

National Volunteer Guide (Part 4)

**Part 4 provides guidance on volunteers
and unlawful workplace behaviour**

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Part 4:

Workplace behaviours

Introduction to volunteers and unlawful workplace behaviour

This section covers:

- ▶ volunteer protection from unlawful workplace behaviour
 - ▶ volunteer protection under work health and safety laws
 - ▶ volunteers' entitlements to workers compensation
 - ▶ an organisation's responsibility for the actions of its volunteers, and
 - ▶ the potential exposure of volunteers to civil liability claims
-

Introduction

This Part of the Guide covers unlawful workplace behaviours.

This Part covers the following types of unlawful workplace behaviour:

- Sexual Harassment
- Discrimination
- Bullying
- Victimisation

This part starts with a summary of the laws that cover unlawful workplace behaviour, and provides an indication of whether they apply to volunteers in the workplace. The obligations your organisation may owe its volunteers under these laws are explained throughout this part.

This part provides guidance on how to comply with these laws. We recommend your volunteer involving organisation comply with these laws (as much as reasonably practicable), even if you are not strictly legally obliged to comply with the laws, or if they apply in limited circumstances – it's a matter of best practice.

This part also provides an overview of the duties your organisation may owe under work health and safety laws (which may offer some protections to your volunteers if they are harmed by workplace behaviours) and if workers compensation is a consideration for your volunteers.

In addition, this part explains the common law duty your organisation has to take reasonable care to avoid exposing workers, including volunteers, to reasonably foreseeable risks of injury. This could include harm caused by sexual harassment, discrimination and victimisation or bullying.

This part also briefly discusses your organisation's responsibility for the actions of its volunteers, and how a volunteer's actions may expose the volunteer to civil liability.

Do sexual harassment, discrimination, bullying and victimisation laws apply to volunteers in the workplace?

Commonwealth			
Sexual harassment	Discrimination	Bullying	Victimisation
<i>Sex Discrimination Act 1984 (Cth)</i>	<i>Racial Discrimination Act 1975 (Cth)</i> <i>Disability Discrimination Act 1992 (Cth)</i> <i>Age Discrimination Act 2004 (Cth)</i> <i>Sex Discrimination Act 1984 (Cth)</i>	<i>Fair Work Act 2009 (Cth)</i>	<i>Racial Discrimination Act 1975 (Cth)</i> <i>Disability Discrimination Act 1992 (Cth)</i> <i>Age Discrimination Act 2004 (Cth)</i> <i>Sex Discrimination Act 1984 (Cth)</i>
This may apply to volunteers in certain circumstances - see the sexual harassment section of this part of the guide	These may apply to volunteers in certain circumstances – see the discrimination section of this part of the guide	This applies to volunteers unless the organisation has no employees or is not a constitutionally covered organisation – see the bullying section of this part of the guide	These may apply to volunteers in certain circumstances – see the victimisation section of this part of the guide
Australian Capital Territory			
Sexual harassment	Discrimination	Bullying	Victimisation
<i>Discrimination Act 1991 (ACT)</i>	<i>Discrimination Act 1991 (ACT)</i>	<i>Work Health and Safety Act 2011 (ACT)</i>	<i>Discrimination Act 1991 (ACT)</i>
✓ This applies to volunteers	✓ This applies to volunteers	This applies to volunteers if the organisation: <ul style="list-style-type: none"> • meets the definition of a 'person conducting a business or undertaking', and • doesn't meet the definition of a 'volunteer association' See the bullying section of this part of the Guide	✓ This applies to volunteers
New South Wales			
Sexual harassment	Discrimination	Bullying	Victimisation
<i>Anti-Discrimination Act 1977 (NSW)</i>	<i>Anti-Discrimination Act 1977 (NSW)</i>	<i>Work Health and Safety Act 2011 (NSW)</i>	<i>Anti-Discrimination Act 1977 (NSW)</i>
✓ This applies to volunteers	This may apply to volunteers in certain circumstances – see the	This applies to volunteers if the organisation:	These may apply to volunteers in certain circumstances – see the



	discrimination section of this part of the guide	<ul style="list-style-type: none"> meets the definition of a 'person conducting a business or undertaking', and doesn't meet the definition of a 'volunteer association' <p>See the bullying section of this part of the guide</p>	victimisation section of this part of the guide
Northern Territory			
Sexual harassment	Discrimination	Bullying	Victimisation
<i>Anti-Discrimination Act 1992 (NT)</i>	<i>Anti-Discrimination Act 1992 (NT)</i>	<i>Work Health and Safety (National Uniform Legislation) Act 2011 (NT)</i>	<i>Anti-Discrimination Act 1992 (NT)</i>
This is unlikely to apply to volunteers– see the sexual harassment section of this part of the guide	This is unlikely to apply to volunteers– see the discrimination section of this part of the guide	<p>This applies to volunteers if the organisation:</p> <ul style="list-style-type: none"> meets the definition of a 'person conducting a business or undertaking', and doesn't meet the definition of a 'volunteer association' <p>See the bullying section of this part of the guide</p>	This may apply to volunteers in certain circumstances – see the victimisation section of this part of the guide
Queensland			
Sexual harassment	Discrimination	Bullying	Victimisation
<i>Anti-Discrimination Act 1991 (QLD)</i>	<i>Anti-Discrimination Act 1991 (QLD)</i>	<i>Work Health and Safety Act 2011 (QLD)</i>	<i>Anti-Discrimination Act 1991 (QLD)</i>
✓ This applies to volunteers	✓ This applies to volunteers	<p>This applies to volunteers if the organisation:</p> <ul style="list-style-type: none"> meets the definition of a 'person conducting a business or undertaking', and doesn't meet the definition of a 'volunteer association' <p>See the bullying section of this part of the guide</p>	✓ This applies to volunteers
South Australia			
Sexual harassment	Discrimination	Bullying	Victimisation



<i>Equal Opportunity Act 1984 (SA)</i>	<i>Equal Opportunity Act 1984 (SA)</i>	<i>Work Health and Safety Act 2012 (SA)</i>	<i>Equal Opportunity Act 1984 (SA)</i>
✓ This applies to volunteers	✓ This applies to volunteers	This applies to volunteers if the organisation: <ul style="list-style-type: none"> • meets the definition of a 'person conducting a business or undertaking', and • doesn't meet the definition of a 'volunteer association' See the bullying section of this part of the Guide	✓ This applies to volunteers
Tasmania			
Sexual harassment	Discrimination	Bullying	Victimisation
<i>Anti-Discrimination Act 1998 (Tas)</i>	<i>Anti-Discrimination Act 1998 (Tas)</i>	<i>Work Health and Safety Act 2012 (Tas)</i>	<i>Anti-Discrimination Act 1998 (Tas)</i>
✓ This applies to volunteers	✓ This applies to volunteers	This applies to volunteers if the organisation: <ul style="list-style-type: none"> • meets the definition of a 'person conducting a business or undertaking', and • doesn't meet the definition of a 'volunteer association' See the bullying section of this part of the Guide	✓ This applies to volunteers
Victoria			
Sexual harassment	Discrimination	Bullying	Victimisation
<i>Equal Opportunity Act 2010 (Vic)</i>	<i>Equal Opportunity Act 2010 (Vic)</i>	<i>Occupational Health and Safety Act 2004 (Vic)</i>	<i>Equal Opportunity Act 2010 (Vic)</i>
✓ This applies to volunteers	This may apply to volunteers - see the discrimination section of this part of the guide	This applies to volunteers if the organisation: <ul style="list-style-type: none"> • is an 'employer' (that is, they have employees), or • manages or controls a 'workplace' See the bullying section of this part of the Guide	This may apply to volunteers - see the victimisation section of this part of the guide

Western Australia			
Sexual harassment	Discrimination	Bullying	Victimisation
<i>Equal Opportunity Act 1984 (WA)</i>	<i>Equal Opportunity Act 1984 (WA)</i>	<i>Occupational Safety and Health Act 1984 (WA)</i>	<i>Equal Opportunity Act 1984 (WA)</i>
This doesn't apply to volunteers	This doesn't apply to volunteers	This applies to volunteers if the organisation: <ul style="list-style-type: none"> • is an 'employer' (that is, they have employees), or • manages or controls a 'workplace' See the bullying section of this part of the Guide	This may apply to volunteers in certain circumstances - see the victimisation section of this part of the guide



Note – negligence laws

Your organisation has safety obligations under the common law (judge made law) of negligence and under the negligence provisions in state and territory legislation. Failing to meet your 'duty of care' and the 'standard of care' expected of your community organisation in relation to unlawful workplace behaviours may mean that your organisation is found negligent.

See the 'negligent action' section of this part of the guide and part 3 of this guide for more information.

Sexual harassment

Sexual harassment laws exist at both the state and federal level. Where the federal and a state or territory law relating to sexual harassment overlap, you must comply with both.

At a federal level, the law is the *Sex Discrimination Act 1984 (Cth)*. In certain circumstances these laws may apply to protect volunteers. Sexual harassment at the state and territory level is covered by the same laws that cover discrimination (set out in the table above and explained in the sexual harassment section below). The state and territory laws apply explicitly to volunteers in most states (but not in Western Australia or the Northern Territory).

Along with duties that your organisation may owe under sexual harassment laws, your organisation may also have duties under:

- work health and safety laws (explained in the section on 'your organisation's legal responsibility for its volunteers' action' below), and
- the law of negligence, which includes a duty to take reasonable care to avoid exposing your workers, including volunteers, to reasonably foreseeable risks of injury which could include harm caused by sexual harassment (explained in the section on 'negligent action' below).

What is sexual harassment?

The definition of sexual harassment differs slightly between the federal laws and the laws in each state and territory. Generally, sexual harassment occurs when the following two factors are met:

- a person makes unwelcome sexual advances, requests sexual favours, makes unsolicited acts of physical intimacy, or physical contact of a sexual nature or remarks with sexual connotations about another person, and

- the behaviour is intended, or could reasonably be expected, to offend, humiliate or intimidate the other person



Examples of conduct – sexual harassment

Examples of conduct which is likely to constitute sexual harassment include:

- unwelcome physical touching
- staring or leering in a sexual manner
- suggestive comments or jokes
- unwanted requests to go out on dates
- requests for sex
- emailing pornography or rude jokes
- sending sexually explicit emails, texts or posts on social networking sites
- intrusive questions about a person's private life or body, and
- displaying posters, magazines or screen savers of a sexual nature



Example – sexual harassment

Peter volunteers with an environmental organisation. He leads a team of up to 10 other volunteers and they do door knocking, phone call campaigns and street petitions. Peter is very friendly with his team and tries to create a very close team atmosphere. He uses words like 'babe' and 'doll' when talking to female members of the team. He also often winks and makes other sexually suggestive facial expressions at a few members of the team – male and female. Some team members are very uncomfortable with Peter's behaviour. One female team member has even said to Peter that she really doesn't like the pet names he uses and his other behaviour isn't appropriate. Peter laughed this off. Peter's behaviour is likely to constitute sexual harassment. Peter's behaviour has sexual connotations and, particularly for the team member who expressed her discomfort, is unwelcome and could reasonably be expected to offend, humiliate or intimidate others.



Note: recent media on sexual harassment #metoo

Sexual harassment in the workplace has been at the forefront of public discussion over the past two years, thanks to the worldwide #metoo and #TimesUp movements. Along with media reports of high profile people being alleged to have assaulted their colleagues in for-profit workplaces (and subsequent criminal charges and findings of guilt) there have also been allegations in not-for-profit workplaces.

For example, it was reported in national media in February 2018 the not-for-profit organisation that operates the Sovereign Hill tourist facility in Victoria had failed to act on allegations of sexual assaults over a two year period. The accused person ultimately pleaded guilty.

Recent state and federal courts decisions have awarded damages to victims of sexual harassment in excess of \$100,000 (previously, awards for damages were generally in the range of \$12,000 to \$20,000). These more recent decisions have followed the land mark case of *Richardson v Oracle Pty Ltd [2014] FCAFC 82*, in which the Full Federal Court increased a damages award from \$18,000 to \$130,000 and recognised that 'community attitudes regarding the impact of sexual harassment [have] changed, in particular that the adverse consequences ... can extend to loss of employment and career; severe psychological illness; and relationship breakdown'. Read more about this case here.

Sexual harassment law and your organisation's obligations

Under these laws (where they apply):

- sexual harassment of volunteers, while they are doing their volunteer work, is unlawful
- volunteers must not sexually harass others in the workplace (including staff, volunteers, clients, and members of the public)
- volunteers in your volunteer organisation have the same legal rights and protections against sexual harassment as employees
- your organisation could be liable (legally responsible) for any harm, injury or loss as a result of the actions of your volunteers (this 'vicarious liability' can generally be avoided if your organisation takes all reasonable steps to prevent sexual harassment), and
- your organisation may have a positive duty to take reasonable and proportionate measures to eliminate sexual harassment from the workplace. This means taking steps to prevent this behaviour and not waiting for a complaint before addressing inappropriate workplace behaviour.

Regardless of whether the sexual harassment laws apply to your organisation and its volunteers (or only in limited circumstances, or only to your employees) it's best practice to comply with the laws (as much as reasonably practicable). Not only is it favourable to your volunteers (and workers, clients and members of the public in contact with your organisation), it will also help prevent any reputational or other damage to your organisation that may arise from a complaint of sexual harassment.



