

**Submission to**

**Ministerial Meeting on  
Public Liability Insurance**

**27 March 2002**

**from**

**Volunteering**  
A U S T R A L I A

## About Volunteering Australia

Volunteering Australia is the national peak body for volunteering in Australia. It's mission is to represent the diverse views and needs of the volunteer movement while promoting the activity of volunteering as one of enduring social, cultural and economic value.

Volunteering Australia receives funding from the Commonwealth Department of Family and Community Services (FaCS) under the National Secretariat Program (NSP) to represent the interests of volunteers and volunteer involving organisations.

Volunteering Australia's member organisations consist of the state and territory volunteering peak bodies, who in turn represent volunteer-involving organisations and interested individuals. Volunteering Australia also works closely with a large network of regional volunteer resource centres (VRCs).

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## Summary

There are approximately 4.4 million volunteers in Australia and the number of volunteer-involving organisations is estimated to be in excess of several hundreds of thousands. Any increases in public liability insurance premiums will have a significant negative impact on volunteer-involving organisations in Australia. At the extreme end, organisations will be forced to cancel important community events and/or close the organisation due to an inability to obtain adequate and affordable insurance coverage. At the very least, organisations have to find additional funds in order to purchase insurance.

While Volunteering Australia acknowledges that the current debate is focused on public liability insurance, we are concerned that the discussion take into account other areas of insurance that also impact significantly on the operations of volunteer-involving organisations. Issues relating to these other forms of insurance are outlined briefly in the following submission.

It is clear from consultations conducted by Volunteering Australia that the public liability problem is far-reaching and that insurance generally features on the issues list of the organisations we consulted with. It is essential that solutions be found to the current problems as soon as possible.

With this in mind, Volunteering Australia has identified some specific criteria that should be considered when assessing the potential impacts of any proposed solutions on volunteer-involving organisations. These criteria are outlined in the body of this submission.

In addition, Volunteering Australia has examined some of the proposed solutions to determine what, if any, impact they would have on volunteer-involving organisations and we have identified areas where further work is needed to ensure that the needs of volunteer-involving organisations are met.

As the national peak body for volunteering, Volunteering Australia is keen to have a role in working with government and industry stakeholders to develop appropriate solutions to the current problem. The state and territory volunteering peak bodies also have a critical role to play at the state level.

Volunteering Australia urges government to continue to consult with the community and representative bodies to find acceptable solutions. Any solution needs to ensure that volunteer-involving organisations can continue to operate and provide the important services and activities that they do, as well as providing provide important volunteering opportunities for individuals in their communities.

## Introduction

Volunteering Australia's interest in the current debate on insurance arises from its concern about the impact that the much-publicised increases in public liability insurance is having on volunteer-involving organisations, the involvement of volunteers and ultimately, the activity of volunteering.

The ABS reported that in the year 2000 approximately 4.4 million Australians over the age of 18 (32% of the population) contributed 704.1 million hours of volunteer work to the Australian community. (*Voluntary Work Survey*, Australian Bureau of Statistic, Catalogue 4441.0 2000).

These 4.4 million volunteers work in all spheres of community and across many sectors including health and welfare, emergency services, arts and culture, heritage, environment and conservation, sport and recreation, education, overseas aid, religious, animal welfare, human rights and youth development (*A National Agenda on Volunteering: Beyond the International Year of Volunteers*, Volunteering Australia 2001).

The work of these volunteers benefits the community in many ways. As well as vital services and activities, volunteering provides opportunities for individuals to participate in their communities and contributes to the building of social capital.

Except in very limited circumstances, volunteer-involving organisations do not have the capacity to pass on increased costs to consumers. Any rise in cost of insurance premiums has the potential to negatively impact on volunteer-involving organisations, and ultimately the communities in which they operate. For example, volunteers can become concerned about inadequate protection for themselves and their organisations and become reluctant to participate in volunteer activities. Organisations continuing to operate uninsured for public liability expose innocent third parties, often the recipients of a service, to an unacceptable level of risk. Or organisations may simply reduce the involvement of volunteers in their activities due to insurance costs and in the process are forced to scale down the level of service provided to the community.

