

National Volunteering Guide

Part 5

Workplace behaviour

Feb 2024



Contents

Part 5	3
Do sexual harassment, discrimination, bullying and victimisation laws apply to volunteers in the workplace?	5
Sexual harassment	10
Sexual harassment laws and your organisation's obligations	12
Federal sexual harassment laws	12
Legal consequences under the Fair Work Act	15
State and territory sexual harassment laws	15
Discrimination	20
Discrimination law and your organisation's obligations	22
Federal anti-discrimination laws	23
State anti-discrimination laws	25
Bullying	30
Bullying and your organisation's obligations	35
Legal consequences under the Fair Work Act	36
Victimisation	38
Your organisation's obligations	39
Victimisation laws	39
State and territory victimisation laws	41
Making a complaint – discrimination, sexual harassment, bullying and victimisation	45
Discrimination, sexual harassment and victimisation	45
Bullying	48
Summary – volunteers and unlawful workplace behaviour	51



Part 5

Workplace behaviour

Volunteers and unlawful workplace behaviour



This part covers:

- ▶ how sexual harassment, discrimination, bullying and victimisation laws apply to volunteers
- ▶ making a complaint under discrimination, sexual harassment, bullying and victimisation laws

This part of the guide considers how sexual harassment, discrimination, bullying and victimisation laws apply to volunteers in the workplace.



Note – negligence and work health and safety laws

Your organisation has legal responsibility for the actions of its volunteers under negligence and work health and safety laws.

An organisation's responsibilities under these laws are relevant to managing unlawful workplace behaviours. For example, where an organisation fails to meet its duty to ensure the health and safety of a client, such as being aware of a volunteer sexually harassing a client but not doing anything to stop the sexual harassment, there will be an impact on the organisation (including reputational and financial damage) and the client (for example, physical and or psychological harm).

For more information about an organisation's responsibilities under negligence and work health and safety laws, see part 4 of this guide.

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

The tables below set out Commonwealth, state and territory legislation relevant to sexual harassment, discrimination, bullying and victimisation and summarises the extent to which these laws apply to volunteers.

Commonwealth			
Sexual harassment	Discrimination	Bullying	Victimisation
<u>Sex Discrimination Act 1984 (Cth)</u> <u>Fair Work Act 2009 (Cth)</u>	<u>Racial Discrimination Act 1975 (Cth)</u> <u>Disability Discrimination Act 1992 (Cth)</u> <u>Age Discrimination Act 2004 (Cth)</u> <u>Sex Discrimination Act 1984 (Cth)</u>	<u>Fair Work Act 2009 (Cth)</u>	<u>Racial Discrimination Act 1975 (Cth)</u> <u>Disability Discrimination Act 1992 (Cth)</u> <u>Age Discrimination Act 2004 (Cth)</u> <u>Sex Discrimination Act 1984 (Cth)</u> <u>Australian Human Rights Commission Act 1986 (Cth)</u>
This applies to volunteers unless the organisation has no employees. See 'sexual harassment' below	These may apply to volunteers in certain circumstances – see 'discrimination' below	This applies to volunteers unless the organisation has no employees or is not a constitutionally covered organisation – see 'bullying' below	These may apply to volunteers in certain circumstances – see 'victimisation' below

Australian Capital Territory			
Sexual harassment	Discrimination	Bullying	Victimisation
<u>Discrimination Act 1991 (ACT)</u>	<u>Discrimination Act 1991 (ACT)</u>	<u>Work Health and Safety Act 2011 (ACT)</u>	<u>Discrimination Act 1991 (ACT)</u>
✓ This applies to volunteers	✓ This applies to volunteers	This applies to volunteers if the organisation: <ul style="list-style-type: none"> • meets the definition of a 'person conducting a business or undertaking', and • doesn't meet the definition of a 'volunteer association' See 'bullying' below	✓ This applies to volunteers



New South Wales			
Sexual harassment	Discrimination	Bullying	Victimisation
<u><i>Anti-Discrimination Act 1977 (NSW)</i></u>	<u><i>Anti-Discrimination Act 1977 (NSW)</i></u>	<u><i>Work Health and Safety Act 2011 (NSW)</i></u>	<u><i>Anti-Discrimination Act 1977 (NSW)</i></u>
✓ This applies to volunteers	This may apply to volunteers in certain circumstances – see the discrimination section of this part of the guide	<p>This applies to volunteers if the organisation:</p> <ul style="list-style-type: none"> • meets the definition of a ‘person conducting a business or undertaking’, and • doesn’t meet the definition of a ‘volunteer association’ <p>See the bullying section of this part of the guide</p>	These may apply to volunteers in certain circumstances – see the victimisation section of this part of the guide

Northern Territory			
Sexual harassment	Discrimination	Bullying	Victimisation
<u><i>Anti-Discrimination Act 1992 (NT)</i></u>	<u><i>Anti-Discrimination Act 1992 (NT)</i></u>	<u><i>Work Health and Safety (National Uniform Legislation) Act 2011 (NT)</i></u>	<u><i>Anti-Discrimination Act 1992 (NT)</i></u>
<p>The law currently in force is unlikely to apply to volunteers.</p> <p>New laws coming into force on a date to be announced, but no later than 1 October 2024, will apply to volunteers.</p>	<p>The law currently in force is unlikely to apply to volunteers.</p> <p>New laws coming into force on a date to be announced, but no later than 1 October 2024, will apply to volunteers.</p>	<p>This applies to volunteers if the organisation:</p> <ul style="list-style-type: none"> • meets the definition of a ‘person conducting a business or undertaking’, and • doesn’t meet the definition of a ‘volunteer association’ <p>See ‘bullying’ below</p>	<p>The law currently in force is unlikely to apply to volunteers.</p> <p>New laws coming into force on a date to be announced, but no later than 1 October 2024, will apply to volunteers.</p>



