

Western Australia

**Volunteers and Food and Other Donors  
(Protection from Liability) Act 2002**

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## **Volunteers and Food and Other Donors (Protection from Liability) Act 2002**

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## **Volunteers and Food and Other Donors (Protection from Liability) Act 2002**

**An Act —**

- **to protect certain volunteers from incurring civil liability when doing community work on a voluntary basis;**
- **to provide that community organisations that organise community work to be done by volunteers may incur the civil liability from which the volunteers are protected when doing that work;**
- **to protect persons who donate food or grocery products from incurring civil liability for personal injury resulting from the consumption of that food or the use of those grocery products, and for related purposes.**

*[Long title amended by No. 53 of 2006 s. 4.]*

## Part 1 — Preliminary

*[Heading inserted by No. 53 of 2006 s. 5.]*

### 1. Short title

This Act may be cited as the *Volunteers and Food and Other Donors (Protection from Liability) Act 2002*<sup>1</sup>.

*[Section 1 amended by No. 53 of 2006 s. 6.]*

### 2. Commencement

- (1) This Act comes into operation on a day to be fixed by proclamation<sup>1</sup>.
- (2) Different days may be fixed under subsection (1) for different provisions.

### 3. Terms used in this Act

- (1) In this Act, unless the contrary intention appears —  
**community organisation** means —
  - (a) a State agency or instrumentality or a department of the Public Service; or
  - (b) an incorporated association under the *Associations Incorporation Act 1987*, a local government or other body corporate,  
that organises the doing of community work by volunteers;  
**community work** means work organised by a community organisation to be done —
    - (a) for a religious, educational, charitable or benevolent purpose;
    - (b) for the purpose of promoting or encouraging literature, science or the arts;
    - (c) for the purpose of sport, recreation or amusement;

- (d) for the purpose of caring for, treating or otherwise assisting people who need assistance because of a physical or mental disability or condition;
- (e) for the purpose of conserving or protecting the environment;
- (f) for the purpose of promoting or preserving historical or cultural heritage;
- (g) for the purpose of establishing, carrying on, or improving a community, social or cultural centre;
- (h) for the purpose of promoting the interests of a local community;
- (i) for a political purpose;
- (j) for any other purpose approved under section 4(1)(f) of the *Associations Incorporation Act 1987*; or
- (k) for a purpose prescribed by the regulations,

but does not include work of a kind that is prescribed by the regulations as work that is not to be regarded as community work for the purposes of this Act;

**food** has the meaning given to that term in the *Food Act 2008* section 9;

**grocery product** means —

- (a) a personal hygiene product; or
- (b) a household cleaning product; or
- (c) a medical product that may be sold or supplied without a written prescription that authorises that sale or supply; or
- (d) anything prescribed by the regulations for the purposes of this definition,

but does not include food;

**organised** includes directed and supervised;

**personal injury** includes —

- (a) death; and
- (b) pre-natal injury; and

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- (c) impairment of a person's physical or mental condition;  
and
- (d) disease; and
- (e) recurrence, aggravation or acceleration of an injury or  
disease;

**volunteer** has the meaning given by section 4.

- (2) A reference in this Act to the doing of anything by a volunteer includes a reference to the omission by a volunteer to do anything.

*[Section 3 amended by No. 53 of 2006 s. 7; No. 43 of 2008 s. 149.]*

**4. "Volunteer", meaning of**

- (1) In this Act —

**volunteer** means a person who does community work on a voluntary basis but does not include a person who is —

- (a) taken to be performing a function under an emergency services Act within the meaning of section 37(1a) of the *Fire and Emergency Services Authority of Western Australia Act 1998*;
- (b) performing a function as an honorary fisheries officer within the meaning of the *Fish Resources Management Act 1994*;
- (c) performing a function as an honorary wildlife officer, honorary forest officer, honorary ranger or honorary conservation and land management officer within the meaning of the *Conservation and Land Management Act 1984*; or
- (d) performing a function prescribed by the regulations.

- (2) For the purposes of subsection (1), a person does community work on a voluntary basis if the person —

- (a) receives no remuneration for 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.
- (3) 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.

**5. Application**

- (1) Part 2 applies in relation to civil liability for a thing done by a volunteer after the commencement of this Act.
- (1a) 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<sup>1</sup>.
- (2) This Act does not limit the protection from liability given by another written law.

