

Not For Profit Pain: Managing Community Organisation Safely

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"Oh it's the Meek...Blessed are the meek! That's nice, I'm glad they're getting something 'cos they have a hell of a time." Member of the Crowd, Sermon on the Mount, Life of Brian

Introduction

There are a large number of not-for-profit (**NPP**) organisations in the community which rely heavily on the work of volunteers. These organisations range from 'community sector organisations' which provide charitable services to parts of the community, to sporting clubs and groups which exist as a meeting point for people with shared interests.¹

The precise number of NPPs in Australia is hard to determine, with estimates ranging from 40,976² to 700,000.³ What is known is that without the large volunteer workforce which provides time and labour without remuneration, these organisations could not exist.⁴

Over the last twelve months, funding cuts have hit many NPP organisations, leaving them struggling to raise the funds necessary to secure on-going delivery of their services.⁵ As these organisations attempt to maintain the same level of service delivery, they will be unable to focus on broader organisational development, such as training and risk assessment.

This paper examines the obligations which are incurred by NPP organisations, and the particular risks that arise in the context of a NPP organisation. As we will see, the very passion and commitment that motivates volunteer workers is often the source of

¹ The majority of these organisations provide human services—health, education and social services—and receive the majority of their funds from governments. The remainder include a wide variety of cultural, sporting, political, religious, environmental, and business and professional organisations: website, Australian Bureau of Statistics: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8106.0Main+Features32006-07>

² In 2008, the ABS reported that at the end of June 2007, there were 40,976 not-for-profit organisations in Australia: website, Australian Bureau of Statistics:

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8106.0Main+Features32006-07>

³ David Crosbie, 'Survival Crisis Hits Not-For-Profit Sector' *The Australian* 7 June 2008

⁴ An estimated 2,434,815 volunteers provided services during 2006-07: website, Australian Bureau of Statistics:

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8106.0Main+Features32006-07>

⁵ David Crosbie, 'Survival Crisis Hits Not-For-Profit Sector' *The Australian* 7 June 2008

the risks incurred when people perform unpaid work. Volunteers are generally driven by benevolent or altruistic motives, which means that their focus tends to be on the welfare of the people to whom the organisation is providing its services. This may be at the cost of the volunteers' own safety and wellbeing.

What legal obligations apply?

The business structure of NPP organisations varies. Some are small, unincorporated organisations, some are registered as co-operatives and some are large incorporated bodies. The obligations incurred by the organisation itself, and by those responsible for the management of the organisation will vary, depending on the type of structure adopted. For example, directors of corporations and co-operatives have specific duties imposed by legislation which applies to those bodies.⁶

In addition, the directors of the organisation, or the organisation itself, may be liable under OHS legislation for failing to maintain a safe workplace. If the organisation has employees, it will be an 'employer' for the purposes of Occupational Health and Safety legislation, and will owe a duty to ensure, so far as is practicable, the health, safety and welfare at work of all its employees.⁷

Further, the OH&S Act imposes obligations on people who manage or control 'workplaces' to ensure that the workplace is safe and without risks to health.⁸

The first question this raises is what is a 'workplace' for the purposes of the Act. Does it require the presence of paid workers, or could it extend to a place where the work provided is entirely voluntary? The answer is currently no, as OH&S legislation defines the concept of a 'workplace' with reference to the presence of employees. For example, the definition of 'workplace' in the Victorian *Occupational Health and Safety Act 2004* (section 5) is: *a place, whether or not in a building or structure, where employees or self-employed persons work*. 'Employee' is defined in the same act to mean: *a person employed under a contract of employment or contract of training*. But it is also clear that where paid employees are found in the workplace,

⁶ *Corporations Act 2001*; *Co-operatives Act 1996* (Vic).

⁷ Examples of prosecutions of NPP organisations are *McGowan v Abc* [2003] NSWIRComm 294 (16 September 2003); *Inspector Swadling v The Sydney Festival Ltd* [2003] NSWIRComm 285 (11 September 2003); *Inspector Drewson v Confederation of Australian Motor Sport Ltd* [2006] NSWIRComm 388 (12 December 2006).

⁸ *Occupational Health and Safety Act 2004* section 26, inserted in 2008 by the *Occupational Health and Safety Amendment (Liability of Volunteers) Bill*.

the entity who manages or controls that workplace will owe duties to everyone who enters that workplace, including volunteers.

Board of Directors

It is important to realise that special responsibility is borne by the Board of Directors of any organisation, including a NPP organisation such as a co-operative. The Board of Directors is the body which manages the organisation, often in conjunction with a paid CEO. Members of the Board who fail to familiarise themselves with the safety requirements of OH&S may find that they are in breach of the director's duties imposed on them by common law and statute.⁹ However, where an "officer" of an organisation (which includes a director) is a volunteer, it appears that he or she will not be liable for prosecution under the OH&S Act for anything they do or fail to do as a volunteer.¹⁰ I say "appear" as volunteers are certainly excluded from the two sections of the Victorian Act which governs the liability of individual officers (sections 144 and 145). However, there are two sections of the Act which are silent on the liability of volunteers, and which could potentially apply to the director of a NPP organisation (section 26, which deals with the liability of people who manage or control workplaces, and section 32 which penalises people who recklessly endanger others in a workplace).¹¹

Even though unpaid Board members will not be liable for OH&S prosecution under the Act, a paid CEO or manager can be. Therefore, it is important for all directors and managers of the organisation to provide leadership in health and safety matters, and to ensure the CEO and other managers have OH&S reporting functions and responsibilities. Without this leadership, the organisation, the CEO and other employees could well be prosecuted. In turn, and most importantly, this protects the people who volunteer and the people who enjoy the benefits of the NPP's services. Unfortunately, many Board members are unwilling to involve themselves in operational detail, and will not familiarise themselves with the risks inherent in the organisation's activities. This is particularly the case when the organisation is managed by a pro-active CEO.