Queensland			
Sexual harassment	Discrimination	Bullying	Victimisation
<u>Anti-Discrimination Act 1991 (QLD)</u>	<u>Anti-Discrimination Act 1991 (QLD)</u>	<u>Work Health and Safety Act 2011 (QLD)</u>	<u>Anti-Discrimination Act 1991 (QLD)</u>
✓ This applies to volunteers	✓ This applies to volunteers	This applies to volunteers if the organisation: <ul style="list-style-type: none"> • meets the definition of a 'person conducting a business or undertaking', and • doesn't meet the definition of a 'volunteer association' See 'bullying' below	✓ This applies to volunteers

South Australia			
Sexual harassment	Discrimination	Bullying	Victimisation
<u>Equal Opportunity Act 1984 (SA)</u>	<u>Equal Opportunity Act 1984 (SA)</u>	<u>Work Health and Safety Act 2012 (SA)</u>	<u>Equal Opportunity Act 1984 (SA)</u>
✓ This applies to volunteers	✓ This applies to volunteers	This applies to volunteers if the organisation: <ul style="list-style-type: none"> • meets the definition of a 'person conducting a business or undertaking', and • doesn't meet the definition of a 'volunteer association' See 'bullying' below	✓ This applies to volunteers



Tasmania			
Sexual harassment	Discrimination	Bullying	Victimisation
<u>Anti-Discrimination Act 1998 (Tas)</u>	<u>Anti-Discrimination Act 1998 (Tas)</u>	<u>Work Health and Safety Act 2012 (Tas)</u>	<u>Anti-Discrimination Act 1998 (Tas)</u>
✓ This applies to volunteers	✓ This applies to volunteers	This applies to volunteers if the organisation: <ul style="list-style-type: none"> • meets the definition of a 'person conducting a business or undertaking', and • doesn't meet the definition of a 'volunteer association' See 'bullying' below	✓ This applies to volunteers

Western Australia			
Sexual harassment	Discrimination	Bullying	Victimisation
<u>Equal Opportunity Act 1984 (WA)</u>	<u>Equal Opportunity Act 1984 (WA)</u>	<u>Work Health and Safety Act 2020 (WA)</u>	<u>Equal Opportunity Act 1984 (WA)</u>
This doesn't apply to volunteers	This doesn't apply to volunteers	This applies to volunteers if the organisation: <ul style="list-style-type: none"> • meets the definition of a 'person conducting a business or undertaking', and • doesn't meet the definition of a 'volunteer association' See 'bullying' below	This may apply to volunteers in certain circumstances - see the victimisation section of this part of the guide



Victoria			
Sexual harassment	Discrimination	Bullying	Victimisation
<u><i>Equal Opportunity Act 2010 (Vic)</i></u>	<u><i>Equal Opportunity Act 2010 (Vic)</i></u>	<u><i>Occupational Health and Safety Act 2004 (Vic)</i></u>	<u><i>Equal Opportunity Act 2010 (Vic)</i></u>
✓ This applies to volunteers	This may apply to volunteers - see 'discrimination' below	This applies to volunteers if the organisation: <ul style="list-style-type: none">• is an 'employer' (that is, they have employees), or• manages or controls a 'workplace' See 'bullying' below	This may apply to volunteers - see the victimisation section of this part of the guide

Sexual harassment

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



What is sexual harassment?

The definition of sexual harassment differs slightly between the federal laws and the laws in each state and territory.

Generally, sexual harassment occurs when the following two factors are met:

- a person makes unwelcome sexual advances, requests sexual favours, makes unsolicited acts of physical intimacy, or physical contact of a sexual nature or remarks with sexual connotations about another person, and
- the behaviour is intended, or could reasonably be expected, to offend, humiliate or intimidate the other person



Examples of conduct – sexual harassment

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

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



Example – sexual harassment

Peter volunteers with an environmental organisation. He leads a team of up to 10 other volunteers and they do door knocking, phone call campaigns and street petitions.

Peter is very friendly with his team and tries to create a very close team atmosphere. He uses words like 'babe' and 'doll' when talking to female members of the team. He also often winks and makes other sexually suggestive facial expressions at a few members of the team – male and female. Some team members are very uncomfortable with Peter's behaviour. One female team member has even said to Peter that she really doesn't like the pet names he uses and his other behaviour isn't appropriate. Peter laughed this off.

Peter's behaviour is likely to constitute sexual harassment. Peter's behaviour has sexual connotations and, particularly for the team member who expressed her discomfort, is unwelcome and could reasonably be expected to offend, humiliate or intimidate others.



Note – the #metoo movement

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

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

In the 2020 case of *Hughes trading as Beesley and Hughes Lawyers v Hill* [2020] FCAFC 126, a senior lawyer had made inappropriate sexual advances to a paralegal working at the firm and then prevented her from making an internal complaint. At trial, the paralegal was awarded \$170,000 in damages against the law firm.



What is harassment on the ground of sex?

'Sex' in this context is best defined as the gender identity, however expressed, of the person being discriminated against.

Harassment on the ground of sex takes place when a person engages in unwelcome conduct of a seriously demeaning nature, because of another person's sex or characteristic of their sex, in circumstances in which a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.



Examples of conduct – harassment on the ground of sex

Examples of conduct from the [Workplace Gender Equality Agency \(WGEA\)](#) which are likely to constitute sex-based harassment include:

- commenting offensively about a person because of their gender
- ignoring or isolating a person because of their gender
- making repeated sexual invitations to a person who has declined before
- making sexual gestures
- displaying sexist material in the workplace
- asking inappropriate sexual questions
- sexual touching, kissing or staring
- sexual assault

Sexual harassment laws and your organisation's obligations

Under these laws (where they apply):

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



Tip – best practice

Regardless whether the sexual harassment laws apply to your organisation and its volunteers (or if they only apply in limited circumstances, or only to your employees), it's best practice, as much as reasonably practicable, to comply with the laws.

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

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

- work health and safety laws to provide a both a workplace free from physical and psychological harm, and
- the law of negligence, which includes a duty to take reasonable care to avoid exposing your workers, including volunteers, to reasonably foreseeable risks of injury which could include harm caused by sexual harassment

Federal sexual harassment laws

At the federal level, the [Sex Discrimination Act 1984 \(Cth\)](#) (**Sex Discrimination Act**) and the [Fair Work Act 2009 \(Cth\)](#) (**Fair Work Act**) protect volunteers in certain circumstances.

