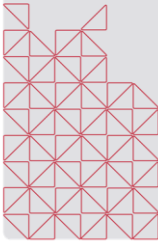


Volunteers and safety: keeping your volunteers safe, protecting your organisation

October 2014 – Deakin CRRLJ
Kate Fischer and Liz Morgan



Melbourne Office
PO Box 16013
Melbourne VIC
Tel +61 3 8636 4400
Fax +61 3 8636 4455
justiceconnect.org.au/nfplaw



Introduction



Introduction

About Not-for-profit Law (NFP Law)

- **Website:** www.justiceconnect.org.au/nfplaw
- **Phone:** 1800 706 220 (Victoria) 02 9114 1793 (NSW)
- **Our services:**
 - Legal information factsheets on common legal issues
www.nfplaw.org.au
 - Legal training for community groups
 - Law reform work aimed at reducing unnecessary NFP regulation
 - Phone advice to answer quick legal questions**
 - Referral to a lawyer to assist with complex legal issue**

** These are very limited services, available for eligible organisations only; see www.justiceconnect.org.au/nfpeligibility

Introduction

About today's session

- Legal information not legal advice
- Focus today is on the law as it applies in Victoria – the law in other states may differ
- Questions any time, but if complex may defer or refer
- Terminology used

Introduction

What we will cover today

Introduction

1. Know 'who' in your organisation is a volunteer
2. Think about legal responsibility **to** and **for** volunteer
3. Review the volunteer role for foreseeable risks
4. Recruiting, inducting, training and supervising volunteers
5. Remember insurance!

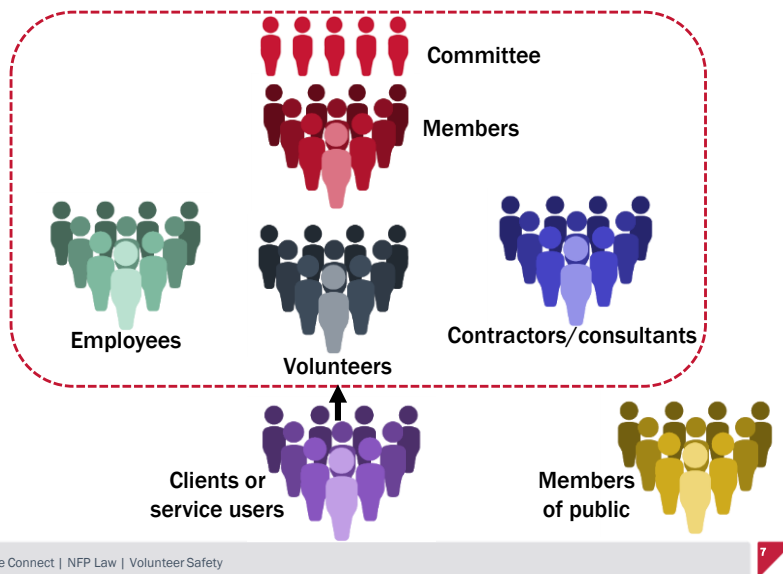
Summary, questions and evaluation

Justice Connect | NFP Law | Volunteer Safety

5

1. Know who in your NFP organisation is a volunteer

Know who is a volunteer



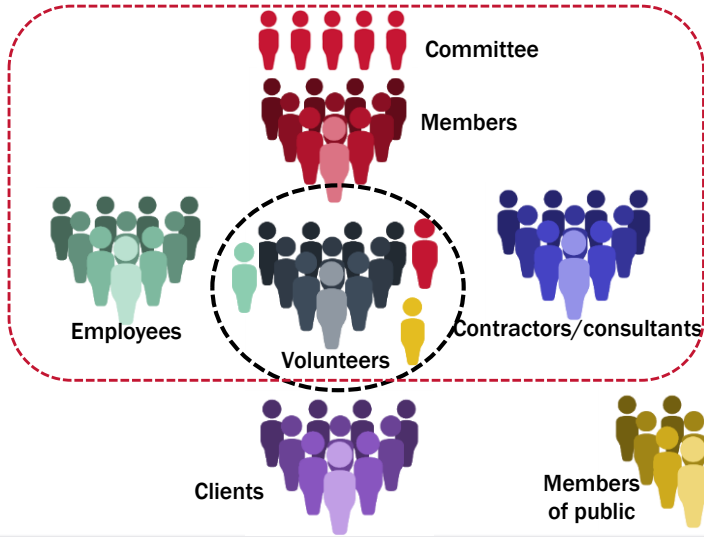
Know who is a volunteer

Volunteers: Characteristics and legal rights



- Do unpaid work or tasks for organisation
- No binding legal agreement or contract between volunteer and organisation
- Attendance should be truly voluntary
- No expectation of payment or remuneration related to work performed (but reasonable reimbursement of expenses is ok)
- No right to be a volunteer – either party can walk away any time