Tips on minimising sexual harassment in the workplace

- Have, and implement, a policy on appropriate workplace behaviour, which makes clear sexual harassment is unacceptable and will not be tolerated. This policy should cover how the organisation will comply with laws about sexual harassment (where they apply).
- Have a nominated person to whom complaints on inappropriate behaviour can be made.
- Make sure you have a fair and transparent process for resolving complaints.
- Make all volunteers (and all workers) aware of the kind of behaviour that is unacceptable, the policy, and what to do if the process for making a complaint does not resolve the complaint.
- Conduct ongoing training in relation to appropriate workplace behaviour.
- Have an appropriate screening process for volunteers to make sure you are not engaging a volunteer with a history of repeated sexual harassment (part 5 of this guide).

Federal sexual harassment law

The *Sex Discrimination Act 1984* (Cth) (**Sex Discrimination Act**) primarily concerns sexual harassment by employers against employees and contractors. It doesn't currently apply to volunteers and the organisations they volunteer with in the same way. This is because volunteering is not an area of 'public life' covered by the Sex Discrimination Act.

However, in particular circumstances, the Sex Discrimination Act may apply to volunteers where volunteering falls within a specified area of public life covered by the Sex Discrimination Act.

These areas of public life include:

- providing goods, services and facilities (see example, below), and
- carrying out a function under a federal law or for the purposes of a federal government program (see example, below) or by a member of a management committee of a club (in this context 'club' means an association of at least 30 people that funds the provision of facilities for the club and sells or supplies alcohol)

Even if the Sex Discrimination Act doesn't apply, or only applies in specified areas of public life, your organisation may still owe duties under other laws to protect your volunteers from sexual harassment (for example, under state and territory discrimination laws, work health and safety laws or negligence law). We also expect that the Sex Discrimination Act will be amended as a result of the recommendations from the National Inquiry into sexual harassment in Australian workplaces.



Example: government programs – sexual harassment

Greg and Ananya volunteer with an organisation that receives funding from the federal government as part of a federal program to support elderly people and assist them to stay living in their homes. Greg and Ananya go to clients' homes and assist with everyday tasks, and sometimes provide respite care for clients' carers. Greg is often flirtatious with female clients, frequently making comments about their physical appearance. He says he is paying them compliments and making them feel good about themselves. However, Ananya has observed that many clients feel uncomfortable when Greg behaves this way. Greg's behaviour is prohibited under the Sex Discrimination Act because, even though he is a volunteer, his role is for the purpose of delivering a federal government program. His behaviour constitutes an unwelcome sexual advance.



Example: goods, services or facilities – sexual harassment

Sexual Health Awareness (SHA) is a charity that works to promote and increase sexual health knowledge and education for young people. SHA volunteers to go out to sexual health clinics and provide information pamphlets and free condoms to any patients who want them. Nathan is a regular volunteer for SHA. He tries to make jokes to patients who pick up pamphlets or condoms, but his jokes are generally of a sexual nature. Patients frequently feel very uncomfortable by Nathan's jokes, which they feel are in bad taste given the circumstances. Nathan's behaviour while providing these goods and services is very likely prohibited under sexual harassment laws. Nathan's jokes are remarks with sexual connotations and could be reasonably expected to offend, humiliate or intimidate others.



Note –inquiry into sexual harassment

The AHRC has conducted a National Inquiry into sexual harassment in Australian workplaces.

The focus of the Inquiry was on:

- the nature and prevalence of sexual harassment in Australian workplaces
- the drivers of this harassment, and
- measures to address sexual harassment in Australian workplaces

In 2018, Justice Connect participated in the AHRC's public consultation and made a [joint submission with Volunteering Australia](#). The AHRC released a report following the inquiry called '[Respect@Work](#)'. Importantly, the AHRC agreed with our recommendation that sexual harassment laws should protect all workers, including volunteers.

State and territory sexual harassment law

Sexual harassment at the state and territory level is covered by the same laws that cover discrimination (see the table above and the section on 'discrimination' below). They apply explicitly to volunteers in the **Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Victoria**.

While the sexual harassment provisions in these laws are all slightly different, they generally provide (as outlined above) that sexual harassment is likely to occur in situations where:

- a person engages in unwelcome conduct of a sexual nature, and
- a reasonable person would have anticipated the possibility the other person would be offended, humiliated or intimidated by the behaviour.

These laws are explained further below.

In the **Northern Territory** and **Western Australia**, it's unlikely the sexual harassment law applies to volunteers. However, your organisation may still owe duties under other laws to protect your volunteers from sexual harassment. For example, work health and safety laws (see the section on 'your organisation's legal responsibility for the actions of its volunteers' below) or the common law (see the section on 'negligent action of a volunteer and civil liability' below).

Australian Capital Territory

Volunteers are covered by the *Discrimination Act 1991* (ACT) (**ACT Discrimination Act**) under the definition of employment. The definition of employment includes an unpaid worker being a person who performs work for an employer for no remuneration (section 4 and Schedule 1).

Under the ACT Discrimination Act it is unlawful for:

- an employer to subject an employee (or volunteer), or a person seeking employment, to sexual harassment, or
- an employee (or volunteer) to subject a fellow employee (or volunteer), or a person seeking employment with the same employer, to sexual harassment.

A person subjects someone else to sexual harassment if the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person or engages in other unwelcome conduct of a sexual nature in circumstances in which the other person reasonably feels offended, humiliated or intimidated (section 58(1)).

The term 'conduct of a sexual nature' includes making a statement of a sexual nature to, or in the presence of, a person, whether the statement is made orally or in writing (section 58(2)).

New South Wales

In relation to sexual harassment, section 22B(9)(e) of the *Anti-Discrimination Act 1977* (NSW) (**NSW Anti-Discrimination Act**) provides that the term 'workplace participant' includes a volunteer or unpaid trainee. It's unlawful under the NSW Anti-Discrimination Act for a volunteer to be sexually harassed by another person at the place that is a workplace of both those persons (section 22B(6)).

A person sexually harasses another person if:

- the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or
- the person engages in other unwelcome conduct of a sexual nature in relation to the other person, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

Northern Territory

Under the *Anti-Discrimination Act 1992* (NT) (**NT Anti-Discrimination Act**) the term 'work' (section 4) doesn't include work performed by volunteers.

Work includes work:

- in a relationship of employment
- under a contract of services
- remunerated in full or part
- under a statutory appointment
- by a person with an impairment in a sheltered workshop and under a guidance program
- vocational training program or other occupational training or retraining program.

This means that volunteers are unlikely to be covered by most provisions of the NT Anti-Discrimination Act, including the sexual harassment provisions. However, the law is unclear. A recent Northern Territory Government Discussion Paper stated:

'It is unclear whether the current definition of work includes volunteers: it is not exhaustive and may include volunteer work.'

The Discussion Paper, published by the Northern Territory Department of the Attorney-General and Justice was part of a department review of the NT Anti-Discrimination Act (see the note box below).

In the event that volunteers are covered by the NT Discrimination Act, organisations could be held vicariously liable (responsible) for sexual harassment by a worker carrying out functions in connection with their work. One way in which an organisation can help defend itself against liability is by proving it took reasonable steps to prevent the sexual harassment from occurring, for example, the provision of training, production of policies and evidence of their implementation. An organisation should take steps to prevent this behaviour and not wait for a complaint before addressing inappropriate workplace behaviour.



Note: review of NT Anti-Discrimination Act

The Northern Territory Department of the Attorney-General and Justice conducted a review of the NT Anti-Discrimination Act to assess whether it continues to meet the needs of the community. It released a discussion paper which you can access [here](#). Consultation is now closed, but some of the matters it sought comment on included:

- introducing new protections under the Act such as domestic violence, homelessness, lawful sexual activity and socioeconomic status
- introducing specific anti-vilification laws prohibiting offensive conduct on the basis of race, religious belief, disability, sexual orientation, gender identity and intersex status
- extending the sexual harassment provisions to include all areas of public life

Check the [Department's website](#) for further updates

Queensland

Volunteers are protected under the *Anti-Discrimination Act 1991* (Qld) (**Qld Anti-Discrimination Act**) from discrimination pursuant to the meaning of the term 'work' (Schedule 1 Dictionary).

'Work' includes work:

- under a work experience arrangement
- vocational placement
- on a voluntary or unpaid basis
- by a person with an impairment in a sheltered workshop and under a guidance program
- vocational training program or other occupational training or retraining program.

Sexual harassment is prohibited under the Qld Anti-Discrimination Act (sections 118-119) and occurs where a person:

- subjects another person to an unsolicited act of physical intimacy
- makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person
- makes a remark with sexual connotations relating to the other person, or
- engages in any other unwelcome conduct of a sexual nature in relation to the other person,

with the intention of offending, humiliating or intimidating the other person or in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

Under the Qld Anti-Discrimination Act, organisations can be held vicariously liable (responsible) for sexual harassment by a worker carrying out functions in connection with their work. One way in which an organisation can help defend itself against liability is by proving it took reasonable steps to prevent the sexual harassment from occurring, for example, the provision of training, production of policies and evidence of their implementation. An organisation should take steps to prevent this behaviour and not wait for a complaint before addressing inappropriate workplace behaviour.

South Australia

Volunteers are protected by the *Equal Opportunity Act 1984* (SA) (**SA Equal Opportunity Act**) pursuant to the definitions of employee and employment, which include unpaid workers and unpaid work (section 5).

The SA Equal Opportunity Act makes it unlawful for a person to subject a volunteer who they work with to sexual harassment while at a place that is a workplace of both people or in circumstances where the

person was, or ought reasonably to have been, aware that the other person was a fellow worker or seeking to become a fellow worker (section 87(1)).

Under the SA Equal Opportunity Act, organisations can be held vicariously liable (responsible) for sexual harassment by an employee (including a volunteer) carrying out functions in connection with their work. One way in which an organisation can help defend itself against liability is by proving that it had appropriate policies in place at the time of the unlawful act, and that they took reasonable steps to enforce the policies. An organisation should take steps to prevent this behaviour and not wait for a complaint before addressing inappropriate workplace behaviour.

A person sexually harasses another if:

- the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed, or
 - engages in other unwelcome conduct of a sexual nature in relation to the person harassed,
- in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated (section 87(9)).

Tasmania

Volunteers are protected by the *Anti-Discrimination Act 1998* (Tas) (**Tas Anti-Discrimination Act**) pursuant to the definition of the term 'employment'. The definition of employment includes employment or occupation in any capacity, with or without remuneration.

The Tas Anti-Discrimination Act provides that a person must not sexually harass another person. Sexual harassment will take place if a person, in circumstances where a reasonable person having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed (section 17):

- subjects another person to an unsolicited act of physical contact of a sexual nature
- makes an unwelcome sexual advance or an unwelcome request for sexual favours to another person
- makes an unwelcome remark or statement with sexual connotations to another person or about another person in that person's presence
- makes any unwelcome gesture, action or comment of a sexual nature, or
- engages in conduct of a sexual nature in relation to another person that is offensive to that person

Victoria

The definition of 'employee' under the *Equal Opportunity Act 2010* (Vic) (**Vic Equal Opportunity Act**) includes, in relation to the prohibition of sexual harassment, unpaid workers and volunteers (section 4).

The Vic Equal Opportunity Act makes it unlawful for either an employer to sexually harass an employee (or a volunteer), or for an employee (or volunteer) to sexually harass a fellow employee (or volunteer).

Further, under the Vic Equal Opportunity Act, organisations have a positive duty to take reasonable and proportionate measures to eliminate sexual harassment from the workplace. This means taking steps to prevent this behaviour and not waiting for a complaint before addressing inappropriate workplace behaviour.

The term 'sexual harassment' means:

- making an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person, or
 - engaging in any other unwelcome conduct of a sexual nature in relation to another person,
- in circumstances where a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

The term 'conduct of a sexual nature' can include:

- subjecting a person to any act of physical intimacy
- making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence, or
- making any gesture, action or comment of a sexual nature in a person's presence.

Western Australia

The definition of 'employment' in the *Equal Opportunity Act 1984* (WA) (**WA Equal Opportunity Act**) includes part time and temporary employment, work under a contract of service and work as a State employee (section 4).

Provisions relating to sexual harassment (section 24) rely on 'employment' (and only apply in relation to specified areas of public life being education, employment and accommodation). Accordingly, volunteers are unlikely to be covered by most provisions of the WA Equal Opportunity Act, including the sexual harassment provisions.



Related resources

There are a number of resources published by the different bodies in each state and at the federal level which administer the sexual harassment laws. These resources include:

- Victorian Equal Opportunity and Human Rights Commission, [Volunteers and the Act – Sexual Harassment Fact Sheet](#)
- Australian Human Rights Commission, [Effectively preventing and responding to sexual harassment – a code of practice](#)
- Queensland Human Rights Commission (previously called Anti-Discrimination Commission Queensland), [resource on sexual harassment](#), including a [sample Policy- discrimination and sexual harassment](#).

Discrimination

Anti-discrimination laws exist at both the state and federal level. They may apply to your organisation's volunteers. At the federal level, anti-discrimination laws are found in a number of pieces of legislation that set out protected attributes such as age, race, disability and sex and protected areas of public life. All of the states and territories have their own legislation (usually called anti-discrimination or equal opportunity legislation).

We refer to all of these laws collectively as **anti-discrimination laws**. They are explained further below.

Along with duties that your organisation may owe under anti-discrimination laws, your organisation may have duties under work health and safety laws (explained in the section 'your organisation's legal responsibility for the actions of its volunteers' below) and under the law of negligence, which contains a duty to take reasonable care to avoid exposing your workers, including volunteers, to reasonably foreseeable risks of injury which could include harm caused by discrimination (explained in the section 'negligent action of a volunteer and civil liability' below).