From 11 September 2021, the 'worker' definition, which includes volunteers, was adopted from the [Work Health and Safety Act 2011\(Cth\)](#) (**Work Health and Safety Act**) into the Sex Discrimination Act. As a result, it is now unlawful for a worker or persons conducting a business or undertaking (**PCBU**), to harass another worker, or a person who is seeking to become a worker, in that business or undertaking, on the ground of sex. This law protects both volunteers and those seeking to become volunteers.

On 13 December 2022, amendments to both the Sex Discrimination Act and the Fair Work Act impose a positive duty on employers to take reasonable and proportionate measures to eliminate, as far as possible, sexual harassment and certain discriminatory conduct.

This positive duty to take reasonable and proportionate measures to eliminate sexual harassment from the workplace means taking steps to prevent this behaviour and not waiting for a complaint before addressing inappropriate workplace behaviour.

From 6 March 2023, under amendments to the [Fair Work Act](#):

- sexual harassment of persons seeking to become volunteers in a particular business or undertaking, is unlawful, and

- volunteers must not sexually harass another person where the other person is seeking to become a volunteer in a particular business or undertaking



Note – the positive duty to eliminate sexual harassment

Amendments to the Sex Discrimination Act have introduced a positive duty on employers and persons conducting a PCBU to take reasonable and proportionate measures to prevent and eliminate sexual harassment in places of work.

These amendments extend the protections to all paid and unpaid workers, including volunteers and interns engaged by an employer or PCBU. This duty is not imposed on volunteer associations (a volunteer association is entirely volunteer run and doesn't engage employees or contractors to carry out work on its behalf).

This means that most organisations are obliged to take proactive steps to prevent sexual harassment, as opposed to being simply reactive to individual complaints.

This duty is ongoing and requires employers to continually review their practices to ensure they are taking meaningful action to prevent harassment from occurring, including against volunteers.



Tips – taking positive steps to prevent sexual harassment in the workplace

- Develop and implement a policy on appropriate workplace behaviour, which makes it clear that sexual harassment is unacceptable and will not be tolerated. This policy should cover how the organisation will comply with laws about sexual harassment (where they apply).
- Make all workers (including volunteers) aware of:
 - the kind of behaviour that is unacceptable
 - the terms of the policy
 - what to do if they are subjected to harassment, and
 - what to do if the process for making a complaint does not resolve the matter
- Conduct training on appropriate workplace behaviour for incoming workers and refreshers for ongoing workers.
- Implement an appropriate screening process for volunteers to make sure you are not engaging a volunteer with a history of repeated sexual harassment (part 3 of this guide).
- Nominate a person to review and evaluate your organisation's compliance with the positive duty.
- Nominate a person, with sufficient authority to act on behalf of the organisation, who people can make complaints on inappropriate behaviour to.
- Implement a fair and transparent process for resolving complaints.

The Sex Discrimination Act has also been amended to provide volunteers (and others) protection from hostile workplace environments.



Note – hostile workplace environments

Under the Sex Discrimination Act, it is unlawful for a person to subject another person to a workplace environment that is hostile on the ground of sex (in this context, 'sex' refers to the gender identity, however described, to the other person).

A workplace environment will be hostile if it is offensive, intimidating or humiliating to a person because of two or more matters that relate to their sex or a characteristic of their sex, regardless of whether the sex or characteristic is the dominant or substantial reason.

A person will subject another person to a workplace environment that is hostile on the ground of sex if, while at work, the first person engages in conduct that a reasonable person (having regard to all the circumstances) would have anticipated might result in the workplace environment being offensive, intimidating or humiliating.

This conduct may include:

- commenting offensively about a person because of their gender
- ignoring or isolating a person because of their gender
- making repeated sexual invitations to a person who has previously declined such invitations
- making sexual gestures
- displaying sexist material in the workplace
- asking inappropriate sexual questions
- sexual touching, kissing or staring
- sexual assault

Volunteering within a specified area of public life.

In particular circumstances, the Sex Discrimination Act may also apply to volunteers where volunteering falls within a specified area of public life.

These areas of public life include:

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

Even if the Sex Discrimination Act doesn't apply, or only applies in specified areas of public life, your organisation may still owe duties under other laws to protect your volunteers from sexual harassment (for example, under state and territory discrimination laws, work health and safety laws or negligence law).



Example – government programs (sexual harassment)

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



Example – goods, services or facilities (sexual harassment)

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

Legal consequences under the Fair Work Act

From 6 March 2023, the Fair Work Act allows a person (including volunteers) who claims they have been sexually harassed in the workplace, to apply to the Fair Work Commission for an order to stop the harassment.

If the person making an application to the Commission for a stop sexual harassment order remains engaged in the workplace, they may make an application up to 24 months after the relevant conduct is alleged to have taken place.

If the Commission is satisfied that:

- the aggrieved person has been sexually harassed, and
- there is a risk that they will continue to be harassed,

the Commission may make an order it considers appropriate to prevent further harassment.

The purpose of an order is for the worker to be able to continue their work free from the harassment. The order may require monitoring of behaviour, compliance and review of existing policies, further support and anything else the Commission considers appropriate in the circumstances.

The Commission may not make an order requiring payment of a monetary amount.

Without issuing a stop harassment order, the Commission may deal with a dispute through mediation, conciliation, making a recommendation or expressing an opinion.

If attempts to resolve the dispute are unsuccessful, the Commission may issue a certificate allowing (within 60 days of the certificate being issued):

- the parties to agree to deal with the dispute by arbitration in the Commission, or
- the aggrieved person to apply to have the dispute heard by the Federal Court or the Federal Circuit and Family Court of Australia

Under these changes to the Fair Work Act, multiple aggrieved persons can make an application so the Commission can deal with the aggrieved persons jointly. This can be both practical and efficient in cases involving a common perpetrator.

