

Engaging and working with youth volunteers

Legal information for New South Wales community organisations

This fact sheet covers:

- youth volunteers and insurance considerations
 - workplace safety and behaviour – induction and training of a youth volunteer
 - workplace conditions and youth volunteers
 - mandatory reporting obligations, and
 - screening considerations for youth volunteers.
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If your organisation engages and manages youth volunteers, there are a number of specific issues you will need to consider.

Most legal information covered in our resources relating to volunteers will also be relevant to youth volunteers. However, there are some extra legal considerations your organisation should turn its mind to when engaging and working with youth volunteers, some of which are covered in this fact sheet.

Generally speaking, when we refer to ‘youth volunteers’, we mean volunteers aged under 18 (unless stated otherwise).

Workplace safety and behaviour

Your organisation owes a duty of care to all volunteers to take all reasonable steps to protect them from reasonably foreseeable harm in the workplace and when undertaking tasks for you. The standard of care expected in relation to youth volunteers may be higher than that owed to other volunteers.

Before engaging a youth volunteer you should consider:

- whether they have adequate skills and experience to perform the role – does the role call for skills or experience that young people may not yet have gained? and
- is your organisation able to adequately fulfil its duty of care to provide a safe workplace for the young person in respect of their physical, mental and emotional safety?

If the answer is ‘no’ to either of the above questions, reflect on whether it would be safe for a youth volunteer to perform the role and/or whether your organisation can implement any safeguards and processes to manage the safety of the youth volunteer.

During induction and training for youth volunteers:

- make sure the volunteer understands all policies and why they exist

- highlight particular policies that are relevant to youth volunteers. For example, social media, privacy, IT, appropriate workplace behaviour, and reporting lines where a volunteer or their guardian has a concern or complaint
- explain the importance of a safe workplace and provide training on how to avoid harmful situations, where possible, and any special safety requirements
- foster a culture of open communication by encouraging the volunteer to ask questions or express any concerns regarding the role, at any time
- allocate a trusted buddy and/or mentor to the volunteer
- understand the volunteer's study requirements and term dates to ensure volunteering does not interfere with this (see 'work conditions' section below), and
- ensure you have details of the volunteer's emergency contacts and important health information (eg. allergies or medical conditions).

FURTHER READING

The NSW Office of the Children's Guardian (**OCG**) website (www.kidsguardian.nsw.gov.au) has further information about implementing effective child safe policies and practices, including a [Getting Started Checklist](#). It also offers free child safe training for people working or volunteering in child-related organisations in NSW.

Moores, together with Our Community, have also created a [Child Protection Toolkit](#) for not-for-profit organisations. The Toolkit discusses child safe recruitment processes, creating a child safe culture and various reporting obligations, and includes a sample Child Protection Policy and Child Safety Code of Conduct (that can be tailored to your organisation).

NOTE

Victoria has introduced compulsory minimum child safe standards that form part of the Victorian Government's response to the Betrayal of Trust Inquiry and will assist organisations to:

- prevent child abuse
- encourage reporting of any abuse that does occur, and
- improve responses to any allegations of child abuse.

NSW has not yet introduced similar standards. However, there may be future law reform resulting from recommendations of the Royal Commission into Institutional Responses to Sexual Child Abuse. In the meantime, the Victorian standards may be a useful reference for your organisation when considering implementing a child safe culture. For more information about these new standards and guidance for implementation, go to the Victoria [Department of Human Services website \(www.dhs.vic.gov.au\)](http://www.dhs.vic.gov.au).

Work conditions for youth volunteers

In NSW, organisations that employ children to take part in entertainment, exhibitions, photography, modelling and door-to-door sales have special legal obligations in relation to protecting the health and welfare of children in the working environment. The various obligations are set out in the *Child and Young Person (Care and Protection) (Child Employment) Regulation 2015*, which includes a Code

of Practice that must be complied with. The NSW OCG sets these out in its guide 'Child Employment Requirements in NSW'.

While these obligations do not always strictly apply to community organisations engaging youth volunteers, as a matter of best practice your organisation should develop its own Code to be followed when engaging and working with youth volunteers, that places an obligation on the organisation to ensure that:

- there is an environment for children where their individual emotional, social, physical and developmental needs are met
- written consent of the parent or guardian of the child is obtained
- there is proper supervision of the child while volunteering
- the volunteering is:
 - outside of normal school hours
 - limited to one shift per day for a maximum of 4 hours per day, on the same day as attending or receiving schooling
 - not earlier than 6am (or sunrise) and not later than 9pm (or sunset)
- the volunteer is provided a rest break of 30 minutes after every 3 hours of work and a rest break of at least 12 hours between finishing one shift and starting another, and
- the volunteer is covered by a personal accident insurance policy (see 'Insurance Consideration' section below).