What is discrimination?

Under anti-discrimination laws, discrimination occurs when:

- a person is treated unfavourably because of a 'personal attribute' protected by law
- the treatment happens in an 'area of public life' protected by the law
- the treatment causes the person to be disadvantaged, and
- an exception does not apply

Discrimination can be:

- **direct** - when someone directly treats, or proposes to treat, another person less favourably than others because the person has one or more protected attributes
- **indirect** - when a person or business imposes, or proposes to impose, a condition or requirement that has, or is likely to have, the effect of disadvantaging another person because they have one or more protected attributes. The condition or requirement must not be reasonable in the circumstances.

Examples of discrimination

Discrimination of volunteers could occur in the recruitment process (see part 5 of this guide), or in other situations including not being given opportunities that other volunteers are given. Some further examples are below.



Note

While it is not clear in the law whether volunteers are protected from discrimination in the recruitment process, as a matter of best practice (and to protect your organisation from other risks such as reputational harm), your organisation should make sure it doesn't have discriminatory practices in the volunteer recruitment process.



Example – direct discrimination

Michael would like to volunteer at his local op shop and goes into the shop to see the manager to apply for a role. Mary, the manager, tells Michael that although he's clearly qualified to carry out the role, because the rest of the volunteers and staff at the shop are women, she doesn't think he will fit in and so will not be offered a volunteer position. Mary has discriminated against Michael on the basis of his gender.



Example – indirect discrimination

Sarah is a hairdresser and is transgender. She only recently started publicly identifying as female. Sarah has volunteered for many years with an organisation called Trims for Change, which gives free haircuts to homeless people. Trims for Change has a policy that requires its volunteers to wear a uniform. The policy also provides that only one uniform per year will be provided to volunteers. The uniforms are gender specific: male volunteers wear a shirt and pants and female volunteers wear a dress. Sarah asked to be provided with the female uniform when she decided to publicly identify as female. Trims for Change refused, telling Sarah the policy only allowed one uniform per year for each volunteer.

The policy is likely to indirectly discriminate against Sarah and other transgender persons on the basis of gender identity.



Example – reasonable indirect discrimination

Mandeep is Sikh and an avid cyclist. He wants to volunteer with an organisation that runs cycling programs for children to promote health and exercise. The organisation Mandeep applies to volunteer with has a policy that all volunteers must wear a helmet when cycling. Mandeep wears a turban as part of his religion.

The policy likely indirectly discriminates against persons who wear religious headdresses on the basis of religion, but the policy may also be reasonable because it is a reasonable safety requirement to require volunteers to wear helmets while cycling.

Protected personal attributes

The particular personal attributes across the various anti-discrimination laws differ. They may include all or some of the following: age, sex, race, skin colour, descent, national or ethnic origin, religious belief or activity (or lack of), disability, physical features, sexual orientation, sexual or gender identity, intersex status, marital or relationship status, carer and parental status, pregnancy or potential pregnancy, breastfeeding, family responsibilities, employment and industrial activity, political belief or activity, association with someone who has (or is assumed to have) one of these attributes, and irrelevant criminal record.

Protected areas of public life

The 'areas of public life' protected under the anti-discrimination laws all differ. Many of the laws include as areas of public life employment, education, accommodation, some clubs, goods and services and facilities. Some also include sport, local government, administration of government laws and programs or land.

As discussed below (in relation to the specific laws) these areas of public life may mean the federal laws might apply to your organisation in certain circumstances (when they might otherwise might not have done so – similarly, the New South Wales and Victorian laws).

Exceptions: when it is lawful to discriminate

Generally, discrimination will be lawful when it doesn't contravene any relevant anti-discrimination legislation. Not all discrimination is against the law, either because the discrimination is not on the basis of a protected attribute or because it is excused or exempted by law.

Discriminatory conduct that is excused or exempted differs between the states and territories, as set out in part 5 of this guide.

Discrimination law and your organisation's obligations

Under these laws (where they apply):

- discrimination of volunteers, while doing volunteer work, is unlawful
- volunteers must not discriminate against others in the workplace (including staff, volunteers, clients, and members of the public)
- volunteers in your volunteer involving organisation have the same legal rights and protections against discrimination as employees
- your organisation could be liable (legally responsible) for any harm, injury or loss as a result of the actions of your volunteers (this 'vicarious liability' can generally be avoided if your organisation takes all reasonable steps to prevent sexual harassment), and
- your organisation may have a positive duty to take reasonable and proportionate measures to eliminate discrimination from the workplace. This means taking steps to prevent this behaviour and not waiting for a complaint before addressing inappropriate workplace behaviour.

As we have stated for sexual harassment, regardless of whether or the not anti-discrimination laws apply to your organisation and its volunteers (or only in limited circumstances, or only to your employees) it's best practice to comply with the laws (as much as reasonably practicable). Not only is it favourable to your volunteers (and workers, clients and members of the public in contact with your organisation) it will help prevent any reputational or other damage to your organisation that may arise from a complaint of discrimination.



Tips – minimising discrimination in the workplace

- ▶ Have, and implement, an anti-discrimination policy with a section on discrimination in recruitment that covers your volunteers (in addition to other workers). For further information on what should be contained in a policy, see part 5 of this guide.
- ▶ When recruiting volunteers, prepare a position description that focuses on the skills required for the volunteer role rather than the personal attributes that may be desirable. Use the same language in the position description across advertisements and in the interview process (for further information, see part 5 of this guide).
- ▶ Nominate a person who your volunteers are to make complaints on discriminatory behaviour to and have a fair and transparent process for resolving complaints.
- ▶ Make all volunteers (and workers) aware of relevant policies, and what to do if the process for making a complaint doesn't resolve the complaint.
- ▶ Conduct regular training for all volunteers and workers in relation to the policy so they recognise discriminatory practices and the processes for addressing them.

As a matter of best practice, if not otherwise required by law, organisations should consider having an anti-discrimination policy and procedure in place. Not only will this help an organisation to meet its legal obligations, but it will also protect its workers from discriminatory behaviour and protect the reputation of the organisation in the event that a complaint of discrimination is made.



National Standards for Volunteer Involvement

Volunteering Australia's National Standards for Volunteer Involvement have a number of standards relevant to the matters discussed in this Part, including:

- **Standard 4** – recruitment of volunteers, which states that recruitment and selection strategies are planned, consistent and meet the needs of the organisation.

A criterion for meeting this standard is that volunteers are recruited based on interest, knowledge, skills or attributes relevant to their role. Evidence of meeting this standard is that volunteer recruitment and selection complies with anti-discrimination legislation.

Federal anti-discrimination laws

At the federal level, discrimination laws are set out in the following pieces of legislation (and accompanying regulations):

- *Racial Discrimination Act 1975* (Cth). This Act makes discrimination on the basis of a person's race, colour, descent, or national or ethnic origin unlawful where it occurs in specified areas of public life.
- *Disability Discrimination Act 1992* (Cth). This Act prohibits discrimination against people with disabilities in specified areas of public life.
- *Age Discrimination Act 2004* (Cth). This Act ensures people are not treated less favourably on the ground of age in specified areas of public life.
- *Sex Discrimination Act 1984* (Cth). This Act prohibits discrimination on the basis of sex, gender identity, sexual orientation, intersex status, marital or relationship status, and pregnancy and family responsibilities in specified areas of public life.

Together these **Federal Discrimination Laws** apply to all Australian employers and workers.

These laws mainly cover discrimination by employers against employees and contractors. They don't apply to volunteers and the organisations they volunteer with in the same way. However, in specified areas of public life the Federal Discrimination Laws may apply to volunteers. All of the Federal Discrimination Laws specify that they apply in the context of the provision of facilities, goods or services. Some of them also cover clubs (in this context means an association of at least 30 people that funds the provision of facilities for the club and sells or supplies alcohol) or sporting activities. Discrimination in these contexts prohibits organisations from discriminating against anyone, including volunteers.

There may also be some protections afforded to volunteers by the *Australian Human Rights Commission Act 1986* (Cth), which incorporates a number of international conventions and prohibits certain discriminatory behaviour including irrelevant criminal records.

However, even if these federal discrimination laws don't apply or apply only in limited circumstances (such as specified areas of public life) your organisation may still owe duties under other laws to protect your volunteers from discrimination (for example, state and territory discrimination laws).



Discrimination – goods and services

Hai Van has multiple sclerosis and is in a wheelchair. She is a client of an organisation that provides crisis accommodation. The organisation runs a kitchen that provides meals to which all clients are entitled. The kitchen is on the second floor of the building that the organisation occupies, and there is no way for Hai Van to get to the second floor in her wheelchair. Under Federal Discrimination Laws, the organisation may be exposing itself to a complaint.



Discrimination – access to premises

Consider the above example if Hai Van was a volunteer of the organisation rather than a client. Under Federal Discrimination Laws, Hai Van is not protected from unlawful discrimination in the area of her work because Federal Discrimination Laws don't apply to discrimination against volunteers working in the workplace. However, Federal Discrimination Laws do prohibit discrimination against a person on the basis of a disability in relation to their access to premises, or parts of premises, unless providing that access would cause the organisation an unjustifiable hardship (for example, it may be too costly or impractical for the organisation to install an elevator or stair lift).

In this case, under Federal Discrimination Laws, the organisation may be exposing itself to a complaint.

State anti-discrimination laws

Whether volunteers are covered by state and territory anti-discrimination laws, and what protected attributes are covered, differs. Volunteers are generally protected by these laws in the **Australian Capital Territory, Queensland, South Australia and Tasmania**.

In specified areas of public life, the laws may also apply to volunteers in **New South Wales and Victoria**.

It's unlikely the law applies to volunteers in the **Northern Territory or Western Australia**. However, even if these laws do not apply or apply only in limited circumstances (such as specified areas of public life) your organisation may still owe duties under other laws to protect your volunteers from discrimination.



Note – other laws to protect human rights and volunteers

In each state and territory, volunteers may be able to rely on other laws that protect them from discrimination. For example:

- In Victoria – *Racial and Religious Tolerance Act 2001* (Vic) which prohibits vilification on the basis of race or religion (and has a broad application so is likely to apply to volunteers) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (volunteers for government local authorities and other public authorities may be able to rely on this law)
- In Western Australia, the *Spent Convictions Act 1988* (WA), prohibits discrimination on the basis of having a spent conviction (this may be applicable to recruitment of volunteers, see part 5 of this guide)
- In Queensland – the *Human Rights Act 2019* (QLD) states that every person has a right to equal and effective protection against discrimination (if your organisation provides services on behalf of the Queensland government, you may also need to comply with this Act when making decisions about volunteers, check your funding agreement and ask your contract manager)
- In the Australian Capital Territory - the *Human Rights Act 2004* (ACT) sets out that every person has the right to equal and effective protection against discrimination on any ground (volunteers for public authorities may be able to rely on this law)



Table: Protected personal attributes in state and territory discrimination law

Each state and territory's legislation varies. The following table is an overview.

A more detailed outline of the law in each jurisdiction is set out on the following pages.

Protected Attribute	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Accommodation status							✓	
Age	✓	✓	✓	✓	✓	✓	✓	✓
Breastfeeding	✓	✓	✓	✓	✓	✓	✓	✓
Disability	✓	✓	✓	✓	✓	✓	✓	✓
Employment status		✓					✓	
Gender identity	✓	✓	✓		✓	✓	✓	
Gender history				✓			✓	
Genetic information							✓	
Immigration status							✓	
Industrial (trade union) activity		✓	✓			✓	✓	✓
Intersex status						✓	✓	
Irrelevant criminal record						✓	✓	✓
Irrelevant medical record						✓		✓
Occupation							✓	
Nationality	✓	✓			✓			
Lawful sexual activity		✓	✓			✓		
Parental, family or carer responsibilities	✓	✓	✓	✓	✓	✓	✓	✓
Physical features		✓					✓	
Political views		✓	✓	✓		✓	✓	✓
Pregnancy	✓	✓	✓	✓	✓	✓	✓	✓
Race	✓	✓	✓	✓	✓	✓	✓	✓
Relationship status	✓	✓	✓	✓	✓	✓	✓	✓
Religion		✓	✓	✓		✓	✓	✓
Religious dress or appearance					✓			
Sex	✓	✓	✓	✓	✓	✓	✓	✓
Sexuality	✓	✓	✓	✓	✓	✓	✓	✓
Spent conviction	✓			✓	✓		✓	✓



Association with a person who has, or is believed to have, any listed attribute	✓	✓	✓		✓	✓	✓	✓
Association with a person who has, or is believed to have, protected attributes of sexual orientation, age or impairment (disability)				✓				

Australian Capital Territory

Pursuant to the *Discrimination Act 1991* (ACT) (**ACT Discrimination Act**), the term:

- 'employment' includes work as an unpaid worker
- 'unpaid worker' means a person who performs work for an employer for no remuneration
- 'employer in relation to an unpaid worker, means the person for whom the unpaid worker performs work

Accordingly, volunteer workers are covered by the provisions of the ACT Discrimination Act. The ACT Discrimination Act prohibits discrimination on the grounds listed in the table above.

New South Wales

The definition of 'employment' under the *Anti-Discrimination Act 1977* (NSW) (**NSW Anti-Discrimination Act**) doesn't include volunteers, and volunteers are unlikely to be covered by most provisions of the NSW Anti-Discrimination Act.

