

Ending the volunteer relationship

Legal information for New South Wales community organisations

This fact sheet covers:

- the legal rights of a volunteer and obligations of an organisation when ending a volunteer relationship, and
- minimising the risks associated with ending a volunteer relationship.

The legal rights, obligations and processes that arise when ending a volunteer relationship differ from those arising in the termination of employment. It is important to understand these differences and how to manage the process well.

Unfair dismissal rights

New South Wales community organisations that engage employees are governed by the *Fair Work Act 2009* (Cth) (**Fair Work Act**) and have certain obligations in relation to the treatment of these workers when they exit the organisation. Under this Commonwealth legislation, employees have certain rights, for example, in relation to redundancy or the ability to bring a claim for ‘unfair dismissal’ or ‘unlawful termination’.

However, a (genuine) volunteer is unable to bring a claim against your organisation for unfair dismissal under the Fair Work Act. This also means your organisation has no legal rights against a volunteer who leaves suddenly or does not turn up for a shift. This is part of the nature of a true volunteer relationship. It is important that both organisations that use volunteers and volunteers themselves understand that the protections that apply in an employer-employee relationship are not the same as in an organisation-volunteer relationship.

TIP

Make it clear in your volunteer agreement that either the volunteer or your organisation may walk away at any time. Avoid using terms like “dismiss”, “letting go” or “fire” as these are more suitable for an employment relationship.



RELATED RESOURCES

For more information about what constitutes a ‘true volunteer’ arrangement, see the Employee, volunteer or independent contractor? fact sheet on the Information Hub at www.nfplaw.org.au/volunteers.



Managing the process of ending the volunteer relationship

There may be a number of reasons your organisation chooses to end a volunteer relationship. Even though a volunteer has no unfair dismissal rights, it is important to manage the process of ending a volunteer relationship well, in order to avoid any reputational damage or other potential legal consequences.

Circumstances where your organisation may seek to terminate a volunteer's role include where:

- your organisation may no longer need the volunteer's services
- the volunteer's performance is not satisfactory, or
- the volunteer's presence may be detrimental to the health and safety of others in the organisation.

NOTE

Your organisation has a duty of care to provide a safe work environment and could be held legally responsible for the actions of its volunteers. If keeping a volunteer in the organisation is a risk to the health and safety of others (including members of the public), ending the relationship may be required to ensure you are acting in accordance with the standard of care required by law.



EXAMPLE

Your organisation has a number of soup vans that travel around the Blue Mountains area feeding homeless people. You have a loyal volunteer that has been serving soup in the vans for the last 20 years. The volunteer is now in his 80s and recently there have been a number of incidents where his increasing fragility and instability has resulted in soup spills, and on one occasion, a minor burn to his hand and to another volunteer.

You are concerned that continuing in the role poses a serious risk to his safety, other volunteers and the public that are being served. You discuss these concerns with the volunteer and explain that you have duty of care to take steps to minimise risks to health and safety.

There are a number of other suitable roles (ie. calling suppliers and administration work) that you offer the volunteer. The volunteer does not accept this as he has his heart set on staying with the soup vans. You suggest that instead of serving, he hands out blankets, cutlery and napkins.

He agrees this is a sensible compromise and you are now comfortable that you are not placing him or anyone else at risk.



When ending a volunteer relationship, we suggest that your organisation:

- draft a policy/process in relation to ending volunteer arrangements (including processes around issuing warnings and documenting conversations) and ensures this is applied consistently
- make the process as fair and transparent as possible
- confirm that the arrangement has come to an end in writing and provide reasons to any volunteer whose role is being terminated
- keep a record of the documentation provided to the volunteer
- check whether the volunteer has made any complaints about the organisation or anyone in the organisation that remain unresolved, and appropriately deal with these issues, and

- ensure all property of the organisation is returned by the volunteer (ID badges, uniform, keys and other items).

EXAMPLE



Confirming the end of the arrangement in writing not only provides finality for the volunteer and organisation but may be relied on by your organisation to avoid any liability that might arise as a result of the volunteer's future actions (to show they were a member of the public at the time of their actions and not a representative of your organisation). Consider the following hypothetical example:

The Homeless Voice is an organisation in Orange that runs a program providing media and public speaking training for people who have experienced homelessness. The organisation matches the volunteers with media and speaking opportunities to help raise awareness and change attitudes in the community about homelessness. At a recent speaking event, a volunteer called Sarah became violent and harassed a cameraperson. There were some informal discussions between Sarah and the volunteer manager about ending her involvement in the program while she obtains some care in relation to a recent relapse of substance abuse.

