



# Not-for-Profit and Volunteering Advocate Proposal

## Facts

- There are **20,864 registered not-for-profit associations** in SA<sup>1</sup>
- **80%** of these organisations are 'Volunteer Associations' who have no employees<sup>2</sup>, so SA Work Health and Safety legislation (with its anti-bullying protections) doesn't apply
- More than **900,000 South Australians volunteer**, contributing about **1.7 million volunteer hours** each week.<sup>3</sup>
- This volunteering effort is valued at almost **\$5 billion** each year,<sup>4</sup> adding **11.5% to State GSP**<sup>5</sup>
- Alarming, formal volunteering is decreasing in South Australia, from a high of 51% of the population in 2006, to 42% today. This is adding extreme pressure on volunteers who serve in vital areas such as emergency services and home care.<sup>6</sup>
- Volunteers provided a volume of work equivalent to **107,400 full time jobs** in SA<sup>7</sup>
- **78%** of 1500 SA NFP's surveyed do not wish to volunteer on Boards because of 'red tape' i.e. excessive bureaucracy or adherence to official rules and formalities; and
- **87%\*** of grants from Round 58 of the DCSI small grants program were awarded to organisations with paid staff<sup>8</sup>
- The **value of volunteering** in SA more than **doubled** from 1992 (\$2.4 billion) to 2006 (\$4.89 billion)<sup>9</sup>
- In 2016, **58%** of South Australians living **regionally** engaged in formal volunteering compared to those living in metropolitan Adelaide (**37%**).<sup>10</sup>
- **21.4%** of South Australians volunteer - the highest number among the States and more than two points above the national average<sup>11</sup>
- **45%** of volunteers in SA grassroots associations had **negative experiences** while volunteering<sup>12</sup>

## Proposal

Volunteering SA&NT seeks the establishment of a new statutory position - a **NFP and Volunteering Advocate**. In listening to the needs of both the NFP sector and government, it is clear that there is no peak, other organisation or Government body that services these **identified gaps**. Gaps include:

- A focal point for engaging and advocating, and raising the profile of, the entire NFP sector across the State, including social enterprises
- Binding resolution of disputes and issues with and between volunteers - both for NFP volunteers and also for the over **100,000 people that volunteer for Public Sector agencies and departments** (not paid Public Sector workers volunteering), for whom the Public Sector Act 2009 and industrial instruments, such as awards and enterprise agreements do not apply
- Resolution of funding and procurement disputes between government and the NFP sector under the Stronger Together NFP Funding Rules and Guidelines
- Independent representation for the whole NFP sector to the Premier, Ministers and government

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<sup>1</sup> Consumer and Business Services, SA Government, 2016

<sup>2</sup> (Estimate) Mex, unpublished report, 2017

<sup>3</sup> Harrison Research, 2016

<sup>4</sup> Ironmonger, 2011

<sup>5</sup> Ironmonger, 2002

<sup>6</sup> Harrison Research, 2016

<sup>7</sup> Ironmonger, 2011

<sup>8</sup> (Estimate) Mex, unpublished report, 2017

<sup>9</sup> Ironmonger, 2011

<sup>10</sup> Harrison Research, 2016

<sup>11</sup> ABS Census, 2016

<sup>12</sup> Mex, unpublished report, 2017

- Recognising and promoting opportunities to reduce compliance burden and cut red tape
- Workforce development across the NFP sector
- Education, including promotion of existing, and possibly developing new, free online tools and resources, to support NFPs with governance and compliance, as well as training on NFP funding rules and guidelines
- Increasing three way relationships between philanthropy, government and the NFP sector
- The provision of independent advice and recommendations regarding NFP issues across all sectors to the State Government
- The need for coordinated advocacy – to both governments and the public – of the benefits and needs of social enterprise
- Making submissions to relevant inquiries on systemic issues and policy influences, programs and practices that effect the NFP organisations across all sector, across the State
- Ensuring NFPs are not disadvantaged by State Government processes or practices
- A public repository of NFP data across all NFP sectors, for both Government and NFP use

## Budget

Indicative Budget - \$300,000 p/a ongoing, for:

- NFP and Volunteering Advocate salary
- Dispute resolution support salary (part-time)
- Admin support salary (part-time)
- SA Regional education tour and ongoing promotion
- Website creation and marketing collateral

## Rationale

Democracy thrives when public policy and debates are informed by a range of voices, yet a recent study<sup>13</sup> shows that charities are self-silencing for fear of risking their funding or attracting retribution.