*[Section 5 amended by No. 53 of 2006 s. 8.]*

## **Part 2 — Protection of volunteers from liability**

*[Heading inserted by No. 53 of 2006 s. 9.]*

### **6. Protection of volunteers from liability**

- (1) Subject to subsections (2) and (3), a volunteer does not incur civil liability for anything that the volunteer has done in good faith when doing community work.
- (2) Subsection (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 of 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.
- (3) The protection given by subsection (1) does 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 instructions given by the community organisation;
  - or
  - (b) whose ability to do the community work in a proper manner was, at the relevant time, significantly impaired by alcohol or drugs.

- (4) In this section —

**drugs** means drugs that are taken voluntarily otherwise than for therapeutic purposes;

**motor vehicle** has the meaning given in section 3(1) of the *Motor Vehicle (Third Party Insurance) Act 1943*.

**7. Liability of community organisations**

- (1) A community organisation incurs the civil liability that, but for the operation of section 6(1), a volunteer would incur for a thing done by the volunteer when doing community work organised by the community organisation.
- (2) The operation of subsection (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.
- (3) If more than one community organisation is involved in organising the community work referred to in subsection (1), that subsection applies to the community organisation that principally organises, or the community organisations that principally organise, that work.
- (4) Liability that would be incurred under subsection (1) by a community organisation that is a State agency, if the State agency were a body corporate, is incurred by the State.
- (5) In subsection (4) —
- State agency** means —
- (a) a State agency or instrumentality that is not a body corporate; or
  - (b) a department of the Public Service.

**8. Certain volunteers' indemnities etc. have no effect**

An agreement, undertaking or arrangement has no effect to the extent that it provides for a volunteer to give a community

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organisation an indemnity against, or to make a contribution to a community organisation in relation to, a liability that —

- (a) the volunteer would incur but for the operation of section 6(1); and
- (b) the community organisation incurs under section 7(1).

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**Part 3 — Protection of food donors and grocery product donors from liability**

*[Heading inserted by No. 53 of 2006 s. 10.]*

**8A. Protection of donors of food and grocery products from liability**

- (1) A person (the *donor*) who donates food or a grocery product in the circumstances described in subsection (2) does not incur civil liability for any personal injury that results from the consumption of the food or the use of the grocery product.
- (2) The circumstances are —
  - (a) that the donor donated the food or grocery product —
    - (i) in good faith for a charitable or benevolent purpose; and
    - (ii) with the intention that the consumer of the food or user of the grocery product would not have to pay for it;
  - and
  - (b) that the food was fit for human consumption, or the grocery product was safe to use, at the time it left the possession or control of the donor; and
  - (c) 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 — that the donor informed the person to whom the donor gave the food or grocery product of those handling requirements; and
  - (d) if the food or grocery product remained fit for human consumption, or safe to use, for only a limited time after it left the possession or control of the donor — that the donor informed the person to whom the donor gave the food or grocery product of that time limit.

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- (3) In subsection (1) —  
***person who donates food or a grocery product*** does not include a person who distributes food or a grocery product donated by another person.

*[Section 8A inserted by No. 53 of 2006 s. 10.]*

## **Part 4 — Regulations**

*[Heading inserted by No. 53 of 2006 s. 11.]*

### **9. Regulations**

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

### Notes

- <sup>1</sup> This is a compilation of the *Volunteers and Food and Other Donors (Protection from Liability) Act 2002* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

#### Compilation table

| Short title   | Number and year | Assent      | Commencement  |
|---|-----------------|-------------|---|
| <i>Volunteers (Protection from Liability) Act 2002</i> <sup>2</sup>   | 32 of 2002      | 14 Nov 2002 | 1 Jan 2003 (see s. 2 and <i>Gazette</i> 17 Dec 2002 p. 5905)                |
| <i>Volunteers (Protection from Liability) Amendment Act 2006</i>  | 53 of 2006      | 26 Oct 2006 | 2 Dec 2006 (see s. 2 and <i>Gazette</i> 1 Dec 2006 p. 5297)                 |
| <b>Reprint 1: The <i>Volunteers and Food and Other Donors (Protection from Liability) Act 2002</i> as at 19 Jan 2007</b> (includes amendments listed above) |                 |             |   |
| <i>Food Act 2008</i> s. 149   | 43 of 2008      | 8 Jul 2008  | 24 Oct 2009 (see s. 2(1)(b) and (2) and <i>Gazette</i> 23 Oct 2009 p. 4157) |

- <sup>2</sup> Now known as *Volunteers and Food and Other Donors (Protection from Liability) Act 2002*; short title changed (see note under s. 1).