This reduction in level of service can have an unfortunate spiraling effect. As services are reduced, so too is funding or support as organisations are assessed to be unable to deliver the level of service they have been contracted for or provide the level of exposure that is attractive to sponsors. Ultimately, this can have a devastating effect on communities as organisations cease to operate. Not only is the service withdrawn but, just as importantly, the opportunities for individuals to contribute to their community through volunteering are reduced.

## **Scope of Current Debate**

The current debate has focused, almost entirely, on public liability insurance. It is clear from reports received across the various jurisdictions and gathered by investigating taskforces and interest groups that public liability is an area of significant concern and one that must be addressed.

However, for volunteer-involving organisations the problem of escalating premiums does not end there. Volunteering Australia is concerned that the impact of insurance coverage as a whole is being overlooked in the current debate.

Three areas are of particular concern, volunteer personal accident insurance, professional indemnity insurance and directors' and officers' liability insurance.

### Volunteer Personal Accident Insurance

Volunteering Australia advocates strongly for the rights of volunteers. Among these rights is "the right to be adequately covered by insurance". This right refers to insurance that protects the volunteer against any accident or injury that they might suffer in the course of their volunteer week.

We believe that there are volunteer organisations that do not insure their volunteers for personal accident insurance in the mistaken belief that public liability insurance provides sufficient protection in this regard.

There are particular issues relating to volunteer personal accident insurance that warrant further examination. These include upper and lower age limits on policy for volunteers and inequities in the level of compensation that volunteers receive under insurance policies compared to the compensation that paid workers receive under workers compensation legislation.

These issues can constitute barriers to volunteering and deserve consideration within the context of the current debate.

### Professional Indemnity Insurance

This type of insurance coverage provides for loss resulting from claims made against an organisation (or individual) for breach of professional duty arising out of negligent acts, errors or omissions occurring when undertaking a specified professional activity.

Government contracts that provide funding to organisations to deliver advice and/or services frequently require that the organisation take out a significant level of professional indemnity insurance cover. The cost of this insurance can run to several thousands of dollars. For smaller organisations, this can constitute a considerable portion of the total operating budget. Yet without this coverage organisations may be unable to

deliver a necessary service without exposing themselves to risk by operating without the appropriate cover.

### Directors' and Officers' Liability

This insurance protects office bearers for loss, including legal costs, where they have committed a wrongful act in the running of the organisation. This form of insurance is important to ensure adequate protection for office bearers in volunteer-involving organisations.

One of the issues reported to Volunteering Australia is the reluctance of individuals to become involved in organisations as board or committee members because of the potential level of personal liability to which they are exposed. This situation can have a devastating effect on some organisations, particularly in regional and rural areas where there is a smaller population base to draw on.

Even without the latest reported increases in public liability insurance, the total cost of insuring for its activities and any possible eventualities is significant for some organisations. It is for this reason, that any solutions proposed in the context of public liability insurance must consider any consequential impacts on insurance as a whole – including the categories mentioned above - as well as recognising that the issue of affordability of insurance includes more than public liability.

We recognise that the terms of reference for the ministerial meeting currently limits discussion to public liability insurance issues, but the additional issues raised here are critical to the discussions on insurance and need to be considered.

### **Size of the Public Liability Problem**

While we have not determined the exact scale of the public liability insurance problem for volunteer-involving organisations, including the detail of who has been affected and by how much, there appears sufficient anecdotal data to suggest that insurance is one of the biggest issues currently facing volunteer-involving organisations.

### Consultations conducted by Volunteering Australia

As part of its commitment to the International Year of Volunteers in 2001 Volunteering Australia, with its partner organisation Australian Volunteers International, conducted a national consultation to identify the major issues affecting volunteer-involving organisations and volunteers. The aim of the consultation was to develop *A National Agenda on Volunteering: Beyond the International Year of Volunteers*.

