

National Volunteer Guide (Part 5)

Part 5 provides guidance on recruiting, inducting, managing and ending the volunteer relationship

May 2020

Contents

Part 5:	4
Introduction	5
Recruitment of volunteers	6
Overview	6
Volunteer role description	6
Importance of a volunteer role description	6
Sample volunteer role description	6
Sample: volunteer role description	8
Volunteer Screening as part of the recruitment process	9
Working with Children Checks	9
Police Checks	9
Other checks.....	10
People on visas.....	10
Recruitment and discrimination law	12
Anti-discrimination procedures in recruitment	14
Anti-discrimination policy	14
When might discrimination be lawful in recruitment?	15
Australian Capital Territory	15
Queensland	16
Northern Territory.....	17
New South Wales	18
South Australia	19
Tasmania	20
Victoria.....	21
Western Australia.....	22
Inducting your volunteers	24



Overview	24
Checklist: Volunteer Induction	24
Sample: volunteer induction checklist.....	25
Volunteer agreement	26
Volunteer Agreement and the non-legal nature of the volunteer relationship.....	26
Sample: volunteer agreement.....	29
Deed of Agreement – intellectual property and confidential information	34
The non-legal nature of the volunteer relationship	34
Intellectual property and confidential information	34
When is it appropriate to have a legally binding agreement?	34
Sample: Deed of Agreement – intellectual property and confidential information	36
Managing the performance of volunteers	38
Overview	38
Organisational performance management plan	38
Performance management procedures and process	39
Managing volunteer grievances	41
Overview	41
Handling volunteer grievances	41
Volunteer grievance policy	42
Ending the volunteer relationship	43
Overview	43
Ending the relationship	43
Managing the process of ending the volunteer relationship	44
Reasons for ending the volunteer relationship	44
The process of ending the volunteer relationship.....	44
Volunteer records at the end of the volunteer relationship	45
Summary: recruiting, inducting, managing and ending the volunteer relationship.....	47
Annexure1:	48
Screening requirements by state and territory	49
Resources	50



Part 5:

**Recruiting, inducting, managing and
ending the volunteer relationship**

Introduction to recruiting, inducting, managing performance and ending the volunteer relationship

This section covers:

- ▶ the recruitment process
 - ▶ inducting your volunteers
 - ▶ managing the performance of your volunteers, and
 - ▶ ending the volunteer relationship
-

Introduction

This part of the guide covers the recruitment and induction of volunteers, managing performance and ending the volunteer relationship. This part begins by providing a brief overview of the need for volunteer involving organisations to be dedicated to a fair process when recruiting volunteers. Using a volunteer role description is helpful to this process. A sample is included.

This part also makes clear that, even if there is no legislative or contractual requirement to perform volunteer checks, volunteer involving organisations ought to conduct some level of screening of volunteers as part of their recruitment process.

Volunteer recruitment processes must not be discriminatory. We provide a brief summary of discrimination law (also discussed in part 4 of this guide), including when discrimination may be lawful. You should exercise caution if your organisation is relying on exceptions or exemptions to discrimination law. Your organisation may need legal advice on this. Volunteers should complete an induction process before beginning any volunteer duties. A sample volunteer induction checklist is included.

A volunteer agreement is also an important part of engaging volunteers, helping to make sure the volunteer understands their rights, role and responsibilities along with those of the organisation. A sample volunteer agreement is included. These sample documents don't constitute legal advice and may not meet the needs of your organisation. Your organisation may need to get specific legal advice.

This part then deals with managing the performance of volunteers, which can be problematic if not done correctly. It provides an overview of performance management planning and processes. It also deals with volunteer grievances, including the need for volunteer involving organisations to have established procedures and policies for handling grievances.

This part concludes by discussing ending the volunteer relationship. Sometimes ending the relationship may be necessary to make sure your organisation is acting in accordance with the standard of care required by law. There may be other reasons to end the relationship. Many volunteers don't understand how the relationship can end, and it's important this is understood from the beginning of the relationship. We recommended this is discussed as part of the induction process.

Recruitment of volunteers

Overview

Volunteers are essential to the success of community organisations. Your organisation should recruit its volunteers in a fair and non-discriminatory way.

We recommend using a volunteer role description when recruiting volunteers. This should focus on the specific requirements of the role.

Volunteer involving organisations should conduct some level of screening of volunteers even where there is no legislative or contractual requirement that checks be performed.

Volunteer role description

Importance of a volunteer role description

We recommend using a volunteer role description for all volunteer positions in your organisation. It should focus on the specific requirements of the role, being the skills or qualifications needed for the role (and not the attributes of a person). A volunteer role description should be used when your organisation is advertising for volunteers; it can help your organisation understand what it needs and shape your advertisement.

A volunteer role description will help your organisation make decisions about potential volunteers. For example, when deciding if the volunteer has the skills to perform the role and what checks might be necessary for the role (so that you are not conducting unnecessary checks which could lead to an allegation of discrimination). See 'volunteer screening' and 'recruitment and discrimination law' below for more information on screening and discrimination.

It's also important that a volunteer is clear about their roles and responsibilities. A volunteer role description will help manage a volunteer's expectations about the role. It's also a record of what the volunteer has agreed to contribute to the organisation. This will be helpful when managing the volunteer's performance and dealing with any grievances (dealt with later in this part of the guide).

A volunteer role description can also be helpful in other circumstances. For example, if there is a need to consider whether a volunteer was acting outside the scope of their role, in particular, where injury, loss or harm has resulted from the actions (or inaction) of the volunteer. As discussed in part 3 of this guide (volunteer safety), in certain circumstances your organisation could be held liable (legally responsible) for the actions of your volunteers. Generally, your organisation will not be held liable if the volunteer has acted outside the scope of the work organised by the organisation or contrary to any instructions given by the organisation to the volunteer. This is one reason why a volunteer role description is important for volunteer involving organisations.



National Standards for Volunteer Involvement

Volunteering Australia's National Standards for Volunteer Involvement have two standards that relate to recruitment of volunteers. These are:

- **Standard 3** – volunteer roles, and
- **Standard 4** – recruitment and selection

Using a volunteer role description for all volunteer positions in your organisation will help your organisation demonstrate it's meeting these standards and encourage parity of esteem between paid workers and volunteers.

Sample volunteer role description

We recommend a volunteer involving organisation prepare a volunteer role description for each volunteer in the organisation. A sample volunteer role description is provided below. It has been developed as an example only and should be changed to meet the needs and circumstances of your organisation.

The volunteer role description should be reviewed from time to time (for example, as part of any volunteer performance review process), and if necessary amendments should be made.

While both the organisation and volunteer need some certainty on the volunteer's role and when the volunteer will be volunteering, it's also important to remember a key aspect of a genuine volunteer relationship is that either the volunteer or organisation can walk away from the arrangement at any time (see below 'ending the volunteer relationship'). You should, therefore, be careful how you frame the relationship.



Caution

Similar to the sample volunteer agreement (below), a volunteer role description should be clear and consistent in the use of language. It should avoid using 'employment' type language.

For example:

- ✓ use terms such as 'volunteer', 'we would be pleased if you would', 'help to', 'provide assistance'
- ✗ avoid terms such as 'job', 'work', 'you must', 'required', 'responsible for'

You should give a copy of the volunteer role description to the volunteer. We recommend you discuss the volunteer role description as part of the induction process (discussed below). You should also then keep a copy with your other records on your volunteer. For further information on volunteer record keeping refer to part 6 of this guide (organisational issues applicable to volunteers).



National Standards for Volunteer Involvement

As outlined above, Volunteering Australia's National Standards for Volunteer Involvement have two standards that relate to recruitment of volunteers, including:

Standard 3 – volunteer roles – 'Volunteers are engaged in meaningful and appropriate roles which contribute to the organisations purpose, goals and objectives'.

The criteria for meeting this standard includes:

- 3.1 'Volunteer roles are designed to contribute to the organisation's purpose, goals and objectives'
- 3.2 'Volunteer roles are appropriate for the community, service user or stakeholder groups with which the organisation works'
- 3.3 'Volunteer roles are defined documented and communicated'. Evidence of meeting this includes that the relationship between volunteers is clearly defined; volunteer's roles have written descriptions that include duties, responsibilities and accountabilities; and volunteer role descriptions are readily available to all relevant employees
- 3.4 'Volunteer roles are reviewed with input from volunteers and employees'



Sample: volunteer role description

Volunteer Client Enquiry Officer

Purpose

The Volunteer Client Enquiry Officer helps provide an effective and efficient response to client enquiries.

Supervision

[Name of supervisor] will supervise volunteers, and provide ongoing support, with focused supervision to be provided by the social workers co-ordinating the task being undertaken by the volunteer.

Volunteer duties and responsibilities

As a Volunteer Client Enquiry Officer at **[Name of organisation]**, you will help by performing the following duties:

- answer phone calls from members of public
- record client personal information in database
- liaise with relevant staff and social workers about client inquiries
- provide clients with general information only, in accordance with social workers instructions
- sit in on client interviews social workers and assist with note-taking
- drafting client correspondence under social workers supervision
- filing and other administrative duties related to client files and
- other duties as directed social workers volunteer coordinator or **[Name of organisation]** staff

Skills, qualifications or experience required (or desirable) for role

We are looking for a volunteer with the following skills, qualifications or experience to fill this volunteer role:

- social workers, social work graduates, or 3-5th year social work students
- an understanding of the issues experienced by people who are marginalised and disadvantaged
- ability to deal with challenging client behaviours
- a demonstrated interest in social issues in Australia or internationally
- an understanding of issues of client confidentiality and the sensitive nature of clients' personal and health information
- experience in an office or client service environment – particularly a charitable organisation, and
- attention to detail and the ability to follow directions carefully

Background checks for role

[Name of organisation] is very serious about its duty to provide clients with a professional service and to providing all people working at **[Name of organisation]** with a safe and healthy working environment. We are a child safe organisation.

We are committed to recruiting dedicated, professional volunteers who have the skills and experience appropriate for this role.

For this reason, should you be interested in this role, we will need to collect the following information before you begin the role **[insert details such as resume, a qualification check, a Working with Children Check, police check]***.

You will only have to provide this information following the initial meeting with the volunteer manager, and, if required, we will help to arrange for checks or help you apply for them.

If you have any questions about these background checks, please don't hesitate to contact **[insert contact information]**. Please note that we treat all information as sensitive and handle it in accordance with privacy laws. You can access a copy of our privacy policy here (or we can provide you with a copy).

Also note that we will require you to sign the attached volunteer agreement**

* These checks are discussed below at 'volunteer screening'

** Volunteer agreements are discussed below at 'volunteer agreement' where a sample volunteer agreement is provided

Volunteer Screening as part of the recruitment process

It's important that volunteer involving organisations screen potential volunteers in a systematic way. Certain background screening checks are required by law (under legislation or contract) and others are optional.

Even when not required, volunteer involving organisations ought to conduct some level of screening for volunteers. This is because all organisations have a responsibility to make sure they maintain a safe environment for all workers (paid and unpaid) and clients. Due to this overarching duty of care (which is discussed in more detail in part 3 of this guide), organisations should always try to be well informed about the people they choose to be part of their organisations.

When considering the types of checks your organisation requires to minimise risks associated with your volunteers, you should consider whether the volunteer's role and responsibilities will include contact with vulnerable clients or children, access to sensitive information, handling money, or operating certain machinery (including vehicles). This consideration should already be completed as part of the preparation of a role description (discussed above) as the first step of the recruitment process and the subsequent advertising for volunteers.

Working with Children Checks

The laws regarding working with children requirements vary between the states and territories. While there are plans to develop a nationally consistent approach to working with children checks and child safe organisations across jurisdictions, currently your organisation will need to comply with the law in your state (or more jurisdictions depending on where your organisation operates). In this part of the guide, the screening checks for people working with children are referred to as **Working with Children Checks**, although we note that terminology differs across the states and territories.

