



**Submission to the
Law Reform Commission of Western Australia**

**on the
Review of the *Equal Opportunity Act 1984 (WA)* – Project 111 Discussion Paper**

November 2021

By email to: equalopportunityreview@justice.wa.gov.au

Overview

This submission responds to the “Review of the *Equal Opportunity Act 1984 (WA)* – Project 111 Discussion Paper” (Discussion Paper)¹

Volunteering WA welcomes the opportunity to provide a submission to the review of the *Equal Opportunity Act 1984 (WA)* (The Act) for consideration.

This submission addresses questions posed in the Discussion Paper pertaining to volunteers, in terms of the extension of protections from sexual harassment and the definition of employment. It also highlights the nature of the volunteer sector and the criticality of its role in Western Australia.

In summary Volunteering WA:

- **strongly supports the proposal to expressly prohibit duty holders from sexually harassing volunteers; but**
- **believes there is a need for considerably more analysis and engagement with the voluntary sector on any legislative changes as they pertain to the extension of the definition of employment.**

Any legislative changes need to be supported by a realistic timetable and accompanied with resources to support awareness, implementation, compliance and access to general and legal advice.

About Volunteering WA

The Governor of Western Australia, Honourable Kim Beazley AC, is the patron of Volunteering WA. We are the peak body for volunteering in WA with over 30 years of expertise. Our mission is to lead, advance and celebrate volunteering, and our vision is for every Western Australian to enjoy volunteering experiences that enrich our state.

Volunteering WA:

- represents volunteering across the State, including all volunteer involving organisations, and their 523,000 volunteers;
- supports over 750 member organisations to attract and manage volunteers and increase their capability and capacity;
- works closely with the Minister for Volunteering and the State Government to collaborate on the implementation of the State Volunteering Strategy 2018; and
- leads and hosts several events that celebrate and recognise the contributions of our volunteers, including the annual WA Volunteer of the Year Awards.

¹ <https://www.wa.gov.au/government/announcements/discussion-paper-review-of-the-equal-opportunity-act>

Current state of volunteering in Western Australia

In 2020, 523,600 or 26% of all Western Australians volunteered through an organisation or group. WA volunteers deliver essential:

- Government services;
- community and public health services;
- community legal services;
- emergency response and recovery;
- visitor and tourism guides; and
- environmental care and conservation.

Volunteering helps to build strong and resilient communities, encourages economic participation, promotes psychological wellbeing, and increases social inclusion and cohesion.

There has been a significant reduction in volunteer participation in WA over the past six years, with over 151,000 fewer volunteers - a 22% reduction. This continues the trend first observed in 2019 (pre-COVID) and is consistent with national experience.

The loss of volunteer capacity is due to a number of reasons, including people become more time poor, fatigue due to the intense and prolonged nature of many emergencies (such as bushfires and COVID-19) and increasing requirements for training, administration and compliance.

For example, over 50% of emergency services' volunteers in WA contemplate leaving on a regular basis with over 15% expecting to leave in the next two years. Almost half of the national aged care volunteer workforce was lost in the year to August 2021.

Interestingly, the rate of informal volunteering is higher – with 614,000 or 30% of the State's population volunteering outside of incorporated associations or organisations. This volunteering is not covered by any legislative protections or provisions. While highly beneficial to the social fabric of Western Australia, informal volunteering generally does not deliver, nor can be relied upon to deliver, the majority of essential services outlined.

Should the Act be amended to expressly prohibit duty holders from sexually harassing unpaid or volunteer workers?

Volunteering WA notes and supports the inclusion of volunteers in the scope of the recent *Sex Discrimination and Fair Work (Respect at Work) Bill 2021 (Cth)*.

We do not believe that there is any sound policy basis for not extending these protections to volunteers in WA. This would improve national consistency between jurisdictions and at different levels of Government, which would help to facilitate training and education in the sector.

Most importantly, it would create a safer environment for all volunteers in WA.

For these reasons, Volunteering WA strongly supports the proposal to expressly prohibit duty holders from sexually harassing volunteers.

Should the definition of employment in the Act be extended to include unpaid and voluntary workers?

There are some characteristics of voluntary organisations and the nature of volunteering, which are helpful to understand:

- volunteering is a much broader construct than simply ‘unpaid work’;
- there are a range of settings, motivations, rewards, conditions, costs and benefits that may be significantly different to paid employment;
- half of all charities have no paid staff and rely on volunteers to coordinate the involvement of other volunteers;
- it is not unusual for volunteer to staff ratios to exceed 35:1;
- the smaller the volunteer organisation, the higher the average volunteer to staff ratio;
- as outlined, formal volunteering participation is declining; and
- informal volunteering (not covered by any legislative provisions) is increasing.

