

# What laws apply to your organisation and volunteers?

Legal information for Victorian community organisations

The following table does not list all legislation that will apply to your organisation. It provides an overview of legislation that most commonly arises when dealing with legal issues involving volunteers. Common law (judge-made law) will also apply to your organisation and volunteers, alongside legislation. Some legislation is simply a codification of the law made by the courts over the years.

There are fact sheets and guides that go into more detail on these laws on the Volunteers page of the Information Hub at [www.nfplaw.org.au/volunteers](http://www.nfplaw.org.au/volunteers).

Legal issue	Legislation	Applies to volunteers?	Applies to employees?	Comments
Discrimination	<i>Equal Opportunity Act 2010</i> (Vic)	✓ (see comments)	✓	The areas of 'public life' covered by the Act do not currently include volunteering. However, volunteering could be construed as falling into other categories in which discrimination is prohibited under the Act. See NFP Law's fact sheet: <a href="#">Volunteers and unlawful workplace behaviour</a> .
	<i>Racial and Religious Tolerance Act 2001</i> (Vic)	✓	✓	The Act has a broad application.
	<i>Charter of Human Rights and Responsibilities Act 2006</i> (Vic)	✓ (see comments)	✓	It will only apply (to your volunteers and employees) if your organisation meets the definition of a 'public authority'.
	<i>Age Discrimination Act 2004</i> (Cth)	✓ (see comments)	✓	The Act does not explicitly cover volunteers. It may apply to volunteers as the Act prohibits discrimination in relation to the provision of goods, services and facilities, club and incorporated associations and some aspects of sport.
	<i>Sex Discrimination Act 1984</i> (Cth)	✓ (see comments)	✓	The Act does not explicitly cover volunteers. It may apply to volunteers as the Act prohibits discrimination in relation to the provision of goods, services and facilities, club and incorporated associations and some aspects of sport.

<b>Legal issue</b>	<b>Legislation</b>	<b>Applies to volunteers?</b>	<b>Applies to employees?</b>	<b>Comments</b>
	<i>Australian Human Rights Commission Act 1986 (Cth)</i>	✓ (see comments)	✓	The Act may apply to volunteers as the Commission can inquire into 'employment' or 'occupation', which are undefined.
	<i>Racial Discrimination Act 1984 (Cth)</i>	✓ (see comments)	✓	The Act does not explicitly cover volunteers. It may apply as the definition of 'racial discrimination' is broad and not confined to the employment relationship.  Definition of employment 'includes a contract for services' and does not mention volunteers or unpaid workers.
	<i>Disability Discrimination Act 1984 (Cth)</i>	✓ (see comments)	✓	The Act does not explicitly cover volunteers. It may apply to volunteers as the Act prohibits discrimination in relation to the provision of goods, services and facilities, clubs and incorporated associations, and sport.
<b>Sexual harassment</b>	<i>Equal Opportunity Act 2010 (Vic)</i>	✓	✓	Sexual harassment provisions apply to volunteers in the same way they apply to employees.  See NFP Law's fact sheet: <a href="#">Volunteers and unlawful workplace behaviour</a> .
	<i>Sex Discrimination Act 1984 (Cth)</i>	✓ (see comments)	✓	The Act does not explicitly cover volunteers. It may apply to volunteers as the Act prohibits discrimination in relation to the provision of goods, services and facilities, clubs and Commonwealth laws and programs or requests for information.
	<i>Charter of Human Rights and Responsibilities Act 2006 (Vic)</i>	✓ (see comments)	✓	It will only apply (to your volunteers and employees) if your organisation meets the definition of a 'public authority'.
	<i>Sex Discrimination Act 1984 (Cth)</i>	✓ (see comments)	✓	Volunteers are not directly covered by the Act but could be construed as falling into other categories covered by the Act.

<b>Legal issue</b>	<b>Legislation</b>	<b>Applies to volunteers?</b>	<b>Applies to employees?</b>	<b>Comments</b>
<b>Bullying</b>	<i>Occupational Health and Safety Act 2004 (Vic)</i>	✓ (see comments)	✓	It will apply to your volunteers if your organisation is an 'employer' of any employees or 'manages or controls a workplace'.
	<i>Fair Work Act 2009 (Cth)</i>	✓ (see comments)	✓	Bullying provisions of the Act will only apply if your organisation is a 'constitutional corporation' and not wholly volunteer run.
<b>Victimisation</b>	<i>Equal Opportunity Act 2010 (Vic)</i>	✓ (see comments)	✓	The areas of 'public life' covered by the Act do not currently include volunteering. However, volunteering could be construed as falling into other categories in which victimisation is prohibited under the Act. See NFP Law's fact sheet: <a href="#">Volunteers and unlawful workplace behaviour</a> .
<b>Working with children</b>	<i>Working with Children Act 2005 (Vic)</i>	✓ (see comments)	✓	It will only apply (to your volunteers and employees) if they are engaged in 'child-related' work and are not 'exempt'. See NFP Law's fact sheet: <a href="#">Volunteers screening</a> .
	<i>Child Employment Act 2003 (Vic)</i>	✓ (see comments)	✓	The Act applies to children engaged in 'employment'. Certain provisions also apply to children engaging in activities that are not considered employment (which would include children volunteers).
	<i>Children, Youth and Families Act 2005 (Vic)</i>	✓ (see comments)	✓	Mandatory reporting regarding child protection will apply to certain people within your organisation.
	<i>Crimes Act 1958 (Vic)</i>	✓	✓	Failure to disclose offences apply to any adult and failure to protect offences apply to a person in a position of authority in a 'relevant organisation'.
	<i>Child Safe Standards</i>	✓	✓	Victoria has introduced compulsory minimum standards that apply to organisations that provide services for children to help protect children from all forms