State and territory sexual harassment laws

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

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

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

These laws are explained further below.



In **Western Australia**, it's unlikely the sexual harassment law applies to volunteers. However, your organisation may still owe duties under other laws to protect your volunteers from sexual harassment. For example, work health and safety laws or the common law.

The current law in the **Northern Territory** is unlikely to apply to volunteers. However, new laws passed by the Northern Territory Parliament (which are to come into force no later than 1 October 2024) will protect volunteers from sexual harassment as outlined above.

Australian Capital Territory

Volunteers are covered by the [Discrimination Act 1991 \(ACT\)](#) (**ACT Discrimination Act**) under the definition of employment. The definition of employment includes an unpaid worker being a person who performs work for an employer for no remuneration.

Under the ACT Discrimination Act it is unlawful for:

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

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

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

New South Wales

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

A person sexually harasses another person if:

- the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or
- the person engages in other unwelcome conduct of a sexual nature in relation to the other person,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

Northern Territory

Under the current [Anti-Discrimination Act 1992 \(NT\)](#) (**NT Anti-Discrimination Act**) the term 'work' doesn't include work performed by volunteers.

Work includes work:

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

This means that, at present, volunteers are unlikely to be covered by most provisions of the NT Anti-Discrimination Act, including the sexual harassment provisions. However, the law is unclear.

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

Queensland

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

'Work' includes work:

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

Sexual harassment is prohibited under the QLD Anti-Discrimination Act and occurs where a person:

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

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

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

South Australia

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

The SA Equal Opportunity Act makes it unlawful for a person to subject a volunteer who they work with to sexual harassment while at a place that is a workplace of both people or in circumstances where the person was, or ought reasonably to have been, aware that the other person was a fellow worker or seeking to become a fellow worker.

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

A person sexually harasses another if:

- the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed, or
- engages in other unwelcome conduct of a sexual nature in relation to the person harassed,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated.

Tasmania

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

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

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

Victoria

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

Under the Vic Equal Opportunity Act, it is unlawful for:

- an employer to sexually harass an employee, volunteer, or person seeking to become an employee or volunteer, or
- an employee or volunteer to sexually harass a fellow employee or volunteer, or a person seeking to become an employee or volunteer

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

The term 'sexual harassment' means:

- making an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person, or
- engaging in any other unwelcome conduct of a sexual nature in relation to another person,

in circumstances where a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

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

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

Western Australia

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

Provisions relating to sexual harassment rely on 'employment' (and only apply in relation to specified areas of public life being education, employment and accommodation). Accordingly, volunteers are

unlikely to be covered by most provisions of the WA Equal Opportunity Act, including the sexual harassment provisions.



For more information, see:

- Victorian Equal Opportunity and Human Rights Commission, [volunteers and sexual harassment webpage](#)
- Australian Human Rights Commission, [Effectively preventing and responding to sexual harassment – a code of practice](#)
- Queensland Human Rights Commission, [resource on sexual harassment](#), including a [sample Policy- discrimination and sexual harassment](#).

Discrimination

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

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

Along with duties that your organisation may owe under anti-discrimination laws, your organisation may have duties under work health and safety laws and under the law of negligence, which contains a duty to take reasonable care to avoid exposing your workers, including volunteers, to reasonably foreseeable risks of injury which could include harm caused by discrimination.



What is discrimination?

Under anti-discrimination laws, discrimination occurs when:

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

Discrimination can be:

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

Examples of discrimination

Discrimination of volunteers could occur in the recruitment process (see part 3 of this guide), or in other situations including not being given opportunities that other volunteers are given. Some further examples are below.



Note

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



Example – direct discrimination

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



Example – indirect discrimination

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

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



Example – reasonable indirect discrimination

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

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

Protected personal attributes

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

Protected areas of public life

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

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

Exceptions – when it is lawful to discriminate

Generally, discrimination will be lawful when it doesn't contravene any relevant anti-discrimination legislation. Discrimination is not against the law if the discrimination is not based on a protected attribute, is excused or exempted by law, or takes place in an area of life not covered by the legislation.

Discriminatory conduct that is excused or exempted differs between the states and territories, as set out in part 3 of this guide.

Discrimination law and your organisation's obligations

Under these laws (where they apply):

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

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



National Standards for Volunteer Involvement

Volunteering Australia's National Standards for Volunteer Involvement include **Standard 4: Recruitment is equitable and diversity is valued** – Volunteer recruitment and selection strategies meet the needs of the organisation and volunteers; they facilitate and value diversity and ensure equity and accessibility.

- 4.1** Organisations and groups involve volunteers using equitable and innovative approaches to attract people with relevant interests, knowledge and skills.
- 4.3** Volunteers are selected based on their interests, knowledge, skills and suitability for the role, and consistent with anti-discrimination law.
- 4.4** Diversity, inclusivity, and accessibility principles are built into recruitment activities, reflecting and promoting awareness of, and respect for, diversity and inclusion and the inherent value this brings to the organisation.

See this standard for examples of evidence of meeting this criteria.



Tips – minimising discrimination in the workplace

- Prepare, and implement, an anti-discrimination policy with a section on discrimination in recruitment that covers your volunteers (in addition to other workers). For further information on what should be contained in a policy, see part 3 of this guide.
- When recruiting volunteers, prepare a position description that focuses on the skills required for the volunteer role rather than the personal attributes that may be desirable. Use the same language in the position description across advertisements and in the interview process (for further information, see part 3 of this guide).
- Nominate a person who your volunteers are to make complaints on discriminatory behaviour to and have a fair and transparent process for resolving complaints.
- Make all volunteers (and workers) aware of relevant policies, and what to do if the process for making a complaint doesn't resolve the complaint.
- Conduct regular training for all volunteers and workers in relation to the policy so they recognise discriminatory practices and the processes for addressing them.

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

Federal anti-discrimination laws

At the federal level, discrimination laws are set out in the following legislation (and accompanying regulations). These discrimination laws make it unlawful to discriminate against a person in certain areas of public life.

