

# Setting up and governing youth organisations - FAQs

Legal information for community organisations

The questions covered in this fact sheet are:

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## Starting and setting up a youth organisation

- What does being incorporated mean?
- Can we have 'youth' members, committee members and directors?
- What reporting requirements do we have?
- Can our youth organisation be a registered charity?
- What obligations would we have if we were registered as a charity?
- Can we get Deductible Gift Recipient endorsement?
- What are MOUs and auspicing agreements?
- What now?

## Running the organisation

- What legal duties apply to our youth-led governing body (board/committee)?
  - What happens if we don't fulfil these duties as a governing body?
  - Do special legal duties apply to advisory committees?
  - What other laws apply to youth organisations?
  - We don't have many formal policies or procedures- is this an issue?
  - What legal duties apply to our volunteers?
  - How can we stay up to date with the laws relevant to youth organisations?
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**Youth organisations often have a number of questions relating to setting up and running their organisation.**

This fact sheet aims to answer common questions and provide a little more guidance about the issues you need to think about when setting up and running a youth organisation.

Below is a quick guide to the terms and phrases used in this fact sheet:

Word or phrase	Definition
Committee/board	The governing body of an organisation.
Committee members/directors	The people that sit on the committee/board of an organisation.
Governing documents	The roadmap for running an organisation. Officially known as the 'rules' or 'constitution' of an organisation. It is a legal requirement that an organisation and its members follow the rules of the organisation.
Members	The people that hold membership in an organisation. This normally means they have the right to vote on certain matters or elect the people that sit on the governing body.
Model rules/constitution	Set of rules drafted by the Government as a template that groups can use if they do not want to write their own.
Youth	Usually means people under 18 years of age, but this may depend on the issue being discussed.
Youth organisation	Organisation either run by, involving, or providing services to youth or advocating about youth issues.

### TIP

This fact sheet answers common questions which are specific to youth organisations. Once you have read this information we recommend considering the broader information available on the Not-for-profit Law [website](#) which is linked throughout.



## 1. Starting and setting up a youth organisation

### What does being incorporated mean?

Incorporation gives your group its own legal identity, separate from its individual members. Incorporated groups can enter into contracts, employ people, and sue and be sued. Incorporated groups have a legal structure, with rules (or constitution), members, and a governing body.

Young people can start and run their own incorporated group. However, it is important to note that legal duties apply to your organisation and its leaders the same as any other organisation, regardless of the age of the members of the governing body. If you are considering having youth members of your governing body you should think carefully about whether the young people involved are equipped to understand and comply with these legal duties (covered in Section 2 of this fact sheet) and whether the law allows it in your state or territory.

If you decide to incorporate, the next step is to choose a legal structure. There are a number of incorporated legal structures which are suitable for not-for-profit community organisations. For many not-for-profit organisations, including youth organisations, the decision about which incorporated structure to choose will come down to a decision between being an **incorporated association** or a **company limited by guarantee**. You may also decide a cooperative structure may be suitable for your organisation.

Incorporated associations are state or territory legal structures and are primarily governed by state laws (as are cooperatives but most states and territories have adopted the [cooperatives national law](#)).

Companies limited by guarantee are governed by federal (Australia-wide) laws.

## RELATED RESOURCES

For more information on a possible legal structure for your organisation, head to our website. Our page 'Choosing a legal structure' has a fact sheet for each state and territory explaining the legal structures available. There is also a fact sheet comparing the features of an incorporated association and a company limited by guarantee. You can find these at [www.nfplaw.org.au/legalstructure](http://www.nfplaw.org.au/legalstructure).

Once you decide on a legal structure, we have specific fact sheets on how to navigate the process of setting up the organisation. These can be found at [www.nfplaw.org.au/settingup](http://www.nfplaw.org.au/settingup).



Alternatively, instead of incorporating, your group may wish to enter into an **auspicing** arrangement with another organisation. This means the other organisation has ultimate responsibility for your group's activities, but your group can run projects under the auspices of the other organisation. Auspicing agreements are discussed below.

## Can we have 'youth' members as part of the committee and directors?

If you incorporate, your organisation will have a committee (or board) members. Whether you can have people under the age of 18 as a committee member depends on the legal structure of your organisation and your rules or constitution.

### Company limited by guarantee

The *Corporations Act 2001* (Cth), which is the relevant law for companies limited by guarantee, requires that a board member (also referred to as a director) or company secretary be 18 years or older.

### Incorporated associations

The table below sets out any age restrictions found in the relevant laws for incorporated associations in each state and territory. In most states and territories, incorporated associations have the choice to adopt a set of model rules or a model constitution rather than writing their own.

There are some age restrictions found in these model rules or constitutions which may be relevant in deciding whether your organisation wants to adopt them in full or in part.



## RELATED RESOURCES

For more information about what the committee or board does in an organisation, and the various positions which may need to be filled, go to [www.nfplaw.org.au/whoruns](http://www.nfplaw.org.au/whoruns).



## CAUTION

If you amend the model rules or model constitution you need to be careful you do not remove or alter a rule that is required by law. You can read more [here](#) or seek legal advice.