⁹ For example, directors must execute their powers and discharge their duties with reasonable care and diligence: *Corporations Act 2001* section 180.

¹⁰ *Occupational Health and Safety Act 2004* section 144(5) and 145(5)

¹¹ I note that WorkSafe expressly states that volunteer directors are not liable for prosecution at all: see WorkSafe guide, *Community Service Volunteer Boards and Committees*.

The Board members may feel that the Board's role should be focussed on strategic decisions which relate to the longer term goals of the organisation. However, the responsibilities of Board members cannot be entirely delegated, and all Board members have a duty to ensure that the performance of the CEO and other managers within the organisation is monitored. This means that Board members must insist on regular reporting, ensure that proper systems and processes are in place, and follow up on initiatives.

What is the nature of the risks which arise in NPPs?

If you have any doubt at all that volunteer workers incur risks in the workplace, then you only need to picture fund raisers weaving in and out of traffic at traffic lights with their collection tins to remove any doubt. There are countless ways that unpaid workers put themselves at risk. Whether it is driving a vehicle, providing support to people with addictions, cooking in a soup kitchen, or coaching a football team, the risks which arise are as diverse as the activities themselves.

Unfortunately, there are some features of NPP organisations which are endemic and which tend to exacerbate the risks.

First, they rely on the goodwill and commitment of the volunteers. As the volunteers are not required to be there, but involve themselves out of a sense of commitment, they may be reluctant to raise safety-related issues. Volunteers are aware that NPP organisations are often doing their best on a limited budget, and volunteers generally put the concerns of others before their own welfare. This is exacerbated by the fact that many organisations focus on a single shared activity which would not be commercially viable, and which attracts volunteers with an altruistic motivation. Consequently, there is no guarantee that the participants have any broader business skills or knowledge of management techniques.

Secondly, NPP organisations are generally cash-strapped and must rely on government subsidies, membership fees or fundraising. Consequently, issues such as risk assessment, the development of documented procedures and training are likely to receive little attention. Most NPP organisations will seek to cut corners in running the organisation rather than cut services that are desperately needed within their communities. Further, government funding is increasingly moving away from traditional grant funding towards commercial relationships, where the government

becomes a purchaser of services. Under this model, funding is often for a specific program for a set number of people. The amount provided will generally only cover the direct cost of providing the service. This leaves no money to invest in ongoing organisational capacity, such as IT or training.¹² This will increase pressure on the organisation, particularly in an economic and political climate in which government increasingly relies on the NPP sector to deliver services to people in need.

Thirdly, the personnel who manage the organisation generally hold down paid employment outside the organisation, and are only able to contribute a limited amount of time to their unpaid role. Not surprisingly, they will focus the time they have available on the core activities of the organisation, such as service delivery, fund raising and management of finances.

For these reasons, the managers of NPP organisations are unlikely to have access to skill development in areas such as risk management, and the organisation is unlikely to develop a library of critical documents or to know of the need for documented systems and procedures.

Volunteer Safety Management Program

All NPPs need to adopt a volunteer safety management program. As with any safety management program it must be relevant to the organisation, documented in a sensible fashion and thorough in its scope. Complementary processes of consultation, training and review must be implemented.

What must be avoided is a safety management plan which is too complicated to implement or ill-adapted to the needs of the organisation. Organisations should avoid adopting a generic system which is 'one size fits all'. Most NPPs focus on a single activity or service. This means that the program adopted can be more tailored than the program which would be suitable for a large multi-faceted organisation. A NPP should make the most of this advantage by focussing on the activities which it performs, and growing the program from the ground up. The involvement of volunteers is critical. All workers should be trained in risk identification and assessment. Regular communication with volunteers should occur, perhaps through

¹² David Crosbie, 'Survival Crisis Hits Not-For-Profit Sector' *The Australian* 7 June 2008

the use of newsletters. All volunteers must be provided with a mechanism for communicating their health and safety concerns.

Finally, health and safety must be institutionalised, so that all members of the organisation, including each Board Member, take personal responsibility. Too many organisations assign one person to the role of looking after OH&S, with the result that nobody else takes an interest, and everyone else walks the other way when they see the OH&S person coming.

Conclusion

The volunteers who provide their services to NPPs are entitled to expect that their contribution is valued as highly as paid workers, and that their health and safety is an equal priority. NPPs cannot allow the altruistic ethos which lies at their heart to undermine the commitment to health and safety which ought to form part of their core business. All NPPs should adopt a volunteer safety management program, and regularly monitor training and compliance to ensure that the organisation's duties are satisfied.

The meek may well inherit the earth, so let's ensure they are free from injury when the day finally arrives.