The consultation consisted of face-to-face forums in every state and territory, supplemented by the dissemination of nearly 20,000 questionnaires. In total 28 forums were conducted and in excess of 1,500 questionnaires were returned.

The affordability, adequacy and availability of insurance were consistently identified as key issues in the face-to-face forums, often generating significant discussion amongst participants. Insurance was also identified as a key issue in the completed questionnaires.

As a result of these consultations one of the specific outcomes sought in the *National Agenda on Volunteering* is “Access to affordable and adequate volunteer and public liability insurance for volunteer-involving organisations.” (Appendix 1).

#### Reports received from Volunteering Australia’s member organisations

In addition to Volunteering Australia’s own consultations we have also received numerous reports from our member and affiliated organisations that tell a story of organisations being forced to cancel community events or activities or taking the risk of operating without insurance.

The impacts felt by organisations unable to obtain adequate and/or affordable insurance cover include:

- Three (3) events cancelled in the South Gippsland area – Mirboo North Show (has been running for many years), Thorpdale Potato Festival and Tarwin Lower River Festival (insurance was a determining factor here as the cost of the insurance was greater than the expected profit margin for the event).
- Cancellation of Darby St Fair, Newcastle.
- Closure of Central Coast Progress Association due to inability to afford additional insurance premiums.
- Central Coast Ugnay Kabayan group experienced premium rise from \$800 to \$3,700.
- “Friends” group that ensures the local train station is kept clean, tidy and garden well ordered is unable to afford the quoted public liability insurance and is expected to continue its activities uninsured.
- Survey of members by Volunteering Tasmania to determine whether public liability insurance has increased and what the impact has been. Preliminary results (based on 40% return rate) are that the majority of organisations surveyed have indicated premium rises.
- A large volunteer-involving organisation that runs environmental projects on both public and private land was forced to cease operating for a day due to the inability to find a public liability insurer.



## Other Evidence

In the past few months, media reports have consistently identified specific volunteer-involving organisations that have suffered extreme increases in public liability premiums and/or who have been forced to cancel events or activities as they are unable to meet the costs of premiums or gain insurance in the first instance.

Reports prepared in some jurisdictions, for example, the Queensland Government's *Liability Insurance Taskforce Report*, have also identified specific examples of premium increases and adverse impacts on volunteer-involving organisations and their activities.

## **Causes of the Current Problem**

Volunteering Australia is pleased that the Minister for Revenue has commissioned an independent report to assist in gathering information about the factors contributing to the increases in public premiums. It is hoped that the report will provide clear and factual information that will help shift the focus from assigning blame for the increases to the more constructive process of finding solutions.

Based on information gleaned from a variety of sources, it is Volunteering Australia's understanding that public liability premium rises are believed to have been caused by a combination of factors, including:

- Increase in claim rates
- Reduction of competition in the insurance industry
- Increased cost of re-insurance
- Under-pricing of public liability premiums in the past
- Lower investment returns
- Australian Prudential Regulatory Authority (APRA) solvency requirements
- Poor risk management practices
- HIH collapse
- Increased uncertainty following the terrorist attacks in September 2001.

There are two factors that Volunteering Australia would like to comment on. The first is claim rates and the second is risk management practices.

With respect to claim rates, we do not believe that there has been a significant increase in claims against the policies held by volunteer-involving organisations, so we are concerned that volunteer-involving organisations may be bearing the costs of others' liabilities. However, Volunteering Australia would be keen to see more data provided by the insurance industry about the claim rates and claim payment levels across the various sectors.

With regard to risk management, it is inevitably true that many volunteer-involving organisations will not have a full understanding of risk management or minimisation strategies that should be in place within their organisations (other than the practice of transferring risk through insurance). However, it is important to understand that just as volunteer-involving organisations differ in size, budget and level of volunteer-involvement, so too do they differ in their risk profiles. It is essential that the risk profile of individual volunteer-involving organisations is fairly and accurately assessed.