However, in particular circumstances, the NSW Anti-Discrimination Act may apply to volunteers where volunteering falls within another area covered by the NSW Discrimination Act (for example, the provision of goods and services). In the event that it applies, the NSW Anti-Discrimination Act prohibits discrimination on the grounds listed in the table above.

The New South Wales authority responsible for administering the NSW Anti-Discrimination Act (the Anti-Discrimination Board) has published [helpful information](#) on volunteers and discrimination (which also explains the areas of 'public life' which may apply to volunteers).

Northern Territory

Under the *Anti-Discrimination Act 1992* (NT) (**NT Anti-Discrimination Act**) the term 'work' (section 4) doesn't include work performed by volunteers.

'Work' includes work:

- in a relationship of employment
- under a contract of services
- remunerated in full or part
- under a statutory appointment
- by a person with an impairment in a sheltered workshop and under a guidance program
- vocational training program or other occupational training or retraining program.

Accordingly, volunteers are unlikely to be covered by most provisions of the NT Anti-Discrimination Act. However, as mentioned above in relation to sexual harassment, the Northern Territory Government has recently stated it is unclear whether the current definition of 'work' includes volunteers. The law is also unclear whether the NT Anti-Discrimination Act may apply to volunteers where volunteering falls within an area of public life covered by the NT Anti-Discrimination Act.

The discussion paper (discussed above and in the note below) stated that in relation to the public life area of 'goods, services and facilities', only customers are protected, not the service providers

themselves. In the event that it were to apply, the NT Anti-Discrimination Act prohibits discrimination on the grounds listed in the table above.

In the event that volunteers are covered by the NT Discrimination Act, organisations could be held vicariously liable (responsible) for the occurrence of discrimination in the workplace. One way in which an organisation can defend itself against liability is by proving that it took reasonable steps to prevent the discrimination from occurring, for example the provision of training and the production of policies. This includes taking steps to prevent this behaviour and not waiting for a complaint before addressing the inappropriate workplace behaviour.



Note: review of NT Anti-discrimination Act

The Northern Territory Department of the Attorney-General and Justice conducted a review of the NT Anti-Discrimination Act to assess whether it continues to meet the needs of the community. It released a discussion paper which you can access [here](#). Consultation is now closed, but some of the matters it sought comment on included:

- introducing new protections under the Act such as domestic violence, homelessness, lawful sexual activity and socioeconomic status
- introducing specific anti-vilification laws prohibiting offensive conduct on the basis of race, religious belief, disability, sexual orientation, gender identity and intersex status
- extending the sexual harassment provisions to include all areas of public life

Check the [Department's website](#) for further updates

Queensland

Pursuant to the *Anti-Discrimination Act 1991* (Qld) (**Qld Anti-Discrimination Act**), volunteers are protected from discrimination as the meaning of the term 'work' includes:

- work under a work experience arrangement within the meaning of the *Education (Work Experience) Act 1996* (Qld)
- work under a vocational placement
- work on a voluntary or unpaid basis
- work by a person with an impairment in a sheltered workshop, whether on a paid basis (including a token remuneration or allowance) or an unpaid basis
- work under a guidance program, an apprenticeship training program or other occupational training or retraining program.

The Qld Anti-Discrimination Act prohibits discrimination on the grounds listed in the table above.

Under the Qld Anti-Discrimination Act, organisations can be held vicariously liable (responsible) for discrimination in the workplace. One way in which an organisation can defend itself against liability is by proving that it took reasonable steps to prevent the discrimination from occurring. This includes taking steps to prevent this behaviour and not waiting for a complaint before addressing the inappropriate workplace behaviour.

South Australia

Volunteers are covered by the *Equal Opportunity Act 1984* (SA) (**SA Equal Opportunity Act**) as (under section 5):

- 'employee' includes an unpaid worker
- 'employer' means an organisation for which the unpaid worker performs services



- 'employment' includes unpaid work
- 'unpaid worker' means a person who performs work for an employer for no remuneration.

The SA Equal Opportunity Act prohibits discrimination on the grounds listed in the table above.

Under the SA Equal Opportunity Act, organisations can be held vicariously liable (responsible) for discrimination by an employee or a volunteer. One way in which an organisation can defend itself against liability is by proving that it had appropriate policies in place at the time of the unlawful act, and that they took reasonable steps to enforce the policy. This includes taking steps to prevent this behaviour and not waiting for a complaint before addressing the inappropriate workplace behaviour.

Tasmania

Under the *Anti-Discrimination Act 1998* (Tas) (**Tas Anti-Discrimination Act**), volunteers are covered as the definition of 'employment' (in section 3) includes employment or occupation in any capacity, with or without remuneration. The Tas Anti-Discrimination Act prohibits discrimination on the grounds listed in the table above.

Victoria

Under the *Equal Opportunity Act 2010* (Vic), (**Vic Equal Opportunity Act**), the definition of 'employee' only includes unpaid workers and volunteers in relation to the prohibition of sexual harassment.

Accordingly, volunteers are unlikely to be covered by most provisions of the Vic Equal Opportunity Act. However, in particular circumstances, the Vic Equal Opportunity Act may apply to volunteers where volunteering falls within another area covered by the Vic Equal Opportunity Act (for example, the provision of goods and services). In the event where it applies, the Vic Equal Opportunity Act prohibits discrimination on the grounds in the table above. Further, in the event it applies, your organisation may have a positive duty to take reasonable and proportionate measures to eliminate discrimination from the workplace. This includes taking steps to prevent this behaviour and not waiting for a complaint before addressing the inappropriate workplace behaviour.

The Victorian authority responsible for administering the Vic Equal Opportunity Act (the Victorian Equal Opportunity and Human Rights Commission) has published [helpful information](#) on volunteers and discrimination (which also explains the areas of 'public life' which may apply to volunteers).

Western Australia

Unlike in other jurisdictions, the definition of 'employment' in the *Equal Opportunity Act 1984* (WA) (**WA Equal Opportunity Act**) doesn't include volunteers, unpaid workers or vocational placement by an educational or training authority. Accordingly, volunteers are unlikely to be covered by most provisions of the WA Discrimination Act. If it were to apply, the WA Equal Opportunity Act prohibits discrimination on the grounds listed in the table above.



Related resources

There are a number of resources published by the different bodies in each state and at the federal level which administer the discrimination laws. These resources include:

- Victorian Equal Opportunity and Human Rights Commission, [Discrimination Fact Sheet](#) and [Discrimination FAQs](#)
- Australian Human Rights Commission, [Willing to Work: Good Practice Examples for Employers \(covering age and disability\)](#)
- Queensland Human Rights Commission (previously called Anti-Discrimination Commission Queensland), [resources on discrimination](#), including a [sample Policy- discrimination and sexual harassment](#).

Bullying

Bullying laws exist at a federal level. The *Fair Work Act 2009* (Cth) (**Fair Work Act**) has provisions that relate to bullying behaviour, which can apply to volunteers.

Separately to these provisions, workplace bullying of volunteers can also breach state and territory work health and safety (**WHS Laws**). Organisations covered by these laws owe various duties to their volunteers including providing and maintaining a working environment that is safe and without risks to health. Bullying in the workplace is a risk to 'psychological health.' The obligation to provide and maintain a working environment that is safe and without risks to health is briefly explained in the section 'your organisation's legal responsibility for the actions of its volunteers' below and is explained in more detail in part 3 of this guide.

There is also a duty under negligence law to take reasonable care to avoid exposing your workers, including volunteers who might be exposed to reasonably foreseeable risks of injury, which could include harm caused by bullying. This is explained in more detail in the section 'negligent action of a volunteer and civil liability' below.



Note

The Fair Work Act applies to an organisation that is a '**constitutional corporation**'.

A 'constitutional corporation' is a body which is incorporated under a federal or state Act (for example, a company limited by guarantee or incorporated association), and which conducts trading or financial activities. The key question for most not-for-profits will usually be whether they are 'trading'.

'Trading' in this context means the provision of good or services for payment as well as the provision of services carried on for the purpose of earning revenue. This may only be a small part of the organisation's activities and it doesn't matter that the income from trading activities is used for charitable purposes.

Activities classified by the courts as 'trading' activities include:

- providing services in return for a fee or charge
- selling goods from a shop or stall
- international student fees
- patient charges
- fundraising activities
- charging car parking fees
- ticket sales and sales of publications
- advertising and broadcasting, and
- charging for admission

The receipt of government grants and subsidies to not-for-profit organisations are generally not regarded by the courts as trading.

What is bullying?

Under the Fair Work Act, workplace bullying occurs when:

- A person, or a group of people, repeatedly behaves unreasonably towards a worker or a group of workers at work, and
- the behaviour creates a risk to health and safety

A 'worker' is defined broadly and extends to volunteers, except those that volunteer in a completely volunteer-based organisation with no employees ('volunteer association'). Being at 'work' is not limited to the confines of a physical workplace. It can occur offsite, at work related functions and through social media channels.

However, this law only applies to behaviour in a ‘constitutionally-covered business.’ Working out whether your community organisation fits this definition is not straightforward.

If your organisation:

- ‘conducts a business or undertaking’ (the business or undertaking does not need to be for profit) within the meaning of work health and safety legislation (see the table at the start of this part of this guide summarising what bullying laws apply in all the states and territories and part 3 of this guide), and
- is a ‘constitutional corporation’ (see the note above) or is incorporated in the Australian Capital Territory or the Northern Territory,

it will be a ‘constitutionally-covered business’ (unincorporated associations are not covered).

Many incorporated not-for-profit volunteer involving organisations will qualify as a ‘constitutionally covered business’, unless they don’t have any paid staff. If you are unsure you may need to seek legal advice to help your organisation determine if it meets this definition.

Unreasonable behaviour that creates a risk to health and safety

Unreasonable behaviour includes, but is not limited to, behaviour that is humiliating, victimising, intimidating or threatening. The question is whether an objective, reasonable person in the circumstances would think that the behaviour is reasonable or not.

Bullying behaviour must also create a risk to health and safety. Often, bullying behaviour will create a risk of mental or psychological harm, for both the person being bullied and other workers who may witness the bullying behaviour. Bullying can make a person feel sad, isolated, and can lead to a mental health condition such as anxiety and depression.

The bullying behaviour may also create a risk of physical harm, such as where the bully behaves in physically intimidating or violent ways, where workers are pressured not to conduct their work in a safe way, or where workers engage in activities like ‘hazing’ or initiation ceremonies.



Example – bullying

Background

Hiruni has, for a number of years, been a volunteer board member of a charity that works with culturally and linguistically diverse youth to help them succeed academically. Recently, the board has elected a new Chair, Megan.

Since Megan was elected Chair, the ‘culture’ of the board has changed. Hiruni has witnessed Megan talking down to particular board members, particularly Matthew, who is also a volunteer. Whenever Matthew speaks in board meetings Megan rolls her eyes and sometimes interrupts him in an abrasive manner. Hiruni checks in with Matthew about Megan’s behaviour. He says that it upsets him and he is intimidated by Megan. He made a complaint to the Secretary of the Board, Angela, and nothing ever came of it. Matthew says he thinks Megan started to dislike him after he raised a couple of safety concerns with her.

Hiruni speaks to Angela and asks her about the complaint Matthew made against Megan. Angela says that she went to Megan and tried to discuss it with her but Megan accused Angela of trying to sabotage the organisation by supporting Matthew’s ‘unreasonable expectations’.

Is this bullying?

Megan’s behaviour likely constitutes bullying under the Fair Work Act because it’s unreasonable and has occurred repeatedly, including:

- treating Matthew dismissively, and speaking over him rudely in board meetings, which makes him upset and intimidated,
- Megan’s creation of a ‘culture of silence’; workers feel that they cannot raise concerns, and
- Megan’s behaviour has created a risk to health and safety because: workers are at risk of mental harm, particularly Matthew, because he feels upset and intimidated in the workplace

When will behaviour not be bullying?

Behaviour will not be bullying when it's reasonable management action that is done in a reasonable way. Management action may include things like performance reviews, conducting a workplace investigation, or modifying a worker's duties because of a medical condition.

A spontaneous conversation or comment is unlikely to constitute management action.

Reasonable management action

The management action must be reasonable in the circumstances. Consider the following example.



Example – reasonable management action

Background

Glenda volunteers in the canteen of a not-for-profit community school. Glenda knows that other volunteers complain about her behind her back because she is a bit slower in completing her duties in the canteen. Glenda rolled her ankle recently and she has been medically advised to keep weight off it for at least two weeks. One of the volunteers reports to the facilities manager that Glenda is limping and seems to be in pain. The facilities manager tells Glenda that she has to go home and won't be able to come back to the canteen until she can provide a doctor's certificate that says she is fit to return to work. Glenda feels that this is unfair.

Is this bullying?

The facilities manager choosing to send Glenda home is 'management action'. The school has a duty to make sure all its workers, including volunteers, are conducting their work safely. Glenda is obviously injured, so it's reasonable in the circumstances to take management action to ensure her and other workers' safety.

Management action taken in a reasonable way

Management action must also be taken in a reasonable way. To ensure the manner of management action is reasonable, it may be necessary to consider the worker's particular circumstances. Review Glenda's situation in the above example and the following further information.



Example – management action taken in a reasonable manner

When told that Glenda was injured, the facilities manager considered how best to approach the situation, being mindful that Glenda has some difficulty with the other volunteers. The facilities manager consulted the school's work health and safety policy for guidance on the appropriate course of action, and made sure that when she told Glenda she would need to go home it was done in a discreet way to avoid making Glenda feel uncomfortable by attracting attention to the situation. This is reasonable management action taken in a reasonable manner.