While the working with children screening requirements and obligations differ across the states and territories they all generally set out:

- **When Working with Children Checks are legally required.** They are generally required for all people who will be carrying out child-related work. The definition of 'child related work' is different across the states and territories.
- **Any exemptions to the legal requirement for a check.** In some states and territories, exemptions are allowed where the volunteer is under 18 years of age or where the volunteer is a parent of a child and the volunteering involves an activity undertaken by that volunteer's child.
- **The legal obligations of an organisation working with children.** This generally includes an obligation to make sure its workers who work with children have submitted to a working with children check, and in many jurisdictions before they begin any child related work.
- **How to apply for a Working with Children Check and other relevant matters.** For example, what the results of a check might mean, when a person who has applied for a working with children check can begin work, what to do if a volunteer already has a working with children check obtained when volunteering at another organisation, and the limits of what a working with children check can achieve.

Your organisation must understand your legal obligations when it comes to Working with Children Checks. These are set out in detail in the annexure to this part.

Police Checks

Police Checks (sometimes referred to as 'criminal record or history checks') are different to Working with Children Checks. For example, not all criminal offences will be relevant for a working with children check, only those the legislation has set out on the basis that those offences pose a risk to children.

A Police Check allows an organisation to be aware of all (releasable) previous convictions (child-related or not). This may be appropriate if you are looking for a volunteer who may be transporting clients and you want to be certain they don't have any relevant driving-related offences.

Police Checks are generally not mandatory. However, some legislation requires criminal record checks as part of people's qualifications (for example, security guard). And sometimes a not-for-profit organisation may be under a contractual agreement to get police checks for certain positions (for example, an agreement with the Department of Human Services for the delivery of services to children). You should comply with any obligations in any funding agreements your organisation has.

Differences between Police Checks and Working with Children Checks include:

- what is checked
- what is revealed by the checks
- the outcome
- length of validity of the checks (a Police Check is a 'point in time' single check), and
- whether the check is transferable across jurisdictions

Where there is no legal obligation to conduct a Police Check (or a Working with Children Check), your organisation may want to consider if there is still a need for a Police Check of a volunteer. This is another reason why having a volunteer role description is important – your organisation can consider the roles and responsibilities set out in the role description and decide what convictions for prior offences, if any, would preclude a person from being suitable for that role. You can then decide if your organisation is going to get a Police Check for the position and you can make this clear in the volunteer role description (see the sample volunteer role description above).

If you decide the position requires a Police Check, your organisation should also consider the process it will follow if the Police Check comes back showing an offence, including discussing the check with the volunteer. This process should allow the volunteer to confidentially explain the result of the check and should ensure the privacy of the person and that the record of the Police Check is stored appropriately (refer to part 6 of this guide).

There are legal protections preventing discrimination on the basis of a criminal record. You must not refuse an applicant simply because they have a prior conviction for an offence that has no relevance to the available position. An example of this is the case of *Mr GC v State of New South Wales (Rail Corporation New South Wales)* [2012] AusHRC 48, when the Australian Human Rights Commission found an organisation had discriminated on the basis of a criminal record (see the example below).

However, your organisation has obligations to create a safe and effective environment, and you can refuse a potential volunteer on the basis of a criminal record when you believe that a prior offence prevents the applicant from performing the 'inherent requirements' of the volunteer position (refer to the discussion below 'recruitment and discrimination law' and part 4 of this guide). If this situation arises your organisation may need to seek legal advice.

Police Checks (in each state and territory) are explained in more detail in the annexure to this part of the guide.

Other checks

In addition to screening required by law, it may be in the best interests of a volunteer involving organisation to make sure it conducts other background checks. By asking for referee details and performing licence and qualification checks (and possibly asking for details of any potential conflicts of interest) an organisation can assure itself that it's making the right choice when recruiting a volunteer. Background checks are addressed in more detail in the annexure to this part.

People on visas

Work restrictions may apply to the holders of temporary visas, such as tourist and student visas. These may affect whether the visa holder can engage in unpaid work (that is volunteer for your organisation). Restrictions are indicated by particular visa conditions. More information about this is below.

What are your volunteer involving organisation's obligations in relation to visa holders?

Organisations need to carefully check any conditions attached to an applicant volunteer's visa.

Work restrictions may apply to certain visas, such as tourist and student visas. These may affect whether the visa holder can engage in unpaid work (that is volunteer for your organisation). Restrictions are indicated by particular visa conditions.

A full list of visa conditions can be found on the [Department of Home Affairs 'Immigration and Citizenship' website](#).

When dealing with people who are not permanent residents, it's important to check they don't breach visa conditions due to their involvement with your organisation. Under the *Migration Act 1958* (Cth) (**Migration Act**), penalties apply to organisations that engage an 'illegal worker' (a non-citizen who is working without a valid visa or working or volunteering in breach of a visa condition), unless it can show that reasonable steps were taken at reasonable times to make sure the person was in fact legal.

Under the law, it doesn't matter if the organisation didn't know the person's work rights. Organisations may be penalised for simply having such a person on their premises. Therefore, it's important that organisations verify a person's immigration status and work rights before and during the volunteer work period. A person is a legal worker if they are:

- an Australian citizen
- an Australian permanent resident
- a New Zealand citizen, or
- a foreign national with a visa with permission to work in Australia (and who is not in breach of their visa conditions, for example, the visa has expired)

To confirm the above, an organisation must sight an Australian or New Zealand passport or conduct a VEVO check. Also see [the Department of Home Affairs webpage on working in Australia](#).

If you believe or know that a potential volunteer is in Australia on a visa, then you should check that they have permission to work. These checks are important to avoid inadvertent breaches of visa conditions.



Tip

We recommend that organisations:

- run a [VEVO check \(online\)](#) of a person's work rights before taking them on as a volunteer if they are not an Australian citizen or permanent resident with unrestricted work rights, and
- seek independent immigration legal advice where required. More information is provided below

Remember this is also important from the volunteer's perspective – they don't want to put their visa at risk either.

The easiest and quickest way for an organisation to take reasonable steps to make sure it's engaging legal workers, is to use the Department's VEVO system. Using this system, your organisation can either:

- register as a VEVO organisation and, with the individual's consent, conduct the search yourself, or
- ask the person to send their current visa details directly from the VEVO Enquiry Form

The VEVO search will reveal the visa status and work entitlements for the visa holder. It will also state whether the person doesn't have permission to work or has work restrictions. If the visa has no work restrictions then the person is free to work and volunteer while they hold a valid visa. However, VEVO checks are only current at the time conducted. Therefore, it's important to:

- conduct regular checks
- track relevant dates (for example, work and expiry dates), and
- keep records on file confirming the organisation has verified the person's immigration status and work rights



Caution

It's important that your organisation checks the VEVO results were recently generated and continues to conduct VEVO checks while the person volunteers with your organisation. This is because visa status and work rights may change. It's not enough to view the results of a VEVO search conducted by a third party (unless, completed by a Migration Agent) or a printed copy held by the person as these could be out of date.



Tip

Add VEVO checks to your volunteer recruitment process and include a copy of the VEVO Results in the volunteer's file



Related resources

The Department of Home Affairs' website includes information on [engaging legal workers](#), and the [Visa Entitlement Verification Online system](#).

The relevant legislation is the *Migration Act 1958* (Cth) and *Migration Regulations 1994* (Cth)

The [Fair Work Ombudsman website](#) features information on unpaid work.



National Standards for Volunteer Involvement

As outlined above, [Volunteering Australia's National Standards for Volunteer Involvement](#) have two standards that relate to recruitment of volunteers, including:

Standard 4 – recruitment and selection – 'Volunteer recruitment and selection strategies are planned, consistent and meet the needs of the organisation'.

Criteria for meeting this standard include:

- 4.3 'Volunteers are selected based on interest, knowledge, skills, or attributes relevant to the role and consistent with anti-discrimination legislation'. Evidence of meeting this criteria is that:
 - 'Volunteer recruitment and selection complies with anti-discrimination legislation'
- 4.4 'Screening processes are applied to volunteer roles that help maintain the safety and security of service users, volunteers and the organisation'. Evidence of meeting this criteria is that:
 - 'Volunteer screening requirements are documented, applied and meet legislative requirements'
 - 'Volunteer reference checks are undertaken as appropriate to the role'
 - 'Guidelines are applied to determining the type of convictions or disciplinary actions that preclude people from becoming volunteers, and to informing people about how their personal history may be used for decision making'

Recruitment and discrimination law

Anti-discrimination law protects workers, including volunteers, in a number of ways. For detailed information about what constitutes unlawful discrimination and whether volunteers are protected from unlawful discrimination in the workplace, see part 4 of this guide (Workplace Behaviour). Regardless of whether an organisation or its volunteers are covered by anti-discrimination laws, best practice dictates that organisations extend any protections available to employees to its volunteers, including in the area of recruitment. An overview of discrimination law in the context of recruitment of volunteers is set out below.

What is discrimination?

Discrimination is treating, or proposing to treat, someone unfavourably because of a personal attribute which is protected by law. Generally, there are two types of discrimination: direct and indirect.

Anti-discrimination laws prohibit both kinds of discrimination when they occur because of a 'protected attribute' of the person (for example, age, sexuality, gender identity, disability, race). The particular protected attributes that are covered vary under the different state and federal laws, and this is explained further in part 4 of this guide.

As a general rule, when you are recruiting volunteers, using a volunteer role description (as discussed above) which focuses on the roles and responsibilities of the position should assist your organisation to ask questions that focus on the requirements of the role rather than the personal attributes of the potential volunteer.

For example, your organisation should be asking 'Would you require any support that would assist in performing this role? This job requires lifting. Is there anything that will prevent you from performing such duties?' Your organisation should not be asking 'Do you have a disability? You look a bit old – are you going to be able to lift boxes of donated goods?'



Tip

An organisation conducting a recruitment process for volunteers, should ask all potential volunteers the same questions and record their responses in writing. This will not only be helpful to compare all potential volunteers but also if an allegation of discrimination is made.



Case example: focusing on personal attributes

In the case of *Smith v Commonwealth of Australia* (2000) EOC 93-077, Ms Smith lodged a complaint with the Human Rights and Equal Opportunity Commission (**Commission**) alleging she had been discriminated against on the grounds of her sex, marital status and pregnancy. Ms Smith had applied for a position as a part-time director on the board of the Red Meat Producer Corporation.

During the interview process, Ms Smith made the shortlist out of 30 applicants, but her application was ultimately unsuccessful. She claimed that interview panel members asked her if she was married and if she had children. When she said she was married with children, the interviewing panel suggested to her that the role may conflict with her family commitments as it involved a lot of travel.

Ms Smith claimed the personal and family life questions caused her to feel uncomfortable, affected her confidence and made it hard for her stay focussed on industry issues. At the time of the interview, Ms Smith was seven months pregnant, however, she did not mention this in the interview.

The Red Meat Producer Corporation claimed that Ms Smith's application was unsuccessful because there were already five people on the board from NSW, Ms Smith was less experienced than other applicants and her reference checks had not turned out well.

Witnesses acknowledged that Ms Smith had been asked questions about marriage and children during the interview and that she appeared uncomfortable with these questions. However, the interview panel agreed to not take them into account.

The Commissioner found Ms Smith had not been treated less favourably on the grounds of her sex or marital status. In fact, Ms Smith had been moved into the top group of applicants following the interview.

However, the Commissioner did find that the asking of the interview questions was a breach of section 14(1)(b) of the *Sex Discrimination Act 1984* (Cth) (this section of the law deals with discrimination in employment) as it constituted less favourable treatment of Ms Smith, placed her under greater stress and made her feel uncomfortable. Ms Smith was awarded \$2,500 in damages.