However, Sarah continues to be approached directly by journalists and other organisations for media and public speaking opportunities. Sarah takes up these opportunities and continues to represent that she is a volunteer at Homeless Voice. At one event, she again has a violent episode and physically abuses an interviewer resulting in their hospitalisation. As a result, Homeless Voice's reputation is tarnished and relationships it has built with the media suffers.

The interviewer does not make a claim against the organisation but this is a potential outcome where a volunteer causes harm to someone while volunteering. As the ending of the volunteer relationship had not been documented, it would be difficult to show that Sarah was no longer a volunteer, and therefore that Homeless Voice is not liable for her actions.

CAUTION



Be careful about ending a volunteer arrangement if there has been a recent complaint made by the volunteer. This could be construed as 'victimisation' against the complainant, even if your organisation decided to end the relationship for completely unrelated reasons. For more information about victimisation, see the Volunteers and workplace behaviour fact sheet on the Not-for-profit Law Information Hub at www.nfplaw.org.au/volunteers.

RELATED RESOURCES



For more information about the legal responsibility of your organisation for the safety of its volunteers and actions of its volunteers, go to the Safety, risk management and volunteers fact sheet on the Not-for-profit Law Information Hub at www.nfplaw.org.au/volunteers.

Volunteer records

After a volunteer relationship ends, it may be necessary to keep records relating to the volunteer for a number of reasons, such as:

- internal organisational reporting or other human resources functions
- government reporting or record keeping obligations
- current or anticipated disputes or legal action
- requirements under insurance or other similar policies, or
- a requirement under funding agreements.

Under the Fair Work Act, organisations must keep employee records for 7 years. This obligation does not specifically extend to volunteer records. However, as a matter of best practice, organisations should keep records for 7 years, as most civil claims can be brought up to 6 years after an event to which the claim relates occurred. Some claims have even longer limitation periods (such as claims brought in relation to harm suffered by a person when they were a child). Therefore, your organisation may consider even longer document retention windows, depending on the type of work you are engaged in.

TIP

Check your organisation's insurance policies and funding agreements to determine whether you are under a contractual obligation to retain volunteer files or certain records for a specific period of time.

TIPS

- your organisation should consider the type of work your volunteers are performing. If you work with children or more vulnerable populations, ideally volunteer records should be kept indefinitely or as long as possible, especially in light of the recent child safety reforms and removal of limitation periods for bringing actions founded upon child abuse (currently only in Victoria but similar reforms may follow in NSW).
- your organisation should remember to treat information that it holds about both current and former volunteers with care, and in accordance with obligation under privacy law.

RELATED RESOURCES

For more information about specific record keeping obligations, see the Documents and Records page on the Information Hub at www.nfplaw.org.au/recordkeeping.

For more information about the privacy laws and how they apply to your organisation, see the NSW Privacy Guide on the Not-for-profit Law Information Hub at www.nfplaw.org.au/privacy.

Resources

Related Not-for-profit Law Resources

✔ Volunteers www.nfplaw.org.au/volunteers

The Volunteers page on the Information Hub features further information on specific issues covered in this fact sheet and the laws as they relate to volunteers, including resources on:

- Volunteers and unlawful workplace behaviour (due to be published in November 2016)
- Engaging and working with youth volunteers (due to be published in November 2016)
- Safety, risk management and volunteers (due to be published in November 2016)
- Volunteers and visas

✔ Insurance and risk www.nfplaw.org.au/riskinsurance

This Information Hub page provides resources covering the risks that may arise from operating and interacting with others.

✔ Privacy www.nfplaw.org.au/privacy

The Privacy page of the Information Hub features the Not-for-profit Law Privacy Guide, which includes information about obligations under privacy law.

Other Related Resources

✔ NSW Volunteering www.volunteering.nsw.gov.au

NSW Volunteering is part of the NSW Government's Family and Community Services. The website features resources for volunteers, organisations and businesses and information on the NSW Volunteering Strategy.

✔ The Centre for Volunteering, www.volunteering.com.au

The state peak body for volunteering provides information on volunteering and volunteer management.

Legislation

✔ [Fair Work Act 2009 \(Cth\)](#)

✔ [Privacy Act 1988 \(Cth\)](#)

✔ [Privacy and Personal Information Protection Act 1998 \(NSW\)](#)

✔ [Health Records and Information Privacy Act 2002 \(NSW\)](#)

A NFP Law Information Hub resource. Access more resources at www.nfplaw.org.au.

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