

Volunteers (Protection from Liability) Amendment Bill 2006

Explanatory Notes

Background

This Bill amends the *Volunteers (Protection from Liability) Act 2002* to provide protection from civil liability to businesses when they donate food or grocery products for charitable purposes. This amendment will provide peace of mind to individuals and businesses that donate food or grocery products for charitable purposes that they will not be sued for something that happens to the food or grocery product once it has left their control or possession.

Clause 1 – Short title

This is a formal clause titling the Bill.

Clause 2 – Commencement

This clause provides that the legislation will come into effect on a day to be fixed by proclamation.

Clause 3 – The Act amended

This clause states that the amendments in this Act are to the *Volunteers (Protection from Liability) Act 2002* except as stated in section 12.

Clause 4 – Long title amended

This clause deletes “that work,” in the long title and amends it to “that work; to protect persons who donate food or grocery products from incurring civil liability for physical injury resulting from the consumption of that food or the use of those grocery products,”

Clause 5 – Heading for Part 1 inserted

This clause inserts the heading “Part 1 Preliminary” before section 1.

Clause 6 – Section 1 amended

This clause changes the name of the Act from the *Volunteers (Protection from Liability) Act 2002* to the *Volunteers and Food and Other Donors (Protection from Liability) Act 2002*. This new title reflects the broadening of the scope of the Act to include protection from civil liability for persons who donate food or grocery products.

Clause 7 – Section 3 amended

This clause amends section 3(1) by inserting in the appropriate alphabetical positions definitions for “food” which is to have the meaning given to that term in section 3(1) of the *Health Act 1911*; the definition of “grocery product” is self explanatory, but does not include food. The inclusion of “grocery product” in the Act reflects the broad range of products that are donated by businesses for charitable purposes and ensures that if these items deteriorate in such a way as to cause personal injury to the recipient, once the item has left the control of the donor, then the donor is protected from civil liability. The definition of “personal injury” is self explanatory.

Clause 8 – Section 5 amended

This clause amends section 5 to reflect the creation of “Part 2” and inserts subsection 5(1a) which states that section 8A applies to food and grocery products donated on

or after the day on which section 10 of the *Volunteers (Protection from Liability) Amendment Act 2006* comes into operation.

Clause 9 – Heading for Part 2 inserted

This clause inserts a heading for Part 2 of the Act. Part 2 will deal specifically with existing provisions for the protection from civil liability of volunteers.

Clause 10 – Part 3 inserted

This clause inserts Part 3 after section 8 of the Act. Part 3 deals specifically with protection of food donors and grocery product donors from liability.

Section 8A(1) provides that a person who donates food or a grocery product in the circumstances described in subsection (2) will not incur civil liability for any personal injury that results from the consumption of the food or use of the grocery product.

Section 8A(2) describes the circumstances that will provide protection of the food donor or grocery product donor from liability. Subsection 8A(2)(a)(i) provides that protection from civil liability will be provided by the Act if the donor of the donated food or grocery product acted in good faith and if the donated food or grocery product is intended for a charitable or benevolent purpose. The Bill will not provide protection from civil liability where donated food or grocery products are used for advertising and promotional purposes.

Subsection 8(2)(a)(ii) provides protection from civil liability if the donor intended that the ultimate consumer or user would not have to pay for the food or the grocery item. The intention of this subclause is to provide protection to the donor only when the donated food or grocery product is distributed by a charitable or benevolent organisation to disadvantaged people and where the consumer of the food or user of the grocery product did not pay for the donated item. If payment is made for the food or grocery product by the consumer, the provisions of the Act will not protect the donor.

Subsection 8A(2)(b) states that the food must have been fit for human consumption, or the grocery product must have been safe to use at the time it left the possession or control of the donor in order for the donor to be protected from civil liability by the Act.

Subsection 8A(2)(c) states that if the food or grocery product was of a nature that required it to be handled in a particular way to ensure that it remained fit for human consumption, or safe to use, after it left the possession or control of the donor, the donor must have informed the person to whom the donor gave the food or grocery product of the handling requirements in order for the donor to be protected from civil liability by the Act. This will mean that the donor should inform the person they give the donated food to of such matters as the food being required to be stored and transported at certain temperatures for it to remain fit for human consumption, or if there are any other special requirements, such as being stored in dry conditions.

Subsection 8A(2)(d) states that if the food or donated grocery product remains fit for human consumption, or safe for use, for only a limited time after it left the possession or control of the donor, that the donor should have informed the person to whom the donor gave the food or grocery product of that time limit in order to be protected from civil liability by the Act.

Section (3) states that in subsection (1) a “person who donates food or a grocery product” does not include a person who distributes the food or a grocery product donated by another person. The intent of the Act is to provide protection from civil liability for donors of food and grocery products. This is because the donors have no control over the storage or handling of the donated food or grocery product once it has left their control or possession and they run the risk of being sued for something done by another person, such as the distributor of the food or grocery product, if the food becomes unfit for human consumption or the grocery product damaged in some way that causes harm to the person who consumes the food or uses the grocery product.

Clause 11 – Heading for Part 4 inserted

This clause inserts before section 9 a heading for Part 4 of the Act which deals with Regulations.

Clause 12 – Consequential amendments

This clause makes consequential amendments to the *Carers Recognition Act 2004* and the *Disability Services Act 1993* to reflect that the name of the Act has changed from the *Volunteers (Protection from Liability) Act 2002* to the *Volunteers and Food and Other Donors (Protection from Liability) Act 2002*