In 2015 the Human Services Partnership Forum recommended the development of “a mechanism for an advocate to represent the best interests of the not for profit sector in relation to funding matters” for all NFP sectors, including social enterprises, sports & recreation, environment, arts and human services.

As the NFP sector matures, there is more diversity in the range of types of volunteering in the community. Not only volunteering in the traditional sense, but also in **social enterprises** that rely on volunteers to execute their social agendas in either the community or the environment.

Nonetheless, serious breaches of trust between volunteers and the organisations they volunteer for have become more prevalent over recent years. Volunteering SA&NT is receiving an increasing number of complaints, and a real gap exists for those experiencing a loss of trust with some organisations. These complaints are mainly in the area of bullying and harassment, whistle blowing, social justice issues or unfair dealings when a volunteering arrangement comes to an end.

Whilst there is legislation to cover a number of issues for volunteers, gaps continue to exist. One prevalent gap is for Volunteer Associations who have no employees. They are not considered a

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<sup>13</sup> Civil Voices survey, Pro Bono Australia and the Human Rights Law Centre, 2017

Person Conducting a Business or Undertaking (PCBU)<sup>14</sup> or a 'constitutionally covered business'<sup>15</sup>. In South Australia, 80% of Volunteer Associations are run completely by volunteers: this means that **over 16,600 volunteer associations in South Australia are not covered by the WHS Act 2012** and have no legal protection under this Act for bullying and harassment.

Volunteers in the public sector are “not public sector employees or otherwise engaged pursuant to any form of contract. Consequently, governing legislation, such as the Public Sector Act 2009, and industrial instruments, such as awards and enterprise agreements, do not apply to them”.<sup>16</sup> Likewise, Public Sector workplace policies, procedures and guidelines applicable to employees do not apply to volunteers, however it is expected that volunteers will, as appropriate, be required to act in a manner consistent with them as a condition of the license or permission granted to them to act as a volunteer.

Additionally, anti-discrimination laws do not specifically apply to volunteers.

Education can play an important role to support the sector in understanding its obligations to its volunteers, however this gap, as highlighted in the case study below, will continue until there is an appropriate form of binding redress for these disputes.

Volunteering plays a key role in sustaining healthy, resilient communities and contributes significantly to the quality and vibrancy of our society.

It is vital that we create a shared future for volunteering in South Australia by supporting volunteerism in its many forms with a real solution to the existing gaps for their protection, for dispute resolution, for risk mitigation and ultimately increasing South Australia's rate of economic growth.

## Further data

- The **Social capital coefficient** means a one-unit increase in social capital results in a **.63% increase** in South Australia's rate of economic growth<sup>17</sup>
- **78%** of 1500 SA NFP's surveyed don't wish to volunteer on Boards because of red tape<sup>18</sup>
- **67%** of grassroots associations have difficulty in finding Board members compared to **49%** of associations with paid staff<sup>19</sup>
- **87%\*** of grants from Round 58 of the DCSI small grants program were awarded to organisations with paid staff<sup>20</sup>
- **45%** of volunteers in SA grassroots associations had **negative experiences** while volunteering<sup>21</sup>
- **21.4%** of South Australians volunteer - the highest number among the States and more than two points above the national average<sup>22</sup>

<sup>14</sup> Work Health and Safety Act 2012 (SA)

<sup>15</sup> Work Health and Safety Act 2011(Cth)

<sup>16</sup> Guideline of the Commissioner for Public Sector Employment – Volunteers, 2016

<sup>17</sup> Mayer, 2003

<sup>18</sup> Mex, unpublished report, 2017

<sup>19</sup> Mex, unpublished report, 2017

<sup>20</sup> (Estimate) [Mex, unpublished report, 2017]

<sup>21</sup> Mex, unpublished report, 2017

<sup>22</sup> ABS Census, 2016

- The **value of volunteering** in SA more than **doubled** from 1992 (\$2.4 billion) to 2006 (\$4.89 billion)<sup>23</sup>

From the *Volunteering in South Australia in 2016 Survey (Harrison) Report*<sup>24</sup>:

- Volunteering is more common amongst those who:
  - are female
  - are aged between 35 and 54 years
  - are in paid employment
  - are university educated
  - were born in Australia
  - reside in a couple family and are married or in a de facto relationship.
- In 2016 sport and physical recreation groups (29%) surpassed welfare and community groups (25%) as the dominant type of organisation at which people volunteer
- 97% of respondents see some benefits to the community from volunteering
- 47% up from 25% in 2014, felt that 'it builds community spirit and facilitates social cohesion',
- 24% stated that 'people get help they would otherwise not get'
- 21% believed 'many community projects would cease to exist' without volunteers

## Appendix 1

### Not-for-Profit and Volunteering Advocate Proposal

#### Case Study

In 2015 the Adelaide Gaol Preservation Society (AGPS) launched a legal bid against the SA government to be reinstated as the operator of tours at the historic Adelaide Gaol site. Their contract was ended after an internal dispute within the Preservation Society led to members being banned from the old gaol in May 2013.

