Child safety (Vic)

Legal information for Victorian community organisations

This fact sheet covers:

- child safety and your organisation's duty of care
- Victorian Child Safe Standards
- responding to allegations of child abuse
- mandatory reporting obligations
- screening checks
- insurance considerations, and
- record-keeping obligations

When you work with children, you have a legal responsibility to ensure their physical, mental and emotional safety.

In addition to the duty of care your community organisation owes employees, volunteers, clients and possibly members of the public, you may have special responsibilities regarding children that your organisation comes into contact with.

Disclaimer

This fact sheet provides information on legal obligations regarding the safety of children in Victoria. This information is intended as a guide only, and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to the full disclaimer that applies to this fact sheet.

Child safety and your duty of care

A Victorian community organisation may owe children a duty of care under the common law (ie. judge made law) of negligence or under provisions of the *Wrongs Act 1958* (Vic) (**Wrongs Act**).

To meet your legal responsibility to children, generally, at common law, you must meet the standard expected of a reasonably competent and prudent organisation in the same position and with the same knowledge as you. **The standard of care owed to children is generally higher than that owed to other people.**

In certain circumstances, your organisation may be held legally responsible (ie. liable) for its workers' or volunteers' actions where the actions cause harm to a child.

It's crucial that your organisation assesses the risks of interaction with children carefully to work out whether it needs to implement further safeguards and processes to help ensure their safety (ie. reasonable precautions). An important safeguard is to have comprehensive induction and training processes in place for workers, including volunteers.

During induction and training

Make sure every person involved in your organisation understands its policies and processes on child safety, and why they exist.

To make sure every person involved in your organisation understands its policies and processes on child safety, and why they exist:	
• highlight policies that are relevant to children, like social media, privacy, IT and appropriate workplace behaviour policies	☐
• explain the importance of a safe workplace and provide training on how to avoid harmful situations, where possible, and point out any special safety requirements that relate to children	☐
• set out the reporting lines and process for dealing with complaints and concerns about child safety	☐
• outline any reporting requirements for child safety that apply to your workers and volunteers (see discussion below) and your organisation's process for reporting, and	☐
• foster a culture of open communication by encouraging the people in your organisation to express any concerns about child safety	☐

In addition to its duty of care to ensure child safety, your organisation may also have obligations under the *Occupational Health and Safety Act 2004* (Vic).

Under these laws, you are required, so far as is reasonably possible, to provide and maintain a working environment that is safe and without risks to health, and to make sure others are not exposed to risks to their health or safety because of the organisation's conduct. If you are dealing with children, you should consider any special measures you may need to take to meet these obligations.

More information

For more information about your organisation's duty of care, see our webpage on negligence, accidents and incidents.

For more information about occupational health and safety obligations, see our webpage on occupational health and safety laws in Victoria.

Child abuse and your duty of care

In addition to the duty of care described above, under the Wrongs Act, your organisation may owe a duty to take reasonable care to prevent the physical or sexual abuse of a child by a person associated with the organisation.

This duty applies to all organisations that exercise care, supervision or authority over children (regardless of whether this is a part of its primary functions or activities).

Under these laws, an organisation must take 'reasonable precautions' to prevent the abuse of a child by a person associated with the organisation while the child is under its care, supervision or authority. People

'associated' with an organisation include, but are not limited to, officers, office holders, employees, owners, volunteers and contractors.

Importantly, if abuse occurs, the organisation is presumed to have breached its duty unless it proves it took 'reasonable precautions' to prevent the abuse.

What 'reasonable precautions' are will depend on the nature of the organisation and the perpetrator's role in the organisation.

At a minimum, organisations that exercise care, supervision or authority over children should take the following precautions:

- screening and reference checking
- supervision and training
- implement systems to provide early warning of possible offences
- random and unannounced inspections to deter misconduct, and
- encourage children and adults to notify authorities or parents about any signs of aberrant or unusual behaviour

Organisations may need to take additional steps if the nature of the organisation and the perpetrator's role requires this.

Note – unincorporated organisations

Under the *Legal Identity of Defendants (Organisational Child Abuse) Act 2018* (Vic) child abuse victims can bring proceedings about a child abuse claim against non-government organisations that are unincorporated.

If a claim is brought against an unincorporated organisation, the organisation can nominate an entity that can be sued to defend the claim. If the organisation fails to do this, a court can appoint the unincorporated organisation's associated trusts to be sued on its behalf and pay compensation to victims.