This is not an exhaustive list of child-safe measures. Your organisation should conduct its own assessment of the working environment (physical and cultural) and the particular volunteer role to ensure sufficient safeguards are in place for all youth volunteers.

Mandatory reporting

Under section 316 of the *Crimes Act 1900* (NSW) every person (which includes a company or corporation) has a duty to report to police or other appropriate authority if they **know or believe a child abuse offence has taken place** and their information might be of assistance to police. Failure to do so can result in the mandatory reporter being imprisoned for two years.

The *Children and Young Persons (Care and Protection) Act 1998* (NSW) (**Care and Protection Act**) creates an obligation to report concerns about a child's welfare in certain circumstances. A 'child' for the purpose of this requirement, is considered under 16 years of age.

Reporting is mandatory for the following people if they **have reasonable grounds to suspect** that a child is **'at risk of significant harm'** and those grounds arise during the course of or from the person's work:

- a person who, in the course of his or her work or other paid employment, delivers health care, welfare, education, children's services, residential services, disability services or law enforcement, wholly or partly, to children, and
- a person who holds a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education,

children's services, residential services, disability services or law enforcement, wholly or partly, to children.

People who fall under this mandatory reporting requirement may include (this is not an exhaustive list) a:

- registered medical practitioner, nurse or midwife
- registered teacher or person who has been granted permission to teach
- principal of a government or non-government school
- police officer or youth justice officer
- person with a post-secondary qualification in the care, education or minding of children employed by a children's service (defined under the Act) or the proprietor of this service
- person with a post-secondary qualification in the care, education or minding of children employed or engaged by an education and care service (defined under the Act), or the approved provider or supervisor
- person with a post-secondary qualification in youth, social or welfare work who works in the health, education or community or welfare services field, or
- registered psychologist, youth justice officer or parole officer.

DEFINITIONS

The Care and Protection Act defines "child", "young person" and "parents" as the following:

- **"Child"** is a person who is aged 15 and under.
- **"Young person"** means a person who is aged 16 or 17.
- **"Parent"** of a child or young person means a person having parental responsibility for the child or young person.

A child will be considered 'at risk of significant harm' if:

- their basic physical or psychological needs are not being met or are at risk of not being met
- the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care
- the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education (where required to attend school in accordance with the *Education Act 1990* (NSW))
- they have been, or are at risk of being, physically or sexually abused or ill-treated (physical or sexual abuse may include an assault and can exist despite the fact that consent has been given)
- they are living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm
- a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm

- the child was the subject of a pre-natal report and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

Any of the above circumstances may relate to a single act or omission or to a series of acts or omissions.

NOTE

While there is no requirement to report risk of significant harm to young people aged 16 and 17, as a matter of best practice, your organisation should encourage anyone working with young people to report any significant health and wellbeing concerns.



TIP

It is important that if your service engages or works with youth, your workers (employees, volunteers or independent contractors) should be aware of their reporting obligations and potential criminal liability for failure to meet them. Consider making reporting a part of your written policies about working with youth. For more guidance in relation to providing a child safe environment, you can refer to the new Victorian Child Safe Standards.



FURTHER READING

Information about the process for reporting child welfare concerns in NSW can be found on the Department of Family and Community Services website (www.facs.nsw.gov.au), including a '[Mandatory Reporter Guide](#)'.



Screening checks and youth volunteers

There are many circumstances where organisations will need to screen employees and/or volunteers because they are working with children. One of these circumstances is where organisations are engaging youth volunteers.

Screening checks (including Working with Children Checks, police checks, reference and other background checks) are an important consideration, especially for organisations involving youth volunteers. As youth volunteers are considered more vulnerable than others working in your organisation, a higher duty of care in respect of their safety applies.

When organisations involve youths in their service or activities, this may trigger a need for the organisation to seek Working with Children Checks (WWC Checks) from those working with youths.

In New South Wales, all of your organisation's workers who undertake 'child-related' work, including volunteers, must have a WWC Check (unless an 'exemption' applies, for example, where they are a parent or close relative of a child and volunteering with the child's school, early education centre or other educational institution).

Further exemptions to WWC Check requirements are listed under Part 4 of the WWC Regulation (this is outlined in further detail in Part 1 of Not-for-profit Law's guide on Screening Checks at www.nfplaw.org.au/recruitment).

Your organisation will need to think carefully about who needs WWC Checks. For more information about the circumstances in which a WWC Check is required, see Not-for-profit Law's Screening Checks Guide at www.nfplaw.org.au/recruitment.