Tip 1: Know who is a volunteer



Justice Connect | NFP Law | Volunteer Safety 9

2. Always think about legal responsibility to and for the volunteer

2. Always think about legal responsibility to and for the volunteer

justice connect
Not-for-profit Law

Liability to and for volunteer

Negligence and OHS laws



Justice Connect | NFP Law | Volunteer Safety

11

Liability to and for volunteer

Negligence law

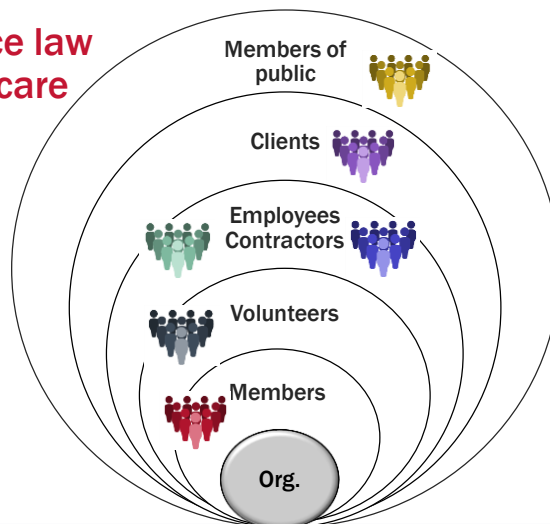
- Under negligence law, community groups:
 - owe a **duty of care** to people it could reasonably foresee may be affected by its activities; and
 - the **standard of care** a community group must meet is to take reasonable care to avoid foreseeable harm, injury or loss
- This comes from the common law and the *Wrongs Act 1958* (Vic) and applies to all Victorian community groups

Justice Connect | NFP Law | Volunteer Safety

12

Liability to and for volunteer

Negligence law – duty of care



Justice Connect | NFP Law | Volunteer Safety

13

Liability to and for volunteer

Negligence law – standard of care

- The standard is not to prevent all incidents ...or to be perfect
– the standard is to take reasonable action to prevent foreseeable harm
- There may be an incident, but your group took all reasonable action to prevent so is not liable



Case examples: the volunteer on the roof examples

Hrybnyuk v Mazur [2004] NSWCA 374

Lenz v Trustees Catholic Church and Anor [2005] NSWCA 446

Justice Connect | NFP Law | Volunteer Safety

14

Liability to and for volunteer

Occupational health and safety laws

- In Victoria, *Occupational Health and Safety Act 2004* (Vic) (**Vic OHS Act**) applies to:
 - organisations that are **employers**, and
 - organisations that **manage or control a workplace**
- Basic legal responsibility of community organisations:
 - provide a safe workplace for people involved in your activities - employees, volunteers, members of public
 - take reasonable care to avoid foreseeable harm