The dispute involved allegations of bullying and harassment from senior committee members against other volunteers, which led to a court case that was resolved before trial.

The issues within the AGPS itself and between the AGPS volunteers and DEWNR took place over a period of 4 years, from 2011 to 2015. Behind the scenes, the lives of those volunteers who were subjected to the alleged bullying and harassment, and others within the AGPS, were badly affected. At the time, one volunteer mentioned to other volunteers she considered taking her own life due to the toll this matter was taking on her.

Had a binding, dispute resolution service been available, these issues may have been resolved much sooner with less toll on all those involved.

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<sup>23</sup> Ironmonger, 2011

<sup>24</sup> Harrison Research, 2016

## Appendix 2

# Not-for-Profit and Volunteering Advocate Proposal - South Australian Not-for-Profit Funding Framework: Stronger Together NFP Funding Rules and Guidelines

Volunteering SA&NT seeks the establishment of a Not-for-Profit (NFP) and Volunteering Advocate.

### Areas of Focus

1. South Australian Not-for-Profit Funding Framework
2. Volunteer Rights and Dispute Resolution – see separate paper [Appendix 3]

Consideration also needs to be given to the accompanying paper [Appendix 3], which sets out a case for the NFP and Volunteering Advocate to have jurisdiction over Volunteer Rights and Dispute Resolution.

### Background

As part of the not-for-profit (NFP) sector funding reform process arising from the ‘Simplify’ red tape reduction initiative, in 2015 the Human Services Partnership Forum recommended the development of “*a mechanism for an advocate to represent the best interests of the not for profit sector in relation to funding matters.*”

This paper offers a definition of advocacy and some key considerations that need to be taken into account when thinking about a NFP and Volunteering Advocate.

### Definition of advocacy

The term *advocacy* covers a wide range of activities carried out by many different types of organisations. Examples include:

- **Citizen advocacy:** Vulnerable people are matched with volunteers who represent the vulnerable person’s interests as if they were their own, free from conflict of interest e.g. disability advocacy<sup>25</sup>.
- **Legal advocacy:** Providing legal representation for people and/or organisations through the court system. This form of advocacy may also be conducted in pursuit of broader social aims. The Environmental Defenders Office, which uses the legal system to protect the environment in South Australia, is a good example<sup>26</sup> of this sort of advocacy.
- **Individual advocacy:** Advocacy for an individual who is unable to act for themselves, e.g. through the Office of the Public Advocate<sup>27</sup>.
- **Systemic advocacy:** Seeking positive changes to legislation, policy and service practices in order to produce long-term positive changes.

An advocate for the NFP sector may need to combine elements of all these forms of advocacy.

<sup>25</sup>Department of Social Services, 2015, <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/for-people-with-disability/national-disability-advocacy-program/models-of-disability-advocacy#6>

<sup>26</sup>Environmental Defenders Office, 2015, [http://www.edosa.org.au/what\\_we\\_do](http://www.edosa.org.au/what_we_do)

<sup>27</sup>Office of the Public Advocate, 2015, [http://www.opa.sa.gov.au/what\\_we\\_do/advocacy](http://www.opa.sa.gov.au/what_we_do/advocacy)

## Key considerations

The following must be taken into account in considering a model for a Not-for-Profit and Volunteering Advocate:

- **Representing a diverse range of stakeholders:** The Stronger Together NFP Funding Rules and Guidelines apply wherever a NFP receives South Australian government funding. A NFP and Volunteering Advocate will need to represent a diverse range of organisations, from sectors including sports and recreation, the environment, the arts, human services as well as social enterprises
- **Resourcing:** A NFP and Volunteering Advocate will need to operate on a no or low-cost model
- **Peak bodies and professional organisations:** While no body represents the entire NFP sector in SA, many organisations already conduct advocacy activities on behalf of NFPs. A Not-for-Profit and Volunteering Advocate needs to complement the work of these organisations to add value.

