a wide range of activities such as performing, coaching and refereeing, performing and media production, befriending and counselling, fundraising and sales, preparing and serving food, transporting people and goods, repairing, maintenance and gardening, management and committee work, personal care, teaching, instruction and providing information, administration and clerical.

People tend to choose volunteer activity that reflects their paid employment. Professionals teach (65% compared to 44% overall) and tradespeople choose maintenance, repairs and gardening work (47% compared to 25% overall).¹⁸

Why do people volunteer?

Reasons for volunteering in the general community include being of service to the community (47%) and personal satisfaction (43%). Young people aged 18-24 volunteered for personal satisfaction (40%) and to help others in the community (40%), to gain new skills (13%) and gain work experience (17%).

The most common reason people from indigenous and non-English backgrounds volunteer include: to gain work experience and develop skills; to do something worthwhile and help others and to be active.¹⁹

Main Provisions

Proposed subsection 6(1) states that an individual does not incur civil liability for anything that the individual has done in good faith in doing work for the Commonwealth or a Commonwealth authority if it is work

- done by the individual on a voluntary basis, and
- organised by the Commonwealth or the Commonwealth authority.

Proposed section 4 defines **Commonwealth** to include

- a federal court
- a Department of the Parliament, and
- a body (not being a body corporate) established or continued in existence for a public purpose by or under a Commonwealth law, other than the independent territories of the Northern Territory, Australian Capital Territory and Norfolk Island.

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A **Commonwealth authority** is a body corporate established or continued in existence for a public purpose by or under a Commonwealth law, but does not include

- an association incorporated under Part IV of the Aboriginal Councils and Associations Act 1976
- an association of employees that is an organisation within the meaning of the *Workplace Relations Act 1996* (a union), or
- a prescribed body.

The definition of **organised** is stated to ‘include directed and supervised’. The Explanatory Memorandum states that the definition excludes volunteers performing work for a Commonwealth-funded body where that body itself directly organises and supervises the work of volunteers (rather than any body which receives Commonwealth funding). The Explanatory Memorandum states that the Bill is not intended to cover volunteers for third party organisations that perform work on behalf of Commonwealth agencies such as job network agencies, or St John Ambulance volunteers working at Commonwealth events. The Explanatory Memorandum states that in many cases, these volunteers will be protected by legislation being passed by state governments.²⁰

Proposed subsection 4(2) states that an individual does work for the Commonwealth or a Commonwealth authority on a **voluntary basis** if it is work for which an individual receives no remuneration or the reimbursement of reasonable expenses, or for which he or she receives an amount less than that prescribed or determined in accordance with regulations. **Proposed subsection 4(3)** extends that definition to include individuals who continue to receive remuneration from their usual employer while doing work. The Explanatory Memorandum states that this subsection is intended to recognise that some employers encourage their employees to provide voluntary services to the community during the normal hours of their paid employment.²¹ Any work performed under a court order is excluded.

Proposed section 5 states that the Act is to only apply in relation to civil liability for a thing done by an individual after commencement. The Explanatory Memorandum states that the 6 month delayed commencement in **proposed section 2** is designed to allow the Commonwealth and Commonwealth authorities sufficient time to adjust their present administrative and insurance arrangements for volunteers.

Proposed sections 6 and 7 are the two main operational provisions which grant the immunity from personal liability and state that the Commonwealth or the Commonwealth authority is liable for that civil liability which the individual would otherwise have incurred.

Proposed subsections 6(2)-(4) exempt:

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- a liability that is covered by a scheme of compulsory third-party motor vehicle insurance
- a liability for defamation
- an individual if he or she was, at the relevant time, significantly impaired by a recreational drug, and
- an individual who knew, or ought to have known that he or she was acting outside the scope of the activities authorised, or instructions given, by the Commonwealth or Commonwealth authority.

Proposed subsection 7(1) imposes the civil liability on the Commonwealth or Commonwealth authority that the volunteer, except for proposed section 6, would incur. **Proposed subsection 7(2)** would prevent the transfer of civil liability to the Commonwealth or Commonwealth authority if it has protection under a provision of an Act.

Proposed section 8 requires the cooperation of a volunteer with a request of the Commonwealth or Commonwealth authority in any action, claim or demand relating to a civil liability.

Proposed section 9 states that an individual cannot indemnify the Commonwealth or a Commonwealth authority for any liability that would occur under the Act.

Concluding Comments

The Bill protects individuals against personal liability by ensuring that it is the Commonwealth or Commonwealth authorities which will be liable for any claims.

