

Insurance and COVID-19: Guidance for Volunteering Involving Organisations

Summary

Volunteers are typically not covered by Workers Compensation and Voluntary Workers Personal Accident Insurance only covers volunteers for injury in the workplace and not illnesses, and so is unlikely to cover a volunteer who has contracted COVID-19.

The issue of insurance cover needs to be considered within a broader risk management framework¹.

Volunteering Australia strongly recommends that Volunteer Involving Organisations:

- Undertake thorough risk assessments and exercise caution if volunteers are in client-facing roles or are in high-risk groups.
- Take every measure possible to keep your volunteers safe in the workplace, which includes complying with national and State and Territory public health directives including social distancing requirements.
- Seek advice from their insurer about the implications of the pandemic regarding their volunteer workforce.
- Communicate with volunteers about the limits of insurance cover.

If someone contracts COVID-19 whilst volunteering, they can incur out of pocket medical expenses and loss of income (from being unable to undertake paid work and not having access to paid sick leave). The National Cabinet recently agreed to reinstate the Pandemic Leave Disaster Payment until the end of September 2022 to support people who do not have access to paid sick leave.² However, it cannot be assumed that all individuals who lose income because of COVID-19 will receive these payments or be fully compensated for loss of income.

Volunteering Australia does not support the use of ‘waivers’ by organisations. (Some organisations are asking volunteers to sign a waiver designed to protect it from a volunteer bringing a claim against an organisation.) Justice Connect³ has advised that it is unlikely the terms of the waiver would be legally effective, and the waiver would not replace the organisation’s legal duty to protect the health and safety of volunteers.

This document is by way of general information and is designed for discretionary use. It does not replace the requirement for the reader to obtain specific operational, legal, insurance, or other advice. Volunteering Australia accepts no responsibility for any errors in the information provided, nor the effect of any such errors.

¹ It is important to remember that having insurance does not transfer risk away from an organisation. It is a way of compensating organisations for loss when an insured event occurs, provided that foreseeable risks have been managed. See, for example <http://understandinsurance.com.au/identifying-and-managing-your-risks>

² <https://www.pm.gov.au/media/meeting-national-cabinet>

³ https://www.nfplaw.org.au/sites/default/files/media/Managing_the_return_of_volunteers_to_the_workplace_1.pdf

Volunteer insurance cover during COVID-19

Generally, volunteers are not covered by Workers Compensation and Voluntary Workers Personal Accident Insurance only covers volunteers for *injury* in the workplace and not *illnesses* and so is unlikely to cover a volunteer infected with COVID-19.

If someone contracts COVID-19 whilst volunteering, they can incur out of pocket medical expenses and loss of income (from being unable to undertake paid work). Being required to isolate for COVID-19 reasons (which may be connected to their volunteering) also means that individuals may lose income if they do not have paid leave available in relation to their paid work. This risk may be partially mitigated for workers who are eligible for the Pandemic Leave Disaster Payment, and other payments available from state and territory governments.

Whilst these developments are welcome, it cannot be assumed that all individuals who lose income because of COVID-19 will be able to access these payments. Further, as highlighted above, it does not address the out of pocket medical expenses that volunteers might incur related to contracting COVID-19, and which are not covered by Voluntary Workers Personal Accident Insurance.

What should volunteer involving organisations do?

Volunteering Australia is recommending that volunteer involving organisations should be exercising exceptional risk management with regards to volunteers. This means undertaking ongoing risk assessments and reviewing risk management plans.

Volunteering Australia strongly recommends that volunteer involving organisations seek advice from their insurer about the implications of the pandemic regarding their volunteer workforce. Organisations should check what is and what is not covered. This includes in the context of asking volunteers to work remotely. There may be further insurance considerations associated with volunteers working remotely, for example cybersecurity concerns with the use of personal or work-owned devices.

Organisations need to be aware insurance and worker protection is a complex area and, as states and territories declare 'states of emergency' or 'states of disaster' and enact new legislation, advice may change.

Volunteering Australia is also strongly encouraging organisations to communicate with volunteers about the limitations of insurance policies. This will help volunteers to make informed decisions about their involvement.

Will organisations be held liable if a volunteer contracts COVID19?

Justice Connect⁴ advise that an organisation could be held liable in certain circumstances. This is because organisations have safety obligations under the common law of negligence, under the negligence provisions in state and territory legislation and in many circumstances under work, health and safety laws.

Under these laws all organisations are required to take action to manage the risk of COVID-19 to workers (including volunteers) and others in the work environment. The outbreak of COVID-19 can be regarded as a foreseeable risk from which organisations are required to take reasonable steps to protect volunteers and individuals that volunteers interact with.

⁴ <https://www.nfplaw.org.au/free-resources/managing-people/managing-volunteers/covid19>

Organisations must comply with national and state or territory COVID-19 public health directions and could face legal consequence if they fail to do so. Justice Connect advise that if organisations undertake thorough risk assessments and comply with all health directives, there is a low risk of an organisation being found to be liable.

Some organisations are asking volunteers to sign ‘waivers’ designed to protect against claims. Justice Connect advise that it is unlikely the terms of the waiver would be legally effective, and the waiver would not replace the organisation’s legal duty to protect the health and safety of volunteers. We do not recommend that organisations ask volunteers to sign these waivers.

However, organisations could decide to ask volunteers to sign a declaration that they will practise ‘COVID-safe’ behaviour and let the organisation know if they have been exposed to someone with COVID-19 or are feeling unwell and have virus symptoms. This declaration could acknowledge that the organisation cannot guarantee all risk is eliminated and that the volunteer is not covered (if this is the case) by Voluntary Workers Personal Accident Insurance in the event they contract the coronavirus.

Could organisations be in breach of anti-discrimination laws for standing down older volunteers?

A volunteer involving organisations can legitimately ask older volunteers (or others at increased risk of adverse COVID-19 health outcomes) not to return to the workplace if it is to comply with public health directives from the Commonwealth or State/Territory governments.

In other circumstances, volunteer involving organisations should be avoiding blanket policies that treat one category of volunteering differently from another category. To do so may contravene anti-discrimination laws. This is a highly complex legal area. Discrimination laws exist at a federal level, and in each state and territory. Whether volunteers are covered by anti-discrimination laws differs from organisation to organisation and from jurisdiction to jurisdiction.

We understand some organisations are citing lack of insurance cover for not bringing back older volunteers. Volunteer involving organisations should be undertaking thorough risk assessments and lack of insurance cover should not be used as an excuse for age discrimination. However, a specific role and its risks can sometimes define insurance coverage and exclusions.

The Justice Connect page ‘Managing volunteers through COVID-19’ includes more information on the legal obligations of volunteer involving organisations.⁵

About Volunteering Australia

Volunteering Australia is the national peak body for volunteering, working to advance volunteering in the Australian community. The seven State and Territory volunteering peak bodies work to advance and promote volunteering in their respective jurisdictions and are Foundation Members of Volunteering Australia.

Volunteering Australia’s vision is to promote strong, connected communities through volunteering. Our mission is to lead, strengthen, promote and celebrate volunteering in Australia.

⁵ <https://www.nfplaw.org.au/free-resources/managing-people/managing-volunteers/covid19>