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

These **Federal Discrimination Laws** apply to all Australian employers and workers and mainly cover discrimination by employers against employees and contractors. **Most of these laws do not apply to volunteers.**

However, in other specified areas of public life the Federal Discrimination Laws may apply to volunteers. All the Federal Discrimination Laws specify that they apply in the context of the provision of facilities, goods or services. Some of them also cover clubs (in this context means an association of at least thirty people that funds the provision of facilities for the club and sells or supplies alcohol) or sporting activities. Discrimination in these contexts prohibits organisations from discriminating against anyone, including volunteers.

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

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

Table – protected personal attributes under Federal Discrimination Laws

Protected Attribute	<i>Racial Discrimination Act 1975 (Cth)</i>	<i>Disability Discrimination Act 1992 (Cth)</i>	<i>Age Discrimination Act 2004 (Cth)</i>	<i>Sex Discrimination Act 1984 (Cth)</i>
Colour	✓			
Descent	✓			
National or ethnic origin	✓			
Race	✓			
Disability		✓		
Age			✓	
Breastfeeding				✓
Family responsibilities				✓
Sex				✓
Gender identity				✓
Intersex status				✓
Marital or relationship status				✓
Pregnancy or potential pregnancy				✓
Sexual orientation				✓



Discrimination – goods and services

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



Discrimination – access to premises

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

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

State anti-discrimination laws

Whether volunteers are covered by state and territory anti-discrimination laws, and what protected attributes are covered, differs. Volunteers are generally protected by these laws in the **Australian Capital Territory, Queensland, South Australia and Tasmania**. While not covered under current laws, new laws to come into force no later than 1 October 2024 in the **Northern Territory** will include these protections for volunteers.

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

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



Note – other laws to protect human rights and volunteers

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

- In Victoria – the [Racial and Religious Tolerance Act 2001 \(Vic\)](#) prohibits vilification on the basis of race or religion (and has a broad application so is likely to apply to volunteers) and the [Charter of Human Rights and Responsibilities Act 2006 \(Vic\)](#) (volunteers for government local authorities and other public authorities may be able to rely on this law)
- In Western Australia and Victoria – the [Spent Convictions Act 1988 \(WA\)](#) and [Spent Convictions Act 2021 \(Vic\)](#) prohibit discrimination on the basis of having a spent conviction (this may be applicable to recruitment of volunteers, see part 3 of this guide)
- In Queensland – the [Human Rights Act 2019 \(QLD\)](#) states that every person has a right to equal and effective protection against discrimination (if your organisation provides services on behalf of the Queensland government, you may also need to comply with this Act when making decisions about volunteers – check your funding agreement and ask your contract manager)
- In the Australian Capital Territory - the [Human Rights Act 2004 \(ACT\)](#) sets out that every person has the right to equal and effective protection against discrimination on any ground (volunteers for public authorities may be able to rely on this law)


Table – protected personal attributes in state and territory discrimination law

Each state and territory's legislation varies. The table below is an overview of these laws.

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



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

Australian Capital Territory

Pursuant to the [Discrimination Act 1991 \(ACT\)](#) (**ACT Discrimination Act**), the term:

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

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

New South Wales

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

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

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

Northern Territory

Under the current version of the [Anti-Discrimination Act 1992 \(NT\)](#) (**NT Anti-Discrimination Act**) the term 'work' doesn't include work performed by volunteers.

'Work' includes work:

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

When new laws come into force, an expanded definition of 'work' which expressly includes work carried out at any place on a volunteer or on another unpaid basis will apply.

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

If volunteers are presently covered by the NT Discrimination Act, organisations could be held vicariously liable (responsible) for the occurrence of discrimination in the workplace.

Queensland

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

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

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

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

South Australia

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

- 'employee' includes an unpaid worker
- 'employer' means an organisation for which the unpaid worker performs services
- 'employment' includes unpaid work
- 'unpaid worker' means a person who performs work for an employer for no remuneration.

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

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

Tasmania

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

Victoria

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

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

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

Western Australia

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



For more information, see:

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

Bullying

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

Separately to these provisions, workplace bullying of volunteers can also breach state and territory work health and safety (**WHS Laws**). Organisations covered by these laws owe various duties to their volunteers including providing and maintaining a working environment that is safe and without risks to health. Bullying in the workplace is a risk to 'psychological health.' The obligation to provide and maintain a working environment that is safe and without risks to health is explained in more detail in part 4 of this guide.

There is also a duty under negligence law to take reasonable care to avoid exposing your workers, including volunteers who might be exposed to reasonably foreseeable risks of injury, which could include harm caused by bullying. This is explained in more detail in part 4 of this guide.



What is bullying?

Under the Fair Work Act, workplace bullying occurs when:

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

A 'worker' is defined broadly and extends to volunteers, except those that volunteer in a completely volunteer-based organisation with no employees ('volunteer association').

Being at 'work' is not limited to the confines of a physical workplace. It can occur offsite, at work related functions and through social media channels.

The bullying provisions under the Fair Work Act apply to behaviour in your organisation if your organisation:

- 'conducts a business or undertaking' (the business or undertaking does not need to be for profit) within the meaning of work health and safety legislation (see the table at the start of this part of this guide summarising what bullying laws apply in all the states and territories and part 4 of this guide), and
- is a 'constitutional corporation' (see the note below) or is incorporated in the Australian Capital Territory or the Northern Territory,

The bullying provisions of the Fair Work Act don't apply to unincorporated associations.



Note – constitutional corporation

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

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

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

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

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

The bullying provisions of the Fair Work Act will apply to many incorporated not-for-profit volunteer involving organisations, unless they don't have any employees or pay anyone to carry out work on behalf of the organisation.

Unreasonable behaviour that creates a risk to health and safety

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

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



Note – psychological health and safety

As a result of changes to the model WHS Laws in 2022, the primary duty of PCBUs to ensure, as far as is reasonably practicable, the health and safety of workers now includes psychological health and safety. The duty is no longer limited to physical health and safety.

