

## **Volunteers (Protection from Liability) Bill 2002**

### **Explanatory Memorandum**

#### **Background**

According to the latest Australian Bureau of Statistics figures, Western Australia has 428,600 volunteers over the age of 18 years who volunteer in a formal setting for the benefit of the wider community. The Government has a strong commitment to supporting volunteers as demonstrated in its *Valuing Volunteers* policy and by the appointment of the first Western Australian Minister for Volunteering.

As a result of the community's increased awareness and use of litigation, there is concern amongst the volunteering community that volunteers are vulnerable to being sued as a result of their voluntary activity.

The Premier announced the Government's intention to develop the Volunteers (Protection from Liability) Bill in February 2002, together with other measures to address the increasing pressure on the Western Australian community that has resulted from the increasing cost of public liability insurance.

The new Bill will provide volunteers with qualified immunity, from personal liability and transfer that liability to certain community organisations that organise community work done by volunteers.

Volunteers who will not be covered by the legislation include volunteers who may undertake voluntary work for an organisation that is not incorporated, informal or individual volunteers who are not linked to an organisation and volunteers who may undertake voluntary work for a Commonwealth Government agency.

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*Clause 1: Short Title*

Short title of the proposed Act which is to be cited as the *Volunteers (Protection from Liability) Act 2002*.

*Clause 2: Commencement*

The proposed Act comes into operation on a day to be fixed by proclamation. Clause 2 provides that different provisions of the Bill may be proclaimed on different days. This may be needed because the Bill refers to a provision of the *Fire and Emergency Services Legislation Amendment Bill 2001* that has not yet been enacted. If that Bill has not been enacted when the *Volunteers (Protection from Liability) Bill 2002* is enacted and ready for proclamation, the relevant provision (clause 4(1)(a)) should not be proclaimed.

*Clause 3: Interpretation*

This clause contains definitions used in the Bill.

A “community organisation” means; a State agency or instrumentality or a department of the Public Service; or, an incorporated association under the *Association Incorporation Act 1987*, a local government or other body corporate; that organises the doing of community work by volunteers.

The definition of “community organisation” does not include a Commonwealth agency or an unincorporated organisation. This means that volunteers working for such bodies are not protected by the legislation.

The definition of “community work” in this Bill is a broad one covering aspects of voluntary activity in the community. It includes activities for religious, cultural, sport and recreation, conservation, local community, political purpose and other purposes approved under section 4(1)(f) of the *Associations Incorporation Act 1987* or as prescribed by the regulations.

Some types of community work may be excluded from the definition by regulation in the future to ensure that the proposed Act is not used to protect individuals from liability resulting from activities it was not originally intended to cover.

The definition of “organised” includes directed and supervised. Volunteers will not be protected by this Bill if they knew or ought to have known that they were acting outside the scope of the community organisation or contrary to instructions.

Sub clause (2) provides that any reference in the Bill to the doing of anything by a volunteer includes a reference to the omission by a volunteer to do anything.

*Clause 4 Meaning of “volunteer”*

Sub clause (1) provides that for the purpose of the Bill volunteer means a person who does community work on a voluntary basis but does not include those who perform emergency services functions as defined by the *Fire and Emergency Services Authority of Western Australia Act 1998*, honorary fisheries officers within the meaning of the *Fish*

*Resources Management Act 1994*, or honorary wildlife officers, honorary forest officers, honorary rangers or honorary conservation and land management officers within the meaning of the *Conservation and Land Management Act 1984*. The existing provisions in those Acts do not operate in the same way as the protection from liability provision of the *Volunteers (Protection from Liability) Bill 2002*. Excluding these groups from the proposed Act avoids confusion as to which Act protects them. The provision in the Bill to regulate will allow for certain groups of volunteers who may be included in any new legislation or amendments to existing legislation to also be excluded from the proposed Act.

Sub clause (2) provides that for the purpose of sub clause (1), a person does community work on a voluntary basis if the person;

(a) receives no remuneration doing that work other than;

- (i) remuneration that the person would receive whether or not the person did that work; or
- (ii) the reimbursement of reasonable expenses incurred by the person in doing that work;

or

(b) receives remuneration that is not greater than the amount, if any, prescribed by the regulations.