**Existing dispute resolution mechanisms:** NFPs can already raise issues or disputes relating to government contracts via existing mechanisms, including the State Procurement Board<sup>28</sup>, the SA Ombudsman and existing government contract management procedures.

## Proposed functions of a Not-For-Profit Advocate

In listening to the needs of both the NFP sector and government, the need for three overarching advocacy functions has emerged. These are:

- Enforcement of the Stronger Together NFP Funding Rules and Guidelines and resolution of disputes on funding issues
- representation for the NFP sector to government
- A brokerage or facilitator role for the sector

The State Procurement Board (SPB) could have their remit altered to perform the first function, but only for Procurements. This may involve the SPB having a NFP subcommittee or requiring that a State Procurement Board member have practical knowledge of, and experience in funding NFPs.

For Grant funding however, governance of the NFP Funding Rules and Guidelines and resolving disputes specifically relating to grant funding issues is not performed by any existing cross-government entity and would be better suited to being undertaken by a Not-for-Profit and Volunteering Advocate. For consistency, they could also undertake this role for Procurements.

An additional range of functions have been identified which would not be suited to sitting with the State Procurement Board. These include:

- Acting as a focal point for engaging the entire NFP sector
- Resolution of intra-sectoral disputes and issues, including with and between volunteers, and non-funding related disputes and issues between government and the NFP sector, with minimal stress and cost
- Recognising and promoting opportunities to reduce compliance burden and cut red tape
- Capability and capacity building and workforce development of the NFP sector and organisations

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<sup>28</sup>State Procurement Board, 2015,  
[http://spb.sa.gov.au/sites/default/files/Supplier%20Complaints%20Policy\\_0.pdf](http://spb.sa.gov.au/sites/default/files/Supplier%20Complaints%20Policy_0.pdf)

- Education, including development of free online tools and resources, to support NFPs with governance and compliance
- Education, including tailored procurement and grant training for NFP funding
- Supporting the development of three way relationships between philanthropy, government and the NFP sector
- Providing independent advice and recommendations regarding NFP sector issues to government
- Making submissions to relevant inquiries on systemic issues and influences on policy, programs and practices
- Raising the profile of NFP organisations with government
- Drawing attention to concerns and barriers for the NFP sector
- Seeking to ensure NFPs are not disadvantaged by particular processes or practices
- Requesting information and feedback on behalf of NFPs

These functions are consistent with the kinds of functions ascribed to comparable roles, including the Industry Advocate, Small Business Commissioner and the Equal Opportunity Commissioner.

The role of the NFP advocate will not include providing legal advice of any kind. Legal matters can be referred to Ombudsman SA or elsewhere as appropriate.

## **Proposed model for a Not-For-Profit and Volunteering Advocate**

With these points in mind, three possible options for a NFP and Volunteering advocate are presented below for consideration.

### ***NFP and Volunteering Advocate - Statutory Position***

One option would be to establish a new, independent statutory position to act as an advocate for NFPs. Similar models exist with South Australia's Office of the Guardian for Children and Young People, and the Small Business Commissioner. Such a role would operate under new legislation.

Advantages:

- A bespoke body designed to meet the advocacy needs of the NFP. Can be designed to have 'teeth'
- Ensures independence from government, with a mandate to act on behalf of NFPs
- No potential for conflict of interest in representing the NFP sector to the State Government
- A bespoke body designed to meet the advocacy needs of the whole NFP sector.
- Could readily adapt services to meet the changing needs of the sector
- Likely to be a model trusted by NFP sector

Disadvantages:

- May be a time-intensive approach, but this could be mitigated by the Advocate getting back office support from an existing government entity.

This is Volunteering SA&NT's recommended model.

### **Government Office**

A second option would be to establish a specialised business unit within a government department, with responsibility for supporting and advocating on behalf of NFPs. An example of this model is Victoria's Centre for Community Services System Development within the Department of Human Services. The South Australian Department for Communities and Social Inclusion (DCSI) already carries out some of these functions specifically for the NFP community sector.

#### Advantages:

- An opportunity may exist to build on work within DCSI.
- Allows the advocate access to government and internal networks.
- Possible co-location with an existing government entity and back office support

#### Disadvantages:

- May not be perceived as sufficiently independent, perception of conflicting interests.
- Policy and resource implications of expanding the role of DCSI to incorporate all South Australian NFPs.