Liability to and for volunteer

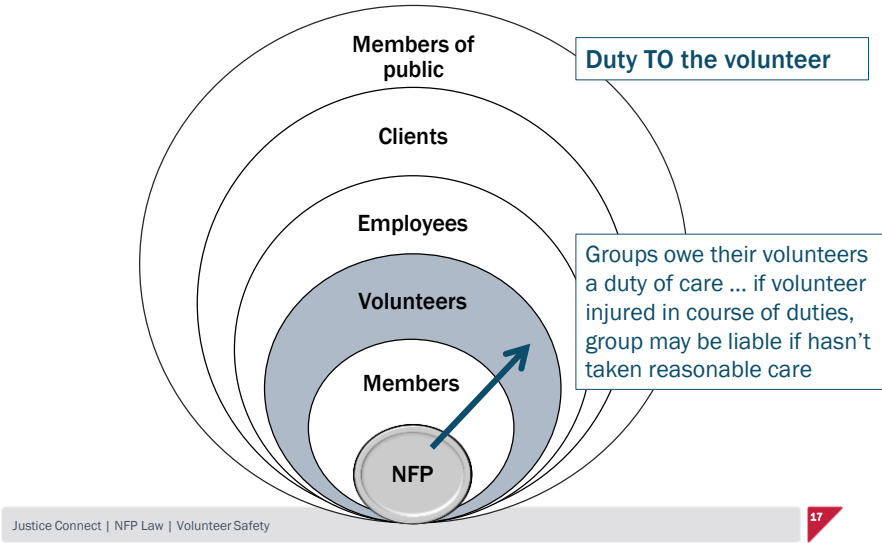
Occupational health and safety laws

- The Vic OHS Act has offences that apply to organisations **and** to people involved in organisations
- However the Act has an exemption from personal liability for **volunteer** committee members
- As the organisation could still be legally responsible under Vic OHS Act, you need to pay attention to safety issues

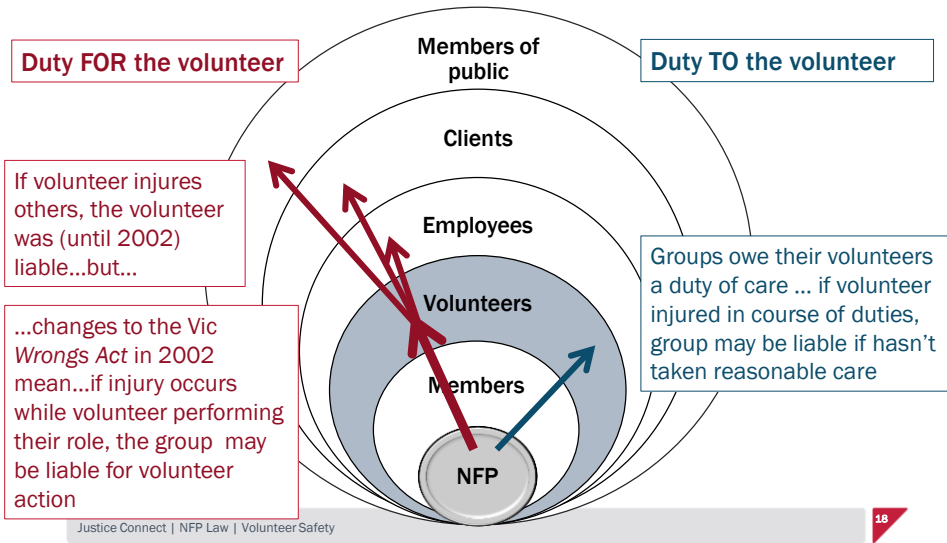


NFP Law Guide: <http://www.nfplaw.org.au/OHS>

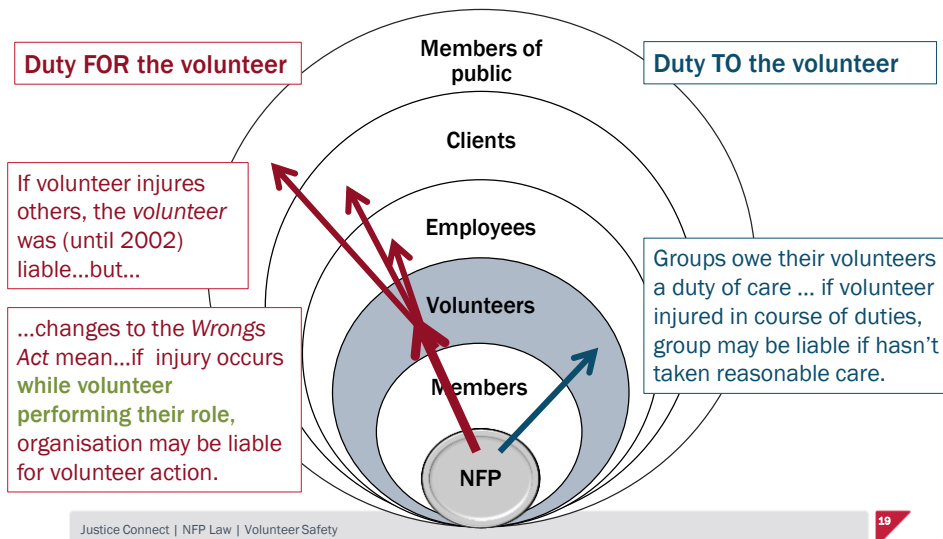
Liability to and for volunteer



Liability to and for volunteer



Liability to and for volunteer



Liability to and for volunteer

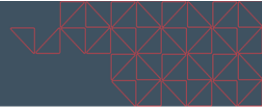
Two sides of legal responsibility for safety

- Your community organisation could be:
 - legally responsible for injuries **to** its volunteers or employees
 - legally responsible **for** the actions of a volunteer or employee that cause harm to someone else
- But note:
 - generally only if within '**course of their duties**'
 - where reasonably foreseeable and no reasonable action

3: Review volunteer role for foreseeable risks



Review role for risks



What do you worry could go wrong?