Before this law came into force, unincorporated organisations using trusts to conduct their activities couldn't be sued in their own right (as they are not incorporated entities).

Victorian Child Safe Standards

Victoria has compulsory minimum Child Safe Standards (**Standards**). These form part of the Victorian Government's response to the Betrayal of Trust Inquiry.

The Standards aim to help organisations providing services to children to:

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

Who must comply with the standards?

In general, Victorian community organisations that:

- provide any services specifically for children
- provide any facilities specifically for use by children who are under the organisation's supervision, or
- engage a child as a contractor, employee or volunteer to assist the organisation in providing services, facilities or goods,

must comply with the Standards

The specific organisations that must comply with the Standards are listed in Schedule 1 of the *Child Wellbeing and Safety Act 2005* (Vic) (**Act**) and include organisations that exercise care, supervision or authority over children, whether as part of its primary function or not.

The Victorian Commission for Children and Young People (**Commission**) is the oversight body for the Standards and works with organisations to build their capacity to meet the requirements. The Commission also oversees and enforces compliance with the Standards and has a wide range of audit and enforcement powers, including referring allegations of non-compliance to other authorities.

The Standards

Standard 1: Organisations establish a culturally safe environment in which the diverse and unique identities and experiences of Aboriginal children and young people are respected and valued.

Standard 2: Child safety and wellbeing is embedded in organisational leadership, governance and culture.

Standard 3: Children and young people are empowered about their rights, participate in decisions affecting them and are taken seriously.

Standard 4: Families and communities are informed, and involved in promoting child safety and wellbeing.

Standard 5: Equity is upheld and diverse needs respected in policy and practice.

Standard 6: People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice.

Standard 7: Processes for complaints and concerns are child focused.

Standard 8: Staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training.

Standard 9: Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed.

Standard 10: Implementation of the Child Safe Standards is regularly reviewed and improved.

Standard 11: Policies and procedures document how the organisation is safe for children and young people

These standards have been in place since 1 July 2022.

These standards replaced the previous seven standards after the Victorian Government endorsed recommendations made in a review conducted by the Victorian Department of Health and Human Services.

Tip

Even if your organisation is not legally required to comply with the Standards, if it interacts with children, the Commission recommends you use these Standards as a guide to create a child safe environment and work towards compliance. You can then be satisfied that you are taking all reasonable steps to protect children from risks to their health and safety.

Note – National Principles for Child Safe Organisations

In February 2019, the Federal Government endorsed the National Principles for Child Safe Organisations (**National Principles**). The National Principles draw on recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**) and provide a nationally consistent approach to embedding a child safe culture across all organisations in all sectors in Australia.

The National Principles are broader in operation than the Victorian Standards. Although Australian organisations are not legally required to adopt them, the National Principles are considered best practice for fostering child safety and wellbeing culture and practice.

The National Principles, along with helpful supporting resources, can be accessed on the Child Safe Organisations website. Additionally, the National Office for Child Safety has published a Complaint Handling Guide.

Case study – the Royal Commission

The Royal Commission found that to keep children safe, an organisation must create and maintain a protective environment that minimises rather than accentuates the risk of abuse.

The Royal Commission critically analysed the system errors, failures and oversights of a particular organisation to demonstrate certain 'unacceptable' actions of a child safe organisation. These include, but are not limited to:

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

The Standards and National Principles aim to respond to these concerns.

Responding to allegations of abuse

In addition to the Standards, the Commission also administers the Reportable Conduct Scheme (**Scheme**).

The Scheme requires certain organisations with a high level of responsibility for children to respond to allegations of child-related misconduct made against their workers, including volunteers, and report these allegations to the Commission.

The Scheme applies to a subset of organisations already covered by the Standards that have a greater responsibility for children. The specific organisations that must comply with the Scheme are listed in Schedules 3, 4 and 5 of the Act.

These organisations are required to:

- ensure the head of the organisation is made aware of, and reports to the Commission, any allegation of reportable conduct made against a worker or volunteer (for example, physical violence, sexual misconduct and significant neglect)
- provide information or documents relating to a reportable allegation to the Commission
- ensure appropriate investigation of the allegation, and
- report any findings and the reasons for the outcome of an investigation to the Commission at the conclusion of the investigation

The Commission has the power to monitor an organisation's investigation into abuse or misconduct, inquire into the safety systems of an organisation engaged in child-related work and share information with key organisations to improve child safety.

