

## Issues Paper April 2010

# Issues Related to Insurance Protection for Volunteers

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## 1 Introduction

All organisations have a legal obligation to protect their boards, committees and personnel, both paid and volunteer from risk while they are working, in other words a *duty of care*. Additionally, individuals in their roles as volunteers have a duty of care to others with whom they come into contact (colleagues, clients etc) through their formal volunteering roles. Common law duty of care obliges an organisation and an individual to avoid carelessly causing personal injury or damage to property. Adequate insurance cover is an integral part of this duty of care and as such the following points need to be considered when an organisation is looking for protection.

### 1.1 Risks to volunteers

The risks facing volunteers will vary depending on the type of work undertaken. Some examples of risks faced could include:

- Personal injury resulting from accidents that occur during their voluntary work,
- Personal injury resulting from physical assault,
- Claims for damages arising from accidents that result in personal injury or damage to property and for which the volunteer can be held responsible.
- Loss of, or damage to the personal property of a volunteer and claims for compensation for losses resulting from negligent or inappropriate advice given by a volunteer working for a volunteer agency.

### 1.2 Negligent acts

Client/user groups could also be exposed to risk due to the negligent act of a volunteer. Duty of care ensures that both client/user group and volunteers are protected. If a volunteer acts negligently, improperly, incompetently or works in inappropriate ways with a client/user of services and their work has been sanctioned by the organisation, that organisation could be held liable.

In order to minimise risks organisations need to implement risk management strategies across the whole organisation. A major plank of risk management for volunteers is insurance coverage.

## 2 Advocacy and advances on volunteer insurance issues

Volunteering Australia has recognised the relevance of insurance in its seminal publications, for example:

### **National Agenda on Volunteering: Beyond the International Year of Volunteers.**

In the development of the *National Agenda on Volunteering* (2001) community, volunteer-involving organisations, business and government were called to work together and adopt actions under six major objectives. Under the fourth objective to: *Acknowledge that the*

*activity of volunteering is not without cost and develop means by which Australian volunteers and volunteer-involving organisations are supported and funded to provide valuable services, outcome 4.1 sought:*

*Access to affordable and adequate volunteer and public liability insurance for volunteer-involving organisations.*

### **National Standards for Involving Volunteers in Not for Profit Organisations.**

Volunteering Australia published in the same year *National Standards for Involving Volunteers in Not for Profit Organisations*. Under Standard 2, Management Responsibility, Criteria 2.5 and 2.6 (p.23) risk management is identified as part of a volunteer management best practice framework and Standard 4, Work and the Workplace, Criteria 4.16, (p. 37) specifically addresses the question of insurance:

*Does the organisation adequately insure its volunteers for personal injury and liability and inform volunteers accordingly?*

In the recent review of the National Standards, Phase 1, comments were received stating that it would be more beneficial to include more useful examples to guide understanding of complex issues such as insurance.

## **2.1 Sector responses**

In 2005/2006, Volunteering Australia worked with AON to develop the 'Volunteers Vital Pack', a range of comprehensive, cost effective insurance products and services for volunteers. This relationship and the work Volunteering Australia has undertaken with members of the volunteering infrastructure ensured a greater awareness of risk management and insurance cover as an issue for volunteering.

Members of the volunteering infrastructure continue to recommend that volunteer involving organisations seek professional advice in determining what cover is available and appropriate for their needs. Some of the types of insurance organisations are encouraged to consider are listed in Table 1.

<b>Examples of insurance cover applicable to volunteers</b>	
Personal Accident Insurance	This type of insurance would normally cover loss of income or if the volunteer is not earning would cover other items such as home help or student tutorial assistance. This insurance does not cover volunteers for any out of pocket expenses following accidental injury, disability or death as due to restrictions under the Federal Legislation private insurers are not allowed to cover gaps in Medicare payments. *See note below this table
Public Liability Insurance	To cover an organisation including its Directors, paid

Directors' and Officers' Liability	workers and volunteer for its legal liability to third parties for personal injury or property damage caused by an occurrence in connection with the insured organisation's business activities.
Professional Indemnity Insurance	To cover an organisation including its Directors, paid workers and volunteers to compensate committee members and office bearers for loss, including legal costs, where they have committed a wrongful act in the running of the organisation.
Motor Vehicle Comprehensive Insurance.	To compensate the organisation, including its Directors, paid workers and volunteers, for loss incurred through a claim made against the organisation for breach of professional duty arising from negligence, errors, omissions, defamation, loss of records or documents, dishonest acts etc by volunteer or paid staff.
Motor Vehicle Non Owned	The Motor Vehicle Comprehensive is designed to cover vehicles which are owned by the organisation and utilised on their business for own damage to the vehicle as well as third party property damage to other vehicles or property.  There is additional cover known as Motor Vehicle Non Owned where if a volunteer owns their vehicle and uses it on behalf of the business that when they claim off their own insurance company the excess can be covered in the policy
Other types of insurance for organisations to consider include: Property/contents, products liability and events insurance.	