It has been suggested to us that one of the factors leading to greater risk exposure by organisations is the need for volunteer-involving organisations to conduct fund-raising activities to compensate for lack of certainty in funding from other sources. It has been suggested that some of these fund-raising activities are often significantly removed from the core activities undertaken by the organisation. This has the effect of attaching public liability premiums that would not be required if the organisations' activities were limited to their core business. Volunteering Australia has not conducted any research or consultation to specifically explore this relationship, however the suggestion highlights the complexity of the issue and the importance of a broad outlook in examining reasons for increases and finding solutions that meet the needs of volunteer-involving organisations.

### **Criteria for Assessing Solutions**

Volunteering Australia does not purport to have sufficient expertise on insurance matters to fully assess all of the possible economic and social impacts that any solutions proposed would have on the wider community. However, Volunteering Australia's expertise is in understanding the workings of volunteer-involving organisations and is therefore able to assess the impacts that proposed solutions would have on volunteer-involving organisations, volunteers and the activity of volunteering.

In this context, Volunteering Australia has identified some specific criteria against which possible solutions can be examined for their impact on volunteering and volunteer-involving organisations.

#### Complexity of Administration

*Any solutions aimed at addressing the current insurance problems must not add to the administrative burden faced by volunteer-involving organisations. Solutions must be suitable for organisations of all types and sizes and able to be adopted within their current structures.*

One of the frequently reported issues during the consultations for the development of *A National Agenda on Volunteering* was the amount of "bureaucracy" or "red-tape" that volunteer-involving organisations were required to undergo in all areas of their business to meet administrative and legislative requirements.

What became apparent during the consultations was that organisations are eager to ensure that their volunteers work in a safe and healthy environment and that activities or services are delivered safely and efficiently to the community. However it is becoming extremely difficult for some organisations, particularly where all (or most) staff are volunteers, to stay abreast of and meet all of their administrative and legal requirements.

The impact of this for some organisations has been to reconsider the range of services and activities that they are able to undertake. The increased legal and administrative requirements on organisations has also been attributed to a growing difficulty in organisations finding suitable people willing to take on governance responsibilities. The combined effect is a reduction in both the range and availability of volunteering activities available within the community.

### Cost of Administration

*Any solutions aimed at addressing the current insurance problems must ensure that any associated administrative cost of implementation must be able to be met within their current budgets. Where proposed solutions would impose additional responsibilities on organisations these organisations must be provided with additional financial or other appropriate support.*

It is important to recognise that volunteer-involving organisations vary significantly in both size (that is, numbers of volunteers) and budgets. Organisations can range from those that receive funding for their operating expenses as part of government service delivery contracts or from private sources which allows the employment of paid staff, to entirely volunteer-run organisations which must rely on the fundraising activities of their volunteers to meet the organisations' operating overheads.

It is likely that some of the legal and administrative requirements mentioned previously may result in increased costs for professional services, for example legal or accounting services or employment of paid administrative staff, necessitating the shift of resources from direct service delivery to administrative overheads.

It would be unacceptable for an organisation to achieve savings on the cost of their insurance, only to have a significant proportion of these savings taken up through increased administrative overheads owing to legislative or administrative overheads of the intended solution.

### Impact on Principles of Volunteering and Volunteer Rights

*Any solutions aimed at addressing the current insurance problems must ensure that the Principles of Volunteering or Volunteer Rights are not compromised.*

The *Principles of Volunteering* and *Volunteer Rights* (Appendices 2 and 3) were developed by Volunteering Australia following significant consultation with the volunteering sector.

The principles and rights reflect a commonly agreed and understood position to ensure that volunteering remains an activity of "...enduring social, cultural and economic value" (*Mission Statement, Volunteering Australia*).

