

Child safety

Legal information for Victorian community organisations



This fact sheet covers:

- child safety and your organisation's duty of care
 - Victorian Child Safe Standards
 - mandatory reporting obligations
 - responding to allegations of child abuse
 - screening considerations
 - insurance considerations, and
 - record-keeping obligations.
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When you work with children, you have a legal responsibility to ensure their physical, mental and emotional safety. In addition to the duty of care your community organisation owes employees, clients and possibly members of the public, you should consider the special responsibilities you may have in relation to children that your organisation comes into contact with when providing services.

This fact sheet covers Victoria's new compulsory Child Safe Standards and aims to help community organisations strengthen their child safety practices.

Child safety and your duty of care

A Victorian community organisation may owe children a duty of care under the common law (ie. judge made law) of negligence, or under the negligence provisions in the *Wrongs Act 1958* (Vic). Generally, fulfilling your legal responsibility to children requires you to meet the standard expected of a reasonably competent and prudent organisation, in the same position and with the same knowledge. It is important to note that the standard of care expected in relation to children may be generally higher than that owed to others.

In certain circumstances, your organisation may also be held legally responsible (ie. liable) for the actions of its workers, including volunteers, where harm has been caused to someone else, such as a child.

NOTE



Under recent changes to the *Wrongs Act (Vic)* 1958, community organisations that exercise care, supervision or authority over a child (whether or not this is a part of its primary functions or activities), now owe **a duty to take reasonable care to prevent the sexual or psychological abuse of a child by an individual associated with the organisation** (eg. an officer, office holder, employee, owner, volunteer or contractor). Under the new laws, the 'onus of proof' is reversed, which means that these organisations will have to prove they took reasonable precautions to prevent the abuse in question from happening. The new laws were introduced as a response to the key recommendations in the [Betrayal of Trust report](#).

It is crucial that your organisation has undertaken a careful risk assessment of the activities involving and interactions it has with children, in order to determine whether it needs to implement any further safeguards and processes to help ensure their safety. One important safeguard to put in place is comprehensive induction and training of workers and volunteers.

During induction and training:

Make sure everybody involved in your organisation understands all the policies you have in relation to child safety, and why they exist. To ensure this:

- highlight policies that are particularly relevant to children, such as social media, privacy, IT, and appropriate workplace behaviour policies
- explain the importance of a safe workplace and provide training on how to avoid harmful situations, where possible, and point out any special safety requirements in relation to children
- set out the reporting lines and process for addressing complaints and concerns about child safety
- outline any reporting requirements for child safety that apply to your workers (see discussion below) and the process for reporting within your organisation, and
- foster a culture of open communication by encouraging the people within your organisation to express any concerns regarding child safety.

In addition to its duty of care to ensure child safety, your organisation may also owe obligations under the *Occupational Health and Safety Act 2004 (Vic)*. Under these laws, you are required to, so far as is reasonably practicable, provide and maintain a working environment that is safe and without risks to health, and to ensure others are not exposed to risks to their health or safety arising from the conduct of the organisation's undertaking. If you are dealing with children, you should consider any special measures you may need to take to meet these obligations.

RELATED RESOURCES



For more information about your organisation's duty of care, see Not-for-profit Law's page on Negligence on the Information Hub at www.nfplaw.org.au/negligence.

For more information about Occupational Health and Safety obligations, see Not-for-profit Law's OHS page on the Information Hub at www.nfplaw.org.au/OHS.

Victorian 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](#). The Standards are aimed at assisting organisations providing services to children to:

- create and ensure child safe environments
- reduce and remove risks of child abuse
- encourage reporting of any suspected child abuse, and
- improve responses to any allegations of child abuse.

All Victorian organisations that provide services to children must comply with the Standards as of **1 January 2017**. The specific organisations that are required to comply are listed in [Schedule 1](#) and [Schedule 2](#) of that Act and include organisations that exercise care, supervision or authority over children, whether as part of its primary function or not.

Compliance is a legal requirement under the *Child Wellbeing and Safety Act 2005* (Vic). The Victorian Commission for Children and Young People (**Commission**) is the oversight body for the Standards and is working with these organisations to build their capacity to meet the new requirements.