State / Territory	What the law says		Model rules
	Board or committee member	Secretary or public officer	Are there additional restrictions which may apply if you adopt the model rules or constitution?
VIC	No age restriction	Must be 18 years or older	Yes – committee members to be 18 years or older
NSW	Must be 18 years or older	Must be 18 years or older	No
SA	No age restriction	Must be 18 years or older	No model rules option available**
QLD	No age restriction	No age restriction	No
WA	No age restriction	Not compulsory to have this position. No age restriction.	Yes – committee members to be 18 years or older
NT	No age restriction	No age restriction	Yes – committee members to be 18 years or older
ACT	No age restriction	Must be 18 years or older	No
TAS	No age restriction	Must be 18 years or older	No

\*\*SA has no model rules however example rules have been developed for incorporated associations and there are no age restrictions in that example.

### CAUTION

The table above only considers restrictions on the age of people for these positions. There may be additional restrictions based on where the person lives or their personal history, such as if they have been or are currently insolvent or have a criminal history.

In addition, it is important that the person be able to meet their duties as a committee member. For more information see Who runs the organisation available at [www.nfplaw.org.au/whoruns](http://www.nfplaw.org.au/whoruns).



### RELATED RESOURCES

It is important that all committee or board members are aware of the duties and obligations associated with their role. See our fact sheet Introduction to the board member role for new board members.

When you bring on a new committee or board member they should have an induction. See our fact sheet Board inductions – bringing on a new board member. These resources are available at [www.nfplaw.org.au/governance](http://www.nfplaw.org.au/governance).



## Members

It is possible to create different classes of membership with different voting rights within your rules or constitution. For example, you could have 'young members' (e.g. under 16, with a lower membership fee) that do not have voting rights and 'full members' (over 16, with a higher membership fee) that do.

Some of the model rules impose restrictions on membership rights based on age. This may impact your organisation's decision on whether to adopt the model rules in full or part.

### ! CAUTION

If you amend the model rules or model constitution you need to be careful you do not remove or alter a rule that is required by law. You can read more [here](#) or seek legal advice.

State / Territory	Age restrictions found in model rules or constitution
VIC	Members under 15 years of age are called associate members and do not have voting rights
NSW	Members under 18 years of age do not have voting rights
SA	No model rules option available.
QLD	None
WA	Members under 15 years of age are called associate members and do not have full voting rights
NT	None
ACT	None
TAS	None

## What are our reporting requirements?

Regardless of whether you incorporate under state or federal law, you will generally need to report to a regulator annually and when certain other events occur (e.g. a change in the organisations registered details). For more information go to 'Reporting to Government' available at [www.nfplaw.org.au/reporting](http://www.nfplaw.org.au/reporting).

There are some different requirements that apply if your organisation is also a registered charity (see below).

## Can our youth organisation be a registered charity?

Yes, if you are eligible, you can! To become a registered charity with the Australian Charities and Not-for-profit Commission (**ACNC**), the national regulator of charities, your group will need to:

- be not-for-profit (including having 'not-for-profit clauses' in its rules or constitution)
- meet the definition of 'charity', and
- have an ABN.

The definition of a 'charity' is found in the *Charities Act 2013* (Cth). A charity is an entity:

- ✓ which is not-for-profit

- ✓ has purposes that are charitable and for the public benefit (and any non-charitable purposes it has are incidental or ancillary to, and in furtherance or in aid of, its charitable purposes)
- ✓ which does not have any disqualifying purposes, and
- ✓ which is not an individual, political party or government entity.

Becoming a registered charity may entitle you to apply to be endorsed by the Australian Taxation Office (ATO) for certain tax concessions, in particular Goods and Services Tax, Fringe Benefit Tax Concessions and Income Tax Exemptions.

## RELATED RESOURCES

For more information on registering as a charity, including further information on the definition of a charity, see 'Introduction to Charities Law' at [www.nfplaw.org.au/charity](http://www.nfplaw.org.au/charity).  
For more information on tax concessions for charities, go to [www.nfplaw.org.au/tax](http://www.nfplaw.org.au/tax).



## What obligations would we have if we were registered as a charity?

When an organisation registers as a charity, it must meet special obligations that apply to charities. Depending on your legal structure, these obligations may be in addition to your existing obligations, and in some instance may replace some of your obligations to your regulator. Examples of where charity reporting obligations replace most regulator reporting obligations include associations incorporated in the ACT and companies limited by guarantee.

For more detail about how charity obligations interact with other obligations, go to Not-for-profit Law's 'Charity Reporting' page at [www.nfplaw.org.au/charityreporting](http://www.nfplaw.org.au/charityreporting).

A brief overview of a charity's key obligations are outlined below:

Obligation	Brief description
<b>Comply with ACNC governance standards</b>	<p>Charities must meet the ACNC's five <a href="#">governance standards</a>, which are a set of minimum requirements for governance.</p> <p>A charity must meet the governance standards when it applies to the ACNC for registration, and must continue to meet the governance standards to maintain its registration.</p> <p>These standards are similar to the requirements that must be met if you are an incorporated association or company limited by guarantee that is not a registered charity.</p> <p>The ACNC legislation also provides for a set of minimum standards to regulate registered charities who send money or participate in activities outside Australia (called external conduct standards). These standards are yet to be made. When they are, like the governance standards, charities will need to comply with these external conduct standards to be registered, and remain registered, with the ACNC.</p>
<b>Record keeping</b>	Charities need to keep records, including financial and operational records.