### **Position within the Office of the Industry Advocate**

One option may be to provide an additional resource within The Office of the Industry Advocate (OIA) to advocate for the NFP sector. The OIA is an independent unit that develops and implements reforms that aim to generate more local jobs, local supplier inputs through supply chains and local investment from government contracts. The OIA also focuses on initiatives that help small to medium enterprises (SMEs) get involved in government procurement<sup>29</sup>.

A NFP-specific position could be created within the OIA, and in line with the OIA's objectives, to:

- Build the capacity of NFPs in the State to successfully tender for Government contracts;
- Recommend changes to policy and practices that remove impediments to NFP participation;
- Initiate procurement reforms that provide greater economic benefit to the State and NFPs.

#### Advantages:

- Makes use of an existing mechanism, with some of the necessary expertise already present within the OIA and reduced associated costs.
- Allows the advocate access to government and internal networks.

#### Disadvantages:

- Such a position may not have the trust of the NFP sector compared to a dedicated NFP advocate
- The remit and skill set of the OIA does not cover the full range of functions proposed for the NFP and Volunteering advocate role.
- The OIA is geared towards increasing the economic benefit for the state from major projects, improving return on investment. As NFP sector funding and jobs necessarily remain in South Australia, they are not a suitable focus for this work.

<sup>29</sup> Office of the Industry Advocate, 2015, <http://www.industryadvocate.sa.gov.au/about-us>

## Appendix 3

### Not-for-Profit and Volunteering Advocate Proposal

#### Volunteer Rights and Dispute Resolution - Paper 2

Volunteering SA&NT seeks the establishment of a Not-for-Profit and Volunteering Advocate.

##### Areas of Focus

3. Volunteer Rights and Dispute Resolution
4. South Australian Not-for-Profit Funding Framework – see separate paper [Appendix 2]

Consideration should be given to the accompanying paper [Appendix 2], which sets out a case for the NFP and Volunteering Advocate to have jurisdiction over the South Australian Not-for-Profit Funding Framework.

##### Objective

Volunteering SA&NT (VSA&NT) is advocating for the implementation of an NFP and Volunteering Advocate in South Australia. Some volunteer rights are enshrined in different legislation, but there is no single place for volunteers to go if they experience problems with their Volunteer Involving Organisation (VIO) or vice versa, a fact becoming increasingly evident through the number of complaints received by VSA&NT over the past 35 years.

Serious breaches of trust between volunteers and the organisations they volunteered for have become more prevalent over the past few years. In the light of these, some volunteers have begun calling for an external means of complaints redress and defined volunteer rights.

As the volunteering peak body VSA&NT represents the volunteering community through advocacy and policy, and builds the capacity of the sector. We lead and participate in discussions and public policy dialogue on volunteering. We are a reference point for government and decision makers on matters relevant to volunteering. We represent those who volunteer in the wider community and are first with advice and expertise on volunteering in the public domain. We are also a Volunteer Support Service, providing a range of services, support and resources for volunteers and VIOs.

It is our business to:

- Provide a credible and informed voice in volunteering
- Be the centre of knowledge and expertise in volunteering
- Position volunteering as a core component of a high quality of life
- Work with volunteers and volunteering communities to enrich the volunteering experience
- Grow volunteering
- Encourage self-reliance in volunteer management, recruitment, retention and recognition of volunteers

Notwithstanding all of the above, we are increasingly finding that the sector is calling for an independent arbitrator to help resolve volunteer rights issues at a grass roots level, whilst promoting good practice in the sector.

## Background

Volunteering is defined as “time willingly given for the common good and without financial gain” (Volunteering Australia, 2015).

This can be across all sectors, it can be informal and formal, and it comes in as many forms as there are volunteering roles to play in our community. Volunteering contributes to the State’s economy. Its value in contributing to the wellbeing of others in the community, as well providing benefits to the volunteer’s wellbeing, are well documented.

In defining volunteers, it is essential that we make the distinction between the rights of the volunteer and the rights of employees in the workplace. The Fair Work Ombudsman’s mandate is to emphasise this distinction, and concentrate part of their investigative powers to ensure that volunteers are not placed in workplaces to the detriment of paid employees.

These distinctions can at times mean that volunteers do not have access to the same protections as paid workers.

**Table A** below provides an overview of legislation that most commonly arises when dealing with legal issues involving volunteers. Most of the legislation listed does not explicitly cover volunteers, although common law (judge-made law) also applies to NFP organisations and volunteers, alongside legislation.

