

Engaging and working with youth volunteers

Legal information for Victorian community organisations

This fact sheet covers:

- youth volunteers and insurance considerations
 - workplace safety and behaviour – induction and training of youth volunteers
 - 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' below), and
- ensure you have details of the volunteer's emergency contacts and important health information (eg. allergies for the volunteer or medical conditions).

NOTE



Child Safe Standards

Victoria has introduced compulsory minimum [Child Safe Standards \(Standards\)](#) 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.

In summary, under an amendment to the *Child Wellbeing and Safety Act 2005 (Vic)*, [Category 1](#) organisations (those that are government funded and provide services for children) should already be complying with the new standards and [Category 2](#) organisations must comply as of **1 January 2017**. The Victorian Commission for Children and Young People (**Commission**) is working with these organisations to build capacity to meet the Standards. The enforcement scheme for these standards is currently being finalised.

Standard 1: Strategies to embed an organisational culture of child safety, including through effective leadership arrangements.

Standard 2: A child safe policy or statement of commitment to child safety.

Standard 3: A code of conduct that establishes clear expectations for appropriate behaviour with children.

Standard 4: Screening, supervision, training and other human resources practices that reduce the risk of child abuse by new and existing personnel.

Standard 5: Processes for responding to and reporting suspected child abuse.

Standard 6: Strategies to identify and reduce or remove risks of child abuse.

Standard 7: Strategies to promote the participation and empowerment of children.

Reportable Conduct Scheme

In addition to the Standards, from **1 July 2017**, the Commission will administer a new Reportable Conduct Scheme, which will provide oversight of how organisations respond to allegations of child abuse and child-related misconduct by workers and volunteers. Under the scheme, the Commission will have certain powers, such as to monitor an organisation's investigation of abuse or misconduct, inquire into the safety systems of an organisation engaged in child-related work and share information with key organisations to improve child safety.

The scheme will be implemented in phases and apply to a subset of organisations already covered by the Standards (that have a greater responsibility for children).

FURTHER READING



For more information about the new Child Safe Standards (including guidance around implementation) and the Reportable Conduct Scheme, visit the Commission's website – www.cyp.vic.gov.au. It has published a number of practical resources including '[A Guide for Creating a Child Safe Organisation](#)' and '[Child Safety Review and Action Plan](#)'.

Moore's, together with Our Community, have also created a [Child Protection Toolkit](#) for not-for-profit organisations, to help them comply with these standards and other legislative requirements. The Toolkit discusses child safe recruitment processes, creating a child safe culture and various reporting obligations. It also includes a sample Child Protection Policy and Child Safety Code of Conduct (that can be tailored to your organisation).

Work conditions and youth volunteers

Organisations have special legal obligations in relation to the working conditions of youth volunteers under the *Child Employment Act 2003 (Vic)* (**Child Employment Act**), including:

- a not-for-profit organisation must not allow a child (aged under 15) to engage in volunteering activities in a public place or engage in door-to-door fundraising earlier than 6am or sunrise (whichever is later) or later than 6pm or sunset (whichever is earlier), unless the child is accompanied by an adult, and
- a person must not cause or permit a child to engage in any activity that is not 'light work', meaning:
 - work must be unlikely to be harmful to a child's health, safety or moral or material welfare or development (eg. repetitive bending, twisting, lifting, manually lifting heavy items, working at heights, with uncontrolled animals, dangerous equipment or in extreme weather conditions, working near moving vehicles), and
 - work is not prejudicial to a child's attendance at school or the child's capacity to benefit from instruction.

While other sections of the Child Employment Act only apply to children in employment under a contract or in a for-profit business, as a matter of best practice your organisation should develop its own code of conduct to be followed when engaging and working with youth volunteers, which 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 3 hours per day, 12 hours per week during school term and 6 hours per day and 30 hours per week outside school term
 - not earlier than 6am (or sunrise) and not later than 6pm (or sunset) if involved in street trading (ie. door knocking), and

- not later than 9pm in all cases
- the volunteer is provided a rest break of 30 minutes after every 3 hours of work
- the volunteer is provided 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 Considerations' 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

There are a number of different reporting obligations, some of which apply to all adults and others that apply to certain people.

Reporting obligations that apply to all adults

Any adult (person 18 years or older) who forms a reasonable belief that a sexual offence has been committed by an adult against a child (under 16 years) has an obligation to report that information to police.

Failure to disclose the information to police is a criminal offence – a **'failure to disclose' offence**.

A 'reasonable belief' does not require proof. Rather, it is formed if a reasonable person in the same position would have formed the belief on the same grounds. For example:

- a child states that they have been sexually abused
- a child states that they know someone who has been sexually abused (sometimes the child may be talking about themselves)
- someone who knows a child states that the child has been sexually abused
- professional observations of the child's behaviour or development leads a professional to form a belief that the child has been sexually abused, or
- signs of sexual abuse lead to a belief that the child has been sexually abused.

A person will not be guilty of the offence if they have a reasonable excuse for not disclosing the information. A reasonable excuse includes:

- fear for safety, or
- where the person believes that the information has already been disclosed to police and they have nothing further to add.

This reporting obligation applies to all adults in your organisation in relation to the belief they hold about any child, including your youth volunteers.

Reporting obligations that apply to certain people

Reporting concerns about children 'in need of protection'

The *Children, Youth and Families Act 2005* (Vic) creates an obligation to report concerns about a child or youth's welfare in certain circumstances. Reporting is mandatory for the following people if they form the belief a youth is 'in need of protection' (discussed below):

- 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, and
- registered psychologist, youth justice officer or parole officer.