Case example: failure to focus on inherent requirements

In the case of *Mr GC v State of New South Wales (Rail Corporation New South Wales)* [2012] AusHRC 48 the Australian Human Rights Commission investigated a complaint by Mr GC that he was discriminated against on the basis of his criminal record when applying for a job as a market analyst with the Rail Corporation of New South Wales (**RailCorp**).

Mr CG was convicted of middle range drink driving in 2001 and of low range drink driving in 2008. Although Mr CG met all the selection criteria and was the selection panel's preferred candidate for the market analyst role, he was advised that he was not offered employment on the basis of his criminal record (being the two drink driving offences).

RailCorp argued that Mr CG could not, in light of his criminal record, meet the inherent requirements of the market analyst role. The Commission rejected this argument noting that, among other things, Mr CG was not required to drive as part of his employment with RailCorp nor was he required to engage in any safety critical activities.

The Commission found that RailCorp had unlawfully discriminated against Mr CG on the basis of his criminal record.

Anti-discrimination procedures in recruitment

We recommend that your volunteer involving organisation proactively work to prevent discrimination by taking a number of steps:

- Have an anti-discrimination policy with a section on discrimination in recruitment that covers all workers (volunteers as well as paid workers).
- Prepare a role 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 role description across advertisements and in the interview process (see the sample volunteer role description above).
- Give proper consideration to the language you use in the volunteer recruitment process (as outlined above, you should avoid focusing on personal attributes such as 'do you have kids; we really need someone reliable'. The focus should be on the requirements of the role, for example 'are you able to commit to volunteering regularly between 8 am and 4 pm on Tuesdays?')
- Conduct regular training for all volunteers and workers about the policy so that people recognise discriminatory practices and are aware of processes for addressing them.

Organisations that have an anti-discrimination policy and procedures (as a matter of best practice, if not otherwise required by law) help protect all their workers from discriminatory behaviour.

These policies and procedures will also help the organisation if a discrimination complaint is made.

Anti-discrimination policy

We recommend that volunteer involving organisations have a policy against discrimination across the whole organisation. A good anti-discrimination policy should include the following:

- a policy statement outlining the organisation's commitment to preventing and addressing discrimination in the workplace
- those covered by the policy (volunteers as well as paid workers)
- the relevant laws that apply
- what constitutes discrimination (including direct and indirect discrimination and examples of both)
- the attributes that are protected
- when discrimination is lawful (see below for further information)
- what workers should do if they experience or witness unlawful discrimination
- how to make a complaint
- how discrimination complaints will be handled

- the consequences of breaching the policy, and
- where to go for further information (for example, relevant websites such as the Australian Human Rights Commission and the relevant state or territory anti-discrimination body – see the Resources section at the end of this part of the guide).

We recommend that your organisation also makes sure all its workers (paid and unpaid) have a good understanding of the anti-discrimination policy, which may require organisations to have regular training sessions.

When might discrimination be lawful in recruitment?

Lawful discrimination

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. The discriminatory conduct that is excused or exempted differs between the states and territories as set out on the following pages.



Caution

The lists of types of lawful discrimination set out below are not exhaustive. There may be other situations in which discrimination is lawful. For more information, see the [Australian Human Rights Commission website](#).

Volunteer involving organisations should be careful relying on exceptions or exemptions and may need to seek legal advice.

Australian Capital Territory

Generally, discriminatory conduct will not be against the *Discrimination Act 1991* (ACT) if:

- a person discriminates against someone else in relation to a position as an employee or contract worker if the duties of the position involve doing domestic duties on the premises where the person lives
- a person discriminates against someone else in relation to a position as an employee or contract worker if the duties of the position involve the care of a child where the child lives
- it's for the provision of accommodation if:
 - the person who provides or proposes to provide the accommodation, or a near relative or carer of the person, lives and intends to continue to live on the premises, and
 - the accommodation provided in the premises is for not more than six people and any near relative or carer of the person
- it's for the provision of accommodation by a religious body for members of a relevant class of people
- it's for the provision of accommodation by a charitable or voluntary body for members of a relevant class of people
- a person discriminates on the ground of accommodation status in relation to the provision of accommodation if the discrimination is reasonable, having regard to any relevant factors
- an employment agency discriminates in the selection of people as suitable for a job vacancy if, had the proposed employer discriminated against the person in the same way, the discrimination would not have been unlawful
- the purpose of the act is:
 - to make sure members of a relevant class of people have equal opportunities with other people, or
 - to give members of a relevant class of people access to facilities, services or opportunities to meet the special needs they have as members of the relevant class

- a voluntary body discriminates against a person in relation to:
 - the admission of people as members of the body, or
 - the provision of benefits, facilities or services to people, whether the people are members of the body or otherwise
 - a person (the first person) discriminates against someone else in relation to:
 - employment as a member of the staff of an educational institution, or
 - a position as a contract worker that involves doing work in an educational institution,

if the institution is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, and the first person so discriminates in good faith to avoid injury to the religious susceptibilities of adherents of that religion or creed, or
 - it's necessary to comply with an order of a court or tribunal, or is authorised by legislation.
- For further information, see part 4 of this guide and the [ACT Human Rights Commission website](#).



Note and caution – Australian Capital Territory

As well as the exceptions that are already expressly provided for by the *Discrimination Act 1991* (ACT), an organisation can make an application to the Australian Human Rights Commission (**Commission**) under section 109 of the Act to be granted a temporary exemption for conduct that would otherwise contravene certain discrimination provisions.

The Commission will only grant an exemption for conduct that promotes acceptance and compliance with the Act, and the exemption will be subject to any conditions the Commission sees fit. If you are considering applying to the Commission for an exemption for your organisation, we recommend that you seek independent legal advice as the above information is just a guide. For further information on how to apply for an exemption, see the [ACT Human Rights Commission webpage on granting exemptions](#).

Queensland

Generally, discriminatory conduct will not be against the *Anti-Discrimination Act 1991* (QLD) if:

- a special measure would need to be taken to promote substantive equality for a disadvantaged group
- it's a genuine occupational requirement for the position (for example, employing only women applicants for positions involving body searches of women)
- it's lawful to discriminate in order to protect public health or the health and safety of people at a place of work
- the employer can demonstrate that it would impose unjustifiable hardship on the organisation to make reasonable adjustments to accommodate the impairment
- a religious body discriminates (except on the basis of age, race or impairment), in the area of employment, against a person who openly acts in a way contrary to the employer's religious beliefs
- the role or service is targeted towards people who are married if you would like the role to be done by a married couple
- the role involves working with children and the discrimination is on the basis of gender identity or lawful sexual activity (where the discrimination is reasonably necessary to protect the child) or against people with a conviction for a child sex offence or those disqualified from working with children under any Act in Australia
- a person is acting in compliance with pre-existing industrial awards and agreements, other pre-existing legislation and court orders, or

- discrimination is on the basis of gender and the role is a live-in job where sleeping accommodation is provided for one sex only and supplying separate accommodation would impose unjustifiable hardship on an employer.

For further information, see part 4 of this guide and the [Queensland Human Rights Commission website](#).



Note and caution – Queensland

If an organisation can show that their proposed actions are likely to contravene the *Anti-Discrimination Act 1991* (Qld) and the actions are not covered by the specific or general exemptions in the Act, they may apply to the Queensland Industrial Relations Commission (QIRC) for a work-related exemption, or to the Queensland Civil and Administrative Tribunal (QCAT) for all other exemptions.

QCAT may grant a temporary exemption, under section 113 of the Act, from the operation of a specified provision to allow conduct that might otherwise be discriminatory. This might include, for example, restricting accommodation to single people, or recruiting for women or men only.

If you are considering applying to either QIRC or QCAT for an exemption for your organisation, we recommend that you seek independent legal advice as the above information is just a guide. For further information on how to apply for an exemption, see the [Queensland Human Rights Commission webpage on granting exemptions](#).

Northern Territory

Generally, discriminatory conduct will not be against the *Anti-Discrimination Act 1996* (NT) if:

- an educational authority, in accordance with the doctrine of a particular religion, excludes applicants on the grounds of religious belief or activity, or sexuality and is in good faith to avoid offending the religious sensitivities of people of the particular religion
- it's based on a genuine occupational qualification or requirement in relation to a particular position
- the person's inability to adequately perform the inherent requirements of the work even where the special need of the other person has been or were to be accommodated
- offering work where the work is to be performed in the person's home
- it's on the grounds of irrelevant criminal record if the work principally involves the care, instruction or supervision of vulnerable persons and the discrimination is reasonably necessary to protect the physical, psychological or emotional well-being of those vulnerable persons, and
- it's necessary to comply with an order of a court or tribunal, or it is authorised by legislation

For further information, see part 4 of this guide and the [Northern Territory Anti-Discrimination Commission website](#).



Note and caution – Northern Territory

As well as the exceptions that are already expressly provided for by the *Anti-Discrimination Act 1996* (NT), an organisation can make an application to the Anti-Discrimination Commissioner under section 59 of the Act to be granted a temporary exemption for conduct that would otherwise contravene certain discrimination provisions.

The Commissioner may grant an exemption on the basis that the proposed discriminatory conduct seeks to redress past discrimination, and the exemption will be subject to any conditions the Commissioner sees fit. If you are considering applying to the Commissioner for an exemption for your organisation, we recommend that you seek independent legal advice as the above information is just a guide. For further information on exemptions, see the [Northern Territory Anti-Discrimination Commission webpage on granting exemptions](#).

New South Wales

Generally, discriminatory conduct will not be against the *Anti-Discrimination Act 1977* (NSW) if:

- it's necessary to protect the health and safety of any person, including the person being discriminated against (where discrimination is on the basis of disability, pregnancy or physical features)
- it's necessary to protect property (where discrimination is on the basis of disability or physical feature)
- the person is unable to carry out the 'inherent requirements' (essential duties) of the role (and taking steps to accommodate the person would cause 'unjustifiable hardship' to the organisation)
- the role or service is targeted towards people of one sex only, towards a particular age group or towards a particular race or ethnic group, where being that particular sex, within that particular age group or of the race or ethnic group is a 'genuine occupational qualification' essential for doing the role
- the role or service is targeted towards all people with disabilities, all people who are transgender and all gay men and lesbians – it's not against the law to discriminate against people who don't have disabilities, are not transgender and not homosexual (only those that are)
- the role or service is targeted towards people who are married if you would like the role to be done by a married couple
- it's a special (or positive) measure being taken to promote substantive equality for a group of people who have one or more of the protected attributes
- a religious body or organisation discriminates in:
 - ordaining or appointing priests, ministers of religion or members of a religious order (or training or educating those people seeking appointment), or
 - selecting or appointing people to perform functions relating to, or participating in, any religious observance or practice, or
- your organisation has obtained an exemption from the President of the NSW Anti-Discrimination Board to allow discrimination on any ground and in any area covered by NSW anti-discrimination laws

For further information, see part 4 of this guide and [Anti-Discrimination New South Wales' website](#).



Note and caution – New South Wales

There are two ways to apply for an exemption under the *Anti-Discrimination Act 1977* (NSW).

The first is to apply to the President of the Anti-Discrimination Board of NSW under section 126 of the Act. Under this section, the President can grant an exemption to allow discrimination on any ground and in any area covered by the Act. Section 126 exemptions generally relate to employment and recruitment.

The second way is to apply to the Minister (currently the Attorney General) under section 126A of the Act for a certificate that a special needs program or activity can operate in a discriminatory manner. The Minister can't grant a certificate for race or age discrimination. Section 126A exemptions apply to special needs programs, activities or facilities which promote access for certain groups of people affected by unlawful discrimination.

If you are considering applying for an exemption for your organisation, we recommend that you seek independent legal advice as the above information is just a guide.

For information on how to apply for exemptions and specific timeframes, see [Anti-Discrimination New South Wales' webpage on granting exemptions](#).