THE STANDARDS

In complying with the Standards, an organisation must include the following principles as part of its response to each Standard:

- promoting the cultural safety of Aboriginal children
- promoting the cultural safety of children from culturally and / or linguistically diverse backgrounds, and
- promoting the safety of children with a disability.

To create and maintain a child safe organisation, an organisation to which the Standards apply must have:

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.

TIP

Even if not legally required to comply with the Standards, if your organisation interacts with children, we suggest that you use these Standards as a guide for the creation of a child safe environment and work towards compliance so you can be satisfied that you are taking all reasonable steps to protect children from risks to their health and safety.



CASE STUDY

The national Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**) found that to keep children safe, an organisation must create and maintain a protective environment that minimises rather than accentuates the risk of abuse. The Royal Commission critically analysed the system errors, failures and oversights of a particular organisation to demonstrate certain 'unacceptable' actions of a child safe organisation, including but not limited to:

- a failure to adhere to appropriate background checking procedures
- a failure to implement child protection policies
- the absence of an effective confidential reporting system and, and
- a failure to provide staff with effective training in child protection matters.

The Standards aim to respond thoroughly to these concerns.



Responding to allegations of abuse

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 into 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 applies to a [subset of organisations](#) already covered by the Standards that have a greater responsibility for children. The scheme will be implemented in three phases over the period from 1 July 2017 to 1 January 2019.

Importantly, the scheme will not interfere with reporting obligations to Victoria Police or with Victoria Police investigations.

FURTHER READING

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



Mandatory reporting

There are a number of different mandatory reporting obligations, some of which apply to all adults and others that apply to certain people. If your organisation engages or works with children, it is crucial that your workers (employees, contractors and volunteers) are aware of their reporting obligations and any potential consequences for failing to meet them.

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 in Victoria by an adult against a child (under 16 years) has an obligation to report that information to Victoria Police, as soon as possible.

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 or 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 lead 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:

- where the person fears, on reasonable grounds, for the safety of any person (other than the alleged offender) and the failure to disclose the information is a reasonable response in the circumstances, or
- where the person believes that the information has already been disclosed to Victoria 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.

Reporting obligations that apply to certain people

Reporting concerns about children 'in need of protection'

The *Children, Youth and Families Act 2005* (Vic) (**Children, Youth and Families Act**) provides that people may report concerns about a child's or youth's welfare where they form a reasonable belief that the child is 'in need of protection'. In summary, 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 from either physical injury or sexual abuse, or
 - 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 them from that harm,
- 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.

The Children, Youth and Families Act also imposes mandatory reporting requirements on certain people working in the medical profession, justice system, education and other children's services. To check whether your organisation's employees, contractors or volunteers are required to meet this more rigorous reporting standard, see the [full list](#) in section 182 of the Children, Youth and Families Act.

Where those people, in the course of their office, position or employment, form a belief, on reasonable grounds, that a child has suffered or is likely to suffer significant harm as a result of either physical injury or sexual abuse, they are required to report this to the Department of Human Services as soon as practicable.

Reducing or removing risk of child sex abuse

Under the *Crimes Act 1958* (Vic) (**Crimes Act**), people associated with particular kinds of organisations including youth organisations, sporting groups, charities and benevolent organisations (see section 490 of the Crimes Act for the full list) who:

- knew of a risk of child sexual abuse by someone in the organisation and had the power or responsibility to reduce or remove the risk, but
- negligently failed to do so,

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

These people may include employees, owners, volunteers, contractors, office holders, officers and agents of the organisations.

The failure to protect and disclose offences have only recently come into force. These legislative changes (under Victorian Criminal law) were passed as a part of the Victorian Government's response to the recommendations of ['Betrayal of Trust', the report of the Royal Commission into Institutional Responses to Child Sexual Abuse](#).