The SA WHS Act 2012, which covers safety, bullying and harassment only applies to “persons conducting a business or undertaking” (a ‘PCUB’), essentially, organisations that have paid employees.

There are 20,864 registered not-for-profit associations<sup>30</sup> in SA. 80% of these are “Volunteer Associations” – they have no employees and as a consequence the WH&S laws don’t apply. Given that these associations could be have anywhere between 1 to hundreds of volunteers at any one time, this gap in protections for volunteers is of serious concern to VSA&NT.

The types of issues experienced by volunteers include sexual harassment, bullying, whistle blowing/fraud, malpractice, social justice issues and natural justice. These issues also extend to unfair dismissal processes in volunteering, alongside a lack of communication which has been known to have seriously detrimental effects on volunteers. At this time there is either no recourse for them other than very costly legal avenues which are likely to be beyond the means of volunteers in most instances.

VSA&NT recently developed a “Code of Conduct” and “Beliefs and Values Policy” for its members. Even though they are excellent behavioural benchmarks for VIOs and volunteers, there are limitations on the operation of these policies due to:

- They only apply to VSA&NT members (as defined in the Constitution)
- They are not an agent of behavioural change
- The only repercussion is expulsion as a member of VSA&NT

Whilst VSA&NT supports VIOs and volunteers on a day to day basis to solve disputes, we have no legal authority and uncooperative VIOs or volunteers can, and do, ignore suggestions for resolution. We may also find ourselves in conflict with our own members, depending on the nature of the complaint.

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<sup>30</sup> Consumer and Business Services, 2016

The Australian Volunteer Rights and Advocacy Working Group (AVRA) conducted research in 2012-2013 with VIOs to investigate breaches of trust between volunteers and the VIOs where they worked. This research was a response to Volunteering England's Volunteer Rights Inquiry<sup>31</sup>, and sought to investigate the nature of volunteers' rights in Australia. The research found:

- Problems like opportunism, unreliability and inconsistent results, poor communication and negatively impacting other volunteers, paid workers and/or reputation are some of the issues faced by VIOs
- Volunteers experience problems such as bullying, poor governance practices, bad management and problems between paid workers and volunteers
- These issues can often be resolved through internal complaints and grievance procedures where they exist in VIOs, however they can manifest themselves into serious legal complaints (20% of formal complaints within organisations ended up having legal consequences for both parties); and
- Protections for both the volunteer and the organisation exist in various legislation (outlined on Page 2 of this Appendix), however there is a gap in protection for both parties when for example, the organisation is not a 'person conducting a business or undertaking' PCBU or when the reciprocity of the volunteering arrangement falls into disarray.

This reciprocity is based on the balanced levels of obligation by the volunteers aligned with their entitlements or rights as a volunteer in an organisation (Volunteer Rights Inquiry, Volunteering England: p18). It is also based on the idea of 'parity of esteem' with paid workers, where volunteers do not necessarily want the same entitlements as paid workers, but they do want equal respect (ibid: p20).

When either or both of these factors are called into question, the likelihood of problems rise. Again, anecdotal evidence suggests the majority of volunteers voluntarily leave an organisation when this challenge arises. However, there are a number of disputes that become acrimonious without the means for resolution.

VSA&NT has spent many years working together with VIOs to promote good management practices for volunteers. In 2015 the *National Standards for Volunteer Involvement* were re-drafted allowing organisations to make use of simple, practical criteria across a broad range of volunteering situations.

There are 8 standards addressing the key areas of volunteer involvement:

- Leadership and management
- Commitment to volunteer involvement
- Volunteer roles
- Recruitment and selection
- Support and development
- Workplace safety and wellbeing
- Volunteer recognition
- Quality management and continuous improvement

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<sup>31</sup> Volunteer Rights Inquiry, Volunteering England, 2011

VSA&NT can identify the gaps in the above areas and support willing VIOs to improve their programs. However for behavioural change to be effective, we believe that there is a fundamental requirement for the creation of a NFP and Volunteering Advocate to take the role of volunteer rights to a more comprehensive level, setting South Australia apart from the rest of the world.