South Australia

Generally, discriminatory conduct will not be against the *Equal Opportunity Act 1984* (SA) if:

- it's a special measure being taken to achieve equal opportunity for people of a particular disability, race, age, sex, marital status, or for pregnant women, people with caring responsibilities and people of a chosen gender
- it's a genuine occupational requirement for the position (for example, employing only women applicants for positions involving body searches of women)
- it's discrimination based on sexual orientation, gender identity or intersex status in relation to employment or engagement for the purposes of an educational institution if:
 - the educational institution is administered in accordance with the precepts of a particular religion and the discrimination is founded on the precepts of that religion
 - the educational authority administering the institution has a written policy stating its position in relation to the matter
 - a copy of the policy is given to a person who is to be interviewed for or offered employment with the authority or a teacher who is to be offered engagement as a contractor by the authority, and
 - a copy of the policy is provided on request, free of charge to employees, contractors and prospective employees and contractors of the authority; to students, prospective students and parents and guardians of students and prospective students of the institution; and to other members of the public
- it's discrimination on the ground of gender identity for the purpose of enforcing standards of appearance and dress reasonably required for employment
- if the person has an attribute which means that they would not be able:
 - to perform their work adequately without endangering themselves or others, or
 - to respond adequately to situations of emergency that should reasonably be anticipated in connection with the employment
- the employer can demonstrate that it would impose unjustifiable hardship on the organisation to make reasonable adjustments to accommodate the impairment, and
- it's necessary to comply with an order of a court or tribunal, or is authorised by legislation.

For further information, see part 4 of this guide and South Australia's [Equal Opportunity Commission's website](#).



Note and caution – South Australia

As well as the exceptions that are already expressly provided for by the *Equal Opportunity Act 1984* (SA), an organisation can make an application to the South Australian Employment Tribunal to grant a temporary exemption from certain discrimination provisions (including outside of employment situations) under section 92 of the Act.

An exemption may be granted if, for example, your program or service aims to promote equality of opportunity between people, prevent certain kinds of discrimination or helps people to participate in the economic and social life of the community. If you are considering applying for an exemption we recommend that you seek independent legal advice as the above information is just a guide.

For further information on how to apply for an exemption, see South Australia's [Equal Opportunity Commission's webpage on granting exemptions](#).

Tasmania

Generally, discriminatory conduct will not be against the *Anti-Discrimination Act 1998* (TAS) if:

- it's a special measure being taken to promote substantive equality for a group of people who have one or more of the protected attributes
- it's required by the doctrines of the religion of an institution
- it's for the purpose of the residential care of persons under the age of 18 years
- it's based on a genuine occupational qualification or requirement in relation to a particular position
- it's a live-in job where sleeping accommodation is provided for less than five adult persons
- if the person has an attribute which means that they would not be able:
 - to carry out the inherent requirements of the employment, or
 - in order to carry out those inherent requirements would require services or facilities not reasonably required by another person, the provision of which would impose unjustifiable hardship
- the employer can demonstrate that it would impose unjustifiable hardship on the organisation to make reasonable adjustments to accommodate the impairment, and
- it's necessary to comply with an order of a court or tribunal, or is authorised by legislation

For further information, see part 4 of this guide and [Equal Opportunity Tasmania's website](#).



Note and caution – Tasmania

As well as the exceptions that are already expressly provided for by the *Anti-Discrimination Act 1998* (Tas), an organisation can make an application to the Anti-Discrimination Commissioner (the Commissioner) under section 56 of the Act to be granted a temporary exemption for conduct that would otherwise contravene certain discrimination provisions of the Act.

The Commissioner will only grant an exemption for conduct that furthers the purposes of the Act, and the exemption can be subject to any conditions the Commissioner sees fit. If you are considering applying to the Commissioner for an exemption for your organisation, we strongly recommend that you seek independent legal advice as the above information is just a guide.

For further information on how to apply for an exemption, see [Equal Opportunity Tasmania's webpage on granting exemptions](#).

Victoria

Generally, discriminatory conduct will not be against the *Equal Opportunity Act 2010* (Vic) if:

- it's necessary to comply with an order of a court or tribunal, or is authorised by legislation
- a religious body or organisation discriminates in:
 - ordaining or appointing priests, ministers of religion or members of a religious order (or training or educating those people seeking appointment)
 - selecting or appointing people to perform functions relating to, or participating in, any religious observance or practice
- conforming to the doctrines, beliefs or principles of the religion or where it is reasonably necessary to avoid injury to the religious sensitivities of people who follow the religion (where discrimination is on the basis of a person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity)
- it's necessary to protect the health and safety of any person, including the person being discriminated against (where discrimination is on the basis of disability, pregnancy or physical features)
- it's necessary to protect property (where discrimination is on the basis of disability or physical feature)
- the person is unable to carry out the 'inherent requirements' (essential duties) of the role (and no reasonable adjustments can be made to accommodate the person)
- avoiding the discrimination causes unjustifiable hardship on the organisation
- your organisation is providing special services, benefits or facilities to meet the special needs of people with a particular personal characteristic, or
- it's a special measure being taken to promote substantive equality for a group of people who have one or more of the protected attributes

For further information, see part 4 of this guide and the [Victorian Equal Opportunity and Human Rights Commission's website](#).



Note and caution – Victoria

If your organisation's planned action doesn't fall within one of the statutory exceptions in the *Equal Opportunity Act 2010* (Vic), section 89 of the Act allows the Victorian Civil and Administrative Tribunal (**VCAT**) to grant temporary exemptions, allowing discrimination to be legal in some circumstances if it believes that this would further the Act's goal of promoting equal opportunity.

Exemptions apply for the period of time set by VCAT, which can't be longer than 5 years. VCAT may also attach conditions when granting an exemption, such as a requirement to provide periodic reports on how often the exemption is applied. You may also wish to apply for an exemption in cases where you are unsure whether an exception or special measure applies.

If you are considering applying to VCAT for an exemption for your organisation, we strongly recommend that you seek independent legal advice as the above information is just a guide. For further information on how to apply for an exemption, see the [Victorian Equal Opportunity and Human Rights Commission's webpage on granting exemptions](#).

Western Australia

Generally, discriminatory conduct will not be against the *Equal Opportunity Act 1984* (WA) if:

- it's an act a purpose of which is to afford a person with a particular family responsibility or of a particular family status access to facilities, services or opportunities to meet their special needs in relation to employment, education, training or welfare, or any ancillary benefits
- an employer who provides accommodation to its employees, provides accommodation of different standards to different employees where:
 - the standard of the accommodation provided to each employee is determined having regard to the number of persons in the household of the employee, and
 - it's not reasonable to expect the employer to provide accommodation of the same standard for all employees
- an employer restricts the employment of a person if:
 - that person is a relative of an employee of the employer, or
 - that person is a relative of an employee of another employer,

and the first-mentioned employer can demonstrate, after making reasonable enquiries, that there is a significant likelihood of collusion between that person and that person's relative which would result in damage to the business of the first-mentioned employer

- the purpose of the act is:
 - to ensure that people with a particular attribute have equal opportunities with other persons in circumstances in relation to which provision is made by this Act, or
 - to afford people with a particular attribute access to facilities, services or opportunities to meet their special needs in relation to employment, education, training or welfare
- it's based on a genuine occupational qualification or requirement in relation to a particular position
- carried out by an employer, principal or person:
 - where the employer or principal is a private educational authority, or
 - in the case of employment or work in a hospital or other place where a medical or other health related service is provided, where the employer or principal is a religious body,

if the duties of the employment or work are for the purposes of, or in connection with, or otherwise involve or relate to, the participation of the employee in any religious observance or practice

- carried out by an employer on the ground of the holding or not holding of any political conviction or the engaging in or refusal or failure to engage in any lawful political activities with respect to the offering of employment or work
- carried out by an employer on the ground of the impairment of that person if it is reasonable for the employer to conclude that the person with the impairment, because of that impairment:
 - would be unable to carry out work reasonably required to be performed in the course of the employment or engagement concerned, or
 - would, in order to carry out that work, require services or facilities that are not required by persons who do not have an impairment and the provision of which would impose an unjustifiable hardship on the employer
- carried out by an employer on the ground of the other person's age when an engagement is offered or access to goods, services or facilities are provided if it is to ensure compliance with health and safety considerations, or
- it's necessary to comply with an order of a court or tribunal, or is authorised by legislation.

For further information, see part 4 of this guide and Western Australia's [Equal Opportunity Commission's website](#).



Note and caution – Western Australia

As well as the exceptions that are already expressly provided for by the *Equal Opportunity Act 1984* (WA), an organisation can make an application to the State Administrative Tribunal (**Tribunal**) under section 135 of the Act to be granted a temporary exemption from certain discrimination provisions.

The Tribunal may grant a temporary exemption for a period not exceeding five years and subject to any conditions it sees fit. If you are considering applying to the Tribunal for an exemption for your organisation, we strongly recommend that you seek independent legal advice as the above information is just a guide.

For further information on how to apply for an exemption, see the [State Administrative Tribunal's website](#).

Inducting your volunteers

Overview

Providing volunteers with a proper induction process is a good way to show your organisation's commitment to its volunteers – it's the first impression the new volunteer will get of your organisation.

The 'induction' is the process of welcoming new volunteers to the organisation and familiarising them with their role, the role of other workers (paid and unpaid) and the workplace more broadly. All volunteers should complete the induction process before starting any volunteer duties. After completing the induction, volunteers should know where to access your organisation's policies and procedures, and also have copies of those that are particularly relevant to them and their role, for example, health and safety, privacy and volunteer grievance policies.

Checklist: Volunteer Induction

We recommend an induction checklist be completed for each new volunteer. A sample checklist is provided below. This sample checklist is not exhaustive and should be changed to meet the needs of your organisation. It should be reviewed to make sure it is consistent with the volunteer role description (for example, if a volunteer is going to be using your organisation's vehicles you may want to make sure that an overview of any relevant vehicle policies and procedures are included as part of the induction process). Note the sample induction checklist does not constitute legal advice.

This sample induction checklist is also for use generally with volunteers. It may be appropriate to have a completely separate checklist for different volunteer positions. For example, all of your committee members (also called board members or directors) may be volunteers. We recommend that new committee members have an induction to the role of the committee – it's important they understand the role of a committee generally, their specific role on the committee and how that role differs to the roles of other people in the organisation.

Once the induction checklist is completed you should give a copy to the volunteer. You should also keep a copy with other records in relation to your volunteer. Part 6 of this guide provides further information on volunteer record keeping.



Related Not-for-profit Law resource

For further information on the process of inducting new board members refer to Not-for-profit Law's facts sheets '[Introduction to the board member role for new board members](#)' and '[Board Inductions – bringing on a new board member](#)'.



National Standards for Volunteer Involvement

Volunteering Australia's National Standards for Volunteer Involvement

Standard 5 – support and development – 'Volunteers understand their roles and gain knowledge, skills and feedback needed to safely and effectively carry out their duties' recommends at 5.1 that 'Volunteers are provided with orientation relevant to their role and responsibility' and 'Orientation for all volunteer roles are documented and implemented'.

A volunteer induction (and checklist) is a way of meeting this criteria. It's also important that volunteers are effectively supported with appropriate training, coordination and management where appropriate.