Obligation	Brief description
Annual reporting to ACNC	<p>The type of report/s that must be submitted depends on the size of the charity. The ACNC has guidance on determining the size of your charity.</p> <ul style="list-style-type: none"> <li>• small charities are required to submit an Annual Information Statement once each year, and can submit an annual financial report if they choose (which does not have to be audited), and</li> <li>• medium charities are required to submit either reviewed or audited financial reports each year as well as an Annual Information Statement.</li> <li>• large charities are required to submit audited financial reports each year as well as an Annual Information Statement.</li> </ul>
Notify ACNC of any changes	<p>Charities need to notify the ACNC when certain things change, including:</p> <ul style="list-style-type: none"> <li>• changes to the legal name of the organisation</li> <li>• changes to the address for service (where legal documents can be sent)</li> <li>• change to the 'responsible persons' (people who are members of your charity's governing body including directors or committee members, or its trustees), and</li> <li>• changes to the governing documents (such as its constitution, rules or trust deed).</li> </ul>

## RELATED RESOURCES

For more information about the definition of a charity, the process for registration, and the benefits and obligations that accompany registration, go to Not-for-profit Law's 'Registering as a Charity' page at [www.nfplaw.org.au/charity](http://www.nfplaw.org.au/charity).

For more information on the ACNC governance standards, head to the Not-for-profit Law website at [www.nfplaw.org.au/governance](http://www.nfplaw.org.au/governance). The ACNC has also released a guide called *Governance for Good – the ACNC's guide for charity board members* available at [www.acnc.gov.au/ACNC/Edu/Tools/GFG/GFG\\_Intro.aspx](http://www.acnc.gov.au/ACNC/Edu/Tools/GFG/GFG_Intro.aspx)



## Can we get Deductible Gift Recipient endorsement?

Becoming an endorsed Deductible Gift Recipient (**DGR**) means donations over \$2 to these organisations are a tax deduction. This endorsement can help increase the number and amounts of donations. Applying for DGR endorsement can be a long and difficult process, so before applying organisations should make sure the rewards of achieving DGR endorsement are worth the effort.

In general, to be eligible for DGR endorsement organisations should:

- have an Australian Business Number (**ABN**)
- meet 'in Australia' requirements as defined in tax law (or have a fund, authority or institution operating in Australia)
- be a not-for-profit organisation (this will usually involve having appropriate not-for-profit and dissolution clauses in your organisation's governing documents), and
- have an appropriate winding up and revocation of endorsement clause in your organisation's governing documents, and
- fall within one of the categories of DGR specified in the tax law. There are almost 50 different DGR categories and each has its own specific requirements.

Some common categories for DGR endorsement particularly relevant to youth organisations include:

- **Public benevolent institutions** – that provide relief to those experiencing disadvantage such as by helping people experiencing illness, homelessness or poverty
- **Health promotion charities** – that promote prevention and control of disease (rather than providing relief)
- **Environment organisations** – organisations whose principal purpose is the protection and enhancement of the natural environment or a significant aspect of it, or research or education about the environment or a significant aspect of it
- **Cultural organisations** – organisations whose principal purpose is the promotion of literature, music, performing arts, craft, design, film, video, radio, community arts or television
- **Harm prevention charities** – that work towards preventing harm (e.g. alcohol abuse or suicide)

### ! CAUTION

Each category of DGR has certain 'eligibility criteria' to meet in order to be endorsed by the ATO. These criteria can be quite technical and we suggest your organisation seeks advice about whether it is likely to satisfy the requirements for endorsement.

Applying for DGR can be a long and costly process, so it is important for your group to carefully consider the need for DGR status.

For a full list of categories your organisation may fall into to be eligible for DGR endorsement, go to the [ATO's DGR Table](#).

Youth organisations most commonly fall under the categories of a **public benevolent institution** (if providing services to disadvantaged youth) or a **health promotion charity** (if promoting the prevention or control of a disease or diseases amongst youth).

There are also record-keeping and potentially reporting requirements that come with being a DGR. Sometimes the burden of extra administration and DGR requirements will outweigh the benefit of DGR status.

You should consider if DGR endorsement will be of sufficient benefit to your organisation to justify the application process and ongoing compliance with the extra requirements.

There is an alternative to an organisation becoming a DGR in its own right. You could work with an existing organisation which has DGR status. This could be for a specific project, rather than all your organisation's activities. It could be a long term arrangement or it could be used to establish a track record for a future DGR application. This is explored further in the section on the difference between a Memorandum of Understanding and an auspice agreement discussed below. For further information on auspicing, go to [www.nfplaw.org.au/auspicing](http://www.nfplaw.org.au/auspicing).

### RELATED RESOURCES

For more information about DGR endorsement, including the process for applying and the obligations of DGR endorsed organisations, go to Not-for-profit Law's [Guide to Deductible Gift Recipient Status](#) at [www.nfplaw.org.au/DGR](http://www.nfplaw.org.au/DGR).





## What is the difference between a memorandum of understanding (MoU) and an auspice agreement?

MOUs and auspice agreements are both ways that groups can work together, however, they are quite different and it is important to understand the different ways they work.