TIP

If you are unsure about whether your adult volunteers require a WWC Check, we suggest you seek clarification from the OCG or take a conservative approach and ask them to get a WWC Check. Even if the adult volunteer's role is not considered 'child-related' work, remember that your organisation owes a duty of care to all volunteers to take all reasonable steps to protect them from reasonably foreseeable harm in the workplace. Make sure that those who are supervising or have control over youth volunteers have been adequately screened. Undertaking a police check and reference checks, as well as a WWC Check, may be necessary to protect volunteers.

EXAMPLE

Elm Tree, a retirement village in Griffith has been approached by a group of primary school students who have asked if they can volunteer once a week – playing board games, reading and providing general company to the residents.

Miguel thinks this would be wonderful for the elderly residents but is concerned that it has no child-safe policies or procedures in place and currently, no volunteers or employees have WWC Checks as they are not engaged in 'child-related work'. A working group is formed to develop these resources.

As a part of its new child-safe policy, it is decided that the manager (or assistant manager) on shift will always be in the same room as the youth volunteers and that they will be asked to obtain a WWC Check. While not strictly required under legislation, the organisation feels that it is a reasonable measure to take to safeguard against potential risks.

Do youth volunteers need to be screened?

Generally, a youth volunteer engaged in 'child-related' work will not require a WWC Check until they turn 18. As soon as they turn 18 and are engaged in 'child-related' work, a volunteer will require a WWC Check.

Depending on a youth volunteer's role and responsibilities, your organisation may choose to undertake other screening such as police checks, reference checks and Google searches.

RELATED RESOURCES

For more detailed information about WWC Checks and Police Checks, go to our Screening Checks guide on the Information Hub at www.nfplaw.org.au/recruitment and Volunteer Screening fact sheet on the Information Hub at www.nfplaw.org.au/volunteers.

For further information about duties of care, negligence and occupational health and safety, go to the Insurance and risk page on the Information Hub at <http://www.nfplaw.org.au/riskinsurance>.

Insurance considerations

It is important to be aware of whether your organisation's insurance policies apply to youth volunteers. Review your current policies and if in doubt, ask your insurer the following questions:

- does the policy have any age limits that may affect a claim?
- are actions of youth volunteers covered?
- are injuries sustained by youth volunteers covered?

Make sure your youth volunteers are aware of the protections that apply (and do not apply) to them under your insurance policies. For example, if they are injured while volunteering, will there be any financial assistance or insurance available?



TIP

Ask your insurer for confirmation of the above in writing so that the position is clear to everyone and if there is any dispute about the policy's coverage, you can refer to this correspondence.

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:

- Safety, risk management and volunteers – for further information about your organisation’s duty to provide a safe work environment and risk management strategies
- Volunteer screening – for further information about organisation’s legal obligations in respect of background checks for volunteers

✔ Recruitment of employees www.nfplaw.org.au/recruitment

For more detailed information about Working with Children Checks and Police Checks, see our Working with Children’s Checks Guide (Vic) on the Information Hub.

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

For more detailed information, read our Not-for-profit Law guide on Risk Management and Insurance.

Legislation

✔ [Child Protection \(Working with Children\) Act 2012 \(NSW\)](#)

✔ [Child Protection \(Working with Children\) Regulation 2013 \(NSW\)](#)

✔ [Children and Young Persons \(Care and Protection\) Act 1998 \(NSW\)](#)

✔ [Child and Young Persons \(Care and Protection\) \(Child Employment\) Regulation 2015 \(NSW\)](#)

✔ [Education Act 1990 \(NSW\)](#)

Other Related Resources

✔ Fair Work Ombudsman www.fairwork.gov.au

The Fair Work Ombudsman has published a [Best Practice Guide](#) for employing young workers. This has useful information that could also be applied to youth volunteers.

✔ NSW Commission for Children & Young People, Office of the Children’s Guardian www.kidsguardian.nsw.gov.au

The OCG has information about implementing effective child safe policies and practices, including a [Getting Started Checklist](#). It also offers free child safe training for people working or volunteering in child related organisations in NSW.

✔ Department of Family and Community Services (FACS) www.facs.nsw.gov.au

FACS has information regarding reporting suspected child abuse or neglect and has published a [‘Mandatory Reporter Guide’](#).

✔ Child Protection Toolkit www.communitydirectors.com.au

Moore’s and Our Community have created a [Child Protection Toolkit](#) for not-for-profit organisations to help them ensure compliance with the complex legislation in this area.

A NFP Law Information Hub resource. Access more resources at www.nfplaw.org.au. Justice Connect Not-for-profit Law acknowledges the generous support of our funders and supporters. Find out more at www.justiceconnect.org.au/our-programs/not-for-profit-law/about/partners-and-supporters.

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