A PCBU must eliminate psychosocial risks in the workplace, or if that is not reasonably practicable, minimise these risks so far as is reasonably practicable.

Victoria (the only state or territory that is not part of the Harmonised WHS scheme) is developing regulations and a code to address the management of psychosocial risks.

See part 4 of this guide for more information on the primary duty of care and psychological health and safety.

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



Example – bullying

Background

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

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

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

Is this bullying?

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

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



Case example – bullying and liability under common law of negligence

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

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

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

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

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

When will behaviour not be bullying?

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

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

Reasonable management action

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



Example – reasonable management action

Background

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

Is this bullying?

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

Management action taken in a reasonable way

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



Example – management action taken in a reasonable manner

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



Example – management action taken in an unreasonable manner

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

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



Case example – Mr Stancu

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

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

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

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

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

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

Stancu [2015] FWC 1999 (26 March 2015)

Bullying and your organisation’s obligations

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

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



Tips – eliminating bullying behaviour

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

Legal consequences under the Fair Work Act

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

If the Commission is satisfied the worker has been bullied at work by a person or a group of people and there is a risk that the worker will continue to be bullied at work by the person or group, the Commission may make any order it considers appropriate.

It can make orders affecting the organisation generally or particular people within the organisation. The purpose of an order is for the worker to be able to continue their work without being bullied. The orders may require monitoring of behaviour, compliance and review of existing policies, further support and anything else the Commission considers appropriate except an order for payment of money.

Your organisation must comply with an order – if it doesn't, the person who has been bullied can then apply for an order for a financial penalty against your organisation.



Case example – Mr Bibawi

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

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

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

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

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

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



Note – actions of volunteer

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



National Standards for Volunteer Involvement

Volunteering Australia's National Standards for Volunteer Involvement includes **Standard 6: Volunteer safety and wellbeing is protected** – The health, safety and wellbeing of volunteers is protected and volunteers understand their rights and responsibilities

- 6.1** Effective working relationships with employees, and between volunteers, are facilitated.
- 6.2** Organisations and groups meet their legal and ethical obligations to protect volunteers from harm.
- 6.3** Processes are in place to protect the health, safety and wellbeing of volunteers in their capacity as volunteers, including relevant insurances, such as personal injury and liability.
- 6.4** Volunteers understand and have access to complaints procedures.
- 6.5** Complaints, concerns and safety incidents are analysed to identify causes and inform continuous improvement.

See this standard for examples of evidence of meeting this criteria.



For more information, see:

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

Also refer to the relevant Work Safe body in your state or territory – these bodies have published information on workplace bullying.

Victimisation

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

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

- work place health and safety laws, and
- the law of negligence, which contains a duty to take reasonable care to avoid exposing your workers, including volunteers, to reasonably foreseeable risks of injury which could include harm caused by victimisation



What is victimisation?

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

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

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

Under recent amendments to the Age Discrimination Act 2004, the Disability Discrimination Act 1992 and the Racial Discrimination Act 1975, acts of victimisation committed before the start of the amending Act (the Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022) are unlawful.

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



Example – victimisation

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

Both Chris and Anushka have been victimised.

Your organisation's obligations

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

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

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

Positive duty to eliminate acts of victimisation

The *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* imposes a positive duty on employers Australia-wide to 'take reasonable and proportionate measures to eliminate' victimisation as far as possible.

In practice, this means that employer organisations are obligated to take proactive steps to prevent acts of victimisation which relate to complaints, proceedings, assertions or allegations about discrimination, sexual harassment and hostile workplace environments. This duty is ongoing and requires employers to continually review their practices to ensure they are taking steps to prevent victimisation.



Tip – victimisation and ending the volunteer relationship

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

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

Victimisation laws

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

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

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

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

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



Victimisation – goods and services

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

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

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



Victimisation – access to premises

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

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

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

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



Example – victimisation by a volunteer

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

State and territory victimisation laws

Australian Capital Territory

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

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

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

New South Wales

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

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

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

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

Northern Territory

As noted above, the current *Anti-Discrimination Act 1992 (NT)* (**NT Anti-Discrimination Act**) definition of 'work' doesn't include work performed by volunteers. However, when new laws come into force, no later than 1 October 2024, volunteers will be included in the definition.

Work at present includes:

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

Accordingly, volunteers are unlikely to be covered by most provisions of the NT Anti-Discrimination Act at present. If it were to apply, the NT Anti-Discrimination Act makes it unlawful for a person to subject another person (or associate of the person) to victimisation because the person has (or intends to):

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

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

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

Queensland

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

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

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

Under the QLD Anti-Discrimination Act, organisations can be held vicariously liable (responsible) for victimisation in the workplace. One way in which an organisation can defend itself against liability is by proving that it took reasonable steps to prevent the victimisation from occurring. This includes taking

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

South Australia

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

- brought proceedings under the SA Equal Opportunity Act
- given evidence or information in proceedings under the SA Equal Opportunity Act
- made allegations that the victim or some other person has been the subject of an act that contravenes the SA Equal Opportunity Act
- reasonably asserted the victim's right, or the right of some other person, to lodge a complaint or take other proceedings under the SA Equal Opportunity Act, or
- otherwise done anything under or by reference to the SA Equal Opportunity Act

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

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

Tasmania

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

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

Victoria

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

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

- brought a dispute to the Victorian Equal Opportunity and Human Rights Commission
- made a complaint under the Vic Equal Opportunity Act
- brought any proceeding or dispute under the Vic Equal Opportunity Act against any person



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

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

If the Vic Equal Opportunity Act applies to your volunteers (for example, sexual harassment or in the specified 'areas' covered by the Vic Equal Opportunity Act) your organisation may have a positive duty to take reasonable and proportionate measures to eliminate victimisation from the workplace. This includes taking steps to prevent this behaviour and not waiting for a complaint before addressing the inappropriate workplace behaviour.

Western Australia

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

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

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

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

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

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

Where possible and appropriate, complaints about discrimination, sexual harassment, bullying and victimisation should be dealt with internally and in accordance with the organisation's complaint handling policy.