## **Framework**

Proposed Legislation: NFP and Volunteering Advocate Bill 2017

VSA&NT proposes the role of an NFP and Volunteering Advocate to promote and support effective management practices in the sector, as well as hold an intrinsic role in resolving disputes that have gone beyond the internal resolution mechanisms of a VIO or are captured via other legislation. The NFP and Volunteering Advocate would be an independent officer, with statutory powers to investigate complaints and to report on proven poor practices and behaviours within the sector. This role would be similar to the enactment of the Industry Advocate proposed in the Industry Advocate Bill 2017, with the ability to act on furthering the objectives of the VSA&NT Strategic Plan 2014-2020 (Minister for Volunteers Report 2016: 3).

The emphasis for the NFP and Volunteering Advocate would be on accountability in the sector, and with an ability to refer to other agencies as appropriate and to report on poor practices and behaviours. The NFP and Volunteering Advocate mandate would be legislated and seek to encourage VIOs and volunteers to work within the reciprocity and parity of esteem frameworks that we advocate strongly for at VSA&NT.

VSA&NT proposes that the NFP and Volunteering Advocate is an escalation point from its own services to the sector. VSA&NT would triage dispute enquiries it received and continue to underpin effective management practices within the sector, providing training and support to proactively guide the sector towards good outcomes for volunteering in the state. The office of the NFP and Volunteering Advocate would progress the disputes through its dispute and mediation resolution service.

## **Interaction with other regulatory bodies**

The NFP and Volunteering Advocate would have a referral role for protections in place already for volunteers in South Australia. Where legislation or a tribunal already exists, the NFP and Volunteering Advocate's Office would determine the scope of the complaint, and make referrals as appropriate. There are regulatory bodies already in place, such as the Fair Work Ombudsman, Sports SA, Equal Opportunity Commission, SafeWork SA and the Legal Services Commission in South Australia. These have particular roles to play, however do not address many, if any, of the issues faced by volunteers. This proposal recognises that there are a number of protections in place for volunteers in the workplace, however a whole of NFP sector approach to dispute resolution, mediation and related accountability and are areas that are not covered by existing legislation, regulatory bodies or other services.

The SA Government Office for Volunteers (OfV) provides guidance to volunteers in a fact sheet titled Solving Volunteer Workplace Disputes. It encourages internal procedures to be followed first using intervention with senior management, mediation with an independent person or a more formal review of the dispute which may involve an investigation.

If unresolved, OfV advocates for external dispute resolution, and directs the reader to the Fair Work Ombudsman (FWO) for general advice. As volunteering is not recognised in the Fair Work Act, there is no jurisdiction for FWO to provide advice to volunteers. Indeed, when you contact FWO, they only provide advice to existing or terminated employees or contractors. There are no options for the volunteer to access advice at this agency, either online or through their phone line. OfV also refers people to the Legal Services Commission and the Equal Opportunity Commission.

## Comparisons with other bodies – none of which provide the services proposed

- **SACAT** - civil and administrative tribunal. SACAT handles cases in the following areas housing disputes, guardianship administration, consent to medical treatment, advance care directives, mental health. SACAT also deals with Reviews of Government decisions
- **Australian Charities and Not-for-Profit Commission (ACNC)** - the independent national regulator of charities. Provides some educational resources
- **Fair Work Ombudsman** - jurisdiction is set out in the Fair Work Act. Services available to all workers and employers in Australia, not volunteers
- **Sport SA State Sport Dispute Centre (SSDC)** - provides mediation and dispute resolution for the sporting community. Parties must be members of Sport SA
- **Office for Volunteers** - role is to provide advice to the SA Government and supports the Minister to achieve SA State Strategic Plan target 24 - 70% participation rate in volunteering
- **Office for the Public Sector (OPS)** – advances the public sector’s public focus, responsiveness, collaboration and excellence. Volunteers in the public sector are “not public sector employees or otherwise engaged pursuant to any form of contract. Consequently, governing legislation, such as the Public Sector Act 2009, and industrial instruments, such as awards and enterprise agreements, do not apply to them”. Likewise, Public Sector workplace policies, procedures and guidelines applicable to employees do not apply to volunteers, however it is expected that volunteers will, as appropriate, be required to act in a manner consistent with them as a condition of the license or permission granted to them to act as a volunteer.
- **SafeWork SA** - provides work health and safety, public safety and state-based industrial relations services across South Australia

A 'person conducting a business or undertaking' (PCBU) is an organisation that employs at least one worker and must comply with the WH&S Act. A 'volunteer association' for the purposes of the WHS Act is a group of volunteers working together for one or more community purposes where nobody is employed. If a volunteer association is run purely by volunteers it is not captured by the WHS Act and does not have duties under the WHS Act (however, common law obligations re negligence apply)

- **Equal Opportunity Commission** – has statutory powers to assess and conciliate complaints of discrimination and to inform the community about their rights and responsibilities under Equal Opportunity laws
- **Legal Services Commission** - provides quality, independent legal assistance to South Australians
- **Community Mediation Services** - provides assistance in neighbourhood and other community disputes. The service is only available to those receiving government benefits
- **Consumer and Business Services** - administers the Associations Incorporation Act 1985 and is responsible for ensuring compliance with legislation relating to charitable organisations and incorporated associations.