It is important that the principles and rights are considered holistically. It would not be acceptable in the course of adopting solutions to the current insurance problem to promote one of the principles or rights at the expense of another, as this would ultimately undermine the activity of volunteering.

### **Proposed Solutions**

Volunteering Australia has begun a preliminary examination of some of the proposed solutions to assess the impact on volunteering.

#### Volunteer Protection Legislation

Legislation has been passed in South Australia that protects volunteers against personal liability. Similar legislation is being introduced in Western Australia.

This legislation is important as it provides clear legislative protections for volunteers and removes a potential barrier to volunteering. Unfortunately, this legislation does not provide a solution to the current issue of public liability premiums.

While protecting volunteers, the volunteer protection legislation transfers liability to the organisation for which the person volunteers. The responsibility remains with organisations to ensure that they are adequately protected by insurance coverage.

Organisations that are unable to provide adequate insurance cover will be unable to provide volunteering opportunities for individuals or will continue to operate without adequate coverage, thereby exposing their organisations to costly litigation.

#### Government Subsidy

One solution that has been suggested is the idea of a government subsidy payable to community organisations to compensate for the rising costs of public liability insurance.

This option has merit in terms of alleviating the immediate problem that many volunteer-involving organisations are facing with respect to substantially increased premiums. It may allow some short-term relief for organisations that are facing imminent scaling back of vital activities or cancellation of traditional community events and activities.

There is no guarantee that this solution would be sustainable in the longer term. Mechanisms would also need to be in place to ensure that insurance companies did not profiteer by artificially inflating premiums in line with the level of subsidy.

The process adopted to administer a subsidy would need to be straightforward to ensure that onerous administrative requirements are not placed on organisations seeking to obtain the subsidy.

### National Accident Compensation Scheme

Volunteering Australia notes that one of the options reportedly being canvassed is the adoption of a national compensation scheme for personal injury and accident that involves removing the common law right to sue and which caps damages at statutory levels. The New Zealand Accident Compensation Corporation has been referred to as a possible model for such a scheme.

Due to the likely complexities of a legislative scheme it is not possible to easily identify all of the possible impacts that would be experienced by volunteer-involving organisations, without more details of a particular model. Volunteering Australia is currently researching the impacts of the New Zealand scheme on volunteers and volunteer-involving organisations and will contribute any findings into any further consultation processes undertaken about a national accident compensation scheme in Australia.

However, in examining any proposals for any such scheme, the specific needs of volunteer-involving organisations and volunteers must be considered. This would include ensuring that volunteers and third parties are covered by the scheme, ensuring that volunteers injured in the course of undertaking voluntary work are treated equally to paid workers with respect to compensation entitlements, and ensuring that premiums for volunteer-involving organisations are affordable to allow coverage of all volunteers and their activities.

### Group Insurance

Volunteering Australia notes that one of the options being examined in a number of jurisdictions is that of group insurance or “pooling” whereby organisations are encouraged to band together as a single group to purchase an umbrella policy. While on the face of it these arrangements appear viable a number of issues need to be considered.

Group insurance is one of the options recommended by the Queensland Government Liability Taskforce (*Report of the Liability Taskforce*, Queensland Government, February 2002). The report estimates that expected savings on current premiums would amount to about 15% (p.20 *Report of the Liability Taskforce* Queensland Government, February 2002). Given the level of increases reported by some organisations this is unlikely to constitute a solution for many of them. Some consideration must be given to assisting organisations in the short term who have been hit with higher than average increases.

Any moves to establish group insurance pools need to consider the sustainability of the pool in the long term. In looking at ways to ensure that the size of the pool is adequate to make premiums affordable for all participating organisations, the issue of compulsory

versus voluntary participation in pooling or group arrangements would require further consideration. It is not clear whether a level of compulsion would have unintended consequences on the operation of organisations. It would be appropriate to undertake further consultation with volunteer-involving organisations on this issue in conjunction with the volunteering peak bodies in each jurisdiction.