	<b>Memorandum of Understanding (MoU)</b>	<b>Auspice Agreement</b>
<b>Description</b>	<p>An MoU is the least formal type of collaborative agreement and not normally a legally binding arrangement.</p> <p>MoUs are often 'agreements to agree', where a comprehensive agreement may be formed at a later time after further negotiations.</p> <p>MoUs can also be documents that set out shared understandings about how organisations will work together.</p>	<p>To 'auspice' means to provide support, sponsorship or guidance. The group or individual requiring support is known as the 'auspicee' and the organisation that auspices the group or individual is known as the 'auspicator'. The 'auspicator' is usually incorporated. The 'auspicee' is often unincorporated.</p> <p>When using an auspice arrangement, the relationship is often described as one where the auspicee will be carrying out activities 'under the auspices of' the incorporated auspicator'. The auspicator often receives funding or enters into relevant agreements for the auspicee. The relationship is usually set out in an Auspice Agreement (which is generally a legally binding arrangement).</p>
<b>When is it used?</b>	<p>MoUs will typically be used in the not-for-profit sector when organisations wish to co-operate with each other, allowing each to make the most of the other's specialist skills, knowledge or resources or efficiently service a particular need.</p> <p>MoUs are not normally considered legally binding. Therefore, you should not use an MoU if your organisation wants to be able to enforce a part of the agreement. If you need to rely on an organisation taking certain actions and/or if your organisation stands to lose money if another organisation which signs the MoU doesn't do what they say they would do – your organisation should enter into a binding contract, rather than an MoU.</p>	<p>The most common reason for a group or individual to seek to be auspiced is a need to quickly and easily meet grant funding requirements. Grant funding can often require a recipient to be incorporated, be a Tax Concession Charity or have deductible gift recipient (DGR) endorsement.</p> <p>Where a group or individual only wants to run a short term project, or is exploring a model and wishing to trial an idea before committing to incorporation, auspicing can offer a neat solution.</p> <p>Youth run groups may wish to consider an auspicing arrangement if they do not wish to undertake the duties and responsibilities which come with incorporating.</p> <p>Normally the auspicee would approach the auspicator. The auspicator may charge a fee for auspicing the auspicee.</p>
<b>What does the document look like?</b>	<p>MoUs will typically establish a framework for collaboration between organisations and express the common goals or vision of the organisations involved.</p>	<p>An auspicing agreement sets out the legal obligations of both the auspicator and auspicee toward each other and in relation to any specific funding or other agreements.</p>

In general, an MoU will not deal with the specific details of particular projects. An MoU is therefore usually more of a 'high level' agreement.

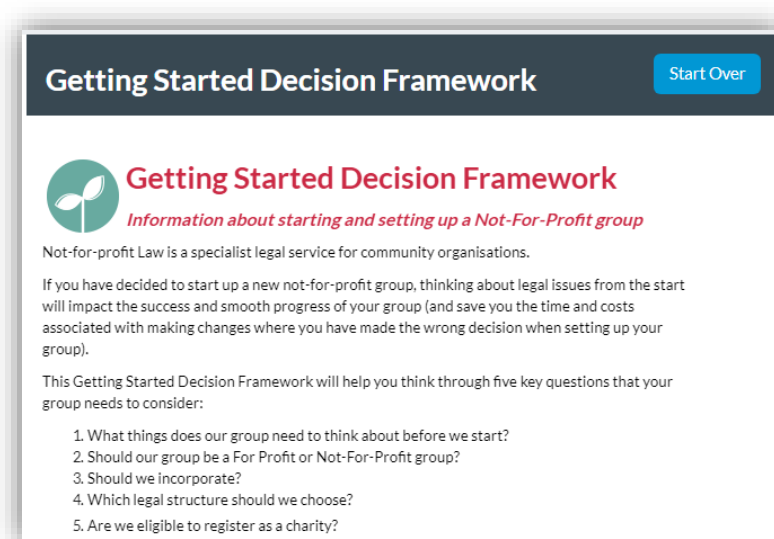
## RELATED RESOURCES

For more information about important issues for parties involved in auspicing to consider, and guidance on reaching agreement on the terms of the auspicing agreement, go to our website at [www.nfplaw.org.au/auspicing](http://www.nfplaw.org.au/auspicing). You will also find a template auspicing agreement which your organisation might like to make use of.

For more information about MoUs, when they should be used, what they will cover and any obligations that may arise, go to our website at [www.nfplaw.org.au/MOU](http://www.nfplaw.org.au/MOU). You will also find a template MoU available which your organisation may like to make use of.



## What now?



**Getting Started Decision Framework** Start Over

**Getting Started Decision Framework**  
Information about starting and setting up a Not-For-Profit group

Not-for-profit Law is a specialist legal service for community organisations.

If you have decided to start up a new not-for-profit group, thinking about legal issues from the start will impact the success and smooth progress of your group (and save you the time and costs associated with making changes where you have made the wrong decision when setting up your group).

This Getting Started Decision Framework will help you think through five key questions that your group needs to consider:

1. What things does our group need to think about before we start?
2. Should our group be a For Profit or Not-For-Profit group?
3. Should we incorporate?
4. Which legal structure should we choose?
5. Are we eligible to register as a charity?

