



INFORMATION BRIEF-PROPOSED CHANGES TO EQUAL OPPORTUNITY ACT 1995 TO INCLUDE COVERAGE OF VOLUNTEERS

Introduction

The current Equal Opportunity Act (EOA) does not cover volunteers. This means in effect volunteers can and are discriminated against because there is no simple legal recourse for volunteers.

Volunteering has changed. Many people now volunteer at least partly to access work experience and training. Given that changes under Job Services Australia will greatly expand the numbers of job seeker looking for volunteering work, the volunteer community can expect more vocational focussed volunteers.

Discrimination is always bad and it is particularly harmful to the spirit of volunteering. And for increasing numbers of volunteers discrimination may deny access to volunteer work required for income support or future employment, and ultimately meaningful community participation.

The EOA outlaws discrimination on the basis of specific “attributes” including race, age, sex, religious belief, parental status etc.

In 2007 the state government appointed Julian Gardner to look at the EOA, and his 2008 report recommended that volunteering work be included under the relevant definitions of employees, employer and employment. Volunteers become employees, for the purposes of the EOA.

This means that volunteer involving organisations now become employers in relation to volunteers as well as paid staff. For those volunteer involving organisations who don’t have paid staff but have volunteers, they will become employers covered by the EOA and will need to comply with the EOA in their treatment of volunteers. This is a major change with significant implications.

Recently the Department of Justice (DoJ) began consulting stakeholders about these proposed changes. Volunteering Victoria has taken an active role in helping DoJ understand the challenges in the implementation and operation of the proposed amendments.

The key issues raised by proposed amendments

Few would deny that volunteers deserve equal opportunity. Volunteers also deserve effective protection under the law. The thesis of the Gardner report is that volunteers should be treated as workers. This is the rationale underpinning the proposed amendments.

The proposed amendments will make discrimination on the basis of a listed attribute unlawful, when a volunteer worker applies for volunteer work. It will also outlaw offering a person worse terms because of the “attribute” covered by the EOA.

What will this mean for volunteer involving organisations (VIO) is that volunteers will be covered in the same manner paid staff are. This will apply to VIO with no paid staff. Simply, volunteers, for the purpose of the EOA, will become workers.

Volunteering Victoria has already raised a number of scenarios with DoJ that make the application of proposed changes potentially complicated: for instance where there are 10 volunteers, seven on the management committee (who also do work) and the rest just doing work. Who are the employers and who are the employees? What if the association is unincorporated? What constitutes employment? If I put out the cones at Little Athletics am I “employed”?

These complications boil down to the questions *who is employing* and *what work is employment*. There are clear issues of implementation that impact on governance, resources, states of knowledge and a range of issues that demonstrate the mismatch of resources between volunteer-only organisations and employer organisations (which to a great extent is based on absence of funding).

The proposals also extend “vicarious liability” to volunteers. This means that VIO could be responsible for breaches of the EOA committed by a volunteer. However with careful governance and management procedures this liability can be avoided by proper training, good written policies and effective monitoring and complaints mechanisms. Of course the issue is resources.

A key issue-exceptions and exemptions

There are a range of exemptions from the application of EOA provisions. They relate mainly to the situation where

- it would be an *unreasonable* burden on the organisation to be required to make the required adjustments for workers with an impairment
- provision of some kinds of personal services delivered in a person’s home
- there is a relevant religious exemption

These exemptions are complex and specific in their application, and do not solve the issues that arise from the issues about definitions looked at above. The exemptions are also under review, but they do allow some rationale-based flexibility.

Next steps

Volunteering Victoria will be looking to make submissions to government about the implementation and operational issues raised in this paper, including the resourcing and training of VIOs to deal with the changes.

But it is important that we put fact-based scenarios to government to help them understand the needs of the volunteer community. If you have particular scenarios that illustrate these challenges let us know.

Currently the proposed changes are just that. A consultation paper, which forms the basis of this information brief, has been distributed to key stakeholders. It is not clear if we will be able to comment on any draft legislation. Volunteering Victoria, working together with other stakeholders will continue to raise issues about the implementation and operation of the proposed amendments.

While all would agree that volunteers deserve equal opportunity, Volunteering Victoria is working with DoJ to ensure the changes have a positive impact on volunteering, rather than an impact which discourages participation in volunteering. DoJ have commenced this consultation process with a commitment to listen to us. We will continue to detail our and your concerns.

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