The proposal in the Discussion Paper that “*the relationship between... volunteer workers and the person in charge of them is, in substance, an employment relationship*” highlights gaps in understanding of these dynamics.

Recent statutory changes impacting voluntary organisations and volunteers in WA include the passage of the:

- *Work Health and Safety Act 2020 (WA)*;
- *National Disability Insurance Scheme (Worker Screening) Act 2020 (WA)*;
- *Transport (Road Passenger Services) Act 2018 (WA)*;
- a number of Public Health Directives under the *Public Health Act 2016 (WA)* pertaining to the State Government’s Mandatory Vaccination Policy including for:
 - community care services volunteers
 - fire and emergency services volunteers
 - aged care volunteers
 - health volunteers.

In addition, there are increasing requirements for volunteers engaged in some sectors governed by the Commonwealth (such as in aged care and disability). The Religious Freedoms legislative amendments currently being considered by the Commonwealth Government are also relevant, particularly for the significant proportion of faith-based volunteers (the second largest sector for volunteer participation after sport and recreation in Australia).

Unsurprisingly, most small and medium voluntary organisations are struggling to become aware of, understand and comply with the scale and pace of these changes.

In most instances, there is a recognised need for specific exemptions, concessions or limitations of scope to ensure the net benefit of any statutory changes on voluntary organisations, volunteers and the beneficiaries of their service.

This case study provides an example of how impacts, costs and benefits on volunteers and their services need to be carefully considered and open for consultation, prior to introduction.

The *Transport (Road Passenger Services) Act 2018* (WA) was introduced with an objective to promote the provision of safe, flexible passenger transport, partially in response to the introduction of ride share services in the market.

The legislation introduced significant changes to the licensing of volunteer transport drivers in WA including increasing administrative and financial burdens on volunteers and volunteer organisations and the risk of significant penalties.

Passenger transport is a commonly held volunteer role in WA including:

- patient transport for hospitals, clinics and nursing homes;
- seniors transport to shops, doctor surgeries and appointments as community services delivered by many Local Government Authorities across the State;
- transport for people with disabilities provided by the not-for-profit sector; and
- transport to increase access to and participation in community events, including for CALD communities.

All the above roles involve volunteers giving their time freely to assist in the transport of disadvantaged members of our community.

The legislative changes caused considerable distress to impacted volunteers and threatened closure of a number of community transport services due to financial and administrative unsustainability.

Advocacy led to changes being introduced in 2021 to exclude volunteers from the scope of the legislation.

Employment legislation is complex, with overlays across portfolios and at State and Commonwealth levels.

This makes access to the law prohibitive. For example, there is currently no funded service (for general or legal advice and representation) in WA to support voluntary organisations or volunteers with regard to bullying complaints. Even basic issues such as determining the primary legislation and jurisdiction can be difficult to determine for not-for-profit organisations.

We feel that there is a need for specific analysis of the impact of any changes to voluntary organisations and volunteers. This needs to consider:

- impacts on volunteer organisations
 - including recruitment, design of volunteering roles, recognition, reimbursement, management of grievances and termination of roles,
 - adequate support for implementation including education and training, and
 - nature of penalties;
- impacts on volunteers
 - including management of grievances and alleged breaches of the legislation,
 - nature of remedies;
- impacts on peak body organisations
 - including adequate resourcing to support the volunteer sector with general

- advice and training; and
- identification and adequate resourcing of Community Legal Centres
 - including availability of legal advice and representation for voluntary organisations and volunteers.

As outlined in the Discussion Paper, most Equal Opportunity legislation in Australia does not currently extend the definition of employment as including voluntary work (i.e., in NSW, Victoria, Queensland, WA, Tasmania).

While the proposal outlined may have some merit, law reform requires all of those impacted to have the opportunity to shape and comment on proposed changes and to have access to the law, legal advice and representation. This is currently very limited in the sector for the reasons outlined.

Volunteering WA therefore believes there is a need for considerably more analysis and engagement with the voluntary sector on any legislative changes, as they pertain to the extension of the definition of employment.

Ongoing resources will be needed to provide support for both volunteer organisations and volunteers in navigating the legislation, particularly the queries pertaining to jurisdictional coverage and application.

In closing

Volunteering WA appreciates the opportunity to provide this submission for consideration.

We would welcome further understanding, analysis and engagement with ourselves and the voluntary sector on any proposed changes.



Tina Williams

**Chief Executive Officer
Volunteering WA**