

What laws apply to your organisation and volunteers?

Legal information for New South Wales community organisations

The following table 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. The table is not an exhaustive list of all legislation that will apply to your organisation.

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.

Legal issue	Legislation	Applies to volunteers?	Applies to employees?	Comments
Discrimination	<i>Anti-Discrimination Act 1977 (NSW)</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 discrimination is prohibited under the Act. See NFP Law's fact sheet: Volunteers and unlawful workplace behaviour .
	<i>Age Discrimination Act 2004 (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, club and incorporated associations and some aspects of sport.
	<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, club and incorporated associations and some aspects of sport.
	<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	✓	The Act does not explicitly cover volunteers. It may apply

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		comments)		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.
Sexual harassment	<i>Anti-Discrimination Act 1977 (NSW)</i>	✓	✓	Sexual harassment provisions apply to volunteers in the same way they apply to employees. See NFP Law's fact sheet: Volunteers and unlawful workplace behaviour .
	<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.
Bullying	<i>Work Health and Safety Act 2011 (NSW)</i>	✓ (see comments)	✓	The NSW WHS Laws apply to persons conducting a business or undertaking (a 'PCUB'), essentially, organisations that have employees. If an organisation is covered by the NSW WHS Laws, they will apply to employees and volunteers in the same way. The NSW WHS Laws do not apply to organisations that only engage volunteers.
	<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.

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Victimisation	<i>Anti-Discrimination Act 1977 (NSW)</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: Volunteers and unlawful workplace behaviour .
Working with children	<i>Child Protection (Working with Children) Act 2012 (NSW)</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: Volunteers screening .
	<i>Children and Young Persons (Care and Protection) Act 1998 (NSW)</i>	✓ (see comments)	✓ (see comments)	Mandatory reporting regarding child protection will apply to certain people within your organisation.
	<i>Crimes Act 1900 (NSW)</i>	✓ (see comments)	✓ (see comments)	Mandatory reporting of child sexual offences will apply to all adults (exceptions apply).
Police checks	N/A	-	-	There is no specific legislation that mandates police checks for employees or volunteers, however they are an important part of risk management and safety and may be required under funding agreements, other sub sector legislation and directives (ie. disability, aged care and health) See NFP Law's fact sheet: Volunteers screening .
Payment for work	<i>Fair Work Act 2009 (Cth)</i>	✗	✓	Only applies to employees, employers and employment.
Unfair dismissal	<i>Fair Work Act 2009 (Cth)</i>	✗	✓	Only applies to employees, employers and employment.
Workplace safety	<i>Work Health and Safety Act 2011 (NSW)</i>	✓ (see comments)	✓	The NSW WHS Laws apply to persons conducting a business or undertaking (a 'PCUB'), essentially, organisations that have employees. If an organisation is covered by the NSW WHS Laws, they will apply to employees and volunteers in the same way. The NSW WHS

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				Laws do not apply to organisation that only engage volunteers ('volunteer associations'). See NFP Law's fact sheet: Safety, risk management and volunteers.
	<i>Civil Liability Act 2002</i> (NSW)	✓ (see comments)	✓ (see comments)	The civil liability provisions apply to 'volunteers' who are performing 'community work' 'organised' by a 'community organisation' in good faith and no exemption applies, meaning that community organisations are legally responsible for the acts of volunteers. This does not include court ordered 'volunteering'. See NFP Law's Volunteer Liability Checklist
Workers' compensation	<i>The Workers Compensation Act 1987</i> (NSW)	✗	✓	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 1955</i> (NSW)	✗	✓	Applies to employees and employers.
Redundancy	<i>Fair Work Act 2009</i> (Cth)	✗	✓	Applies to employees, and employers.
Visas	<i>Migration Act 1958</i> (Cth)	✓	✓	See NFP Law's fact sheet: Visas and volunteers.
Intellectual property	<i>Patents Act 1990</i> (Cth) <i>Trade Marks Act 1995</i> (Cth) <i>Design Act 2003</i> (Cth) <i>Plant Breeder's Rights Act 1994</i> (Cth)	✓	✓	In general, unless there is an agreement, intellectual property created by a volunteer is owned by the volunteer.
Privacy	<i>Privacy Act 1988</i> (Cth)	✓ (see comments)	✓ (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

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				a related body corporate to a body that meets any of the above criteria. See NFP Law's Privacy Guide
	<i>Privacy and Personal Information Protection Act 1998 (NSW)</i>	✓ (see comments)	✓ (see comments)	Applies to NSW government agencies.
	<i>Health Records and Information Privacy Act 2002 (NSW)</i>	✓ (see comments)	✓ (see comments)	Applies to NSW health service providers and to other organisation that handle health information.