This allows for volunteers who may also be in paid employment, but are released from that employment, to undertake voluntary work and for volunteers who may receive some reimbursement eg with the cost of travel to and from the voluntary work or any other expenses that may be incurred. In addition, it may be necessary at a later date to provide for an amount in regulations that a volunteer may receive for their voluntary work perhaps as a small honorarium.

Sub clause (3) provides that a person is not to be regarded as doing community work on a voluntary basis if the person is doing that work under an order imposed by a court. Such persons will not be undertaking the activity by choice and therefore cannot be defined to be volunteers.

#### *Clause 5 Application*

- (1) The proposed Act will apply in relation to civil liability for a thing done by a volunteer after the commencement of the Act.
- (2) The proposed Act will not limit the protection from liability given by another written law.

*Clause 6 Protection of volunteers from liability*

Sub clause (1) provides that a volunteer will not incur civil liability from anything that the volunteer has done in good faith when doing “community work”(as defined) subject to sub clause (2) and (3).

Volunteers not connected to a “community organisation” as defined, are not protected by this Bill.

Sub clause (2) provides that sub clause (1) does not affect any right to recover damages in respect of defamation or in respect of the death of, or bodily injury to, any person directly caused by, or by the driving of, a motor vehicle if at the time of the death or bodily injury-

- (a) the vehicle was owned or being driven by a person who, but for the operation of subsection (1), would incur liability in respect of the death or injury; and
- (b) a contract or insurance-
  - (i) was, or was required to be, in force in respect of the vehicle under section 4 of the *Motor Vehicle (Third Party Insurance) Act 1943*; or
  - (ii) referred to in section 3(4) of that Act was in force in respect of the vehicle.

A volunteer doing community work that may involve driving an uninsured vehicle where third party insurance is not required, for example on a farm, will be covered by the protection from liability provision of the Bill. A volunteer doing community work involving unlawfully driving an uninsured vehicle on the road will not be covered by the protection of the Bill – that is the protection provided by the Bill does not apply if the vehicle concerned is, or is legally required to be covered by third party insurance.

Sub clause (3) provides that the protection given by sub clause (1) will not apply to a volunteer;

- (a) who knew or ought reasonably to have known that at the relevant time he or she was acting; (i) outside the scope of the community work organised by the community organisation; or
  - (ii) contrary to instruction given by the community organisation;
 or
- (b) whose ability to do the community work in a proper manner was, at is significantly impaired by alcohol or drugs.

By way of example, if a volunteer is directed by a community organisation to assist with gardening for a senior they should obtain direction from the community organisation, to undertake other work for the senior in order to be protected by this legislation.

For the purpose of sub clause (4) drugs means drugs that are taken voluntarily other than for therapeutic purposes. Motor vehicle has the meaning given in section 3(1) of the *Motor Vehicle (Third Party Insurance) Act 1943*.

*Clause 7 Liability of community organisations*

Sub clause (1) allows for the transfer of civil liability from the individual volunteer to the community organisation.

Sub clause (2) provides that the operation of sub clause (1) is subject to any protection from liability that would have applied to the community organisation if the thing done by the volunteer had been done by the community organisation.

This means that the Bill preserves existing protection from liability that a community organisation may have arising from contractual arrangements with a third party.

Sub clause (3) provides that if more than one community organisation is involved in organising the community work, then it is the community organisation that principally organises, or the community organisations that principally organise that work that is liable for the action of volunteers as stated in sub clause (1).

Sub clause (4) provides that liability that would be incurred under sub clause (1) by a community organisation that is a State agency, if the State agency were a body corporate, is incurred by the State.

Sub clause (5) provides that State agency means;

- (a) a State agency or instrumentality that is not a body corporate; or
- (b) a department of the Public Service.

*Clause 8 Certain indemnities etc. have no effect*

Clause 8 precludes a community organisation from entering into an arrangement which would entitle it to seek an indemnity from a volunteer in respect of a liability of the community organisation arising out of the conduct of the volunteer.

*Clause 9 Regulations*

The Governor may make regulations prescribing all matters that are required or permitted by the Bill to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of the Bill. Regulations may be made at different times for different provisions, as appropriate.