Sample: volunteer induction checklist

Checklist of Items	Completed	Follow up required? Who is to follow up?
Welcomed and introduced to other workers (paid and unpaid)	<input type="checkbox"/>	
Provided background about organisation and overview of organisational structure	<input type="checkbox"/>	
Work station prepared and relevant safety considerations undertaken	<input type="checkbox"/>	
Walk through of the workplace and discussed work premises, facilities and Work Health and Safety (emergency procedures, first aid, safety considerations in the role, reporting health and safety concerns, critical incident policies)	<input type="checkbox"/>	
Discussed volunteer role description, expectations and reporting structure	<input type="checkbox"/>	
Discussed volunteer agreement including important issues like the nature of the relationship, how it can end, reimbursements (and signed)	<input type="checkbox"/>	
Discussed consent and release form (and signed)	<input type="checkbox"/>	
Key contact person allocated (to go to with any concerns, feedback or queries about role and duties)	<input type="checkbox"/>	
Policies provided and read by the volunteer (with confirmation in writing):	<input type="checkbox"/>	
• Privacy policy	<input type="checkbox"/>	
• Workplace behaviour policies (including policies about communications and social media that set out expectations about media, print and email)	<input type="checkbox"/>	
• Health and Safety policy	<input type="checkbox"/>	
• Volunteer grievance policy	<input type="checkbox"/>	
• [Add other key policies and procedures, for example, conflict of interest, working with vulnerable clients, return of property]	<input type="checkbox"/>	
Conducted training in relation to the role, including any machinery and equipment use	<input type="checkbox"/>	
Conducted or scheduled training in relation to workplace behaviour policies and risk management	<input type="checkbox"/>	
Discussed insurance coverage as a volunteer (what cover is available under the organisation's insurance)	<input type="checkbox"/>	
Signature of volunteer:		
Date:		
Signature of volunteer manager:		
Date:		

Volunteer agreement

A volunteer agreement is an important part of engaging volunteers, helping to make sure the volunteer understands their rights, role and responsibilities. It's also important in helping your organisation manage its obligations in relation to health and safety. As set out in part 3 of this guide, the workplace health and safety (**WHS**) legislation enacted throughout Australia creates obligations for most organisations to ensure the health and safety of their volunteers. In addition to any obligations under the WHS laws your organisation also has a general duty of care towards your volunteers.

There are other reasons in which a volunteer agreement may become important, including clarity on the ownership of intellectual property (discussed below and also in part 6 of this guide).

A sample volunteer agreement is provided below. This sample volunteer agreement may not be appropriate for every volunteer involving organisation. It should be changed to meet the needs of your organisation (see tips below). The sample volunteer agreement doesn't constitute legal advice. Your organisation may need to consider seeking legal advice on its volunteer agreement.

Once the volunteer agreement has been discussed with your volunteer and signed (see below), you should give a copy to the volunteer. You should also then keep a copy with your other records in relation to your volunteer. For further information on volunteer record keeping, refer to part 6 of this guide (Organisational issues applicable to volunteers).



Tips – volunteer agreement drafting

Our tips for drafting a volunteer agreement:

- be clear that you have engaged the person as a volunteer
- include a statement that the parties don't intend to enter into a legally enforceable contract in relation to the carrying out of the work (refer to 'non-legal nature of the volunteer relationship' below)
- consider if you need to be extra clear on certain rights and obligations between the organisation and the volunteer – such as intellectual property and confidentiality (refer to 'non-legal nature of the volunteer relationship' below)
- be clear and consistent in the use of 'non-employment' type language
- use terms such as 'help to' and 'we would be pleased if you would'
- avoid terms such as 'pay, payment, salary, contract, work, appointment' or 'you must'
- be clear that the volunteer will not be receiving payment for work but may receive reimbursement for reasonable expenses and that any other non-monetary benefits provided to the volunteer are done so on a gratuitous basis only and are not payment in lieu of salary
- outline what the volunteer can expect from the organisation (for example, an induction, supervision and applicable insurance coverage)
- outline what the organisation expects from its volunteers (for example, compliance with policies and procedures including WHS, privacy, confidentiality and workplace behaviour), and
- ask the volunteer to notify you if they are unable to attend to any allocated work

Volunteer Agreement and the non-legal nature of the volunteer relationship

► What is a legally binding relationship?

A legally binding relationship is a relationship where the parties have agreed they have legal obligations to each other. Generally, this means that they intend that the promises made by each party will be binding, and if one party breaches the terms of the agreement, the other one has a right to seek damages against the breaching party or, in some circumstances, force the other party to perform certain obligations under the agreement.

The nature of volunteering requires that there is no legally binding relationship between the parties regarding the volunteer work to be carried out. For example, if the organisation doesn't provide the volunteer with work, the volunteer has no recourse against the organisation. Similarly, if the volunteer fails to report for duty as agreed, the organisation has no legal recourse against the volunteer. This is also explained in part 2 of this guide (which deals with the differences between a volunteer and other workers, like employee relationships).

► **What about intellectual property and confidential information?**

There may be situations where a volunteer involving organisation wants to be very clear on certain rights and obligations between the organisation and the volunteer. For example, if the volunteer is producing or creating material in their role, the organisation may want to be clear with the volunteer about who owns the intellectual property in the material. If the volunteer is exposed to confidential information, the organisation may wish to be clear with the volunteer about their confidentiality obligations. Refer to part 6 of this guide for more information on intellectual property and confidential information.

Our sample volunteer agreement below makes it clear to the volunteer that they have obligations in relation to intellectual property and confidentiality (see paragraph 12 of the sample agreement). However, because the sample volunteer agreement has been drafted as a **non-legally binding agreement**, the organisation may not have legal recourse against the volunteer if something goes wrong (for example, if the volunteer discloses confidential information or decides to keep the intellectual property they created for the organisation and use it for their own personal gain).



It's a risk assessment

Some volunteer involving organisations may conduct a risk assessment and decide that a non-legally binding volunteer agreement is appropriate and provides adequate protection.

Other organisations may be particularly concerned with protecting confidentiality and intellectual property and seek to impose legally binding obligations on the volunteer in relation to these particular matters. If in doubt seek legal advice.

Organisations can impose legally binding obligations on the volunteer in relation to these particular matters by:

- asking their volunteers to enter into separate legally binding agreements regarding intellectual property and confidentiality, or
- amending the sample volunteer agreement below to make it legally-binding.

In both cases, the agreements would need to be executed (signed) in a legally binding manner, such as a 'deed' (see below for more information on 'deeds').

Provided the legally binding obligations go no further than this (they are not imposing legal obligations on the volunteer around other tasks or the work), having a legally binding agreement in relation to intellectual property or confidentiality should not, by itself, affect the nature of the volunteer relationship.

We recommend seeking legal advice before asking volunteers to enter into a legally binding arrangement in relation to intellectual property or confidentiality.



Note on volunteer agreement being ‘executed’ (signed) as a deed

If an organisation wishes to create legally binding obligations in relation to intellectual property or confidentiality, the below sample volunteer agreement will need to be amended so that it’s executed (signed) as a deed. We recommend seeking legal assistance if you wish to alter the sample volunteer agreement and make it a deed.

A deed is a special type of binding promise or commitment to do something. It’s not the same as a contract. A deed doesn’t require ‘consideration’. Consideration is one of the four requirements for a contract to be valid and enforceable, and generally refers to the exchange of something of value, such as the exchange of labour for payment. This makes deeds useful documents when a promise is being made without anything in return for that promise (such as payment). We explain this in more detail below.



Caution – unincorporated associations

If your organisation is an unincorporated association (which means that it has not formalised its structure through a process of registration with government), it can’t enter into contracts (including deeds) its own name. Your organisation should seek legal advice if it wants to make the volunteer agreement legally binding.

Sample: volunteer agreement



Note

This is a generic, sample agreement. It's not legal advice and may not suit your organisation. Your organisation will need to draft an agreement to suit your particular circumstances and may want to seek legal advice on this.

This is an Agreement between:

[insert volunteer name] (referred to in this document as '**the volunteer**' or '**you**') and

[insert organisation name] (sometimes referred to in this document as '**we**').

This Agreement is not intended to be a legally binding contract between us and it may be cancelled at any time by either us or you.

Tip – The volunteer role should match the role title in the volunteer role description.

1. You are a volunteer

The role of **[insert volunteer role title]** at **[insert organisation's name]** is a volunteer role. This means you are not an employee of, or contractor to, **[insert organisation's name]** and, if you accept the role, you perform all duties on a voluntary basis and you will not receive remuneration or payment for your work, other than reasonable reimbursement of expenses (see below at paragraph 9).

Neither **[insert organisation's name]** nor you intend any employment or contractual relationship to be created (you are not an employee, independent contractor or consultant at **[insert organisation's name]**). If this changes at any time, and there is a possibility that you might perform paid work for the organisation or be involved in vocational training, we will discuss this and document the arrangement in a formal contract.

2. What you can expect when volunteering at **[insert organisation's name]**

[insert organisation's name] values its volunteers and we will endeavour to provide you with:

- a written role description so you understand your role and the tasks you are authorised to perform

Tip - Refer to our sample induction checklist above

Tip – Talk about the training that will be provided so that you are clear and upfront with the volunteer from the start

- a full induction, orientation and training relating to the volunteer role
- a safe environment in which to perform your role
- respect for your privacy, including keeping your private information confidential
- a supervisor, so that you have the opportunity to ask questions and get feedback (see paragraph 4 below)
- reimbursement for your reasonable expenses so you are not out-of-pocket as a result of volunteering for us (for further information see paragraph 9 below), and
- insurance to cover you for the volunteer duties you are authorised to perform (see paragraph 10 below).

Tip - You may need to edit this line on insurance depending on your organisation's insurance coverage. Before including this line, check what your volunteers are covered for under your insurance policy. If you don't have insurance coverage it's important to be upfront and clear about this.



3. What [insert organisation's name] asks of its volunteers

We ask that you:

- support [insert organisation's name]'s aims and objectives
- participate in all relevant induction and training sessions
- only perform duties you are authorised to perform and always operate under the direction and supervision of [insert organisation's name]'s staff and obey reasonable directions and instructions
- understand and comply with the organisation's policies and procedures including **[insert policies, for example: equal opportunity, health and safety, privacy and confidentiality policies, and grievances policy]**
- notify your supervisor or another member of staff of any health and safety issues or potentially hazardous situations that may pose a risk to you or others and report any accidents or incidents relating to staff, volunteers, or the workplace
- behave appropriately and courteously to all staff, clients and the public in the course of your role
- use any property or equipment given to you in your role safely and only for purpose of the role and return it to the organisation when you finish your volunteer role
- let us know if you wish to change the nature of your contribution (for example, hours, role) to [insert organisation's name] at any time
- let us know immediately if there is anything, or anything arises, that makes you unsuitable or unable to legally carry out your volunteer role (for example, your role requires you to drive and you lose your licence or you injure yourself)
- comply with the law at all times, and
- be open and honest in your dealings with us and let us know if we can improve our volunteer program and the support that you receive.

Tip - When discussing this agreement with your new volunteer, explain why this is important, for example it may mean the volunteer is personally liable or they are not covered under the organisation's insurance policy (see part 3 of our guide).

Tip – Make sure this list of policies matches the policies that you cover off on your induction checklist

Tip - Make sure this section reflects your organisation's expectations of its volunteers and its values.

4. Contact person

Your contact person at [insert organisation's name] will be [insert volunteer manager's name and contact details]. If you have any questions or concerns about your role, your health and safety, or if you need any assistance to help you perform your role, please contact [insert volunteer manager's name] as soon as possible.

5. Role description and details

We ask that you only perform duties you are authorised to perform, always operate under the direction and supervision of [insert organisation's name]'s staff and obey reasonable directions and instructions. This is particularly important for health, safety and insurance reasons (see paragraph 6 below).

We have developed a role description [insert volunteer role title role description] to help you understand your role and the tasks you are authorised to perform and tasks that are prohibited.

If you are unsure whether a particular task or work is part of your role, or who you can and can't receive directions and instructions from please don't hesitate to talk to your contact person.

6. The health and safety of you and others

At [insert organisation's name] volunteer safety, and the safety of everyone who is involved in our organisation, is a priority.

[Insert organisation's name] has safety obligations towards:

- you in your capacity as a volunteer at [insert organisation's name], and
- the people that you interact with as a part of your volunteer role.

Tip – Insert role description, along with estimated hours and time commitment or roster details and location. Or attach the role description separately and note that the role description is attached.