Table 1: Types of insurance commonly purchased by not for profit organisations for volunteers

\*Under a Voluntary Policy, if a volunteer is claiming reimbursement for medical expenses incurred as a direct result of injury then they must first seek to be reimbursed from their private health fund if applicable and then with medical expenses the insurance policy will only cover non Medicare medical expenses to the amount stated in the policy (after deduction of any excess) for injuries which occur during insured activities. The policy will cover fees incurred as a result of injury including but not limited to fees paid to nurses, chemists, hospitals, chiropractors, osteopaths and physiotherapists but all of the accounts would need to be settled first and then reimbursement sought.

### 3 Legislative protection: covered or not?

#### 3.1 Liability of volunteers

Each state and territory has enacted legislation to limit the potential liability of volunteers in their roles, mostly as office bearers. In the Northern Territory for example, volunteers are not liable for personal injury caused by their actions as a volunteer unless they are grossly negligent. This has left a significant gap in the cover as anyone who has suffered an injury from a volunteer would more than likely be able to prove in a court of law that there was negligence involved.

Relevant legislations include:

- Volunteer Protection Act 2001 (SA);
- Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002 (Vic);
- Civil Liability Act 2003 (Qld);
- The Civil Act 2002 (NSW);
- Volunteer (Protection from Liability) Act 2002 (WA);
- Personal Injuries (Liabilities and Damages) Act 2003 (NT);
- Civil Law (Wrongs) Act 2002 (ACT);
- Civil Liability Act 2002 (Tas).

A detailed review of inconsistencies or gaps in the liability protection offered to volunteers under these different legislations is beyond the scope of this paper.

#### 3.2 Workplace legislation

Inclusion of volunteers is not uniform across the range of legislation relevant to workplace rights and responsibilities which include:

- Occupational Health and Safety;
- Workers' Compensation;
- Equal Opportunity and Anti-Discrimination.

Volunteers are not covered by Workers' Compensation across all states and territories (with a few exceptions eg: emergency management volunteers and certain types of volunteers in Queensland). A further detailed review of inconsistencies or gaps in the protection offered to volunteers under workplace legislations is required.

#### 3.3 The Health Insurance Act 1973

The outcome of this Act was to provide universal health cover, allow people to take out insurance with private health insurers, and also prevent general insurance companies from providing this cover. This means that general insurance companies cannot cover volunteers

for expenses incurred for medical items wholly or partially covered under Medicare. For example, where a person is injured as a volunteer, working for a not for profit organisation, they can claim Medicare reimbursement but if the costs are beyond that which is prescribed by Medicare, a general insurance company cannot, in accordance with the Act, cover the gap between Medicare payment and actual fee for the medical item.

The issue here is that volunteers will and most likely do incur out of pocket expenses for injury where medical attention has been necessary.

### 3.4 Private Health Insurance Act 2007

Under the *Private Health Insurance Act 2007* and the Health Insurance Business Rules 2009 attached to the Act<sup>1</sup>, certain insurance is not considered to be health insurance business if the insurance, whether provided by a private health insurer or other person, covers certain volunteer activity as described in the extract below.

***Volunteers, sporting and youth activities***—a person in respect of the occurrence, in relation to that person, of one of the following events:

- an event occurring while the person is, without payment, providing services to an educational, religious, charitable or benevolent organisation or while that person is travelling to or from the place where those services are provided;
- an event occurring while the person;
  - is engaged in a sporting activity (in the capacity of a participant, adjudicator, judge, referee or umpire or in a similar capacity); or
  - is acting as an official at, or otherwise assisting in the conduct of, a sporting activity; or
  - is acting in his or her capacity as an elected or appointed official of a sporting organisation;or while that person is travelling to or from:
  - that activity; or
  - the place where that person acts in that capacity;
- an event occurring while the person is engaged in youth activities organised by a voluntary organisation (for example, the Girl Guides Association of Australia, the Scout Association of Australia, the Y.M.C.A. of Australia, the Y.W.C.A. of Australia or a police citizens youth club) or while that person is travelling to or from such activities.

Excluding insurance that covers this type of activity from the definition of *health insurance business* means that a general insurer (or a private health insurer) may insure for health services benefits in the above circumstances however this cover would exclude any such cost wholly or partially covered by Medicare (see above). This is the clause in the Private Health Insurance Act that allows insurers to provide Non Medicare Medical Expenses to volunteers throughout Australia but again this is only for Non Medicare Medical Expenses

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<sup>1</sup> Private Health Insurance (Health Insurance Business) Rules 2009 Part 4 Section 15



(which primarily will be physiotherapy, ostiotherapy, etc), and would not pick up anything that would under the Health Act be covered by Medicare or a Private Health Insurer.