Importantly, the Scheme does not interfere with reporting obligations to Victoria Police or with Victoria Police investigations. The Scheme requires all allegations of suspected criminal conduct to be reported to Victoria Police as the first priority.

More information

For more information about the Standards (including guidance around implementation) and the Reportable Conduct Scheme, visit the Commission's website. The Commission has published a number of practical resources including 'A Guide for Creating a Child Safe Organisation'.

Mandatory reporting

There are mandatory reporting obligations – some apply to all adults, and others apply to certain people.

Note

If your organisation engages or works with children, it's crucial that your workers (employees, contractors and volunteers) are aware of their reporting obligations and any potential consequences if they fail to meet them.

Reporting obligations that apply to all adults

Any adult (a person 18 years or older) who forms a reasonable belief that a sexual offence has been committed in Victoria by an adult against a child (a person under 16 years) has an obligation to report that information to Victoria Police as soon possible.

If an adult fails to disclose this information to police, this is a criminal offence punishable by up to three years imprisonment under section 327 of the *Crimes Act 1958* (Vic) (**Crimes Act**).

A 'reasonable belief' does not require proof. Rather, it is formed if a reasonable person in the same position would have formed the belief on the same grounds.

For example:

- a child states they have been sexually abused or that they know someone who has been sexually abused (sometimes the child may be talking about themselves)
- someone who knows a child states that the child has been sexually abused
- professional observations of the child's behaviour or development lead a professional to form a belief that the child has been sexually abused, or
- signs of sexual abuse lead to a belief that the child has been sexually abused

A person will not be guilty of the offence if they have a reasonable excuse for not disclosing suspected abuse.

A reasonable excuse includes:

- where the person fears, on reasonable grounds, for the safety of any person (other than the alleged offender) and the failure to disclose the information is a reasonable response in the circumstances, or
- where the person believes that the information has already been disclosed to Victoria Police and they have nothing further to add

A person doesn't have a reasonable excuse for failing to disclose sexual abuse if they are only concerned for the perceived interests of the perpetrator or any organisation. 'Perceived interests' includes reputation, legal liability or financial status.

This reporting obligation applies to all adults in your organisation in relation to the belief they hold about any child. While section 327 does not impose any reporting obligations on the organisation itself, the organisation may have reporting obligations under the Reportable Conduct Scheme described above.

Note

There are exceptions to the section 327 offence, including:

- where the victim requests confidentiality – the obligation to report does not apply where the information comes from a person aged 16 or over and this person requests that the offence not be reported
- the person was a child when they formed a reasonable belief – if a person was under the age of 18 when they formed a reasonable belief, they will not be obliged to make a disclosure when they turn 18
- the information would be privileged – if the information is disclosed in situations where it would be privileged (client legal privilege, journalistic privilege or a religious confession)
- the information is confidential communication – a registered medical practitioner or counsellor is not required to disclose information to police if the information is obtained from a child while providing treatment and assistance to that child in relation to sexual abuse
- the information is in the public domain – the obligation to report does not apply to a person if they receive information through the public domain or form their 'reasonable belief' solely from information in the public domain (for example, from news articles), or
- the victim of the alleged sexual offence turned 16 years old before the start of the reporting obligation on 27 October 2014

Tip

If you are unsure about whether any exceptions apply or if you are required to make a mandatory report, seek legal advice.

Reporting obligations that apply to certain people

The *Children, Youth and Families Act 2005* (Vic) (**Children, Youth and Families Act**) provides that a person may report concerns about a child's welfare where they form a reasonable belief that the child is '**in need of protection**'.

What does ‘in need of protection’ mean?

A child will be considered ‘in need of protection’ if:

- the child has been abandoned by their parents and after reasonable inquiries:
  - the parents can’t be found, and
  - no other suitable person can be found who is willing and able to care for the child
- the child's parents are dead or incapacitated and there is no other suitable person willing and able to care for the child
- the child has suffered or is likely to suffer:
  - significant harm as a result from either physical injury or sexual abuse, or
  - emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged, and the child’s parents have not protected or are unlikely to protect them from that harm, or
  - the child's physical development or health has been, or is likely to be, significantly harmed and the child's parents have not provided, arranged or allowed the provision of, or are unlikely to provide, arrange or allow the provision of, basic care or effective medical, surgical or other remedial care

The Children, Youth and Families Act also puts mandatory reporting requirements on certain people working in the medical profession, justice system, education and other children’s services.

Tip

To check whether your organisation’s employees, contractors or volunteers are required to meet this more rigorous reporting standard, see the full list in section 182 of the Children, Youth and Families Act.