It's important to understand that you may be personally liable (that is legally or financially responsible) for any harm or damage caused to yourself or others if you act outside of the role description, outside of the instructions given to you or you are affected by drugs or alcohol when you are volunteering.

It's therefore important that you only perform the tasks in your role description and that you follow the instructions of your contact person **[insert volunteer manager's name]** and **[insert organisation's name]**'s staff.

Tip – Insert the state or territory where the volunteer will be predominantly performing the volunteer role.

Tip – You will need to confirm if the health and safety legislation in your state or territory applies to your organisation. Generally speaking, if you have even one employee, the health and safety legislation will apply to your organisation, for more information see part 3 of the guide. If the health and safety legislation in your state or territory does not apply, delete this section.

Tip – The laws that govern health and safety differ in each state and territory. If you are in Victoria, you can insert Occupational, Health and Safety law. If you are in Western Australia you can insert Occupational Safety and Health law. All other states and territories can insert Work Health and Safety Law.

In **[insert state or territory]**, the **[insert relevant law]** applies. Also, there may be other legal actions (such as negligence claims) that mean we always need to consider safety issues.

Under the **[insert relevant law]** and other laws, **[insert organisation's name]** has a duty of care to minimise risks to everyone affected by its conduct (including paid employees and volunteers).

It also means that as a volunteer, you may have duties under **[insert relevant law]** too. These include:

- taking reasonable care for your own health and safety
- taking reasonable care for the health and safety of others
- complying with any reasonable instruction by **[insert organisation's name]**
- letting **[insert organisation's name]** know of any concerns you may have about safety or fitness in performing our role, and
- cooperating with any reasonable policies and procedures of **[insert organisation's name]**.

We will provide you with a full induction, safety equipment and role training **[insert any other safety measures here]** when you commence as a **[insert volunteer role]** with our organisation. However, please do not hesitate to talk to your contact officer at any time if you have any health and safety concerns.

Tip – Organisational policies include any of the policies that are listed in the volunteer induction checklist.

7. Induction and training required before you start in the volunteer role

[Insert organisation's name] is committed to providing suitable training in support of the organisational policies relevant to your role as a volunteer. For this reason, it's our policy that all volunteers undertake induction and training at **[insert organisation's name]** before starting their volunteer role.

[Insert volunteer manager's name] will confirm the details of the induction and training schedule with you.

Tip – Amend this section to reflect when the volunteer will receive induction and training (is it before they start their role, at the start or during the course of the volunteering role?)

8. Information we need before you can start in the volunteer role

Before you can start the volunteer role, we need the following information: **[insert background checks required such as CV, ID checks, reference checks, police checks, licence checks]**

All background check information will be conducted in accordance with our 'Background Check' policy and our privacy policy.

Tip – Refer to the background checks you have listed in the volunteer role description

Tip – Check if your organisation has a policy before including this.

9. Volunteer expenses and other benefits

As a volunteer, **[insert organisation's name]** will reimburse you for any reasonable out-of-pocket expenses that you incur when performing authorised tasks associated with your role.

We do this to ensure that you are not financially disadvantaged as a result of your volunteer role with us. These payments are not remuneration or wages. You might need prior approval and will always need to produce receipts.

We may sometimes provide you with other benefits as part of your volunteering role (examples include training, free food, accommodation, event entry, clothing or equipment). Where this occurs, it is on a gratuitous basis at the discretion of **[insert organisation's name]** and is not payment in lieu of salary.

Tip – Be upfront and clear with your volunteers about when a volunteer will need prior approval (for example, by reference to a dollar amount).

Tip – You may want to amend this to reflect your organisations' current practices.

Tip – You may need to edit this section depending on your organisation's insurance coverage. If you don't have insurance cover for volunteers it's important to be upfront and clear about this.

10. Insurance

We are committed to providing adequate insurance cover for volunteers while carrying out their volunteering roles that have been approved and authorised by us.

[insert organisation's name] has the following insurances: **[list insurances]**

To ensure this insurance covers you for any incidents that occur while you are volunteering with us, you need to: **[include details of what the volunteer needs to do, for example, report an incident as soon as it has occurred, sign in each time you volunteer]**

We want to let you know that the following events are unlikely to be covered by our insurance:

- actions that are beyond the scope of your volunteer role, or that occur without appropriate authority or permission from us
- criminal activity (including criminal charges arising out of driving incidents), and
- dishonest or reckless activities (for example turning up intoxicated).

Tip – Carefully review your insurance and complete this list with any exclusions set out in your policies. For questions to ask your insurer see part 3 of this guide.

Tip – This sample agreement has been drafted as a non-legally binding agreement to reflect the volunteer nature of the relationship. Carefully consider whether your organisation requires the confidential information obligations to be legally-binding. If yes, you may wish to use our Sample Deed of Agreement (below) instead, or seek legal advice.

11. Confidential information

Volunteers are likely to be given access to **[insert organisation's name]**'s confidential information as part of, or to assist them with, their role. Confidential information includes any information about **[insert organisation's name]**, its business, services and clients which has been designated by **[insert organisation's name]** as confidential or which is, by its nature, confidential or proprietary to **[insert organisation's name]**.

You are not permitted to use or disclose any confidential information for any purpose other than the proper discharge of your duties as a volunteer of **[insert organisation's name]**.

Tip – This sample agreement has been drafted as a non-legally binding agreement to reflect the volunteer nature of the relationship. Carefully consider whether your organisation requires the obligations in relation to intellectual property to be legally-binding. If yes, you may wish to use our Sample Deed of Agreement (below) instead, or seek legal advice.

12. Intellectual Property

You agree to transfer all intellectual property rights and interests (including copyright) in any ideas or materials you create relating to your provision of voluntary services at **[insert organisation's name]** to **[insert organisation's name]**.

You consent to the use by **[insert organisation's name]** of such creations in a manner reasonably contemplated by the voluntary services provided under this document. As a volunteer you also agree not to bring any claim for infringement of your moral rights in respect of that use.

Tip – Ask the volunteer to circle 'agree' or 'do not agree' (and make sure you only use it for the purposes you have listed). You may have obligations under privacy laws and should take steps to protect this personal information.

13. Consent to use photographs and images

You **[agree/do not agree]** that **[insert organisation's name]** may take photographs and video footage of you carrying out your volunteer work and use it for the purposes of marketing and promotion of **[insert organisation's name]** and its goods or services. This may include printed and digital marketing, including the use of your image on social media platforms.

Please sign to acknowledge that you have read this volunteer agreement and have had an opportunity to ask questions.

Tip - It's a good idea to give the volunteer a copy of the signed agreement, and for your organisation to keep the original as a record (or in accordance with your organisation's policies on record keeping).

Volunteer's full name

Volunteer's signature

Date

Deed of Agreement – intellectual property and confidential information

The non-legal nature of the volunteer relationship

As explained above, the nature of a volunteer relationship requires that there is no legally binding relationship between a volunteer and a not-for-profit organisation regarding the volunteer work to be performed. For example, if the organisation doesn't give the volunteer work, the volunteer has no recourse against the organisation. Similarly, if the volunteer doesn't report for duty as agreed, the organisation has no recourse against the volunteer.

Intellectual property and confidential information

There may be situations where an organisation wants to be very clear on certain rights and obligations between the organisation and the volunteer. For example, if the volunteer is producing or creating material in their role, the organisation may want to make it clear who owns the intellectual property in the material. If the volunteer is exposed to or dealing with confidential information, the organisation may also wish to be clear with the volunteer about their confidentiality obligations.

When is it appropriate to have a legally binding agreement?

Some volunteer involving organisations may conduct a risk assessment and decide that a non-legally binding volunteer agreement is appropriate and adequate. Other organisations may be particularly concerned with protecting confidentiality and intellectual property and seek to impose legally binding obligations on the volunteer in relation to these particular matters.

Organisations can impose legally binding obligations on the volunteer in relation to these particular matters by asking their volunteers to enter into a separate legally binding agreement, such as a 'deed', regarding intellectual property and confidentiality. We've provide a sample Confidentiality and Intellectual Property Deed below.

Provided the legally binding obligations go no further than this (that is, they aren't imposing legal obligations on the volunteer around other tasks or the work), having a legally binding agreement in relation to intellectual property or confidentiality should not, by itself, affect the nature of the volunteer relationship.



Caution

A deed is a legally binding document. We recommend seeking legal advice before asking volunteers to enter into a legally binding arrangement in relation to intellectual property or confidentiality.



What is a deed?

A deed is a special type of binding promise or commitment to do something. It's not the same as a contract.

A deed doesn't require 'consideration'. Consideration generally refers to the exchange of something of value, such as the exchange of labour for payment and is one of the four requirements for a contract to be valid and enforceable. This makes deeds useful documents when a promise is being made without anything in return for that promise (such as payment).



What does ‘execution’ mean?

Execution means signing an agreement, and doing this with any required formalities, including, for example, having a witness to the signing.

For the signing of the sample Deed (see below), the person signing it on behalf of your organisation must be authorised to do this – make sure you check authority before signing the agreement.

The signing should be witnessed by a third person (not the volunteer or the person authorised to sign on behalf of the organisation).

If the volunteer is working remotely, they can print and sign the deed (provided that they have a witness with them, who can witness their signature) and provide the original signed and witnessed deed to the organisation by post, or a scanned copy by email.



What are ‘moral rights’?

Moral rights are the right to be credited for your work, not to have your work falsely attributed to another artist and not to have your work treated in a derogatory way. You continue to have these rights even if you transfer your intellectual property rights to someone else.

The moral rights consent requested in the sample Deed means that the volunteer will not enforce these rights against the organisation.

You can find out more information about moral rights in part 6 of this guide and from the [Australian Copyright Council](#).

Sample: Deed of Agreement – intellectual property and confidential information



Note

This is a generic, sample deed of agreement. It's not legal advice and may not suit your organisation. Your organisation will need to draft a deed of agreement to suit your particular circumstances and may want to seek legal advice on this.

This is a Confidentiality and Intellectual Property Deed made between:

[insert volunteer name] of **[insert address]** (referred to in this document as '**the volunteer**', '**you**' or '**your**') and **[insert organisation name, including ABN]** of **[insert address]** (referred to in this document as '**the Organisation**', '**we**', '**us**' or '**our**').

This Deed is a legally binding agreement between you and us about confidential information that you may have access to, and intellectual property in materials that you may create, in your role as a volunteer.

Nothing in this Deed changes the fact that you are a volunteer, and not an employee of, or contractor to, the Organisation.

Confidential information

As a result of your role as a volunteer with us you may be given access to confidential information. The term 'confidential information' includes any information about us and our business, services and clients which is:

- marked confidential, or that we tell you is confidential; or
- by its nature, is confidential or proprietary to us.

Information will not be confidential if:

- it is or becomes public (except if that results from a breach of this Deed or any other obligation of confidentiality that you owe to us);
- you know (and can demonstrate) that you knew this information before you received it from us; or
- you receive it from someone else who is entitled to give it to you.

You must only use our confidential information to perform your role as a volunteer with us, and you must not disclose it outside our organisation (unless we ask you to). You agree that the confidential information belongs to us.

You must return all material containing our confidential information to us if we ask you to, or when your role with us ends.

Intellectual Property

If you create any materials while you are performing your role with us, you agree that:

- any rights (including copyright and other intellectual property rights) in those materials will be owned by us, and that this Deed assigns any rights that you have in those materials (either now or in the future) to us; and
- we can use those materials in any way that we need, and that our use will not infringe any moral rights that you have in those materials.