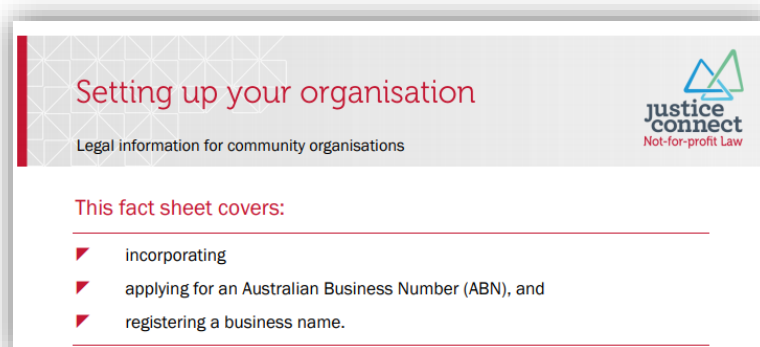
Now that you've got the answers to your youth specific questions, we recommend using our *Getting Started Decision Framework* available at [www.nfplaw.org.au/gettingstarted](http://www.nfplaw.org.au/gettingstarted).

The framework will ask you a number of questions about your proposed organisation and once you have completed them you are provided with a report with suggestions to assist you in setting up your organisation.

Once you've decided on the structure of your organisation, read our fact sheet on *Setting up your organisation* to explain your next steps.

There are also fact sheets available for specific legal structures.

You can find these fact sheets at [www.nfplaw.org.au/settingup](http://www.nfplaw.org.au/settingup).



**Setting up your organisation**  
Legal information for community organisations

justice connect  
Not-for-profit Law

**This fact sheet covers:**

- ▶ incorporating
- ▶ applying for an Australian Business Number (ABN), and
- ▶ registering a business name.

## Other resources are available



The Not for profit Law website ([www.nfplaw.org.au](http://www.nfplaw.org.au)) has fact sheets and resources ready to assist your organisation with common questions and issues. It's always worth having a look to see if there is information related to what you're doing or thinking of doing in the future, just to be sure you've considered all your options.

See 'Section 2 – Running the organisation' below for day-to-day obligations you should be aware of as a youth organisation.

## 2. Running the organisation

### What legal duties apply to our youth-led governing body?

The members of the governing body (board/committee) of your youth organisation owe the same legal duties as those governing other types of not-for-profit organisations regardless of their age. These duties include:

- the duty to act in good faith and for a proper purpose
- the duty to act with reasonable care, diligence and skill (including the duty to prevent insolvent trading)
- the duty to not misuse information or position, and
- the duty to disclose and manage conflicts of interest.

As part of these four key legal duties a not-for-profit's governing body must ensure the organisation:

- complies with general legal and regulatory requirements - in particular, that it prepares reports, annual returns and financial accounts (e.g. if an incorporated association that it reports to the state regulatory body as required) and other laws, such as [privacy laws](#) and [occupational health and safety laws](#), and

- does not breach any of the requirements or rules set out in its governing document and that it acts in accordance with the purpose or objects set out in the governing document.

## What happens if we don't fulfil these duties as a governing body?

If it is found you have breached a legal duty as a board/committee member, you may be personally liable for this breach, which could result in the following:

- fines or compensation: paying fines set out in the incorporating legislation or having to pay the not-for-profit or a third party for losses related to the breach
- disqualification: the person who breached a duty can be prevented from sitting on any governing body (board/committee) for a period of time, and
- criminal penalties: in extreme cases, if board members are deliberately dishonest or reckless and the breach is significant then some of their actions may attract criminal penalties.

While prosecution is a rare event and will only be taken where there is a degree of deliberate wrongdoing, extreme recklessness or negligence, it is important to remember the reputational consequences of a breach of the duties. These can sometimes be more significant than the legal penalties.

### RELATED RESOURCES

For more information about the key legal duties owed by governing members of a not-for-profit organisations (including incorporated associations, companies limited by guarantee, cooperatives and indigenous corporations), go to NFP Law's Duties Guide available at [www.nfplaw.org.au/governance](http://www.nfplaw.org.au/governance).



## We are on an external advisory committee for a youth organisation – do we have specific legal duties?

There are no particular legal duties that apply to an external advisory committee of a youth organisation (or other not-for-profit organisation).

The legal duties discussed above apply to all members of the governing body (board/committee). These duties may also apply to someone who is not a formal member of the governing body if they act in a way that is similar or the same as someone on the governing body. This may be the case where an advisory committee member is particularly influential or acts and is treated in the same way as a member of the governing body. Having a 'volunteer agreement' in place and a clear description of the role and responsibilities of the advisory committee may be useful in clarifying the boundaries of the role, and whether or not that role could attract legal duties.

Advisory committee members should be careful not to share information about the organisation gained as a result of advising the group.