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

Discrimination, sexual harassment and victimisation

Fair Work Commission (FWC)	<p>Under the Fair Work Act a person (including volunteers) who claims they have been sexually harassed in the workplace, may apply to the Fair Work Commission for an order to stop the harassment.</p> <p>If the person making an application to the Commission for a stop sexual harassment order remains engaged in the workplace, they may make an application up to 24 months after the relevant conduct is alleged to have taken place.</p> <p>If the Commission is satisfied that:</p> <ul style="list-style-type: none"> the aggrieved person has been sexually harassed, and there is a risk that they will continue to be harassed, <p>the Commission may make an order it considers appropriate to prevent further harassment.</p> <p>The purpose of an order is for the worker to be able to continue their work free from the harassment. The order may require monitoring of behaviour, compliance and review of existing policies, further support and anything else the Commission considers appropriate in the circumstances.</p> <p>The Commission may not make an order requiring payment of a monetary amount.</p> <p>Without issuing a stop harassment order, the Commission may deal with a dispute through mediation, conciliation, making a recommendation or expressing an opinion.</p> <p>If attempts to resolve the dispute are unsuccessful, the Commission may issue a certificate allowing (within 60 days of the certificate being issued):</p> <ul style="list-style-type: none"> the parties to agree to deal with the dispute by arbitration in the Commission, or the aggrieved person to apply to have the dispute heard by the Federal Court or the Federal Circuit and Family Court of Australia <p>Multiple aggrieved persons can make an application so the Commission can deal with the aggrieved persons jointly. This can be both practical and efficient in cases involving a common perpetrator.</p>
Australian Human Rights Commission (AHRC)	<p>The AHRC investigates and resolves complaints of discrimination, harassment or bullying on the basis of, but not limited to sex, disability, race or age.</p> <p>The complaint made must be with regards to unlawful discrimination. To resolve complaints, the AHRC use the method of conciliation, a free and informal process which can occur through a telephone conference, exchange of letters, or a face to face conference between the complainant and respondent.</p>



	<p>If the complaint can't be resolved through conciliation, the complainant may apply to have their complaint be heard in the Federal Court or Federal Circuit Court of Australia, but must do so within 60 days (of the end of conciliation) and in some instances, with permission from the Court. Whether or not a volunteer can make a complaint to the AHRC will depend on whether the volunteer is covered by certain aspects of the federal discrimination laws. This is complex and may require legal advice.</p> <p>The <u>Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022</u> has amended the <u>Australian Human Rights Commission Act 1986</u> to extend the period for making complaints about age, disability and race discrimination to 24 months. The President of the AHRC may terminate claims made beyond this timeframe.</p>
<p>Australian Capital Territory</p> <p>ACT Human Rights Commission (ACT-HRC)</p>	<p>The ACT-HRC's role is to resolve complaints and promote rights. It may:</p> <ul style="list-style-type: none"> • decide to take no further action on a complaint • attempt to resolve it through conciliation, or • decide that resolution by conciliation is unlikely to be successful <p>If the ACT-HRC decides that conciliation should be attempted to resolve the complaint, this allows an opportunity for both parties to discuss and try to find a way to resolve the complaint.</p> <p>Outcomes from conciliation may include: a written or verbal apology, the introduction of policies and guidelines, financial compensation (agreed to by the other party) or gestures to show the respondent's good will towards the complainant.</p> <p>If the complaint is unable to be resolved through conciliation or the ACT-HRC decides that conciliation will be unlikely to resolve the complaint, the complaint may be referred to the ACT Civil and Administrative Tribunal.</p>
<p>New South Wales</p> <p>Anti-Discrimination Board of NSW (ADB)</p>	<p>The ADB investigates complaints of discrimination that are covered in the <u>Anti-Discrimination Act 1977 (NSW)</u>.</p> <p>It doesn't have the power to make an order or award compensation, but actively seeks to resolve complaints through conciliation which is designed to be an informal and cost-effective method of resolving disputes. The ADB may also choose to refuse investigating a complaint if the incident occurred more than 12 months before the complaint was lodged. If a person or organisation wishes to lodge a complaint about events which happened more than 12 months ago, an explanation for the delay in lodging the complaint will need to be provided to the ADB.</p>
<p>Northern Territory</p> <p>Northern Territory Anti-Discrimination Commission (NTADC)</p>	<p>A complaint to the NTADC must be made within 12 months of the incident occurring. However, the NTADC may consider complaints over 12 months if there is good reason. Once the NTADC receives a complaint covered by the <u>Anti-Discrimination Act 1992 (NT)</u> the respondent is notified by the NTADC and the matter is set down for a compulsory conciliation. If the matter is not resolved the complainant may decide to continue the evaluation process which involves the complaint being referred to the Northern Territory Civil and Administrative Tribunal if the NTADC decides there is merit for the referral.</p>
<p>Queensland</p> <p>Queensland Human Rights Commission (QHRC)</p>	<p>The QHRC uses conciliation in resolving complaints that may arise and QHRC provide this service free of charge.</p> <p>Complaints to the QHRC must be made in writing, and set out how the incident involved a breach of the <u>Anti-Discrimination Act 1991 (QLD)</u> and the <u>Human Rights Act 2019 (QLD)</u>.</p>



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

Western Australia

Equal Opportunity Commission (EOCWA)

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

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

Common outcomes from conciliation can include:

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

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

Bullying

Not all organisations are required to comply with the work health and safety legislation. To work out whether your organisation is subject to these laws, see part 4 of this guide.