Review role for risks

Risk management = prevention

- Risk management is simply a process for:
 - identifying the ‘things that could go wrong’ before those things happen, and
 - putting in place strategies, practices or arrangements to avoid or minimise the impact of those risks



Review role for risks

Implementing a risk management plan



Review role for risks

Volunteer risk management resources



NFP Law Guide: Insurance and risk management for Victorian community organisations: <http://www.nfplaw.org.au/insurance>



Volunteering Australia: Running the Risk:
www.volunteeringaustralia.org/wp-content/files_mf/1377053059VAManagersrunningtherisk.pdf



Victorian WorkSafe Volunteer health and safety:
www.worksafe.vic.gov.au/_data/assets/pdf_file/0004/9526/Volunteer_handbook.pdf

Review role for risks

Simple measures to control volunteer risks

- Sound recruitment and background checks
- Induct volunteers (physical, role, policy, behavioral)
- Ongoing supervision and training
- Personal protective equipment and adequate provisions
- Volunteer pairing or employee / volunteer ratios
- Regular feedback sessions
- Volunteer insurance – discussed in more detail in Tip 5

Review role for risks

Why? Reviewing role = compliance with the law

- A documented risk management plan provides evidence of your compliance with occupational health and safety laws (**OHS laws**) or negligence law:
 - it shows your group has considered the foreseeable risks and taken reasonable action
 - it may show your group has met its standard of care – and is therefore not legally responsible for an incident

Review role for risks

Remember:

- To be useful, risk management **must be documented**
- Think past physical ‘risks’
 - ❖ example: psychological such as stress from bullying
- Reasonable care includes **taking action**:



Case example: the tree in the school grounds case
Symons v Cedar College Inc. [2012] SAIRC 1



Case example: the throwing books case
Swan v Monash Law Book Co-operative [2013] VSC 326

4. Recruiting, inducting, training and supervising volunteers in the role

In the role - recruitment

Volunteer background checks

- Working with children checks
- Criminal record checks
- Licence checks
- Qualification checks
- Reference and identification checks
- Other?



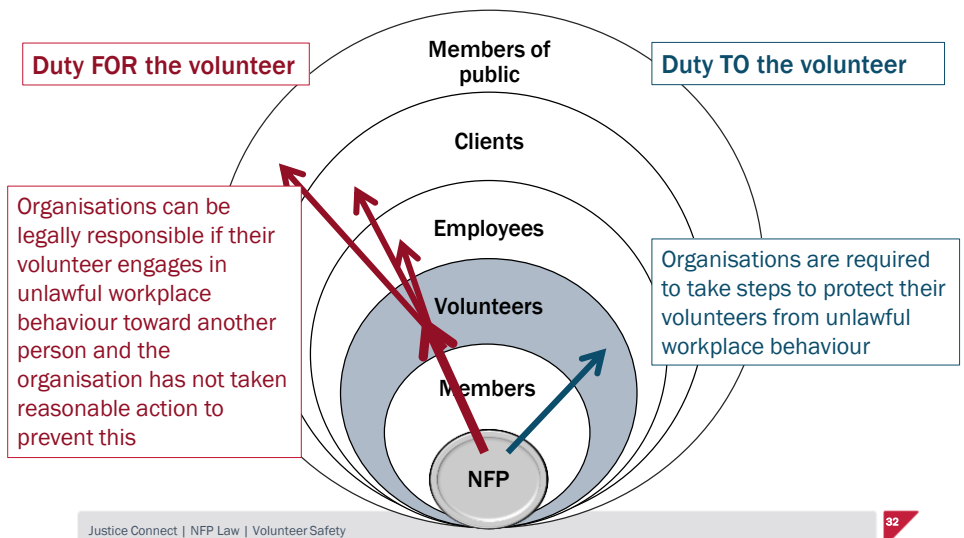
In the role - workplace behaviour

A safe workplace for everyone

- Sexual harassment
- Bullying
- Discrimination
- Victimisation



In the role - workplace behaviour



In the role - difficult conversations



Why might it be necessary to have a 'review conversation' with a volunteer ?