Your moral rights are the rights you have to be acknowledged as the author of the work, not to have authorship attributed to anyone else and integrity of authorship. You agree that:

- we can do anything (or omit to do anything) that might infringe your moral rights, including not acknowledging your authorship of the material, modifying editing or updating the materials, or incorporating all or part of the materials into other documents or materials;
- your consent extends to acts and omissions other parties acting on our behalf or with our authorisation, including our licensees and successors in title;
- you will not bring any claims against us, our licensees, successors in title or any other person or organisation acting as a result of anything we do (or omit to do); and
- your consent is a genuine consent and has not been induced by duress or any false or misleading statement.



General

You agree that you will sign any additional documents that we ask you to sign in order to confirm the arrangements set out in this Deed.

This Deed is governed by the laws of **[New South Wales - or insert the state or territory in which the Organisation is based]**, Australia. Both you and we submit to the jurisdiction of the courts of **[New South Wales - or insert the state or territory in which the Organisation is based]**.

This Deed contains the entire agreement between us with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter.

This Deed may be executed in multiple counterparts, each of which shall be treated as an original and together will constitute one and the same deed. Both you and the Organisation agree that this deed may be executed and delivered by electronic means (including portable document format) by either of the parties and the receiving party may rely on a document executed and delivered electronically as if the original had been received.

You agree that, the terms of this Deed are binding on you and continue after your volunteer work with the Organisation ends.

Executed as a Deed by:

Signed sealed and delivered by

Volunteer's full name (please print)

In the presence of:

Witness' signature

Volunteer's signature

Witness' full name (please print)

Date of signature

Signed sealed and delivered for and on behalf of
[insert organisation name and ABN]

By its duly authorised representative in the presence of:

Witness' signature

Authorised representative's signature

Witness' full name (please print)

Authorised representative's full name (please print)

Managing the performance of volunteers

Overview

Managing the performance of volunteers can be problematic if not done correctly. A well-structured performance management system provides a number of benefits both to the volunteer involving organisation and the volunteer.

The benefits of performance management include:

- establishing the volunteer performance objectives and how these objectives align with both the organisation's values, purposes and activities and the volunteer's roles and responsibilities as set out in the volunteer role description
- improved guidance and assistance in developing the potential of the volunteer and their capabilities
- identifying the volunteer's training needs, and
- improved communication and relationships between a volunteer and their manager, including an agreed process for feedback from the volunteer



Example

Sarah, a long-standing volunteer at the organisation, gets angry about a misunderstanding and upsets a member of staff. Another time, she is short-tempered with a different volunteer in front of peers, shocking them also.

Her supervisor reviews the organisation's volunteer performance management policy and asks Sarah to attend a volunteer performance management meeting. Her supervisor clearly outlines the two incidents which occurred. Sarah admits that the incidents occurred and is quite upset about her conduct. Sarah apologises to the shift supervisor and says that she is very overwhelmed in her personal life. Sarah acknowledges that she can no longer commit to the organisation as a volunteer. Sarah and the shift supervisor agree to end the volunteer relationship. The shift supervisor took clear notes of the meeting with Sarah. Both Sarah and the shift supervisor signed the notes from the meeting. The organisation provided a letter to Sarah thanking her for her time at the organisation and confirming the volunteer relationship had ended.

Organisational performance management plan

A volunteer involving organisation should have a plan in place for how it will manage the performance of all its workers. Although managing the performance of employees involves risks that don't apply to volunteers (for example, unfair dismissal), best practice dictates that the management of volunteers shouldn't differ significantly from the management of employees. This provides consistency of treatment and gives workers some certainty about the process they may expect when issues come up.

A useful way to think about performance management is to think in terms of both conduct and performance. 'Performance' generally refers to the quality of work. For example, only partly recording a client's contact details in the organisation's systems or failing to collect necessary information from a client.

This differs from 'conduct' which generally refers to the deliberate breaking of workplace rules, such as misuse of the organisation's equipment (for example, using a vehicle without permission or in breach of the organisation's policies), disclosure of confidential information or inappropriate workplace behaviour (for example, bullying or sexual harassment).

A performance management plan should include:

- **A review of the volunteer's performance after a set period of time** – although volunteers don't generally have a formal probationary period, it's a good idea for the organisation to set a timeframe following which it will consider whether the volunteer arrangement is working out as expected. If the arrangement is not working out, it's better for the organisation (and potentially its clients), if it addresses this and, if necessary, ends the arrangement.

- **Periodic appraisal of performance** – where possible, this should be a formal and documented process which:

- set out aspects of the volunteer's work that is both satisfactory and unsatisfactory and how unsatisfactory aspects of work performance might be improved
- identifies any training required or desirable, and
- allows for goal setting for the upcoming appraisal period

Generally, appraisals are carried out at least annually but (depending on the nature of the work) may be more often. Don't confuse periodic performance appraisal with performance management procedures. Performance management procedures address specific performance or conduct issues when they arise.

- **Performance management procedures** – when specific issues that relate to performance or conduct (or both) arise, they should be addressed immediately (see 'performance management procedures and process' below). Failure to do so may result in damage to the organisation's reputation or property, damage or distress to clients, discontent among other volunteers and the creation of vicarious liability for the organisation (see part 3 of this guide on safety).
- **Ending the relationship** – when volunteers don't respond appropriately to performance management procedures it may be necessary for the organisation to end the volunteer relationship (see 'ending the relationship' below).



National Standards for Volunteer Involvement

Volunteering Australia's National Standards for Volunteer Involvement are relevant to the discussion on performance management. For example:

Standard 7: volunteer recognition – 'volunteer contribution, value and impact is understood, appreciated and acknowledged'.

Criteria for this standard includes 7.2 'volunteers are informed about how their contributions benefit the organisation, service users and the community'. Evidence of this includes that volunteers are provided with feedback on the value on the impact and value of their contribution to the organisation and its work.

Standard 8: quality management and continuous improvement – 'effective volunteer involvement results from a system of good practice, review and continuous improvement'

This involves at 8.2 'volunteer involvement is regularly reviewed in line with the organisation's evaluation and quality' and at 8.3 'the organisation's performance with volunteer involvement is monitored'. Evidence of meeting these criteria includes obtaining feedback from volunteers in a variety of ways. Periodic appraisals of a volunteer's performance are opportunities to give a volunteer feedback.

Performance management procedures and process

Your organisation should develop procedures on how it will manage specific issues relating to performance or conduct (or both) that arise. As outlined above, this should be separate to any process in place for performance appraisal.

Where an issue relating to performance or conduct arises, you should notify the volunteer of the issue and arrange a meeting. It's good practice to ask the volunteer if they would like to have a support person present at the meeting. Make sure you keep a record that the offer was made (particularly if the offer is declined). The meeting should follow this process:

- clearly outline the relevant performance or conduct issues
- give the volunteer an opportunity to respond to the issues raised
- clearly and specifically outline why the current performance level or conduct is not acceptable and how the performance or conduct needs to improve

- if appropriate, discuss any reasonable support to be provided to help the volunteer improve (for example, further instructions or specific training)
- advise the volunteer of the consequences should the performance level or conduct not improve within the specified timeframe (ending the volunteer relationship)
- seek the volunteer's agreement to improve performance or conduct

You should keep written notes of both the performance or conduct issues and of the meeting itself. It may also be useful to have another person from the organisation in the meeting.

Following the meeting, you should consider the volunteer's responses to the issues raised and the need for continued monitoring of the volunteer's performance and conduct objectively. In some cases, it may be preferable or appropriate to simply end the volunteering relationship. (See 'ending the relationship' below).



National Standards for Volunteer Involvement

Volunteering Australia's National Standards for Volunteer Involvement

Standard 5: support and development – 'volunteer contribution, value and impact is understood, appreciated and acknowledged' is relevant to much of the above discussion on managing performance and conduct.

As stated by Volunteering Australia:

'Volunteers understand their roles and gain knowledge, skills and feedback needed to safely and effectively carry out their duties. Support and development ensures that the organisation has processes to equip volunteers to perform their roles well and in line with the organisation's needs. Meeting this standard assists the organisation to identify and provide orientation, skill development and ongoing support needed by volunteers, and to manage situations fairly and consistently where a volunteer may not be meeting'.

Evidence of meeting this standard includes that:

- discussions are held with a volunteer or a group of volunteers on achievements and areas for development, and
- volunteer performance or misconduct issues are promptly identified, recorded and addressed in line with principles of natural justice

Managing volunteer grievances

Overview

Volunteers have the right to express grievances with the volunteer program or your organisation. Your organisation should make sure the volunteer's grievances are heard and dealt with in an appropriate manner.

Grievances occur in most volunteer involving organisations. They can be raised on topics including workload and work distribution, work conditions, and management-volunteer relations.



National Standards for Volunteer Involvement

Volunteering Australia's National Standards for Volunteer Involvement

Standard 6: workplace safety and wellbeing – the health safety and wellbeing of volunteers is protected in the workplace, recommends at 6.3 'volunteers have access to complaints and grievance procedures'. Evidence of meeting this criteria includes:

- volunteers are given information about how to make a complaint or raise a concern within the organisation and to relevant external bodies
- grievances from volunteers are managed consistently, transparently, equitably and in line with the principles of natural justice

If your organisation follows the advice below for handling grievances, including having a grievance policy, this will help your organisation meet this criteria.

Handling volunteer grievances

To make sure volunteers' grievances are heard and dealt with in an appropriate manner, a volunteer involving organisation should:

- develop and implement a policy for managing volunteer grievances (see 'volunteer grievance policy' below)
- provide the policy to your volunteer (attaching the policy to the volunteer agreement is a good way to make sure the volunteer has a copy, and the policy can also be discussed as part of the induction process)
- make sure all volunteer managers and those involved in supervising volunteers are aware of the policy and understand their roles and responsibilities in relation to the policy
- have a process for making sure grievances are addressed in a fair and appropriate manner, which includes reviewing the outcome of the grievance to make sure appropriate decisions were made



Related Not-for-profit Law resource

You can find more information on [complaint handling by volunteer involving organisations](#) on Not-for-profit Law's website.



Example

Bill, a volunteer, makes a complaint that the workplace is unsafe. Bill's complaint is that the stairs that lead into the donation shop are very steep and hard to identify. He claims that patrons of the donation shop have had near accidents on many occasions. The workplace supervisor receives the complaint and is immediately concerned for the safety of the volunteers, staff and customers. The workplace supervisor reviews the volunteer grievances policy and refers the complaint to the organisation's workplace health and safety officer. The workplace health safety officer organises a contractor to install a hand rail and to paint the stairs a brighter colour so that they are more easily identifiable. Bill is informed in writing of the outcome of his complaint. Bill is satisfied with the response of the organisation and doesn't take any further action.

Volunteer grievance policy

A volunteer grievance policy is a written document that sets out the process for making a complaint, how the complaint will be resolved and who is responsible for resolving it. The policy should be short and concise so it's easy to understand and follow. It should include the following:

- **Purpose.** A brief description (for example, the purpose of the policy is to provide a framework for the handling of grievances in a fair and timely manner).
- **Scope.** A statement on who the policy applies to. For example, student placements or internships may have slightly different processes which involve the student's school or university.
- **Definitions.** What is meant by a 'work related grievance' (for example, any problem, or concern or complaint in relation to the volunteer's work environment, including changes to the volunteer's role, their safety, or the behaviour of others in the workplace).
- **Roles and responsibilities.** The role of managers (and supervisors) to manage a grievance complaint as well as the expectations of the volunteer who made the complaint.
- **How to raise a grievance.** The process the volunteer is to take (for example, raise the complaint with the volunteer's immediate supervisor in the first instance).
- **Procedures.** This should include mechanisms to ensure the fair resolution of the complaint (for example, opportunities to be heard and use of supports).
- **Outcomes of the grievance resolution process.** The volunteer should receive written advice of the outcome of their grievance.
- **Further action.** Options to pursue the grievance through other appropriate internal or external processes.
- **Documentation.** All documentation relating to the grievance should be placed on the volunteer's file (also refer to part 6 of this guide which deals with the keeping of volunteer records, including the requirements of confidentiality and privacy).