Federal

Fair Work Commission (FWC)

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

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

Actions that the Commission might consider could include:

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

Australian Human Rights Commission (AHRC)

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

Australian Capital Territory

Access Canberra

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

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

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



	<ul style="list-style-type: none"> • issue an improvement notice requiring specific actions to be taken by the employer where there is a breach of the <i>Work Health and Safety Act 2011</i> (this action may include directions to develop and implement policies and procedures, directions to train staff in relation to acceptable workplace behaviours or directions to train supervisors in relation to their role in dealing with bullying at work) • provide advice to the employer about how to comply with health and safety laws • decide that the workplace has taken reasonable steps to prevent bullying at work • decide that the employer has taken reasonable steps to respond to and manage allegations of bullying at work, and • recommend that the employer engage the services of a suitably qualified person to assist with managing health and safety issues
New South Wales SafeWork NSW	<p>SafeWork NSW's role is to ensure that organisations subject to the <i>Work Health and Safety Act 2011 (NSW)</i> provide and maintain a work environment that is without risks to health and safety.</p> <p>SafeWork NSW can investigate workplace bullying. If you are a worker you can notify SafeWork NSW by filling in the 'Workplace bullying form'.</p> <p>If a SafeWork inspector visits the workplace, they may:</p> <ul style="list-style-type: none"> • provide information and advice on the requirements of WHS or workers compensation law • explain the range of SafeWork products and services available to your business • provide practical advice on how to eliminate or reduce the risk of injury and illness • investigate or verify compliance with legislative obligations • issue notices or other instructions to secure compliance with legislation
Northern Territory NT WorkSafe	<p>The role of NT WorkSafe is to assess whether the workplace concerned, has appropriate systems in place to manage the risk of exposure to workplace bullying.</p> <p>NT WorkSafe responds to workplace bullying complaints only in certain situations that fall within the scope of the <i>Work Health and Safety (National Uniform Legislation) Act (NT)</i>:</p> <ul style="list-style-type: none"> • the complaint must (on the face of it) fall within the definition of workplace harassment • the complaint must be in writing. The complainant will be given or sent an information package which must be completed • the complaint should have been raised at the workplace and an attempt made to resolve the complaint internally <p>For further information or to request a bullying and harassment complaint form contact NT WorkSafe on 1800 019 115 or ntworksafe@nt.gov.au.</p>
Queensland Workplace Health and Safety Queensland (WHSQ)	<p>WHSQ can only respond to complaints in certain situations that fall within the scope of the <i>Work Health and Safety Act 2011 (QLD)</i>, such as:</p> <ul style="list-style-type: none"> • the complaint must (on face value) fall within the definition of workplace bullying • the complaint must be in writing unless there are exceptional circumstances • the complainant must contact the Work Health and Safety Infoline on 1300 362 128 for an information package, which includes the address to send



	<p>the complaint and a checklist which must be completed, signed and attached to the written complaint</p> <ul style="list-style-type: none"> attempts should be made to resolve the situation in the workplace before contacting WHSQ <p>If all the above has been satisfied, a WHSQ inspector will contact the workplace, advise them of the complaint and may request evidence from the workplace that the risk of injury or illness from workplace bullying is being effectively managed. When people at the workplace fail to meet their duties under the <i>Work Health and Safety Act 2011</i>, inspectors may use a range of compliance and enforcement options including, but not limited to, advice, verbal directions, improvement and infringement notices.</p>
South Australia SafeWork SA	<p>SafeWork SA's role is to ensure that PCBUs and workers meet their obligations under work health and safety laws, including, psychological health risks from bullying.</p> <p>Workers can contact SafeWork SA to make a complaint on 1300 365 255.</p> <p>If a complaint is made to SafeWork SA, they will:</p> <ul style="list-style-type: none"> confirm if the complaint has merit under the legal definitions determine if the PCBU has taken appropriate measures or actions make sure the hazards are suitably controlled issue statutory notices for breaches of work health and safety laws, if required
Tasmania WorkSafe Tasmania	<p>WorkSafe Tasmania can investigate if it receives a complaint of bullying in the workplace. A worker can make a complaint using the online form to lodge a complaint or phone the Helpline on 1300 366 322.</p> <p>WorkSafe Tasmania will only investigate when:</p> <ul style="list-style-type: none"> the bullying is still occurring, and the victim has exhausted all options in their workplace to stop the bullying <p>It is the role of a WorkSafe Tasmania inspector to investigate and determine if those involved have met their obligations under the <u><i>Work Health and Safety Act 2012 (Tas)</i></u> for example, if the organisation has a policy and procedure in place for preventing and responding to bullying.</p>
Victoria WorkSafe Victoria	<p>WorkSafe's Advisory Service can provide information on bullying and how to prevent it, advice on how to raise the issue of bullying in your workplace or refer the matter to an inspector (where appropriate).</p>
Western Australia WorkSafe Western Australia	<p>A person (after taking preliminary steps) can make a complaint about bullying via an <u>Occupational Safety and Health (OSH) enquiry</u> with WorkSafe. Action taken by WorkSafe is targeted at preventing and managing bullying in the workplace. Depending on the outcome of the investigation and the circumstances the Inspector can take one or more of the following actions:</p> <ul style="list-style-type: none"> no action provide information issue improvement notice

Summary – volunteers and unlawful workplace behaviour



Laws prohibit sexual harassment

- The laws exist at both state and federal level.
- The federal laws prohibit sexual harassment and harassment on the ground of sex.
- Generally, sexual harassment laws apply to volunteers (including those seeking volunteer work) in all states except Western Australia and at present the Northern Territory.
- A positive duty now applies to some organisations to ensure they are taking ongoing steps to protect volunteers from sexual harassment.
- We recommend you take proactive steps to ensure this obligation is discharged.
- It is now unlawful for a person to subject another to a workplace environment which is hostile on the ground of sex.

Laws prohibit discrimination

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

Laws prohibit bullying

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

Laws prohibit victimisation

- These are the same laws that prohibit discrimination so your organisation will need to be aware of whether victimisation laws apply to volunteers in their state.
- A positive duty now applies to some organisations to ensure they are taking ongoing steps to protect volunteers from victimisation.
- We recommend you comply with these laws (as much as reasonably possible) even if strictly speaking you are not legally required to comply.

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

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

Negligence

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

Legal obligations to protect volunteers from unlawful workplace behaviour

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

Legal obligations to protect the people your volunteers are interacting with

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

Volunteers may be sued

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