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				of abuse. See NFP Law's fact sheet: <a href="#">Engaging and working with youth volunteers</a> .
Police checks	N/A	-	-	There is no legislation that mandates police checks of employees or volunteers, however they are an important part of risk management and safety.
Payment for work	<i>Fair Work Act 2009</i> (Cth)	✘	✔	Only applies to employees, employers and employment.
Unfair dismissal	<i>Fair Work Act 2009</i> (Cth)	✘	✔	Only applies to employees, employers and employment.
Workplace safety	<i>Occupational Health and Safety Act 2004</i> (Vic)	✔ (see comments)	✔	It will only apply (to your volunteers and employees) if your organisation is an 'employer' or 'manages or controls a workplace'. See NFP Law's fact sheet: <a href="#">Safety, risk management and volunteers</a> .
	<i>Wrongs Act 1958</i> (Vic)	✔ (see comments)	✔ (see comments)	The civil liability provisions apply to 'volunteers' who are performing 'community work' 'organised' by a 'community organisation', meaning that community organisations are legally responsible for the acts of volunteers. This does not include court ordered 'volunteering'. See NFP Law's checklist: <a href="#">Is our organisation liable for the actions of its volunteers under the Wrongs Act 1958 (Vic)?</a>
Workers' compensation	<i>Workplace Injury Rehabilitation and Compensation Act 2013</i> (Vic)	✘	✔	Applies to workers (which does not include volunteers) and employers.
Superannuation rights	<i>Superannuation Guarantee Administration Act 1992</i> (Cth)	✘	✔	Applies to employees and employers.
Paid sick and annual leave	<i>Fair Work Act 2009</i> (Cth)	✘	✔	Applies to employees, employers and employment.
Paid long service leave	<i>Long Service Leave Act 1992</i> (Vic)	✘	✔	Applies to employees and employers.

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<b>Redundancy</b>	<i>Fair Work Act 2009 (Cth)</i>	✗	✓	Applies to employees, and employers.
<b>Visas</b>	<i>Migration Act 1958 (Cth)</i>	✓	✓	See NFP Law's fact sheet: <a href="#">Visas and volunteers.</a>
<b>Intellectual property</b>	<i>Patents Act 1990 (Cth)</i> <i>Trade Marks Act 1995 (Cth)</i> <i>Design Act 2003 (Cth)</i> <i>Plant Breeder's Rights Act 1994.(Cth)</i>	✓	✓	In general, unless there is an agreement, intellectual property created by a volunteer is owned by the volunteer.
<b>Privacy</b>	<i>Privacy Act 1988 (Cth)</i>	✗ (see comments)	✓	Applies to organisations with an annual turnover of more than \$3 million, or that provide a health service, collect and provide the personal information of others, provide services under a Commonwealth contract, or is a related body corporate to a body that meets any of the above criteria.
	<i>The Privacy and Data Protection Act 2014 (Vic)</i>	✓ (see comments)	✓	Applies to organisations contracted to provide services on behalf of a Victorian government agency.

# Resources

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## Related Not-for-profit Law Resources

✔ Volunteers [www.nfplaw.org.au/volunteers](http://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
- Engaging and working with youth volunteers
- Safety, risk management and volunteers
- Is our organisation liable for the actions of its volunteers under the *Wrongs Act 1958* (Vic)?
- Visas and Volunteers

✔ Insurance and risk [www.nfplaw.org.au/riskinsurance](http://www.nfplaw.org.au/riskinsurance)

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

## Victorian Government Resources

✔ Victorian Department of Human Services (DHS) [www.dhs.vic.gov.au](http://www.dhs.vic.gov.au)

The DHS website offers information on new mandatory Child Safe Standards.

## Other Related Resources

✔ Volunteering Victoria [www.volunteeringvictoria.org.au](http://www.volunteeringvictoria.org.au)

The state peak body for volunteering provides information on volunteering, policy and research.

## Legislation

✔ [Australasian Legal Information Institute \(AUSTLII\)](http://www.austlii.edu.au/au/other/austrlii/au/austrlii/)

To locate any of the Commonwealth or State legislation and regulations referred to in this fact sheet visit AUSTLII.



A NFP Law Information Hub resource. Access more resources at [www.nfplaw.org.au](http://www.nfplaw.org.au)

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