Example – management action taken in an unreasonable manner

After consulting the school's work health and safety policy, the facilities manager spots Terri-Anne, another canteen volunteer, walking past. The facilities manager calls out to Terri-Anne and tells her that Glenda's injury is 'a real health and safety issue' and that they have to get her out of there before she does some damage to herself or someone else.

The facilities manager tells Terri-Anne that she's busy and so asks Terri-Anne to go tell Glenda to go home till she's better. Terri-Anne promptly returns to the canteen and announces to Glenda in front of the others volunteers and children that the facilities manager told her to tell her to go home as she's a health and safety risk. Glenda felt embarrassed and humiliated by receiving this message from Terri-Anne and in such an abrupt and public manner. Although the decision to send Glenda home was reasonable management action, it was taken in an unreasonable manner.



Case example: Mr Stancu

Stancu [2015] FWC 1999 (26 March 2015)

Mr Stancu was engaged as a volunteer with Australian Volunteers International (AVI).

Mr Stancu alleged that his AVI country manager, Ms Faktaufon 'bullied him' in the course of his volunteer role as sanitation engineer at The Ministry of Public Works and Utilities in Kiribati (the Central Pacific). Mr Stancu was there as part of the Australian Volunteers for International Development Program.

Mr Stancu made an application for a stop bullying order against Ms Faktaufon in the Fair Work Commission. Mr Stancu argued that the manner in which Ms Faktaufon had gone about counselling and warning Mr Stancu about his behaviour was unreasonable, and that the behaviour created a risk to his health and safety. AVI argued that (among other things) the actions of Ms Faktaufon constituted reasonable management action.

Ms Faktaufon met with Mr Stancu, provided written correspondence and issued a warning in relation to complaints about inappropriate behaviour at a state dinner function, excessive drinking, being inappropriately dressed in public (wearing no shirt, and wearing only swimwear in the streets), behaving inappropriately in the office, hitting a pedestrian with his car and using abusive and racist language toward the pedestrian.

The court found that these warnings did not present a health or safety risk to Mr Stancu, and that they constituted reasonable management action carried out in a reasonable manner. The complaints raised had come from many different sources and in most cases it was reasonable that Ms Faktaufon should act on them. Ms Faktaufon also gave Mr Stancu an opportunity to respond to the complaints.

The court also found that Mr Stancu was not working as a volunteer for a constitutional corporation within the Commonwealth. Even though Mr Stancu was engaged through the Australian Volunteers for International Development programme, which was being managed by AVI, his work was being done for the Ministry, which was not a constitutionally covered business and was operating outside the Commonwealth.

Bullying and your organisations obligations

Your organisation is likely to owe duties to protect volunteers from being bullied (and from bullying others while engaging in volunteer work (under the federal law, state and territory work health and safety legislation, or negligence law).

As we have stated for all other workplace behaviours, regardless of whether or not the bullying laws apply to your organisation (or only your employees and not volunteers) it's best practice to comply with the law

(as much as is reasonably practicable). Not only is it favourable to your volunteers (and workers, clients and members of the public in contact with your organisation) it will help prevent any reputational or other damage to your organisation that may arise from a complaint of bullying.



Tips – eliminating bullying behaviour

- ▶ Have a policy on appropriate workplace behaviour. This policy should cover how your organisation will comply with laws about bullying (where they apply).
- ▶ Nominate a person who your volunteers are to make complaints on inappropriate behaviour to and have a fair and transparent process for resolving complaints.
- ▶ Make all volunteers (and all workers) aware of the kind of behaviour that is unacceptable, the policy, and what to do if the process for making a complaint does not resolve the complaint.
- ▶ Conduct ongoing training in relation to appropriate workplace behaviour.

The legal consequences under the Fair Work Act of a volunteer being bullied

The Fair Work Act allows a worker (including a volunteer) who has been bullied at work to apply to the Fair Work Commission (**Commission**) for an order to stop bullying. If the volunteer is no longer volunteering for the organisation they can't apply to the Commission.

If the Commission is satisfied the worker has been bullied at work by a person or a group of people and there is a risk that the worker will continue to be bullied at work by the person or group, then the Commission may make any order it considers appropriate. It can make orders affecting the organisation generally or particular people within the organisation. The purpose of an order is for the worker to be able to continue their work without being bullied. The orders may require monitoring of behaviour, compliance and review of existing policies, further support and anything else the Commission considers appropriate except an order for payment. Your organisation must comply with an order – if it doesn't, the person who has been bullied can apply for an order for a financial penalty against your organisation.



Case example: Mr Bibawi

Bibawi v Stepping Stone Clubhouse Inc t/a Stepping Stone & Others [2019] FWCFB 1314

Stepping Stones is a community organisation that provides services to people with mental illness. They provide a clubhouse for clients. The clubhouse provides access to voluntary educational, social, recreational and work activities, and provides mental health services. One of the programs offered by Stepping Stones was called 'Work-ordered day'. Under this program clients could volunteer to give administrative support to the clubhouse. Participation in this program was intended to improve the health and wellbeing of participants, and assist them to return to employment. The clubhouse would not be able to run without the assistance of these volunteers.

Mr Bibawi was a client of Stepping Stones, and he participated in the 'Work-ordered day' program. His duties included data entry, writing parts of a newsletter, reaching out to clients and other general administrative tasks. By participating in this program, Mr Bibawi qualified for the Centrelink Mobility Allowance.

While taking part in the program Mr Bibawi experienced bullying and applied to the Fair Work Commission for a Stop-Bullying Order against Stepping Stones. To be eligible to apply for a Stop-Bullying Order, the applicant needs to be a 'worker' under the Fair Work Act.

At first the Commission said that Mr Bibawi wasn't a worker, and so was not eligible to apply for a Stop-Bullying Order. Mr Bibawi appealed this decision, arguing that he carried out work for Stepping Stones. The Full Bench of the Commission agreed with Mr Bibawi, and found that he was a worker. They said that it was clear that Mr Bibawi carried out work that was of benefit to the running of the clubhouse. They also said that it didn't matter that Mr Bibawi was a client of Stepping Stones, that he received Centrelink benefits, or that he carried out the work to improve his well-being.

The Full Bench noted that 'there may be a wide range of motivations and objectives attaching to the performance of such work' and that the only consideration for the Commission should be that work was performed, and not the reasons behind it.

The legal consequences of a volunteer being bullied under other laws

Work health and safety laws

As outlined above, separate to the Fair Work Act provisions, workplace bullying can also breach state and territory WHS Laws.

The table at the start of this part of this guide summarising what bullying laws apply in the states and territories lists all of the WHS laws in each state and territory.

Generally speaking, workplace bullying is repeated and unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety. It is seen as a risk to health and safety because it may affect the mental (and physical) health of workers in an organisation, including volunteers.

If the WHS Laws apply to your organisation (see the section 'your organisation's legal responsibility for the actions of its volunteers' below and part 3 of this guide), your organisation will have an obligation to ensure the health and safety of workers and other people who might be affected by the work of the organisation. This includes eliminating, or minimising as far as reasonably practicable, any risks to health and safety by for example, taking proactive steps to prevent and respond to workplace bullying.

If an organisation does not comply with these WHS Laws it risks substantial fines, discussed at the section 'your organisation's legal responsibility for the actions of its volunteers' below.

Negligence laws

There are common law duties to provide a safe workplace, which mean your organisation could be held liable for a breach of this law. This is discussed further in the section 'negligent action of a volunteer and civil liability' below.



Note – actions of volunteer

Your organisation is also in many cases responsible for the actions or omissions of volunteers. If your volunteer is acting in a way that may be classified as ‘bullying’ in the workplace, make sure you take proactive steps to prevent and respond to the behaviour.



National Standards for Volunteer Involvement

Volunteering Australia’s National Standards for Volunteer Involvement promotes as part of **Standard 6**: workplace safety and wellbeing – effective working relationships with employees, and between volunteers should be facilitated by the organisations.

This Standard also denotes that processes should be put in place to protect the health and safety of volunteers in their capacity as volunteers, including access to complaints and grievance procedures. For more detail, refer to the Standard.



Related resources

There are a number of resources published by the different bodies in each state and at the federal level to which a complaint regarding discrimination, sexual harassment or victimisation may be made. These include:

- Fair Work Commission; [Anti-Bullying Guide](#), [Anti-Bullying Benchbook](#)
- Safe Work Australia; [Guide for preventing and responding to workplace bullying](#)
- Australian Human Rights Commission; [What is bullying](#), [Workplace bullying](#)

Also refer to the relevant Work Safe body in your state or territory (refer to the resources section at the end of this part of the guide). All of these bodies have information on workplace bullying.

Victimisation

Laws relating to sexual harassment, bullying and discrimination also prevent victimisation of a person who has made a complaint about such behaviour or exercised other rights under the relevant laws.

Along with duties that your organisation may owe under victimisation laws, your organisation may have duties under:

- work place health and safety laws (explained in the section 'your organisation's legal responsibility for the actions of its volunteers' below), and
- the law of negligence, which contains a duty to take reasonable care to avoid exposing your workers, including volunteers, to reasonably foreseeable risks of injury which could include harm caused by victimisation (explained in the section 'negligent action of a volunteer and civil liability' below)

What is victimisation?

The specific definition of victimisation varies slightly from each territory and state and federally but for the main part it occurs where a person is subjected to, or threatened with, some form of detriment (which means a loss, damage, or injury to the person making the complaint) because:

- they, or someone associated with them makes a complaint under discrimination law (discrimination, sexual harassment or victimisation)
- they asserted rights, or another person's rights, under discrimination law
- they assisted with an investigation of a complaint of a matter covered by discrimination law, or
- they refused to do something because it would be discrimination, sexual harassment or victimisation

The types of detriment that might result in victimisation can include bullying and intimidation by other workers, being moved to another volunteer position with lower responsibility, not being given any meaningful volunteer work, or ending the volunteer relationship.

It is also unlawful under the *Fair Work Act 2009* (Cth) for a person to coerce another person into exercising (or not exercising) a 'workplace right' (such as the right to make a bullying or discrimination complaint). While coercion is different from victimisation (coercion occurs before an action is taken, while victimisation generally arises after the victim takes some action), volunteer organisations should nevertheless be aware of this risk and make sure this does not occur.



Example – victimisation

Chris is a volunteer at a not-for-profit animal shelter. While volunteering, Chris observed his colleague Anushka being subjected to comments of a sexual nature by their supervisor, Trudi. Chris saw that Anushka was upset by the comments and encouraged her to make a complaint about Trudi's conduct. However, Anushka was reluctant to do so because she feared that Trudi may retaliate against her. Despite this, Chris reported the incident to Trudi's supervisor. Trudi and her supervisor were friends and, following Chris's complaint, both he and Anushka were told that their services as volunteers were no longer required.

Both Chris and Anushka have been victimised.

Victimisation law and your organisation's obligations

Under the same laws that prohibit discrimination, sexual harassment and bullying (where they apply) your organisation should be aware that:

- victimisation of volunteers, while doing volunteer work, is unlawful
- volunteers must not victimise others in the workplace (including staff, volunteers, clients, and members of the public)
- volunteers in your volunteer involving organisation have the same legal rights and protections against victimisation as employees

- your organisation could be liable (legally responsible) for any harm, injury or loss as a result of the actions of your volunteers (this 'vicarious liability' can generally be avoided if your organisation takes all reasonable steps to prevent victimisation), and
- your organisation may have a positive duty to take reasonable and proportionate measures to eliminate victimisation from the workplace. This means taking steps to prevent this behaviour and not waiting for a complaint before addressing inappropriate workplace behaviour.

As we have stated for sexual harassment and discrimination, whether or not the victimisation laws apply to your organisation (or only your employees and not volunteers) it is best practice to comply with the law (as far as reasonably practicable). Not only is it favourable to your volunteers (and workers, clients and members of the public in contact with your organisation) it will help prevent any reputational or other damage to your organisation that may arise from a complaint of victimisation.



Tip: victimisation and ending the volunteer relationship

Before you end the volunteer relationship with a volunteer, always make sure there are no outstanding complaints made by the volunteer, to avoid victimisation at this point. If there are outstanding complaints, resolve these appropriately before proceeding with ending the volunteer relationship.

Your organisation should also make sure its policy on appropriate workplace behaviour (as outlined above in relation to sexual harassment and discrimination) makes it clear that victimisation is unacceptable and will not be tolerated. This policy should cover how the organisation will comply with laws about victimisation (where they apply). The policy should also set out the process for resolving complaints and what to do if the process for making a complaint does not resolve the complaint. All volunteers should be trained on these policies and procedures and the policy must be implemented.

Federal and state and territory victimisation laws

The laws dealing with victimisation are complex. Your volunteer involving organisation may need to seek legal advice to determine how they may apply.

The provisions of the *Fair Work Act 2009* (Cth) (**Fair Work Act**) that prohibit victimisation generally don't apply to volunteers. As noted above, the federal anti-discrimination laws do not generally cover volunteers. This means there is no general protection from victimisation for volunteers. There may be limited circumstances where the federal anti-discrimination laws protect volunteers under another area of public life (for example, the provision of goods and services).

In the states and territories, the same laws that prohibit discrimination and sexual harassment (as discussed above) also broadly (but don't always) prohibit victimisation. Whether or not victimisation of a volunteer is prohibited by the law depends on whether the victimisation occurs in connection with a breach (or an allegation of a breach) of the relevant anti-discrimination legislation. That is, victimisation is only prohibited where the original discrimination or sexual harassment alleged was unlawful.