Resources

Related Not-for-profit Law Resources

✔ Volunteers www.nfplaw.org.au/volunteers

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

- Volunteers and unlawful workplace behaviour
- Engaging and working with youth volunteers
- Safety, risk management and volunteers
- Is our organisation liable for the actions of its volunteers under the *Civil Liability Act 2002* (NSW)?
- Visas and Volunteers

✔ Privacy www.nfplaw.org.au/privacy

This Information Hub page features a Privacy Guide for organisations operating in NSW as well as a Privacy Compliance Manual with an overview of federal privacy laws and a template privacy policy.

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

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

Other Related Resources

✔ Volunteering Australia www.volunteeringaustralia.org

Volunteering Australia has a resource which provides an overview of background check requirements and the associated costs across the various states and territories.

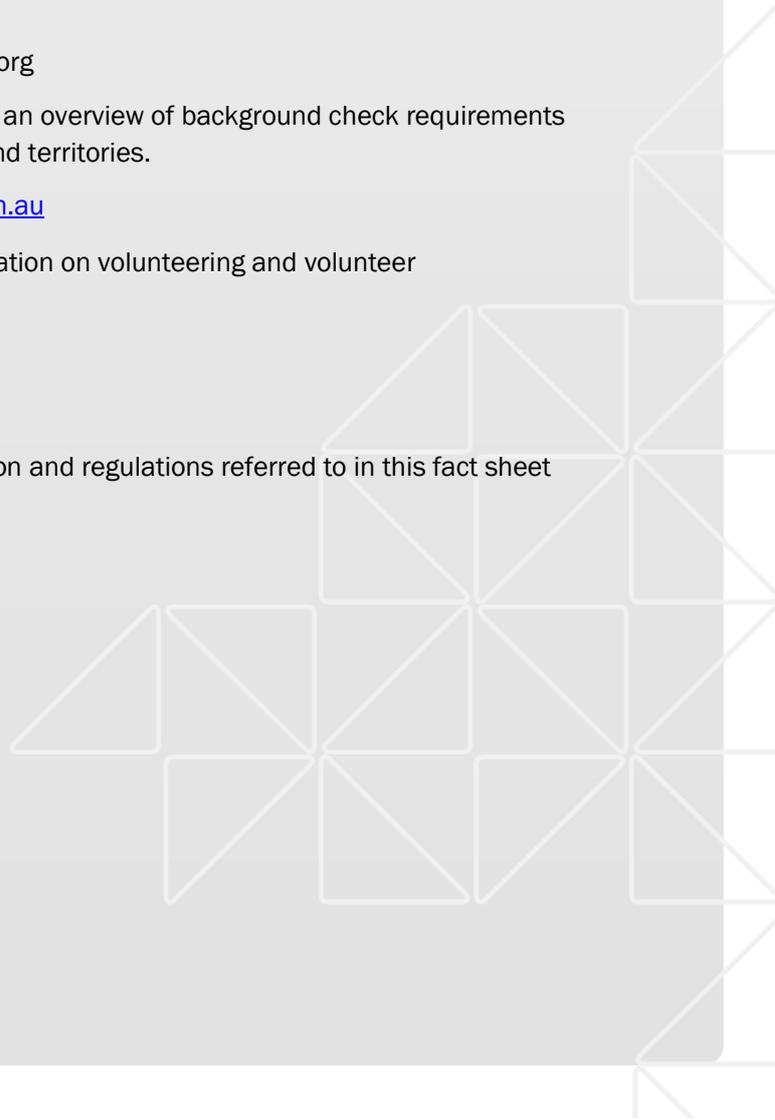
✔ The Centre for Volunteering www.volunteering.com.au

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

Legislation

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

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.

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