Where a person, in the course of their office, position or employment, forms a **belief**, on reasonable grounds, that a child has suffered or is likely to suffer significant harm as a result of either physical injury or sexual abuse, and the child's parents have not protected, or are unlikely to protect, the child from harm of that type, they are required to report this to the Department of Health and Human Services as soon as practicable.

A belief is a belief on reasonable grounds if a reasonable person practising the profession or carrying out the duties of the office, position or employment, as the case requires, would have formed the belief on those grounds.

It is a criminal offence not to comply with a mandatory reporting obligation. It is a defence to prove that the mandatory reporter honestly and reasonably believed that all the reasonable grounds for their belief had been the subject of a report to the Department made by another person.

Reducing or removing risk of child sex abuse

Under section 49O of the Crimes Act, people who occupy positions in organisations that exercise care, supervision or authority over children who fail to protect a child from a risk of sexual abuse may be guilty of a criminal offence.

These organisations include youth organisations, sporting groups, charities and benevolent organisations.

Tip

See section 49O of the Crimes Act for the full list of ‘relevant organisations’.

A person may be charged with a criminal 'failure to protect' offence if:

- there is a substantial risk that a child will become the victim of a sexual offence committed by another person who is 18 years of age or more and is associated with the relevant organisation, and
- the person:
  - occupies a position in, or in relation to, a relevant organisation (ie. employees, owners, volunteers, contractors, office holders, officers and agents of the organisation)
  - knows that risk exists
  - by reason of their position, has the power or responsibility to reduce or remove that risk, and
  - negligently fails to reduce or remove that risk

Case study – the Royal Commission

The Royal Commission heard that a school’s deputy head asked police for advice after a student alleged bullying and sexual harassment. The advice, which recommended that the school formally report the incident to police to avoid any possible action for concealing an indictable criminal act under the Crimes Act, was then circulated to the school’s headmaster and members of the leadership team, including a school counsellor.

During the Royal Commission, the school’s leadership group admitted that no one had properly read the email, deeming it a ‘catastrophic failure’. As a result, there were no internal discussions about the incident, nor did the school ever act on the advice.

Tip

If your organisation engages or works with children, it’s important that everyone who works in your organisation (including volunteers) is aware of their reporting obligations and any potential consequences of failing to meet them.

Reporting obligations should form a part of your organisation’s standard induction, training and ongoing professional development processes, and you should have written policies and procedures in place.

More information

For more information about child protection and mandatory reporting in Victoria, go to the Department of Health and Human Services, Child Protection website.

For a list of regional and metropolitan phone numbers, see the Department's Child Protection Contacts.

To report concerns that are life threatening, call Victoria Police on 000.

For **urgent child protection concerns**, call the After Hours Child Protection Emergency Services on 13 12 78.

Screening checks

Organisations that work with children need to screen their workers in many circumstances.

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

Who needs to be screened?

When an organisation involves children in their service or activities, the organisation may need Working with Children Checks (**WWC Checks**) from the people working with children.

In Victoria, all your organisation's workers, including volunteers, who undertake 'child-related work' in one of the specific activities defined in the *Worker Screening Act 2020* (Vic) (**Worker Screening Act**) must have a WWC Check (unless an exemption applies). If this requirement is not met, it is an offence (with penalties) for both the organisation and the worker.

What is 'child-related work'?

Activities will be considered 'child-related work' for the purposes of a WWC Check where the work with your organisation (paid or unpaid) **usually** involves **direct contact** with a child.

Contact which is only occasional or incidental to the work does not fall within the definition of 'child-related work' under the Worker Screening Act.

What is 'direct contact'?

What constitutes 'direct contact' is broadly defined in the Worker Screening Act.

It means any contact between a person and child that involves physical contact, face-to-face contact, contact by post or other written communication, contact by telephone or other oral communication, and contact by email or other electronic communication.

Your organisation must identify who will need WWC Checks.

More information

Our Screening Check Guide for Victoria goes through the requirements in more detail.

A common area of confusion is whether adult workers (including volunteers) are required to get WWC Checks when working alongside children.

Example of when a WWC Check is required
✓ An adult worker (including a volunteer) will require a WWC Check if they have direct contact with a child as part of their duties (this includes supervising a child).

Examples of when a WWC Check is not required
✗ A child's parent will not require a WWC Check if they are participating in an activity in which their own child is participating or ordinarily participates.
✗ An adult 'closely related' to a child in their 'child-related work' will not require a WWC Check.