Irrespective of whether a compulsory or voluntary scheme were adopted the level of administration required for participation in a group or pooling arrangement must be carefully considered.

### Self Insurance

Volunteering Australia notes that another solution proposed is that of a self-insurance pool whereby organisations group together to pool funds to meet the cost of claims brought against member organisations.

The Queensland Government Report (*Report of the Liability Taskforce*, Queensland Government, February 2002) estimates that the potential savings to organisations participating in a self-insurance pool would be 30 to 40% (p. 21 *Report of the Liability Taskforce*, Queensland Government, February 2002). While these savings would be substantial the risks to participating organisations are greater than several of the other options proposed. Member organisations face significant financial exposure if the total claims cost exceeds the premium pool at a given point in time.

Here again, sustainability and compulsory versus voluntary participation are issues requiring further examination.

It is envisaged that intensive education would be needed among volunteer-involving organisations to ensure that there is thorough understanding of what self-insurance is and the potential risks of such a scheme.

### Removal of Taxes and Charges on Insurance Premiums

The goods and services tax, state government stamp duty and additional levies have been identified as adding significantly to the costs of insurance premiums.

One solution proposed to Volunteering Australia is the removal of these additional charges from premiums paid by volunteer-involving organisations.

This solution would go some way to alleviating the financial burden on organisations in the short term, but alone is unlikely to constitute an acceptable long-term solution. Additional strategies are needed to address the rises in the underlying premiums.

More data is needed on the dollar savings to organisations if these additional charges were removed.

## Risk Management

One option identified as being able to minimise insurance premiums in the longer term is the implementation of appropriate risk management strategies by volunteer-involving organisations.

Volunteering Australia does not consider that risk management alone provides a solution to the current problem, but agrees that risk management is an important area where education is needed among volunteer-involving organisations. Minimising risk of accident and personal injury is clearly important in the current context of insurance costs, but it also goes to the heart of maintaining the importance of volunteering in Australia by ensuring that volunteering is an enjoyable and rewarding activity for participants.

Volunteering Australia would support the development of risk management education resources for volunteer-involving organisations and encourages governments in all jurisdictions to work collectively with one another and with relevant community peak bodies to develop appropriate tools and resources.

In addition, Volunteering Australia urges government to recognise that volunteer-involving organisations will require support to implement appropriate education packages and their own risk management strategies. The development of tools, resources and accompanying training for volunteer-involving organisations will not come without a financial cost and it is imperative that government provides the resources necessary.

There are many options that can be explored in this area, from financial assistance for the production and development of resources to critical infrastructure support through specialised risk management units or personnel to work with volunteer-involving organisations to assist them in developing suitable risk management strategies. Further detailed consultation is needed between government and volunteering peak bodies about the specific needs of volunteer-involving organisations.

While organisations should be encouraged and assisted to implement risk management strategies, extreme caution should be exercised before imposing obligations in funding agreements as a means of forcing organisations to consider the issue. Any sudden moves in this direction would be likely to impact on organisations' immediate ability to involve volunteers and deliver services.

Any strategies adopted by government to encourage volunteer-involving organisations to implement appropriate risk management strategies should not be onerous for organisations. Guidelines for implementing risk management strategies should be provided and wherever possible tools and assistance should be provided to assist in implementation.

## **Conclusion**

Clearly more work is needed on identifying the implications of each of the solutions before acceptable solutions are found.

Volunteering Australia notes that in some jurisdictions work has been undertaken in consultation with the sector to begin developing solutions. As a priority work must continue at the highest levels to find acceptable solutions.

Volunteering Australia urges government in all jurisdictions to continue to consult with the peak volunteering bodies and their member organisations to ensure that the needs of volunteer-involving organisations are met.

Without volunteer-involving organisations and their many volunteers, the community would be deprived of many invaluable services, events and activities as well as the essential opportunity for individuals to actively participate in their communities.