As a summary, volunteers are generally protected by these laws in the **Australian Capital Territory**, **Queensland**, **South Australia** and **Tasmania**. This includes protection against victimisation in relation to their volunteer work. However, in **New South Wales** and **Victoria**, volunteers are generally protected from victimisation that relates to a sexual harassment matter but generally not from victimisation that relates to discrimination. In **Western Australia** and the **Northern Territory**, volunteers are generally not protected against victimisation in relation to discrimination or sexual harassment that has occurred or is alleged to have occurred in the course of their volunteer work.

Nevertheless, in all jurisdictions volunteers are protected against victimisation which occurs in relation to unlawful discriminatory conduct taking place in certain areas of public life (such as the provision of goods and services or, for example, in relation to people with disabilities, access to premises).



Victimisation – goods and services

Hai Van has multiple sclerosis and is in a wheelchair. She is a client of an organisation that provides crisis accommodation. The organisation runs a kitchen that provides meals to which all clients are entitled. The kitchen is on the second floor of the building that the organisation occupies, and there is no way for Hai Van to get to the second floor in her wheelchair, even though it would not cause the organisation an unjustifiable hardship to install a stair lift.

Under State Discrimination Laws, the organisation has breached the relevant legislation. Hai Van discusses this with the organisation and alleges that she intends to bring a claim against the organisation. In response, the organisation informs Hai Van that she is barred from utilising the organisation's crisis accommodation.

In this case, the organisation has victimised Hai Van and is exposed to a claim.



Victimisation – access to premises

Consider the above example if Hai Van was a volunteer of the organisation rather than a client and, instead of being barred from accessing the organisation's services, she is told that her services as a volunteer are no longer required.

Under ACT, Qld, Tas and SA Discrimination Laws, Hai Van is protected from discrimination in relation to her work as a volunteer. She informs the organisation that she has been discriminated against and has a right to make a claim. By informing Hai Van that it is terminating the volunteering relationship, the organisation has, in addition to unlawfully discriminating against Hai Van, victimised her and is exposed to a claim.

Under Vic, NSW, WA and NT Discrimination Laws, Hai Van is not protected from unlawful discrimination in the area of her work and so she is not protected by the laws against victimisation. However, Discrimination Laws in these jurisdictions do prohibit discrimination against a person on the basis of a disability in relation to their access to premises, or parts of premises (unless, for example, providing access would cause an unjustifiable hardship on the organisation). So she may still be able to make a victimisation claim against the organisation on that basis (that she was discriminated against in relation to the provision of access to premises).

Regardless of whether a volunteer is themselves protected from victimisation while providing volunteer services in other areas of public life, as indicated in the example below, volunteers may nevertheless expose organisations to victimisation claims as a result of the volunteer's actions.



Example – victimisation by a volunteer

A community house runs educational courses. A volunteer tutor fails a student because she didn't complete her attendance requirement. The student complains that she is being discriminated against due to her race. The community house tells the student that this is a ridiculous complaint and that any application to re-enrol next year will not be accepted. While the student's discrimination complaint appears weak, she may be able to bring a claim for victimisation based on the actions of the community house after receiving the complaint. In this instance the community house may be liable for the unlawful (victimisation) action of its volunteer.

State and territory victimisation laws

These are set out below.

Australian Capital Territory

As noted above, volunteers are covered by the provisions of the *Discrimination Act 1991* (ACT) (**ACT Discrimination Act**). The ACT Discrimination Act makes it unlawful for a person to subject, or threaten to subject, another person to any detriment because (section 68):

- the other person, or someone associated with the other person, has taken (or proposes to take) discrimination action, or
- the first person believes the other person, or someone associated with the other person has taken (or proposes to take) discrimination action

The term 'discrimination action' includes actions such as making a discrimination complaint, reasonably asserting a right, giving evidence in court or giving evidence as part of an investigation.

New South Wales

As noted above, other than in relation to sexual harassment, the definition of 'employment' under the *Anti-Discrimination Act 1977* (NSW) (**NSW Anti-Discrimination Act**) doesn't include volunteers, and volunteers are unlikely to be covered by most provisions of the NSW Anti-Discrimination Act (other than sexual harassment).

However, in particular circumstances, the NSW Anti-Discrimination Act may apply to volunteers in an area of public life covered by the NSW Anti-Discrimination Act (for example, the provision of goods and services). In the event that it applies, the NSW Anti-Discrimination Act makes it unlawful for a person to subject another person to any detriment in any circumstances on the grounds that the victimised person has (or intends to) (section 50):

- brought proceedings against the discriminator or any other person under the NSW Anti-Discrimination Act
- given evidence or information in connection with proceedings brought under the NSW Anti-Discrimination Act
- alleged that the discriminator has committed an act which would amount to a contravention of the NSW Anti-Discrimination Act, or
- otherwise done anything under or by reference to the NSW Discrimination Act in relation to the discriminator or any other person

The above does not apply to false allegations not made in good faith.

Northern Territory

As noted above, the *Anti-Discrimination Act 1992* (NT) (**NT Anti-Discrimination Act**) definition of 'work' (section 4) doesn't include work performed by volunteers.

Work includes:

- work in a relationship of employment
- work under a contract of services
- work remunerated in full or part
- work under a statutory appointment
- work by a person with an impairment in a sheltered workshop and under a guidance program
- vocational training program or other occupational training or retraining program

Accordingly, volunteers are unlikely to be covered by most provisions of the NT Anti-Discrimination Act (as outlined above, the NT Government has recently stated the laws are unclear). If it were to apply, the



NT Anti-Discrimination Act makes it unlawful for a person to subject another person (or associate of the person) to victimisation because the person has (or intends to) (section 23):

- make a complaint under the NT Anti-Discrimination Act
- given evidence or information in connection with proceedings brought under the NT Anti-Discrimination Act
- alleged that a person has committed an act which would amount to a contravention of the NT Anti-Discrimination Act, or
- done anything in relation to a person under or by reference to the NT Anti-Discrimination Act

The above does not apply to false allegations not made in good faith.

As noted in the Note Box above, the NT Anti-Discrimination Act is currently under review.

In the event that volunteers are covered by the NT Anti-Discrimination Act, organisations could be held vicariously liable (responsible) for victimisation in the workplace. One way in which an organisation can defend itself against liability is by proving that it took reasonable steps to prevent the victimisation from occurring, for example the provision of training and the production of policies. This includes taking steps to prevent this behaviour and not waiting for a complaint before addressing the inappropriate workplace behaviour.

Queensland

As noted above, volunteers are protected under the *Anti-Discrimination Act 1991* (Qld) (**Qld Anti-Discrimination Act**) from discrimination and sexual harassment. Under the Qld Anti-Discrimination Act, victimisation occurs where a person does an act, or threatens to do an act, to the detriment of another person (section 130):

- because the second person (or a person associated with that person):
 - refused to do an act that would amount to a contravention of the Qld Anti-Discrimination Act
 - in good faith, alleged, or intends to allege that a person committed a contravention of the Qld Anti-Discrimination Act, or
 - is, has been, or intends to be, involved in a proceeding under the Qld Anti-Discrimination Act against any person, or
- because the first person believes that the second person (or a person associated with that person) is doing, has done, or intends to do one of the things mentioned above.

The term 'involvement in a proceeding' includes making a complaint under the Qld Anti-Discrimination Act, being involved in a prosecution for an offence under the Qld Anti-Discrimination Act, and supplying information, producing documents or appearing as a witness as part of the prosecution process.

Under the Qld Anti-Discrimination Act, organisations can be held vicariously liable (responsible) for victimisation in the workplace. One way in which an organisation can defend itself against liability is by proving that it took reasonable steps to prevent the victimisation from occurring. This includes taking steps to prevent this behaviour and not waiting for a complaint before addressing the inappropriate workplace behaviour.

South Australia

As noted above, volunteers are covered by the *Equal Opportunity Act 1984* (SA) (**SA Equal Opportunity Act**) (section 5) which prohibits acts of victimisation, including treating the victim unfavourably on the ground that the victim has (or intends to, or is suspected of having) (section 86):

- brought proceedings under the SA Equal Opportunity Act
- given evidence or information in proceedings under the SA Equal Opportunity Act
- made allegations that the victim or some other person has been the subject of an act that contravenes the SA Equal Opportunity Act

- reasonably asserted the victim's right, or the right of some other person, to lodge a complaint or take other proceedings under the SA Equal Opportunity Act, or
- otherwise done anything under or by reference to the SA Equal Opportunity Act

The above does not apply to false allegations not made in good faith.

Under the SA Equal Opportunity Act, organisations can be held vicariously liable (responsible) for the occurrence of victimisation by an employee (including a volunteer) the workplace. One way in which an organisation can defend itself against liability is by proving that it had appropriate policies in place at the time of the unlawful act, and that they took reasonable steps to enforce the policy. This includes taking steps to prevent this behaviour and not waiting for a complaint before addressing the inappropriate workplace behaviour

Tasmania

As noted above, the *Anti-Discrimination Act 1998* (Tas) (**Tas Anti-Discrimination Act**) covers volunteers. The Tas Anti-Discrimination Act prohibits a person from subjecting, or threatening to subject another person (or an associate of that person) to any detriment because they (section 18):

- have made, or intend to make, a complaint under the Tas Anti-Discrimination Act
- gave, or intend to give, evidence or information in connection with any proceedings under the Tas Anti-Discrimination Act
- allege, or intend to allege, that any person has committed an act which would amount to a contravention of Tas Anti-Discrimination Act
- refused, or intend to refuse, to do anything that would amount to a contravention of the Tas Anti-Discrimination Act, or
- have otherwise done anything under or by reference to the Tas Anti-Discrimination Act.

Victoria

As noted above, the definition of 'employee' under the *Equal Opportunity Act 2010* (Vic) (**Vic Equal Opportunity Act**) includes unpaid workers and volunteers, but this is only in relation to the prohibition of sexual harassment.

However, in particular circumstances in addition to sexual harassment, the Vic Equal Opportunity Act may apply to volunteers in specified 'areas' covered by the Vic Equal Opportunity Act (for example, the provision of goods and services). The Vic Equal Opportunity Act (section 104) prohibits victimisation, which occurs where a person subjects, or threatens to subject, another person to any detriment because that other person (or a person associated with that person) has:

- brought a dispute to the Victorian Equal Opportunity and Human Rights Commission
- made a complaint under the Vic Equal Opportunity Act
- brought any proceeding or dispute under the Vic Equal Opportunity Act against any person
- given evidence or information, or produced a document, in connection with a proceeding or investigation conducted under the Vic Equal Opportunity Act
- attended a compulsory conference or mediation in any proceedings under the Vic Equal Opportunity Act
- alleged that a person that has done an act or has refused to do anything that is unlawful under certain provisions of the Vic Equal Opportunity Act (or believes that they would do so), or
- has otherwise done anything in accordance with the Vic Equal Opportunity Act in relation to any person

The above does not apply to false allegations not made in good faith.

In the event that the Vic Equal Opportunity Act applies to your volunteers (for example, sexual harassment or in the specified 'areas' covered by the Vic Equal Opportunity Act) your organisation may have a positive duty to take reasonable and proportionate measures to eliminate victimisation from the



workplace. This includes taking steps to prevent this behaviour and not waiting for a complaint before addressing the inappropriate workplace behaviour.

Western Australia

As noted above, the definition of 'employment' in the *Equal Opportunity Act 1984* (WA), (**WA Equal Opportunity Act**) doesn't include volunteers, unpaid workers or vocational placement by an educational or training authority and for the most part it does not apply to volunteers.

The WA Equal Opportunity Act (section 67) provides that it is unlawful for a person (victimiser) to subject or threaten to subject another person (the person victimised) to any detriment because the person victimised has (or intends):

- made a complaint under the WA Equal Opportunity Act
- brought proceedings against the victimiser or any other person under the WA Equal Opportunity Act
- given information, or a document, to a person performing any function under the WA Equal Opportunity Act
- appeared as a witness before the Tribunal in a proceeding under the WA Equal Opportunity Act
- has asserted any rights of the person victimised or rights of any other person under the WA Equal Opportunity Act, or
- has made an allegation that a person that has done an act that is unlawful under certain provisions of the WA Equal Opportunity Act

The above does not apply to false allegations not made in good faith.

As the WA Equal Opportunity Act doesn't protect volunteers in the workplace, they are not protected from victimisation in the workplace in relation to their volunteering.

Making a complaint: discrimination, sexual harassment, bullying and victimisation

Where possible and appropriate, complaints about discrimination, sexual harassment, bullying and victimisation should be dealt with internally and in accordance with the organisation's complaint handling policy. For more information on grievance handling policies, see part 5 of this guide.

Where it is not possible or appropriate to resolve complaints internally, complaints may be made to the relevant state or federal body. There are different bodies in each state and at the federal level to which a complaint regarding discrimination, sexual harassment, bullying or victimisation may be made. For information on how to make a complaint, and what a complaint should contain, you should contact the relevant body listed in the table below. Equally, if you have been notified that a complaint has been made against you or your organisation, you should also contact the body in the table below.