### 3.5 State Government Regulations

As a result of some State government regulations, for example, Victorian and NSW education regulations, volunteers who are recipients of government benefits (eg: mutual obligation) are precluded from the departments' insurance protection (public liability and personal accident) ordinarily provided to volunteers in schools because they are deemed to be receiving payment. The Victorian Department of Education and Early Childhood Development regulations define a volunteer worker as:

*A 'volunteer school worker' means a person, who without payment or reward, voluntarily engages in school work.*

Further, Centrelink does not provide insurance for voluntary work participants and requires that an 'approved volunteer organisation' must hold the required types of insurance that will protect volunteers participating in voluntary work. Therefore, in a situation such as with the Victorian Department of Education, volunteers who are receiving benefits are not covered by insurance by either body and may be asked to cease their volunteering. It is uncertain how many volunteers may be in this circumstance.

## 4 Gaps in available insurance cover

### 4.1 Age limits

Volunteering Australia is aware that some insurers place age limitations on their policies. Examples include situations where volunteers over the age of ninety may not be eligible for volunteer insurance cover. Equally we are aware that some insurers have a more inclusive policy that requires only that volunteers are able to take direction.

*The "Volunteers Vital Pack" coverage has no age limits but the policy does state that the volunteer must be able to take direction. AON 2010*

## 5 Case study:

Tom was injured working as a volunteer. He believed that he was 'fully insured'.

As he lived in the country he needed to travel to the city for tests, in particular a MRI on his knee. The GP expenses left Tom with a \$200.00 debt.

His local council (where he volunteers) contacted their insurance company which travelled up to discuss Tom's MRI and transport claim.

A representative from the Insurer provided information about the Health Insurance Act, stating that for medical items no general insurance company could provide any gap payment between the actual medical cost and the reimbursement from Medicare. However in the interests of good faith, the insurance company did make a payment to cover the MRI and transport costs (not covered by Medicare as MRI had been performed by a private imaging

company). The only way all medical expenses could be covered is through a bulk billing GP and a hospital that bulk bills.

The local council considered an offer to cover the gap payment (for GP expenses) but was advised that for 'legal' reasons they could not provide this payment to Tom.

## 6 Who buys insurance – organisations or volunteers?

### 6.1 Portable individual personal accident and liability Insurance

While Volunteering Australia and its members encourage all organisations to protect volunteers with appropriate insurance, another option that has been under investigation for some time is the concept of portable individual personal accident and liability insurance for volunteers.

Volunteering Australia recognises that volunteer activity is increasingly taking place outside the formal structures of not-for-profit organisations that can offer insurance cover for their volunteers. This increase in informal volunteering, combined with a trend for higher mobility amongst volunteers, may lead to situations where volunteers find themselves protected in certain circumstances but not others.

In this context Volunteering Australia has investigated the feasibility (and desirability) of arranging a "rest easy" policy that would provide an individual with personal accident and liability cover in the event that no other cover was in force.

Volunteering Australia has established that affordable individual volunteer personal accident and liability insurance coverage can be delivered by the insurance industry. Volunteering Australia is presently investigating the feasibility of linking this to completion of basic volunteer OH&S and Rights and Obligations orientation training that will satisfy the insurance providers' requirements for establishing volunteer competency.

### 6.2 International visitors

Many international visitors purchase personal insurance coverage that may cover loss involved in volunteer activity. Most international visitors and temporary residents do not have access to Medicare and therefore rely on private insurance to help cover the cost of hospital and medical expenses while in Australia. Such coverage can be purchased through private health providers in Australia or through international insurance companies. Due to the waiting periods for certain medical items it can be advantageous for visitors to purchase insurance prior to arriving in Australia. For instance, under Medibank visitors cannot claim for 2 months, a trip to the GP; for hospital visits the waiting period is 2 months for a new condition but 12 months for a pre existing condition; however, accident victims are covered immediately.

## 7 Conclusion

Volunteer effort is conducted in a vast and diverse range of formal and informal organisational structures. Access to affordable insurance cover has improved over the past decade and there is evidence<sup>2</sup> that access to insurance is not a significant barrier to volunteerism in formal not-for-profit agencies.

However, the changing nature of volunteering and the trend towards less formal, episodic and more mobile volunteer workforce may increasingly expose volunteers to situations where they find themselves unprotected by legislation or insurance coverage.

There is need for greater harmonisation of Commonwealth and State legislation to ensure that all volunteers, regardless of the circumstances of their volunteer effort, enjoy universal protection against loss.

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<sup>2</sup> Volunteering Australia 2009, *National Survey of Volunteering Issues*