## FURTHER READING

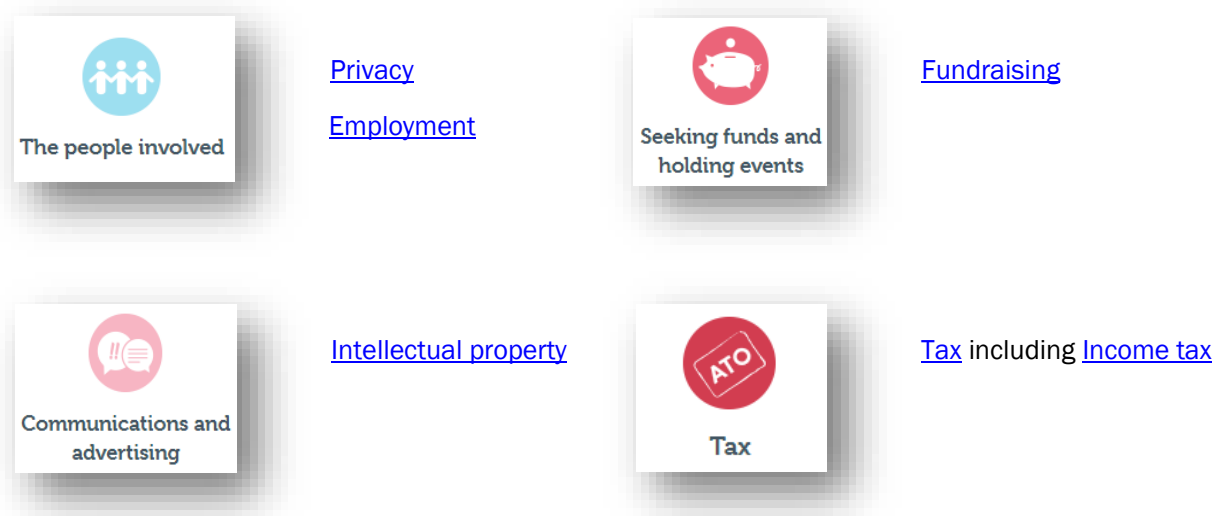
For more information about the rules or constitution of a not-for-profit organisation go to the Not-for-profit Law website at [www.nfplaw.org.au/constitution](http://www.nfplaw.org.au/constitution).

You can find a template volunteer agreement, as well as a number of related fact sheets, at [www.nfplaw.org.au/volunteers](http://www.nfplaw.org.au/volunteers).



## What other laws apply to youth organisations?

There are many laws that could potentially apply to youth organisations. For example:



We have resources available on our website on all of these issues under the icon categories displayed above.

### Laws that are particularly relevant to youth organisations include:

#### Child safety: Working with children checks

Each state and territory has requirements for working with children checks for volunteers and employees who will potentially have contact with young people. We have *Screening Check Guides* for each state and territory available at [www.nfplaw.org.au/recruitment](http://www.nfplaw.org.au/recruitment).

#### Child safety: Mandatory reporting

There are various mandatory and voluntary reporting schemes in operation around Australia relating to child safety. For more information on these schemes, see this child safety toolkit which can be downloaded at [www.communitydirectors.com.au/icda/tools/?articleId=6737](http://www.communitydirectors.com.au/icda/tools/?articleId=6737).

In NSW, Victoria and ACT reportable conduct schemes apply to the heads of certain types of organisations and bodies, such as the CEO, if they become aware that a child abuse allegation has been made against an employee, volunteer, director or contractor.

It is recommended that any organisation that works with children or young people have a procedure for responding to a report of suspected or actual child abuse.

### Child safety: Failure to report

There are consequences in each state and territory if someone who is required to make a report fails to do so. These may be a fine or imprisonment.

Victoria has specific offences for 'failure to disclose' and 'failure to protect'. In Victoria, any adult who forms a reasonable belief that a sexual offence has been committed by an adult against a child under 16 has an obligation to report that information to police. Failure to disclose the information to police is a criminal offence.

An offence (called 'failure to protect') also applies to people within relevant organisations 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.

### Child safety: Minimum child safe standards

Victoria has introduced compulsory minimum standards that apply to organisations that provide services for children to help protect children from all forms of abuse. The child safe standards form part of the Victorian Government's response to the Betrayal of Trust Inquiry.

For more information about these new standards, go to the [Department of Human Services website](#).

### Work conditions of young people

Organisations have special obligations relating to children engaging in volunteering and other activities, such as employment. For example, in Victoria under the *Child Employment Act 2003* (Vic):

- a not-for-profit organisation must not allow a child (under the age of 15) to engage in activities in a public place or engage in door-to-door fundraising earlier than 6 a.m. or sunrise (whichever is later) or later than 6 p.m. 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' (for the meaning go to the [Business Victoria website](#))

#### RELATED RESOURCES

For more information about various legal issues that relate to volunteers, go to NFP Law's Information Hub at [www.nfplaw.org.au/volunteers](http://www.nfplaw.org.au/volunteers).

You can find the relevant state body for more information around child employment in the resources section at the end of this fact sheet. Although these are not always legally applicable to volunteers, as a matter of best practice your organisation should assume they also apply to youth volunteers.

The [Australian Institute of Family Studies](#) provides an overview of child protection legislation in each state and territory in Australia, as well as other useful resources. You can find these resources at [aifs.gov.au/cfca/publications/australian-child-protection-legislation](http://aifs.gov.au/cfca/publications/australian-child-protection-legislation). There are also some state specific fact sheets on youth volunteers available at [www.nfplaw.org.au/volunteers](http://www.nfplaw.org.au/volunteers).

### Record keeping

There are many sources of record keeping obligations. For example, there are particular laws around health records, personal information, and in circumstances where there is actual or threatened criminal litigation against the organisation or any of its clients.