Discrimination, sexual harassment and victimisation

<p>Federal</p> <p><u>Australian Human Rights Commission (AHRC)</u></p>	<p>The AHRC investigates and resolves complaints of discrimination, harassment or bullying on the basis of, but not limited to: sex, disability, race or age.</p> <p>The complaint made must be with regards to unlawful discrimination. To resolve complaints, the AHRC use the method of conciliation, a free and informal process which can occur through a telephone conference, exchange of letters, or a face to face conference between the complainant and respondent.</p> <p>If the complaint can't be resolved through conciliation, the complainant may apply to have their complaint be heard in the Federal Court or Federal Circuit Court of Australia, but must do so within 60 days (of the end of conciliation) and in some instances, with permission from the Court. Whether or not a volunteer can make a complaint to the AHRC will depend on whether the volunteer is covered by certain aspects of the federal discrimination laws. This is complex and may require legal advice.</p>
<p>Australian Capital Territory</p> <p><u>ACT Human Rights Commission (ACT-HRC)</u></p>	<p>The ACT-HRC's role is to resolve complaints and promote rights.</p> <p>It may:</p> <ul style="list-style-type: none"> • decide to take no further action on a complaint • attempt to resolve it through conciliation, or • decide that resolution by conciliation is unlikely to be successful <p>If the ACT-HRC decides that conciliation should be attempted to resolve the complaint, this allows an opportunity for both parties to discuss and try to find a way to resolve the complaint.</p> <p>Outcomes from conciliation may include: a written or verbal apology, the introduction of policies and guidelines, financial compensation (agreed to by the other party) or gestures to show the respondent's good will towards the complainant.</p> <p>If the complaint is unable to be resolved through conciliation or the ACT-HRC decides that conciliation will be unlikely to resolve the complaint, the complaint may be referred to the ACT Civil and Administrative Tribunal.</p>
<p>New South Wales</p> <p><u>Anti-Discrimination Board of NSW (ADB)</u></p>	<p>The ADB investigates complaints of discrimination that are covered in the <i>Anti-Discrimination Act 1977</i> (NSW).</p> <p>It doesn't have the power to make an order or award compensation, but actively seeks to resolve complaints through conciliation which is designed to be an informal and cost-effective method of resolving disputes. The ADB may also choose to refuse investigating a complaint if the incident occurred more than 12 months before the complaint was lodged. If a person or organisation wishes to lodge a complaint about events which happened more than 12 months ago, an explanation for the delay in lodging the complaint will need to be provided to the ADB.</p>
<p>Northern Territory</p>	<p>A complaint to the NTADC must be made within 12 months of the incident occurring. However, the NTADC may consider complaints over 12 months if there is good reason. Once the NTADC receives a complaint covered by the <i>Anti-Discrimination Act 1992</i> (NT) the respondent is notified by the NTADC and the matter is set down for a compulsory conciliation. If the matter is not resolved the complainant may decide to</p>



<p><u>Northern Territory Anti-Discrimination Commission (NTADC)</u></p>	<p>continue the evaluation process which involves the complaint being referred to the Northern Territory Civil and Administrative Tribunal if the NTADC decides there is merit for the referral.</p>
<p>Queensland</p> <p><u>Queensland Human Rights Commission (QHRC)</u></p> <p>Previously the Anti-Discrimination Commission Queensland (ADCQ)</p>	<p>The QHRC uses conciliation in resolving complaints that may arise and QHRC provide this service free of charge.</p> <p>Complaints to the QHRC must be made in writing, and set out how the incident involved a breach of the <i>Anti-Discrimination Act 1991</i> (QLD) and the <i>Human Rights Act 2019</i> (QLD).</p> <p>Complaints to the QHRC must be made within a year of the incident. However, the QHRC may choose to accept a complaint about an incident which occurred over a year ago depending on the length of and reason for the delay.</p> <p>If the complaint is unable to be resolved through conciliation, the complainant may approach the Queensland Industrial Relations Commission for work-related complaints or the Queensland Civil and Administrative Tribunal for all other complaints.</p>
<p>South Australia</p> <p><u>Equal Opportunity Commission (EOCSA)</u></p>	<p>EOCSA provide free and confidential services in resolving complaints through the use of conciliation.</p> <p>A 12 month time limit is imposed and the EOCSA generally won't consider complaints about incidents over 12 months ago unless there is good reason, and it would be fair for the complaint to be taken up despite being late.</p> <p>If the parties are unable to agree to resolve the complaint, the EOCSA may choose to refer the complaint to the South Australian Employment Tribunal (SAET).</p> <p>The SAET hears and determines matters regarding:</p> <ul style="list-style-type: none"> • equal opportunity complaints • exemptions to the <i>Equal Opportunity Act 1984</i> (SA), • or a review of refusal to extend time <p>Equal opportunity complaints must be made in the first instance to the EOCSA before approaching the SAET.</p>
<p>Tasmania</p> <p><u>Equal Opportunity Tasmania (EOT)</u></p>	<p>A complaint must be within the scope of the <i>Anti-Discrimination Act 1998</i> (TAS) and made within 12 months of the incident. If the EOT decides the complaint is to be handled, an investigation process will occur.</p> <p>At the end of the investigation, the EOT may decide to:</p> <ul style="list-style-type: none"> • dismiss the complaint • resolve the complaint through conciliation, or • refer the complaint to the Anti-Discrimination Tribunal <p>If the EOT chooses to dismiss the complaint, the EOT will inform the complainant and respondent of the decision and reasons for it. The complainant has the right to ask the Anti-Discrimination Tribunal for a review of the decision by the EOT.</p> <p>If conciliation occurs, but the complaint is unresolved, the EOT must send the complaint to the Anti-Discrimination Tribunal for inquiry.</p>
<p>Victoria</p> <p><u>Victorian Equal Opportunity and Human Rights Commission (VEOHRC)</u></p>	<p>VEOHRC seeks to resolve complaints through the process of conciliation, the aim of which is to reach an agreement between the complainant and the respondent.</p> <p>VEOHRC is unable to make orders or award compensation but common outcomes of conciliation can include:</p> <ul style="list-style-type: none"> • an apology • financial compensation (agreed to by the other party) • a job reinstatement, or an agreement to change or stop behaviour <p>If the issue can't be resolved through conciliation, a complainant may apply to the Victorian Civil and Administrative Tribunal. The complainant is able to make this application exists regardless of whether a complaint has been made to VEOHRC.</p>

Western Australia

Equal Opportunity Commission (EOCWA)

Complaints to the EOCWA must be on a matter under the *Equal Opportunity Act 1984* (WA) and the incident must have occurred within 12 months of the complaint being lodged.

Generally, the EOCWA will refuse complaints about incidents over 12 months ago but may consider them if there is good reason or good cause for the delay.

Common outcomes from conciliation can include:

- an apology
- staff training programs, or
- compensation for a specific loss

If the complaint is unable to be conciliated, the EOCWA may choose to dismiss the complaint or refer the matter to the State Administrative Tribunal for hearing and determination.

Bullying

Not all organisations are required to comply with the work health and safety legislation. To work out whether or not your organisation is subject to these laws, see part 3 of this guide.

Federal

Fair Work Commission (FWC)

The role of the FWC is to prevent bullying from occurring in the future. The FWC becomes involved when a person makes an application to the commission for an order to stop bullying. The FWC can't order that financial penalties be imposed, or make orders for compensation.

If a person is eligible to make a stop bullying order (they are a 'worker' and they are a constitutionally covered business, see section 4.1), they must make an application using Form F72 – Application for an order to stop workplace bullying, accompanied by the appropriate fee. Importantly, this application must be made while the worker is still involved with the organisation.

Actions that the Commission might consider could include:

- requiring the individual or group of individuals to stop the specified behaviour
- regular monitoring of behaviours by an employer or principal
- compliance with an employer or principal's bullying policy
- the provision of information and additional support and training to workers
- review of the employer's or principal's bullying policy

Australian Human Rights Commission (AHRC)

As mentioned above, a person may also be able to make a complaint to the AHRC for bullying in the workplace, where the bullying is linked to, or based on, a protected characteristic, such as the person's age, sex, race or disability or if it based on person's criminal record, trade union activity, political opinion, religion or social origin. Whether or not volunteers are able to make a complaint to the AHRC is complicated and legal advice may need to be sort.

Australian Capital Territory

Access Canberra

Access Canberra's role is to monitor and enforce compliance with the *Work Health and Safety Act 2011* (ACT).

One of Access Canberra's roles in relation to bullying at work is to ensure that the employer is meeting their obligation to provide a work environment that is safe and that risks to health (including risks to psychological health) are prevented or managed. In the case of bullying, this can include dealing effectively with issues that do arise despite attempts at prevention.

If an application is made to Access Canberra, an Access Canberra inspector might:

- issue an improvement notice requiring specific actions to be taken by the employer where there is a breach of the *Work Health and Safety Act 2011* (this action may include directions to develop and implement policies and procedures, directions to train staff in relation to acceptable workplace behaviours or directions to train supervisors in relation to their role in dealing with bullying at work)
- provide advice to the employer about how to comply with health and safety laws
- decide that the workplace has taken reasonable steps to prevent bullying at work



	<ul style="list-style-type: none"> decide that the employer has taken reasonable steps to respond to and manage allegations of bullying at work, and recommend that the employer engage the services of a suitably qualified person to assist with managing health and safety issues
New South Wales <u>SafeWork NSW</u>	<p>SafeWork NSW's role is to ensure that organisations subject to the <i>Work Health and Safety Act 2011</i> (NSW) provide and maintain a work environment that is without risks to health and safety.</p> <p>SafeWork NSW can investigate workplace bullying. If you are a worker you can notify SafeWork NSW by filling in the 'Workplace bullying form'.</p> <p>If a SafeWork inspector visits the workplace, they may:</p> <ul style="list-style-type: none"> provide information and advice on the requirements of WHS or workers compensation law explain the range of SafeWork products and services available to your business provide practical advice on how to eliminate or reduce the risk of injury and illness investigate or verify compliance with legislative obligations issue notices or other instructions to secure compliance with legislation
Northern Territory <u>NT WorkSafe</u>	<p>The role of NT WorkSafe is to assess whether the workplace concerned, has appropriate systems in place to manage the risk of exposure to workplace bullying.</p> <p>NT WorkSafe responds to workplace bullying complaints only in certain situations that fall within the scope of the <i>Work Health and Safety (National Uniform Legislation) Act</i>:</p> <ul style="list-style-type: none"> the complaint must (on the face of it) fall within the definition of workplace harassment the complaint must be in writing. The complainant will be given or sent an information package which must be completed the complaint should have been raised at the workplace and an attempt made to resolve the complaint internally <p>For further information or to request a bullying and harassment complaint form contact NT WorkSafe on 1800 019 115 or ntworksafe@nt.gov.au.</p>
Queensland <u>Workplace Health and Safety Queensland (WHSQ)</u>	<p>WHSQ can only respond to complaints in certain situations that fall within the scope of the <i>Work Health and Safety Act 2011</i>, such as:</p> <ul style="list-style-type: none"> the complaint must (on face value) fall within the definition of workplace bullying the complaint must be in writing unless there are exceptional circumstances the complainant must contact the Work Health and Safety Infoline on 1300 362 128 for an information package, which includes the address to send the complaint and a checklist which must be completed, signed and attached to the written complaint attempts should be made to resolve the situation in the workplace before contacting WHSQ <p>If all of the above has been satisfied, a WHSQ inspector will contact the workplace, advise them of the complaint and may request evidence from the workplace that the risk of injury or illness from workplace bullying is being effectively managed. When people at the workplace fail to meet their duties under the <i>Work Health and Safety Act 2011</i>, inspectors may use a range of compliance and enforcement options including, but not limited to, advice, verbal directions, improvement and infringement notices.</p>
South Australia <u>SafeWork SA</u>	<p>SafeWork SA's role is to ensure that PCBUs and workers meet their obligations under work health and safety laws, including, psychological health risks from bullying.</p> <p>Workers can contact SafeWork SA to make a complaint on 1300 365 255.</p> <p>If a complaint is made to SafeWork SA, they will:</p> <ul style="list-style-type: none"> confirm if the complaint has merit under the legal definitions determine if the PCBU has taken appropriate measures or actions make sure the hazards are suitably controlled issue statutory notices for breaches of work health and safety laws, if required



<p>Tasmania</p> <p><u>WorkSafe Tasmania</u></p>	<p>WorkSafe Tasmania can investigate if it receives a complaint of bullying in the workplace. A worker can make a complaint using the online form to lodge a complaint or phone the Helpline on 1300 366 322.</p> <p>WorkSafe Tasmania will only investigate when:</p> <ul style="list-style-type: none"> • the bullying is still occurring, and • the victim has exhausted all options in their workplace to stop the bullying <p>It is the role of a WorkSafe Tasmania inspector to investigate and determine if those involved have met their obligations under the <i>Work Health and Safety Act 2012</i> (Tas) for example, if the organisation has a policy and procedure in place for preventing and responding to bullying.</p>
<p>Victoria</p> <p><u>WorkSafe Victoria</u></p>	<p>WorkSafe's Advisory Service can provide information on bullying and how to prevent it, advice on how to raise the issue of bullying in your workplace or refer the matter to an inspector (where appropriate).</p>
<p>Western Australia</p> <p><u>WorkSafe Western Australia</u></p>	<p>A person (after taking preliminary steps) can make a complaint about bullying via an <u>Occupational Safety and Health (OSH) enquiry</u> with WorkSafe. Action taken by WorkSafe is targeted at preventing and managing bullying in the workplace. Depending on the outcome of the investigation and the circumstances the Inspector can take one or more of the following actions:</p> <ul style="list-style-type: none"> • no action • provide information • issue improvement notice

Your organisation's legal responsibility for the actions of its volunteers

When considering your obligations in relation to unlawful workplace behaviours, your volunteer involving organisation will need to consider the two sides to this obligation:

- your duty to take steps to ensure that the volunteer is not subject to unlawful workplace behaviour, and
- your duty to take steps to ensure that the people your volunteers are interacting with (clients, other workers or the public) are not subject to unlawful workplace behaviour by the volunteer

Organisations are responsible for the actions of their volunteers. It's essential that organisations understand that they owe duties to others who may be impacted by their volunteers' actions and the impact of failing to meet those obligations on the organisation itself, workers and others in the workplace.