Caution

Some organisations will have volunteers who are also legal members of the organisation. If your organisation has any volunteers who are also members, it's important to make sure any member's grievances are dealt with under the correct process.

Depending on the subject matter of the grievance, this may be the volunteer grievance procedure or the grievance procedure in your organisation's roles or constitution. If your organisation is an incorporated association, you should check the grievance procedure requirements in your relevant incorporated association legislation.

For further information, see our [resources on the Not-for-profit Law website](#).

Ending the volunteer relationship

Overview

There are a number of reasons your organisation may choose to end a volunteer relationship. It's important to manage the process of ending a volunteer relationship well. This will help your organisation avoid any potential legal consequences or reputational damage.

Ending a genuine volunteer relationship is different to ending an employment relationship by termination of an employee (which involves certain legal rights, obligations and processes). It's important that both your organisation and the volunteer understand these differences. Your organisation should have processes for the ending of a volunteer relationship which include keeping of volunteer records once the relationship has come to an end.

Ending the relationship

It's important your organisation is clear on the nature of the relationships with its workers (both paid and unpaid) as the rights and obligations differ. This is discussed in part 2 of this guide, which sets out how the *Fair Work Act 2009* (Cth) (**Fair Work Act**) doesn't apply to volunteers. This includes when ending the relationship.

Under the Fair Work Act, employees have certain rights, for example, in relation to redundancy or the ability to bring a claim for 'unfair dismissal' or 'unlawful termination'. Because the provisions of the Fair Work Act regarding unfair dismissal don't apply to volunteers, a genuine volunteer can't bring a claim against your organisation for unfair dismissal.

Unlike an employee, your organisation has no legal rights against a volunteer who doesn't turn up, walks out or doesn't return to your organisation.

This is part of the nature of a true volunteer relationship. It's important that organisations that use volunteers and volunteers themselves understand that the protections that apply in an employer-employee relationship are not the same as in an organisation-volunteer relationship.



Related Not-for-profit Law resource

For more information dismissing an employee (if it's appropriate, how to terminate lawfully and fairly) refer to [Not-for-profit Law's webpages on employees](#).



Tip

When discussing your organisation's volunteer agreement with your volunteer it's a good time to make it clear that relationship is not an employment relationship, (as set out in paragraph 2 of the sample volunteer agreement). It will be helpful to explain that this means:

- the protections that apply in an employer-employee relationship are not the same as in an organisation-volunteer relationship, and
- the volunteer or organisation may end the relationship at any time

When talking about ending the relationship you should avoid the terms 'dismiss', 'letting go' or 'fire' as these are more suitable for an employment relationship. 'End' or 'walk away' are better terms to use.

Managing the process of ending the volunteer relationship

Reasons for ending the volunteer relationship

There may be a number of reasons why a volunteer involving organisation chooses to end a relationship with one of its volunteers. These include:

- there's no longer a need for the volunteer's services
- the volunteer's performance
- the volunteer's conduct is not satisfactory (or has not improved following a review process) or there has been serious misconduct, or
- the volunteer's presence may be detrimental to the health and safety of others in the organisation.

As outlined in part 3 of this guide (Safety), a volunteer involving organisation has a duty of care to provide a safe work environment and could be held legally responsible for the actions of its volunteers.

If keeping a volunteer in the organisation is a risk to the health and safety of others (including members of the public), ending the relationship may be necessary to make sure you are acting in accordance with the standard of care required by law.



Caution

There is a tension between anti-discrimination laws and health and safety laws, so make sure you have considered anti-discrimination laws as well. Discrimination law is discussed in part 4 of this guide. If in doubt, seek legal advice.



Example

Your organisation has a number of soup vans that travel around the Adelaide Hills area feeding homeless people. You have a loyal volunteer that has been serving soup in the vans for the last 20 years. The volunteer is now in their eighties and recently there have been a number of incidents where their increasing fragility and instability have resulted in soup spills, as well as a minor burn to their hand and to another volunteer. You are concerned that continuing in the role poses a serious risk to their safety, other volunteers and the public that are being served. You discuss these concerns with the volunteer and explain that you have duty of care to take steps to minimise risks to health and safety.

There are a number of other suitable roles (for example, calling suppliers and administration work) that you offer the volunteer. The volunteer doesn't accept this as they have their heart set on staying with the soup vans. You suggest that instead of serving, they hand out blankets, cutlery and napkins. They agree this is a sensible compromise and you are now comfortable that you are not placing them or anyone else at risk. However, you should ensure they understands that they are no longer authorised to serve soup under any circumstances.

The process of ending the volunteer relationship

When ending a volunteer relationship you should think very clearly about your approach.

- **Be aware of other relationships.** As outlined above, and in part 2 of this guide, if the person has been engaged by your organisation as a paid worker, your organisation will have different legal obligations including processes to be followed (and the person will have certain legal rights). Also be aware if the person is a member of your organisation as they will continue to have member rights (you should check your organisation's rules or constitution).

- **Be careful about ending a volunteer arrangement if there has been a recent complaint made by the volunteer.** This could be construed as 'victimisation' against the complainant, even if your organisation decided to end the relationship for completely unrelated reasons. For more information about victimisation, refer to part 4 of this guide.
- **Make sure the process is as fair and transparent as possible.** You don't need to give reasons why the relationship is ending, however, it is good practice to do so. Think about your organisation's reputation - the former volunteer may tell other volunteers in your organisation who could think you were being unfair and they may stop volunteering. They could also tell family and friends.
- **Confirm the arrangement has come to an end in writing and keep a record of the documentation provided to the volunteer.**
- **Maintain your organisation's obligations of confidentiality and privacy of the volunteer.**
- **Make sure all property of the organisation is returned by the volunteer** (for example, documents and uniforms).
- **Consider if security changes are needed** including to any buildings (access codes), IT systems and other electronic accounts (for example, Facebook login details and email passwords).



Related Not-for-profit Law resource

See [Not-for-profit Law's fact sheets](#) on members' rights for members of a company limited by guarantee and of incorporated associations (for each jurisdiction).



Example

Confirming the end of the arrangement in writing, not only provides finality for the volunteer and organisation, but may be relied on by your organisation to avoid any liability (legal responsibility) that might arise as a result of the volunteer's future actions. This may be relevant if you need to show they were not a volunteer at the time of their actions and not a representative of your organisation. Consider the following hypothetical example:

The Ocean Voice is an organisation that runs a program providing media and public speaking training for people who are interested in environmental activism. The organisation matches the volunteers with media and speaking opportunities to help raise awareness and change attitudes about environmental issues. At a recent speaking event, a volunteer called Kylie became violent and harassed a camera person. There were some informal discussions between Kylie and the volunteer manager about ending her involvement in the program while she obtains some care in relation to issues in her personal life. However, Kylie continues to be approached directly by journalists and other organisations for media and public speaking opportunities. Kylie takes up these opportunities and continues to represent that she is a volunteer at Ocean Voice. At one event, she again has a violent episode and physically abuses an interviewer resulting in their hospitalisation. As a result, Ocean Voice's reputation is tarnished and the relationships it has built with the media suffers.

In this example, while the interviewer doesn't make a claim against the organisation, this is a potential outcome where a volunteer causes harm to someone while volunteering. As the ending of the volunteer relationship had not been formalised or documented, it would be difficult to show Kylie was no longer a volunteer, and that Ocean Voice was not therefore liable for her actions.

Volunteer records at the end of the volunteer relationship

While organisations have limited legal obligations to keep specific records relating to volunteers, we recommend that a volunteer involving organisation keep records of its volunteers for at least seven years.

Part 6 of this guide sets out reasons for keeping records in more detail. These include the reason that legal action can generally be brought up to six years after an event to which the legal action relates (for example, a former volunteer alleges your organisation's negligence was the cause of the injury to the person while they were volunteering for your organisation). Some claims have even longer limitation periods. If your organisation is also bound by work health and safety laws, in most jurisdictions these laws generally require certain records be kept for five years.

Keeping volunteer records for seven years is also consistent with any obligations your volunteer involving organisation has under the Fair Work Act in relation to employee records. This obligation does not specifically extend to volunteer records, however, best practice dictates that the management of volunteers should not differ significantly from the management of employees, (including record keeping).



National Standards for Volunteer Involvement

Volunteering Australia's National Standards for Volunteer Involvement sets out that evidence to meet **Standard 1: leadership and management** – the governing body and senior employees lead and promote a positive culture towards volunteering and implement effective management systems to support volunteer involvement, includes (at 1.4) that:

- volunteer records are maintained
- required information to be collected from volunteers is identified
- information is documented and secure, and
- the organisation has documented and implemented processes that comply with privacy legislation for securely managing volunteer personal and confidential information

Summary: recruiting, inducting, managing and ending the volunteer relationship

Recruiting volunteers

- Recruit your volunteers in a fair and non-discriminatory way.
- Use a volunteer role description for all volunteer positions in your organisation.
- In some instances, checks will be required by law. If your organisation and its workers are involved in child related work then generally a Working with Children Check will be required. Even when not required, your organisation ought to undertake some level of screening for volunteers.
- Organisations that have an anti-discrimination policy and procedures help protect their workers from discriminatory behaviour and help prevent damage that may arise from a complaint of discrimination.

Inducting volunteers

- Volunteers should complete an induction process before starting any volunteer work. Use a Volunteer Induction Checklist.
- A Volunteer Agreement is also an important part of engaging volunteers.
- A genuine volunteer relationship requires there is no legally binding relationship between the organisation and the volunteer in relation to the work to be carried out. In some circumstances an organisation can impose legally binding obligations on a volunteer in relation to intellectual property and confidential information.

Managing volunteer performance

- If not done correctly, performance management can be problematic.
- A well-structured performance management system provides a number of benefits both to the organisation and the volunteer.
- A management system should include a management plan and processes to be followed.

Managing volunteer grievances

- Volunteers have the right to express grievances with the volunteer program or your organisation.
- Your organisation should make sure volunteers' grievances are heard and dealt with in an appropriate manner.
- Have a volunteer grievance policy in place that outlines the process of making a complaint, how it will be resolved and who is responsible for resolving it.

Ending the volunteer relationship

- Sometimes ending the relationship is necessary to make sure your organisation is acting in accordance with the standard of care to its workers that is required by law.
- There may be other reasons to end the relationship.
- Many volunteers don't understand how the relationship can end – it's important this is understood from the beginning of the relationship. Discuss this as part of the induction process.



Annexure1:

**Screening requirements by state and
territory**

Annexure 1

Screening requirements by state and territory

The links below will take you to the Not-for-profit Law website (to the page concerning recruitment).

Scroll to the end of the page and select your jurisdiction. Screening Guides for each jurisdiction were reviewed in August 2018.

[Australian Capital Territory](#)

[New South Wales](#)

[Northern Territory](#)

[Queensland](#)

[South Australia](#)

[Tasmania](#)

[Victoria](#)

[Western Australia](#)

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 also has resources on the following related topics:

► [Recruitment](#)

For more information about recruitment including Not-for-profit Law's screening guide checks

► [The people involved](#)

This page sets out the special legal obligations and rights that apply to an organisation's relationships with employees, volunteers, funders, donors and service users.

► [Insurance and risk](#)

For more information on insurance and risk management, read our risk management and insurance guide.

► [Privacy](#)

You can download Not-for-profit Law's privacy guide, which includes information about obligations under privacy law.

State and territory anti-discrimination and equal opportunity regulators

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

Anti-discrimination and equal opportunity 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 \(Vic\)](#)
- ▶ [Racial Discrimination Act 1975 \(Cth\)](#)
- ▶ [Sex Discrimination Act 1984 \(Cth\)](#)

Other relevant legislation

- ▶ [Fair Work Act 2009 \(Cth\)](#)
- ▶ [Privacy Act 1988 \(Cth\)](#)

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](#)