A child will be considered 'in need of protection' if:

- the child has been abandoned by his or her parents and after reasonable inquiries —
 - the parents cannot be found, and
 - no other suitable person can be found who is willing and able to care for the child,
- the child's parents are dead or incapacitated and there is no other suitable person willing and able to care for the child
- the child has suffered, or is likely to suffer, significant harm as a result of physical injury and the child's parents have not protected, or are unlikely to protect, the child from harm of that type
- the child has suffered, or is likely to suffer, significant harm as a result of sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from harm of that type
- the child has suffered, or is likely to suffer, emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged and the child's parents have not protected, or are unlikely to protect, the child from harm of that type, or
- the child's physical development or health has been, or is likely to be, significantly harmed and the child's parents have not provided, arranged or allowed the provision of, or are unlikely to provide, arrange or allow the provision of, basic care or effective medical, surgical or other remedial care.

Reducing or removing risk of child sex abuse

Under the *Crimes Act 1958* (Vic) (**Crimes Act**), people associated with particular kinds of organisations (ie. employees, owners, volunteers, contractors, office holders) who:

- knew of a risk of child sexual abuse by someone in the organisation and had the authority to reduce or remove the risk, but

- negligently failed to do so,

may be charged with a criminal **'failure to protect' offence**.

This list of 'relevant organisations' (kinds of organisation covered by the Crimes Act) includes youth organisations, sporting groups, charities and benevolent organisations (see section 49C of the Crimes Act for the full list).

The failure to protect and disclose offences have only recently come into force. These legislative changes (under Victorian Criminal law) which were passed as a part of the Victorian Government's response to the recommendations of ['Betrayal of Trust', the report of the Parliamentary Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations](#).

TIP

It is important that if your service engages or works with youth, your workers (employees, volunteers or independent contractors) are aware of their reporting obligations and potential criminal liability for failure to meet them.

Consider making it a part of your written policies about working with youth that if any adults form a belief that a youth volunteer (or employee) is in need of protection, for whatever reason, they report it to management as soon as possible so a decision can be made about reporting the concerns appropriately and lawfully. For more guidance in relation to providing a child safe environment, refer to the new Child Safe Standards.

FURTHER READING

For more information about child protection and mandatory reporting in Victoria, go to the [Department of Human Services, Child Protection website](#).

For urgent child protection concerns, call the Child Protection Crisis Line on 13 12 78.

For a list of regional and metropolitan phone numbers, see the Department's [Child Protection Contacts](#).

Screening checks and youth volunteers

There are many circumstances where organisations will need to screen their 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 important considerations, 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 is owed.

Who needs to be screened when we engage youth volunteers?

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

In Victoria, all of your organisation's workers who undertake 'child-related' work, including volunteers, must have a WWC Check (unless an exemption applies).

Your organisation will need to think carefully about who will need Working with Children Checks. Not-for-profit Law's WWC Check Guide at www.nfplaw.org.au/recruitment goes through the position in further detail.

One common area of confusion is whether adult volunteers are required to get WWC Checks when working alongside youth volunteers. In summary, under the *Working with Children Act 2005* (Vic) (**WWC Act**):

- ✘ an adult volunteer will not require a WWC Check if an adult and a child are participating in a volunteering activity on exactly the same basis (eg. both playing in a sporting team, or both helping in a kitchen)
- ✔ an adult volunteer will require a WWC Check if they are in any kind of senior or supervisory position to the child volunteer
- ✘ a parent of a child will not require a WWC Check if they are volunteering in an activity in which their child participates, or normally participates
- ✘ an adult 'closely related' to each child in the volunteering activity will not require a WWC Check

Other exemptions to the requirement to get a WWC Check when engaging in 'child-related work' are listed under Part 3 of the WWC Act (this is outlined in further detail in Section 2 of Not-for-profit Law's guide on Screening Checks at www.nfplaw.org.au/volunteers).

Your organisation will need to analyse the various volunteer positions in the organisation to determine whether an adult volunteer is participating in a volunteering activity on the same basis as a youth volunteer.

EXAMPLES



- A youth and adult volunteer are cleaning out kennels at a lost dogs' home. In this instance, they are participating in a volunteering activity on the same basis and the adult will not require a WWC Check.
- An adult volunteer has been asked to look over and assist the youth volunteer where needed. In this case, the adult appears to be in a supervisory position and will require a WWC Check, unless there is another adult volunteer with a WWC Check that is directly supervising both volunteers.

TIP



If you are unsure about whether your adult volunteers require a WWC Check, we suggest you seek clarification from the [Victorian Department of Justice and Regulation, Working with Children Check website](#) 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 or an exemption applies, 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 youth volunteers.

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.

There are some exceptions to this general rule. Under the WWC Act:

- a worker (including volunteers) under the age of 18, who is supervising children under the age of 15, will require a WWC Check, and
- if your volunteers are students aged 18 or 19 years of age, and the volunteer work has been organised by their educational institution, they are exempt from having to get 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 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 your 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

✔ [Working with Children Act 2005 \(Vic\)](#)

✔ [Child Employment Act 2003 \(Vic\)](#)

✔ [Children, Youth and Families Act 2005 \(Vic\)](#)

✔ [Crimes Act 1958 \(Vic\)](#)

Other 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.

✔ Commission for Children and Young People www.cyp.vic.gov.au

The Commission has published [resources](#) for organisations in relation creating safe environments for children, including complying with the Child Safe Standards

✔ Victorian Department of Human Services (DHS) www.dhs.vic.gov.au

For more information about child protection and mandatory reporting obligations

✔ Victoria Department of Justice and Regulation, Working with Children Check Division www.workingwithchildren.vic.gov.au

For more information about Working with Children Check requirements in Victoria

✔ 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.

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