CASE STUDY

The Royal Commission heard that a school's deputy head had sought police advice, following a student's allegation of bullying and sexual harassment. The advice, which recommended that the school formally report the incident to police to avoid any possible action for concealing an indictable criminal act under the Crimes Act was then circulated to the school's headmaster and members of the leadership team, including a school counsellor. During the Royal Commission, the school's leadership group admitted that no one had properly read through the email, deeming it a 'catastrophic failure'. As a



result, there were no internal discussions regarding the incident, nor did the school ever act on the advice.

TIP

It is important that if your service engages or works with children, all those that work in your organisation (including volunteers) are aware of their reporting obligations and any potential consequences for failing to meet them. Reporting obligations should form a part of your organisation's standard induction, training and ongoing professional development processes, with written policies and procedures in place



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

There are many circumstances where organisations will need to screen their workers because they are working with children.

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

Who needs to be screened?

When organisations involve children 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 children.

In Victoria, all of your organisation's workers who undertake 'child-related' work, including volunteers, **must** have a WWC Check (unless an exemption applies). It is an offence (which carries penalties) for both the organisation and the worker if this requirement is not met.

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

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

- ✓ an adult worker (including a volunteer) **will require** a WWC Check if they have contact with a child that is unsupervised, direct and a part of their duties (this includes supervising a child)

- ✘ an adult worker (including a volunteer) **will not require** a WWC Check merely because the adult is participating in an activity with a child on the same basis as the child (e.g. both playing in a sporting team, or both helping in a kitchen)
- ✘ a parent of a child **will not require** a WWC Check if they are volunteering in an activity in which their own child is participating or ordinarily participates
- ✘ an adult 'closely related' to each child in their child-related work/volunteering **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 and described in further detail in Section 2 of Not-for-profit Law's guide on Screening Checks at www.nfplaw.org.au/recruitment.

NOTE

New laws amending the *Working with Children Act 2005* (Vic) (passed in November last year) will take effect on 1 August 2017 and it is important your organisation is ready for the changes. In summary:

- The laws expand the definition of 'child-related work' to require Working with Children Checks (WWC Check) for family members providing out-of-home care or 'kinship care' to a child.
- Where a person is engaged in child-related work, it will be necessary to obtain a WWC Check regardless of whether or not the contact with a child is supervised. As stated above, a WWC Check is currently not required if a person's contact with a child is supervised.
- The definition of 'direct contact' is also widened beyond face-to-face contact to include written, oral and electronic communication. This means a person engaging in child-related work that involves communicating with the child via phone, email and other technologies may also require a WWC Check, where this was previously not the case.
- Charges that do not result in a conviction or a finding of guilt will now be considered by the Department in its assessment of an application for a WWC Check.

TIPS

- 💡 If you are unsure about whether your adult workers (including 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 worker'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.

CASE STUDY



A case study provided by the Royal Commission highlights the consequences of employing people without adequate background and criminal history checks. The offender was employed by a school as a bus driver. At the time of his appointment he had been convicted of three sexual offences against children. The school was not under an obligation to conduct a criminal history check in the circumstances, and did not do so. Several years later, he was convicted of five sexual offences against three students of the school. A WWC Check would have likely revealed his previous sexual offences and prevented the abuse from occurring. The example highlights the benefit of taking a conservative approach to WWC Checks.

Do youth working in our organisation need to be screened?

- ✘ Generally, under the WWC Act, workers aged under 18 years of age and engaged in ‘child-related’ work **will not require** a WWC Check until they turn 18
- ✘ Student volunteers **aged 18 or 19 years of age**, whose volunteer work has been organised by their educational institution **will not require** a WWC Check

However, under the *Child Employment Act 2003* (Vic), a worker (including volunteers) under the age of 18, who is supervising children under the age of 15, **will require** a WWC Check, and so the above exception will not apply in these circumstances.

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

Even if your community organisation puts in place measures to avoid or minimise risk in relation to the safety and well-being of children, your community organisation may still want to take out insurance to cover against possible harms to children.

Where the potential risks can't be avoided, your community organisation can look at insurance options that may be available to protect against those risks.

An insurance policy is a contract – a legally binding document between you and the insurance company. This means that your organisation will have to do certain things – for example, provide full and accurate information, notify of incidents – to make sure the contract is and remains valid. Make sure you understand the terms and conditions of the policy, so that you know what these obligations are.