In relation to youth, employers in some states may be required to keep additional records. See the specific government body listed in the resources section at the end of this fact sheet for where to find this information.

For general record keeping requirements, see [www.nfplaw.org.au/recordkeeping](http://www.nfplaw.org.au/recordkeeping).

## What legal duties do we owe our volunteers?

Your organisation has certain obligations towards its volunteers and to those your volunteers work with. For example:

- you should not allow a volunteer to commence any work where they may come into contact with children unless they have had a working with children check (WWC Check) – this is not always a legal requirement but should be undertaken as best practice,
- your organisation may have legal obligations to protect the health and safety of your volunteers, and
- negligence laws also require your organisation take reasonable steps to prevent foreseeable harm, injury or loss. This includes taking reasonable steps to prevent your volunteers being subject to harmful ‘workplace’ behaviour such as injuries, discrimination, sexual harassment, bullying and victimisation.

In certain situations, your organisation may also be held legally responsible (be liable) for the actions of its volunteers as representatives of your organisation – for example if your volunteer causes an injury or harm to another person or property while undertaking their volunteer role.

This makes it crucial for your organisation to have good volunteer induction and management practices (which include obligations for the mandatory reporting of child abuse, where relevant), workplace safety and behaviour policies and insurance in place in relation to your volunteers.

### RELATED RESOURCES

For more information about health and safety, see our resources at [www.nfplaw.org.au/OHS](http://www.nfplaw.org.au/OHS).

## We have ‘young volunteers’ – are they any special requirements?

All of your obligations to your volunteers also extend to your young volunteers. However, you may also have additional conditions for child volunteers. When you have young volunteers, your organisation should consider the following:

- its duty of care to provide a safe workplace for young volunteers
- whether or not the young person has the required skills or experience to safely perform the volunteer role
- whether its insurance policies apply to young volunteers (both harm caused to volunteers and the actions of volunteers)
- the requirement that people working with the young volunteers have working with children checks
- whether it needs consent from parents or parents present for very young volunteers, and
- the fact that young people are particularly vulnerable and may need special policies and procedures around the activities they undertake (depending on their age).

## RELATED RESOURCES

For more information about various legal issues that relate to volunteers, go to [www.nfplaw.org.au/volunteers](http://www.nfplaw.org.au/volunteers). For some states there are specific fact sheets on engaging and working with youth volunteers.



## We don't have many policies or procedures in place – is this an issue?

As discussed above, the board/committee members have particular legal duties in relation to governing the organisation. These duties include making sure the organisation takes all reasonable steps to mitigate the risks to the health and safety of its staff, volunteers, clients and other members of the public. Your organisation may have a legal duty of care under the common law (judge made law) of negligence, or under the negligence provisions in state and territory legislation in addition to OH&S laws (as above).

### FURTHER READING

If you want to know more read our fact sheet on Negligence [here](#). It explains how a duty of care arises and talks about risks and risk management.

While there is no general legal obligation for an organisation to have a set of specific policies in place it is good practice to have governance policies which cover certain matters (in limited circumstances some laws will require some organisation to have policies in place, for example, in relation to whistleblowing).

Developing appropriate policies and procedures helps ensuring compliance with various legal duties, including any obligation of duty of care.

Policies may relate to:

- good governance
- financial management
- management of volunteers and employees
- health and safety
- privacy, IT and social media

As a youth organisation you should have a child safety policy.

It is important to keep in mind that you may be required to have certain policies under government funding or other contractual arrangements.

## We also have no risk management plan - is this an issue?

Risks can expose your organisation, and sometimes individuals, to liability (legal responsibility) that can have serious legal, financial and reputational consequences. If you are involved in a community organisation, no matter what size, it is a good idea to spend at least a short amount of time discussing two simple questions:

- What “bad things” might happen as a result of the operation or activities of our organisation?
- What can we do to avoid these risks, or at least minimise the chance they will happen, and if they did happen, what protections should be have in place (such as insurance policies)?



Many organisations establish a risk committee that is responsible for undertaking this analysis, and reporting back to the board/committee. This process should involve both the board/committee and senior staff (where applicable), should be documented and should include a timeframe for review (e.g. annually).

#### RELATED RESOURCES

For more information about insurance and risk management, go to Not-for-profit Law's Insurance and Risk Management Guide at [www.nfplaw.org.au/insurance](http://www.nfplaw.org.au/insurance).

## How can we stay up to date with changes to the laws relevant to youth organisations?



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Not-for-profit Law also sends a monthly newsletter including developments in the law and new resources available on our website. You can subscribe to our monthly newsletter by visiting [www.nfplaw.org.au/subscribe](http://www.nfplaw.org.au/subscribe).

You may also wish to subscribe to updates and alerts from other relevant peak and governing bodies. You can find a list of some of these bodies in the *Resources* section below.