## Principles to Apply to the NFP Advocate Role

When considering volunteer rights, the following principles should be considered

1. proportionality
2. reciprocity
3. parity of esteem

The following are also important considerations:

- Role needs to be enshrined in legislation
- NFP and Volunteering Advocate role to on-refer people to other agencies / regulatory bodies existing services, as appropriate e.g. SafeWork SA, Equal Opportunity Commission
- Promoting use of the *National Standards for Volunteer Involvement*
- Utilising the peak body, VSA&NT, to triage, where the NFP and Volunteering Advocate is the escalation point
- Dispute resolution and mediation, particularly if one party won't agree to mediate, or if the parties do mediate but no agreement reached
- Distinction between workers and volunteers to be maintained
- Interactions with other regulatory bodies and legislation
- Free service
- Annual reporting
- Clearly defined scope



**Table A<sup>32</sup>**

<b>Legal issue</b>	<b>Legislation</b>	<b>Applies to volunteers?</b>
Discrimination	Age Discrimination Act 2004 (Cth)	The Act does not explicitly cover volunteers. It may apply to volunteers as the Act prohibits discrimination in relation to the provision of goods, services and facilities, club and incorporated associations and some aspects of sport
	Sex Discrimination Act 1984 (Cth)	The Act does not explicitly cover volunteers. It may apply to volunteers as the Act prohibits discrimination in relation to the provision of goods, services and facilities, club and incorporated associations and some aspects of sport
	Australian Human Rights Commission Act 1986 (Cth)	The Act may apply to volunteers as the Commission can inquire into 'employment' or 'occupation', which are undefined.
	Racial Discrimination Act 1984 (Cth)	The Act does not explicitly cover volunteers. It may apply as the definition of 'racial discrimination' is broad and not confined to the employment relationship. Definition of employment 'includes a contract for services' and does not mention volunteers or unpaid workers.
	Disability Discrimination Act 1984 (Cth)	The Act does not explicitly cover volunteers. It may apply to volunteers as the Act prohibits discrimination in relation to the provision of goods, services and facilities, clubs and incorporated associations, and sport.
Sexual harassment	Sex Discrimination Act 1984 (Cth)	The Act does not explicitly cover volunteers. It may apply to volunteers as the Act prohibits discrimination in relation to the provision of goods, services and facilities, clubs and Commonwealth laws and programs or requests for information.
Bullying	Work Health and Safety Act 2012 (SA)	The SA WHS Laws only apply to "persons conducting a business or undertaking" (a 'PCUB'), essentially, organisations that have employees. If an organisation is covered by the SA WHS Laws, they will apply to employees and volunteers in the same way.

<sup>32</sup> Not-for-Profit Law, Justice Connect, 2016

		The SA WHS Laws do not apply to organisations that only engage volunteers.
	Fair Work Act 2009 (Cth)	Bullying provisions of the Act will only apply if your organisation is a 'constitutional corporation' and not wholly volunteer run.
Payment for work	Fair Work Act 2009 (Cth)	Only applies to employees, employers and employment.
Unfair dismissal	Fair Work Act 2009 (Cth)	Only applies to employees, employers and employment.
Superannuation rights	Superannuation Guarantee Administration Act 1992 (Cth)	Applies to employees and employers.
Paid sick and annual leave	Fair Work Act 2009 (Cth)	Applies to employees, employers and employment.
Redundancy	Fair Work Act 2009 (Cth)	Applies to employees, and employers.
Privacy	Privacy Act 1988 (Cth)	Applies to organisations with an annual turnover of more than \$3 million, or that provide a health service, collect and provide the personal information of others, provide services under a Commonwealth contract, or is a related body corporate to a body that meets any of the above criteria.
Protection	Volunteers Protection Act 2001 (SA)	Provides some protection for volunteers doing community work from being sued for damage, loss or injury they may have caused to others during their volunteer work. Only individual volunteers doing 'community work' for 'community organisations' are covered by the Act.