RELATED RESOURCES

For more information about risk and insurance see our guide on this topic on the Information Hub at www.nfplaw.org.au/insuranceandrisk.

It is also important that your community organisation is aware of what is and isn't covered in the insurance contract. In particular, whether or not your insurance policies cover all people involved in your organisation, including children, and in what circumstances. In order for your organisation to satisfy itself of the coverage it holds, we suggest that you 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 children themselves covered?
- are injuries sustained by children covered?
- are there any particular reporting, record keeping or other requirements in respect of claims involving children?

TIPS

- 💡 When your organisation signs an agreement with another party, check whether there is any requirement to take out particular insurance. This is reasonably common, particularly in agreements to provide services.
- 💡 Insurance is often a complex issue for community organisations, and it is recommended that you contact an insurance broker who has experience in arranging insurance for organisations like yours to ensure the insurance you take out is suited to your particular needs.

Record-keeping obligations

All community organisations will need to keep documents and records. Requirements to keep certain documents and records may be set out in your organisation's rules, policies or resolutions, funding agreements and other contracts, or in legislation.

The timing and specific requirements for keeping documents and records will differ. Sometimes, the requirements depend on your legal structure or state of incorporation. For example, charities registered with the Australian Charities and Not-for-profits Commission are required to keep a range of financial, operational and other records for 7 years.

There are also many sources of record keeping obligations in relation to specific types of information or in certain circumstances. For example:

- funding agreements may ask that specific records are kept for an extended period of time
- insurance contracts may require that records be held for an extended period of time
- certain employee records must be kept for 7 years, and

RELATED RESOURCES

For more information about general record-keeping obligations, see the Documents and records page on the Not-for-profit Law Information Hub at www.nfplaw.org.au/recordkeeping.

- criminal litigation – under the Crimes Act it is a criminal offence to destroy documents if an office bearer or staff member is aware they may be needed for any actual or threatened litigation being brought against the organisation or any of its clients.

Litigation involving children

Typically an action can be brought against a person or entity within 6 years of the cause of action occurring (eg. a breach of contract or an act of negligence). Therefore, any legal documents that may be relevant if legal action was to be taken (but is not actual or threatened), for example contracts, should be kept for 6 years.

However, where a claim involves a child, the situation is different and your organisation should keep records for a lot longer than 6 years.

In Victoria, there is no limitation period for bringing a claim for personal injury resulting from child sexual abuse, which means a person can bring a claim at any point in their lifetime, regardless of how long ago the act causing the harm took place.

Also, generally a person under 18 years of age can bring a claim for personal injury (not relating to child sexual abuse) within:

- 12 years from the date of the act causing injury, or
- 6 years of the ‘discoverable date’ - the first day it is known or should have been known that injury has occurred and it was caused by the fault of the defendant to the claim (whichever is latest).

If the injured child was not in the care of a competent parent or guardian the limitations period is extended further.

CASE STUDY

A number of case studies provided by the Royal Commission demonstrate the long-term consequences of an institution’s failure to adequately keep documents and records. The destruction of critical documents or lack of consistent record-keeping meant that in many circumstances, schools and other institutions they were unable to confirm whether and to what extent investigations in response to allegations of abuse had been undertaken, and if so, the relevant outcomes. Further, institutions were unable to connect various pieces of information concerning an offender’s behaviour and could not respond adequately to subsequent concerns, years on. Similarly, many young victims were unable to obtain answers as to the circumstances of the abuse they suffered.



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.

✔ Documents and records www.nfplaw.org.au/recordkeeping

Legislation

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

✔ [Child Wellbeing and Safety Act \(Vic\)](#)

✔ [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.cryp.vic.gov.au

The Commission has published [resources](#) for organisations in relation to 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

✔ Youth Affairs Council of Victoria www.yacvic.org.au

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

✔ Child Protection Toolkit www.communitydirectors.com.au

Moore and Our Community have 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).

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au. Justice Connect Not-for-profit Law acknowledges the generous support of our funders and supporters. Find out more at www.nfplaw.org.au

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