In its more general inquiry into impacts on public liability insurance, the Senate Economics Committee concluded:

If insurance premiums for community and volunteer organisations are to be reduced then protection from litigation needs to be granted to *both the volunteers and the organisations*. Only with such protection can the number of claims against these organisations be curtailed resulting in an expected fall in insurance premiums.²²

However, this Bill is more limited in scope. To the extent that a fear of personal civil liability exists, the Bill should serve the purpose identified in the Explanatory Memorandum to prevent the discouragement of people from offering their services in a voluntary capacity to the Commonwealth and Commonwealth authorities.

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Endnotes

- 1 Second Reading Speech to the Commonwealth Volunteers Protection Bill 2002, Mr Peter Slipper MP, Parliamentary Secretary to the Minister for Finance and Administration. There have been 3 meetings to date, the first was held on 27 March 2002 and the third on 2 October 2002. The Joint Communique for the 2 October meeting is available here: <http://www.health.gov.au/haf/mi/02octcom.pdf>.
- 2 *ibid.*, For further more detailed information about the status and progress of reforms in the States and Territories, see the Joint Communique of 2 October 2002, See: <http://www.health.gov.au/haf/mi/02octcom.pdf>.
- 3 [Joint Communique](#), Ministerial Meeting on Public Liability, Melbourne, 30 May 2002.
- 4 Explanatory Memorandum, p. 1.
- 5 Explanatory Memorandum, p. 2.
- 6 The Hon. K.T. Griffin, Second Reading Speech to the then Volunteers Protection Bill 2001. It was noted that following community consultation, 84% of formal respondents agreed with the proposed model.
- 7 'Review of the Law of Negligence', Final Report, (the Ipp Report), p. 170. Available at: <http://revofneg.treasury.gov.au/content/review2.asp>.
- 8 Section 5, *Volunteers Protection Act 2001* (SA).
- 9 The Ipp Report, p. 170.
- 10 *ibid.*, italics added.
- 11 <http://www.health.gov.au/haf/mi/02octcom.pdf>, See especially the Attachment relating to the developments in the States and Territories which documents the progress of States and Territories on various initiatives including exemptions for volunteers where relevant. A similar list of legislative initiatives can be found in Appendix 5 to the Senate Economics Committee Report: http://www.aph.gov.au/senate/committee/economics_ctte/publib_insur/report/contents.htm.
- 12 Submission to the Senate Economic References Committee which tabled its report on its *Inquiry into the impact of public liability and professional indemnity insurance cost insurance*, 22 October 2002 (the Senate Economics Committee Report). Whilst this raises the problems with rising insurance premiums in the sector generally, it does not address the distinction between protecting volunteers and volunteer organisations. This is briefly discussed in the concluding comments section below: http://www.aph.gov.au/senate/committee/economics_ctte/publib_insur/report/contents.htm.
- 13 Second Reading Speech to the Commonwealth Volunteers Protection Bill 2002, Mr Peter Slipper MP, Parliamentary Secretary to the Minister for Finance and Administration.
- 14 It is worth reiterating that most of these volunteers will be covered by State and Territory legislation. For further information and statistics about regional differences within Australia and international comparisons, please see: <http://www.volunteeringaustralia.org/tools/statistics.shtml>.

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- 15 Australian Bureau of Statistics, *Voluntary Work Australia 2000*, Catalogue No 4441.0, AGPS, Canberra, 2001.
- 16 Australian Bureau of Statistics, *Voluntary Work Australia, 1995*, Catalogue No 441.0, AGPS, Canberra, 1996.
- 17 Ironmonger, D. 'Measuring Volunteering in Economic Terms', in *Volunteers and Volunteering*, Warburton J. and Oppenheimer, M. (eds), The Federation Press, New South Wales 2000.
- 18 Australian Bureau of Statistics, *Voluntary Work Australia 2000*, Catalogue No 4441.0, AGPS, Canberra, 2001.
- 19 Kerr, L. Savelsberg, H., Sparrow, S. and Tedmanson, D., *Experiences and Perceptions of volunteering in Indigenous and non-English Speaking Background Communities*, Social Policy Research Group, University of South Australia, 2001.
- 20 Explanatory Memorandum, p. 6, It is arguable that there should be no volunteers for whom it is possible to inadvertently slip through the coverage when a comprehensive, Commonwealth, State and Territory scheme is implemented.
- 21 Explanatory Memorandum, p. 6.
- 22 Senate Economics Committee Report, p. 57, italics added.

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