# Resources

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## Related Not-for-profit Law Resources

- ✔ [Choosing a legal structure](#)
- ✔ [Registering as a charity](#)
- ✔ [Deductible Gift Recipient Endorsement](#)
- ✔ [Governance](#)
- ✔ [Rules or Constitution](#)
- ✔ [Insurance and Risk](#)
- ✔ [Volunteers](#)
- ✔ [Documents and records](#)
- ✔ [Auspicing](#)
- ✔ [Memoranda of Understanding](#)

## Legislation

- ✔ *Charities Act 2013 (Cth)*
- ✔ *Corporations Act 2001 (Cth)*
- ✔ *Income Tax Assessment Act 1936 (Cth)*

## Other Resources

### National

- ✔ [Australian Charities and Not-for-profit Commission](#)  
The independent national regulator of charities. For information about governance and reporting for registered charities
- ✔ [The Australian Institute of Company Directors](#)  
The AICD has released Good Governance Principles and Guidance for NFP Organisations
- ✔ [Child Safety Toolkit](#) created by Moores Legal, published by Our Community  
For details of the schemes, checks, policies and reporting requirements for child protection around Australia.
- ✔ [National Children's Commissioner at the Human Rights Commission](#)  
Advocates for the rights of children and young people nationally.
- ✔ [Royal Commission into Institutional Responses to Child Sexual Abuse](#)  
For information about the Royal Commission and its final report.
- ✔ [Volunteering Australia](#)

National peak body for volunteers.

## Victoria

### ✔ [Commission for Children and Young People](#)

An independent body which promotes improvement in policies and practices affecting the safety and wellbeing of Victorian children and young people. They regulate organisations that work with children and young people, including the Reportable Conduct Scheme. Produce a number of resources for children and organisations.

### ✔ [Department of Health and Human Services](#)

For more information relating to child protection laws, including the new child safe standards

### ✔ [Youth Affairs Council of Victoria](#)

The peak body and leading policy advocate on young people's issues in Victoria

### ✔ [Volunteering Victoria](#)

The state peak body for volunteering that focuses on advocacy, sector development and the promotion of volunteering

### ✔ [Department of Justice and Regulation](#)

For updates relating to working with children checks and child protection laws, including 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

### ✔ [Business Victoria](#)

For more information about child employment laws and requirements, including specific obligations for keeping records.

### ✔ [Worksafe Victoria](#)

For more information about protecting the health, safety and welfare of employees and other persons who are at, or come in to contact with a workplace.

## New South Wales

### ✔ [Office of the Advocate for Children and Young People](#)

Works to improve the safety, welfare and wellbeing of all children and young people in NSW. Includes the [NSW Youth Advisory Council](#).

### ✔ [Office of the Children's Guardian](#)

For information on child employment regulations, child safe organisations and working with children checks. Also runs child safe training.

### ✔ [NSW Volunteering](#)

The state peak body for volunteering.

### ✔ [Youth Action](#)

State peak body for young people and youth services in NSW.

✔ [Department of Family and Community Services](#)

Looks after child protection and reports of child abuse.

## Queensland

✔ [Queensland Family and Child Commission](#)

Works to promote the safety, wellbeing and best interests of children and young people. Monitors and reports on the child protection system. Includes the Queensland Youth Advisory Council.

✔ [Youth Affairs Network of Queensland](#)

Peak community youth affairs body.

✔ [Business Queensland](#)

For information on requirements around employing children.

✔ [Department of Child Safety, Youth and Women](#)

For information around child protection and child services.

✔ [Blue Card](#)

Queensland's working with children check system.

✔ [Volunteering Queensland](#)

State peak body for volunteers.

## South Australia

✔ [Commissioner for Children and Young People](#)

Advocates and promotes the rights, wellbeing and best interests of children and young people across South Australia.

✔ [Office for Youth](#)

Supports young people in South Australia and provides grants for programs and activities which directly impact young people.

✔ [Youth Affairs Council of South Australia](#)

The peak body representing young people and the youth sector in South Australia.

✔ [SafeWork SA](#)

For information and requirements around employing children and young people.

✔ [Volunteering SA and NT](#)

Peak body for volunteering and volunteer resource centre for South Australia and the Northern Territory.

## Tasmania

✔ [Commissioner for Children and Young People](#)

Promotes and protects the safety, wellbeing and rights of children and young people.

✔ [Youth Network of Tasmania](#)

Peak body for the non-government youth sector in Tasmania. Incorporates the Tasmanian Youth Forum.

✔ [Volunteering Tasmania](#)

State peak body for volunteers.

✔ [Department of Health and Human Services](#)

Incorporates Children and Youth Services.

✔ [Consumer, Building and Occupational Services](#)

For information on registration to work with vulnerable people.

## ACT

✔ [Children and Young People's Commissioner](#)

Promotes the rights of children and young people in Canberra.

✔ [Youth Coalition of the ACT](#)

Peak youth affairs body of the ACT.

✔ [Office for Children, Youth and Family Support](#)

Government department for services for children and young people. Includes laws and restrictions of employment and volunteering of children and young people.

✔ [Volunteering and Contact ACT](#)

Peak body for volunteering and community information services in the Canberra Region.

✔ [Access Canberra](#)

For working with vulnerable people requirements and information.

## Northern Territory

✔ [Office of the Children's Commissioner Northern Territory](#)

Independent office that is responsible for ensuring the wellbeing of vulnerable children. Operate a child abuse and protection hotline.

✔ [Volunteering SA and NT](#)

Peak body for volunteering and volunteer resource centre for South Australia and the Northern Territory.

✔ [Northern Territory Government information and services](#)

For information on child protection and working with children clearance.

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