What does 'closely related' mean?

A person is closely related to a child if they are the child's spouse, parent, step-parent, mother-in-law, father-in-law, grandparent, uncle or aunt, brother or sister (including half-siblings, step-siblings and siblings-in-law).

Other exemptions to the requirement to get a WWC Check when engaging in 'child-related work' are set out in the Worker Screening Act and described in further detail in our Screening Checks Guide for Victoria.

Even if a WWC Check is not required under the Worker Screening Act, due to your organisation's overarching duty of care to provide a safe environment (described above), you should consider whether other screening checks might still be appropriate (for example, police or reference checks).

Case study – the Royal Commission

A case study from the Royal Commission highlights what happens when people are employed without adequate background and criminal history checks.

In this case, the offender was employed as a bus driver by a school. When he was employed, he'd been convicted of three sexual offences against children. The school had no obligation to check his criminal history and didn't check this. Years later, he was convicted of five sexual offences against three of the school's students.

A WWC Check would have likely revealed his previous sexual offences and prevented the abuse. The example highlights the importance of taking a conservative approach to WWC Checks.

More information

For more information about WWC checks (including guidance on whether your workers are required to have a WWC check), visit the Working with Children Check website.

Do youth working in our organisation need to be screened?

Generally, under the Worker Screening Act, workers under 18 years and engaged in 'child-related' work **will not require** a WWC Check until they turn 18.

Student volunteers **aged 18 or 19 years** whose volunteer work has been organised by their educational institution **will not require** a WWC Check.

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

Depending on a youth volunteer's role and responsibilities, your organisation may choose to do other appropriate screening such as police and reference checks.

More information

For more detailed information about WWC checks and police checks, see to our Screening Checks guide for Victoria and part 3 of our National Volunteer Guide.

For further information about duties of care, negligence and occupational health and safety, see to our webpage on insurance and risk.

Insurance considerations

Even if your community organisation puts measures in place to avoid or minimise risk to the safety and well-being of children, there may be potential risks that can't be avoided. Your community organisation can look at available insurance options to protect against those risks.

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

More information

For more information about risk and insurance see our guide on this topic.

It's also important that your community organisation is aware of what is and isn't covered in the insurance contract. In particular – whether your insurance policies cover all people involved in your organisation, including children, and in what circumstances.

To assess your organisation's coverage, review your current policies and, if in doubt, ask your insurer or insurer broker the following questions:

- does the policy have any age limits that may affect a claim?
- are actions of children covered?

- are injuries sustained by children covered?
- are there any particular reporting, record keeping or other requirements for claims involving children?
- do any exclusions that might affect the organisation's coverage apply?

Tip

When your organisation signs an agreement with another party, **check whether there is any requirement** to take out particular insurance. This is reasonably common, particularly in agreements to provide services.

Insurance is often a complex issue for community organisations. You may want to **contact an insurance broker who has experience** in arranging insurance for not-for-profit organisations to ensure the insurance you take out is suited to your particular needs.

Record-keeping obligations

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

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

There are also many sources of record keeping obligations for specific types of information or in certain circumstances

For example:

- funding agreements may ask that specific records are kept for an extended period of time
- insurance contracts may require that records be held for an extended period of time
- certain employee records must be kept for seven years, and
- criminal litigation – under the Crimes Act it is a criminal offence to destroy documents if an office bearer or staff member is aware they may be needed for any actual or threatened court action being brought against the organisation or any of its clients

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

If the documents relate to a death or personal injury, the documents may need to be retained for 12 years, as such an action may be brought within the period of 12 years from the date of the act or omission alleged to have resulted in the death or personal injury.

However, where a claim involves a child, the situation is different and your organisation should keep records for as long as possible.

In Victoria, there is no limitation period for taking legal action for personal injury from child sexual abuse. This means a person can bring a claim at any point in their life, regardless of how long ago the harmful act took place.

Case study – the Royal Commission

The Royal Commission provided case studies that demonstrate the long-term consequences of an institution's failure to keep adequate documents and records.

The destruction of critical documents, or inconsistent record-keeping, meant that, in many circumstances, schools and other institutions couldn't confirm whether and to what extent they conducted investigations in response to allegations of abuse, and if they had, the outcomes. Further, institutions couldn't connect information about an offender's behaviour or respond adequately to subsequent concerns years later. Similarly, many young victims weren't able to get answers about the circumstances of their abuse.