5: Insurance

Insurance

Important points about volunteers and insurance

- Workers comp. **does not** (or very rarely) cover volunteers
- Public liability insurance should usually cover injuries an organisation's volunteers cause to others (eg. public) but **may not** cover for injuries caused to volunteers
- While most org's **have** public liability insurance (injuries to public) and those with employees have Workcover (injuries to employees) – **the gap is injuries to volunteers**
- Check you have, or consider, volunteer personal accident insurance – it's like 'Workcover for your volunteers'

Justice Connect | NFP Law | Volunteer Safety

35

Insurance

Some notes on insurance

- A last resort!
- Read insurance policies carefully and understand obligations
 - ❖ Know your exclusions; check and up-date your details at renewal time
- Consider 'extras' and who will pay:
 - ❖ vehicle insurance excess, ambulance cover costs
- don't hope – a head in sand approach not acceptable!
 - ❖ if new, or in doubt – check with your insurer

Justice Connect | NFP Law | Volunteer Safety

36

**Summary, questions
and evaluation**



Summary and questions



Questions?

www.justiceconnect.org.au

justice connect

Who we are What we do Our impact Get involved Get help News and media Our programs

Welcome to Justice Connect
In July, PILCH VIC and PILCH NSW merged to become Justice Connect
READ MORE >

Legal assistance for individuals
Get help through our Referral Service >

Homeless Law
For people experiencing or at risk of homelessness >

MOSAIC
Migrant Outreach - Advice, Information & Community Education >

Not-for-profit Law
Legal information, advice and referrals for not-for-profit organisations >

Seniors Law
For older people experiencing elder abuse or with a legal issue associated with ageing >

Justice Connect | NFP Law | Volunteer Safety **39**

NFP Law

justice connect

Who we are What we do Our impact Get involved Get help News and media Our programs

Not-for-profit Law

> About
> Not-for-profit information portal
> Training
> Legal advice
> Law and policy reform

Legal advice, information and training for not-for-profits
READ MORE >

Not-for-profit portal
Visit our legal information portal for not-for-profit organisations >

Legal advice
Find out if Not-for-profit Law can help your organisation >

Law and policy reform
Working to reducing red tape and improve the legal framework for community organisations >

Training
Find out more about our not-for-profit seminar series and customised legal training >

Justice Connect | NFP Law | Volunteer Safety **40**

NFP Law Info Hub: www.nfplaw.org.au

Justice Connect Not-for-profit Law Legal advice, training and information for charities and not-for-profits. Location: VIC

Not-for-profit Law INFORMATION HUB LEGAL INFORMATION FOR COMMUNITY ORGANISATIONS justice connect

BROWSE TOPICS ▾ UPDATES ABOUT Need more help? Search for information 🔍

Find information

KEYWORDS TOPIC STATE JURISDICTION

SEARCH Cancel

UPDATES

New Social Enterprise Guide
15 May 2014

Not-for-profit Law has launched the new Social Enterprise Guide. Social enterprises are being increasingly recognised as an important and efficient way to achieve social change while harnessing market forces. At Not-for-profit Law, we are receiving more and more queries for new organisations and existing not-for-profits wanting to set up a social enterprise.

READ MORE...

03 April 2014
New Privacy Laws
New Privacy Laws, including the new Australian Privacy Principles commenced in March 2014.

03 April 2014
New Not-for-profit Law Guide to DGR
Not-for-profit Law has a new resource on applying for DGR endorsement.

Browse Topics

Getting started Running the... The people involved Fundraising and...

Summary and Questions

Further legal training

- Today's training is just one of 12 different legal training sessions NFP Law offers
- For example, we also provide training on topics such as:
 - ❖ Legal duties of NFP board and committee members
 - ❖ Understanding your rules
 - ❖ Legal issues in managing volunteers
 - ❖ Safety risk and insurance ... as well as many more
- If you would like to find out more about NFP Law training see: www.justiceconnect.org.au/nfplaw/customtraining

Summary and Questions

Evaluation and thanks!

- We would be grateful if you could please complete the evaluation form
- If you would like to receive our monthly legal update – please include email address and we will subscribe you
- Thank you to Deakin CRRLJ for inviting us to participate in today's forum
- Thank you for your participation!