For example, where an organisation fails to meet its duty to ensure the health and safety of a client, such as being aware of a volunteer sexually harassing a client but not doing anything to stop the sexual harassment, there will be an impact on the organisation (including reputational and financial damage) and the client (for example, physical and or psychological harm).

Organisations can potentially be held responsible for the actions of their volunteers, under the discrimination laws (as explained above) or under the Harmonised WHS Laws, Victorian OHS Law and Western Australian OSH Law, or under the common law (negligence).

For further information on your organisation's legal responsibility for the actions of its volunteers, see the part 3 of this guide.

Unlawful workplace behaviour and work health and safety laws

As mentioned above, under work health and safety laws, volunteer involving organisations may have obligations to take steps to protect volunteers from unlawful workplace behaviour. This is because unlawful workplace behaviour can pose a risk to the health and safety of your volunteers.

The work health and safety laws in Australia are different in each state and territory in Australia, and not all community organisations are covered by the laws. For further information on these laws and common law duties, see part 3 of this guide.



National Standards for Volunteer Involvement

Volunteering Australia's National Standards for Volunteer Involvement have a number of standards relevant to the matters discussed in this part. If your organisation complies with its legal obligations as set out in this part (or if not obligated, but does so as a matter of best practice), it will help ensure your organisation meets these standards (and can provide evidence that it does so).

Standard 6: workplace safety and wellbeing states that health, safety and wellbeing of volunteers is protected in the workplace. Criteria for meeting this standard includes:

- 6.1 Effective working relationships with employees, and between volunteers are facilitated by the organisation. Evidence of meeting this includes having structured processes in place for relevant staff to communicate or meet with volunteers, and where requested, volunteers are provided with opportunities to meet collectively regarding their work with the organisation.
- 6.2 Processes are in place to protect the health and safety of volunteers in their capacity as volunteers. Evidence of meeting this includes having safety and health management policies and procedures that include volunteers; volunteers are insured for personal injury and liability have access to the same post incident debriefing and support provided to employees; and expectations and limits of volunteer roles, including time commitments and any designated hours are agreed with volunteers and individual workloads of volunteers are monitored and managed.
- 6.3 Volunteers have access to complaints and grievances procedures. Evidence of meeting this includes volunteers being given information on how to make a complaint or raise a concern within the organisation and to relevant external bodies and grievances from volunteers are managed consistently, transparently, equitably and in line with principles of natural justice.

Volunteers' entitlements to workers compensation

All employers in each state and territory are required to take out a workers compensation insurance policy to cover themselves and their employees. Who is covered by workers compensation insurance policies is determined by the laws in each state and territory relating to workers compensation.

Generally, volunteers are not covered by workers' compensation legislation. There are some exceptions mainly relating to emergency workers (for example, a volunteer firefighter lodges a worker's compensation claim alleging a psychological injury due to bullying by her manager).

For further information on the application of workers compensation to volunteers, and insurance for volunteers, see part 3 of this guide.

Unlawful workplace behaviour and negligence laws

Not-for-profit community organisations have safety obligations under the common law (judge made law) of negligence and under the negligence provisions in state and territory legislation. They owe a duty of care to people affected by their activities to take reasonable steps to protect them from reasonably foreseeable harm.



Case example – liability under common law of negligence

Swan v Monash Law Book Co-operative [2013] VSC 326

In this case, the employer was a small not-for-profit bookshop. It had one employee and then employed another (Ms Swan). The evidence showed that over a period of time, the first employee bullied Ms Swan including regularly belittling her in front of customers, being constantly hyper critical of her work, even throwing books at her.

Ms Swan complained to the board (as she had no-one else to complain to). The board promised to do something about it, discussed it at a board meeting but didn't take action to resolve the situation. The bullying continued and Ms Swan again complained to the Board who again promised to do something but they didn't. In the end Ms Swan made an application to the Court alleging the negligence of her employer caused her injury (psychiatric) by exposing her to an unsafe workplace - she was subject to bullying conduct – and sought damages for pain and suffering and pecuniary loss.

The Court was highly critical of the employer's response to Ms Swan's complaints. It found the employer was negligent because it didn't investigate once the complaint was made, assess the risk to Ms Swan, monitor behaviour of its employees, have workplace behaviour policies setting out expectations on appropriate behaviour, have training on appropriate behaviour including on how to make complaints or a procedures on responding to complaints.

When determining that the organisation was liable, the Judge found that the Board's lack of action was 'explained but not excused' by the voluntary nature of the board members' work. The organisation was ordered to pay almost \$600,000 in damages.

More information about negligence law can be found in part 3 of this guide.

Negligent action of a volunteer and civil liability

As discussed above, your organisation will need to consider the two sides to safety – the duty to the volunteer, and the duty to the people that your volunteer interacts with. This extends to negligence laws, and in some circumstances, your organisation may be held liable, that is 'legally responsible' for the negligent actions (or any failures to act) of its volunteers.

For further information on the civil liability of volunteers, and whether or not a volunteer is entitled to the protection see part 3 of this guide.

Summary: volunteers and unlawful workplace behaviour

Laws prohibit sexual harassment

- The laws exist at both state and federal level.
- Generally, sexual harassment laws apply to volunteers (while performing out volunteer work) in all states except Western Australia and the Northern Territory.
- We recommend you comply with these laws (as much as reasonably possible) even if strictly speaking you are not legally required to comply as a matter of best practice.

Laws prohibit discrimination

- The laws exist at both state and federal level.
- Generally, the state-based discrimination laws will apply to volunteers in the Australian Capital Territory, Queensland, South Australia and Tasmania. They may apply in Victoria and New South Wales where volunteering falls within another area covered by the discrimination legalisation, but are unlikely to apply in Western Australia and the Northern Territory.
- We recommend you comply with these laws (as much as reasonably possible) even if strictly speaking you are not legally required to comply as a matter of best practice.

Laws prohibit bullying

- Bullying behaviour is prohibited under federal law (for example, volunteers are protected in the same way as are employees under the *Fair Work Act 2009*) and in each state and territory.
- We recommend you comply with these laws (as much as reasonably possible) even if strictly speaking you are not legally required to comply as a matter of best practice.

Laws prohibit victimisation

- These are the same laws that prohibit discrimination so your organisation will need to be aware of whether victimisation laws apply to volunteers in their state.
- We recommend you comply with these laws (as much as reasonably possible) even if strictly speaking you are not legally required to comply as a matter of best practice.

Sexual harassment, discrimination, bullying, victimisation may also be a work health and safety issue

- The relevant federal, state or territory work health and safety legislation may apply to your organisation.
- Generally, if your organisation is required to take out workers' compensation insurance policy it will not cover your volunteers. You may need to consider separate insurance.

Negligence

- Where legislation doesn't protect a volunteer at work, a common law (negligence) duty of care may still be owed to the volunteer to ensure they do not suffer harm as a result of inappropriate workplace behaviour.

Legal obligations to protect volunteers from unlawful workplace

- Your organisation must understand its legal obligations to protect its volunteers from unlawful workplace behaviour.
- It should have a workplace behaviour policy and procedures to help all workers to be protected from unlawful behaviour. It should include details of the person to whom complaints on behaviour can be made, the process for resolving complaints and what to do if the process for making a complaint does not resolve it. Ongoing training on appropriate workplace behaviour should be conducted.

Legal obligations to protect the people your volunteers are interacting with

- Your organisation must understand it also has legal obligations to protect the people your volunteers are interacting with are not subject to unlawful workplace behaviour by the volunteer.
- Your organisation could be legally responsible (under discrimination laws, work health and safety legislation, and negligence law).

Volunteers may be sued

- Laws in each state and territory protect volunteers from this liability, for things in done in good faith (or honestly and without recklessness in the ACT), however, there are some exceptions.

Resources

Not-for-profit Law resources

Not-for-profit Law has developed a National Volunteer Guide, which sets out in detail the key legal issues affecting volunteer involving organisations. The guide is in six parts and includes a number of templates and sample policy documents, which should be read together. See [Not-for-profit Law's webpage on volunteering](#):

- Part 2: Volunteer, employee or independent contractor
- Part 3: Volunteer safety
- Part 4: Volunteers and unlawful workplace behaviour
- Part 5: Recruiting, inducting, managing performance and ending the volunteer relationship
- Part 6: Organisational issues applicable to volunteers

Not-for-profit Law has also developed a number of free webinars for volunteer involving organisations, which can also be accessed from [Not-for-profit Law's webpage on volunteering](#)

Not-for-profit Law has also developed a [National WHS Guide](#) which can help your organisation understand its obligations under the occupational health and safety laws, whether it is bound by these laws and how it can ensure it complies. A separate Guide also exists for Victorian organisations as their laws differs slightly.

Legislation

- ▶ [Age Discrimination Act 2004 \(Cth\)](#)
- ▶ [Anti-Discrimination Act 1977 \(NSW\)](#)
- ▶ [Anti-Discrimination Act 1991 \(Qld\)](#)
- ▶ [Anti-Discrimination Act 1992 \(NT\)](#)
- ▶ [Anti-Discrimination Act 1998 \(Tas\)](#)
- ▶ [Disability Discrimination Act 1992 \(Cth\)](#)
- ▶ [Discrimination Act 1991 \(ACT\)](#)
- ▶ [Equal Opportunity Act 1984 \(SA\)](#)
- ▶ [Equal Opportunity Act 1984 \(WA\)](#)
- ▶ [Equal Opportunity Act 2010 \(Vic\)](#)
- ▶ [Fair Work Act 2009 \(Cth\)](#)
- ▶ [Human Rights Act 2019 \(QLD\)](#)
- ▶ [Occupational Safety and Health Act 1984 \(WA\)](#)
- ▶ [Racial Discrimination Act 1975 \(Cth\)](#)
- ▶ [Sex Discrimination Act 1984 \(Cth\)](#)
- ▶ [Victorian Occupational Health and Safety Act 2004 \(Vic\)](#)
- ▶ [Work Health and Safety Act 2011 \(Cth\)](#)

- ▶ [Work Health and Safety Act 2011 \(ACT\)](#)
- ▶ [Work Health and Safety Act 2011 \(NSW\)](#)
- ▶ [Work Health and Safety Act 2011 \(QLD\)](#)
- ▶ [Work Health and Safety Act 2012 \(SA\)](#)
- ▶ [Work Health and Safety Act 2012 \(TAS\)](#)
- ▶ [Occupational Health and Safety Act 2004 \(Vic\)](#)
- ▶ [Occupational Safety and Health Act 1984 \(WA\)](#)

Discrimination, sexual harassment and victimisation complaints

- ▶ [Australian Human Rights Commission](#)
- ▶ [Victorian Equal Opportunity and Human Rights Commission](#)
- ▶ [Anti-Discrimination Board of NSW](#)
- ▶ [Queensland Human Rights Commission](#)
- ▶ [ACT Human Rights Commission](#)
- ▶ [WA Equal Opportunity Commission](#)
- ▶ [SA Equal Opportunity Commission](#)
- ▶ [Northern Territory Anti-Discrimination Commission](#)
- ▶ [Equal Opportunity Tasmania](#)

Bullying complaints

- ▶ [Fair Work Commission](#)

Work Health and Safety

- ▶ Safe Work Australia – [The Essential Guide to Work Health and Safety for Volunteers](#)
- ▶ Safe Work Australia – [Guide to the Model Work Health and Safety Act](#)

Workplace health and safety regulators

To find out more about workplace health and safety and the workers' compensation scheme that applies to your organisation, contact the regulator in your state or territory:

- ▶ [WorkSafe ACT](#)
- ▶ [SafeWork NSW](#)
- ▶ [NT WorkSafe](#)
- ▶ [Workplace Health and Safety Queensland, Office of Industrial Relations](#)
- ▶ [SafeWork SA](#)
- ▶ [WorkSafe Tasmania](#)
- ▶ [WorkSafe Victoria](#)
- ▶ [WorkSafe Western Australia](#)
- ▶ [Safe Work Australia](#)

Volunteering Australia resources

- ▶ [Volunteering Australia](#)

Volunteering Australia has published a suite of resources for volunteer managers including information on insurance and complaint handling.

▶ National Standards for Volunteer Involvement

Volunteering Australia's National Standards for Volunteer Involvement reflect best practice in volunteer management in Australia's current work environment.

▶ Definition of volunteering

Volunteering Australia's definition of volunteering has a set of explanatory notes, a detailed Issues Paper that provides background and context, and a set of FAQs around it.

State and territory peak bodies for volunteering

State and Territory peak bodies facilitate opportunities for people seeking to volunteer, and support volunteer involving organisations. These bodies are:

- ▶ Volunteering and Contact ACT
- ▶ The Centre for Volunteering (NSW)
- ▶ Volunteering Queensland
- ▶ Volunteering SA&NT
- ▶ Volunteering Tasmania
- ▶ Volunteering Victoria
- ▶ Volunteering WA

