



E5: The legal and employment context

Top legal issues for not-for-profits in 2023

Volunteering Australia

2023 Conference



Introduction

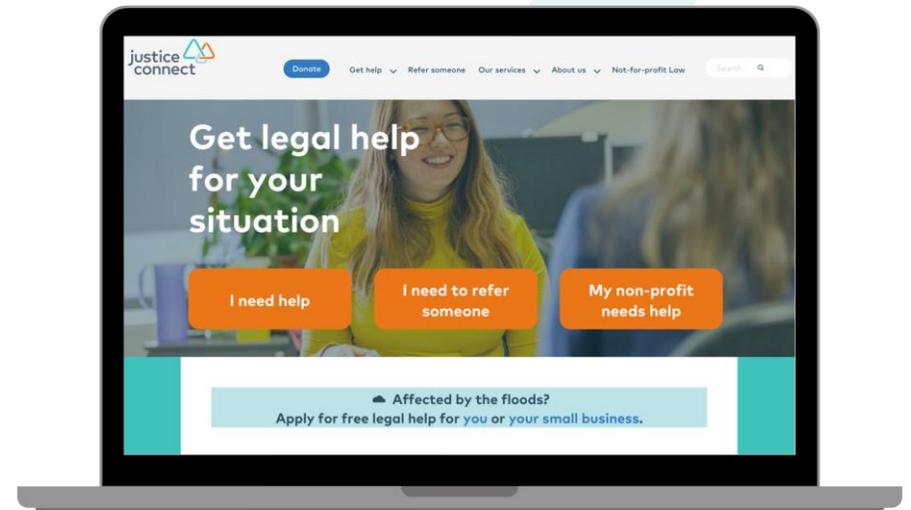
Justice Connect acknowledges the Traditional Owners of the land on which we work.

We pay respect to their Elders past and present and acknowledge that this was, is and always will be Aboriginal land.



Who we are

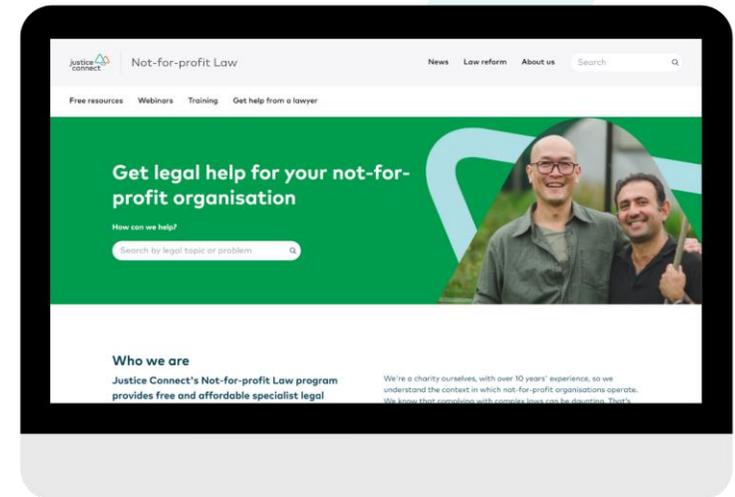
In the face of huge unmet legal need, Justice Connect design and deliver high-impact interventions to increase access to legal support and progress social justice.



Who we are

Justice Connect's Not-for-profit Law program is a national, specialised legal service.

We provide free and low-cost legal assistance to not-for-profit organisations, run a certified social enterprise and advocate for better laws and regulation on behalf of the community sector.



Top legal issues for 2023

Each year, our service receives **hundreds** of questions from volunteer involving organisations.

We have our eye on **the key legal issues** that not – for-profit organisations need to be aware of in 2023.



Top legal issues for 2023

- 1. Changes to workplace health and safety laws**
- 2. Updates to sexual harassment laws**
- 3. Enhanced privacy and data security laws**



This is legal information and not legal advice



Changes to workplace health and safety laws

Overview

- Broadly speaking, **Australia's work, health and safety laws** apply to community organisations and to volunteers.
- The basic legal responsibility of community organisations is to ensure the workplace is **safe, and without risk to the health** of its workers and other people.
- The laws are being updated to reflect that it's not just about physical health, it's also about the **mental health** of our workers.



Changes to workplace health and safety laws

Summary of the change



Under various WHS laws across Australia, a person conducting a business or undertaking (PCBU) must manage the risk of **psychosocial hazards** in the workplace:

Job demands, high workload, low workload

Poor support

Bullying

Inadequate recognition

Remote or isolated work

Traumatic events or material



Changes to workplace health and safety laws

Summary of the change

State / Territory	Express duty to manage psychosocial risks
ACT	No*
NSW	Yes
NT	No*
QLD	Yes – commences 1 April 2023
SA	No*
TAS	Yes
VIC	Considering similar legislation
WA	Yes

**Obligation to take reasonable steps to prevent psychological harm still exists*



Changes to workplace health and safety laws

What does this mean for volunteer involving organisations?

Organisations must acknowledge that **volunteers can and will come into contact** with psychosocial hazards in the workplace.

Volunteer involving organisations must **treat** psychosocial risks in **the same** way they would treat physical risks.

Volunteers will (and should) expect the organisations they volunteer for to **take psychosocial hazards seriously**.



Changes to workplace health and safety laws

This year, I encourage you to think about:



How and where can you improve your volunteering programs to ensure the **psychological safety** of your volunteers?



Updates to sexual harassment laws

Overview

- The laws dealing with sexual harassment in the workplace have, and continue to be, undergoing **significant reform**.
- Previously volunteers weren't protected by national laws.
- The reforms now make it clear that **volunteers** are protected in a number of ways and that **community organisations** (PCBUs) have a **positive duty**.



Updates to sexual harassment laws

Summary of the change

-  The *Sex Discrimination Act 1984* now imposes a **positive duty** on PCBUs to take reasonable and proportionate measures **to eliminate**, as far as possible, **sexual harassment** and certain **discriminatory conduct**.
-  The *Fair Work Act 2009* has been amended to make it **unlawful** for a person to sexually harass another person in connection with work.

Updates to sexual harassment laws

What does this mean for volunteer involving organisations?

This is a huge win for the volunteering sector – let's **demonstrate** that **sexual harassment and discrimination** based on sex will **not be tolerated**.

Organisations **MUST** take **be responsive AND proactive**.

Volunteers now have a **clear path** for making a complaint about this type of conduct to regulators, seeking compensation and the regulators have more powers to intervene.



Updates to sexual harassment laws

This year, I encourage you to think about:



The **'positive steps'** your organisation could take to better prevent and respond to sexual harassment and discrimination



Enhanced privacy and data security laws

Overview

- Laws in Australia exist to **protect** the collection, disclosure, use and access to **people's personal information**.
- **Volunteers** very often collect, disclose, use or **have access** to the type of **personal information** that these laws protect.
- Recent changes to the laws have resulted in an **increase in civil penalties** and the **regulator's powers** – and we're likely to see **further reform**.



Enhanced privacy and data security laws

Summary of changes being considered as part of Privacy Act Review:



Expanding the definition of 'personal information'

This would mean more types of information will be protected



Changing the 'small business exception'

This would mean more not-for-profits will be captured by the legislation



A right for individuals to enforce privacy obligations under the Privacy Act

This would mean clients have a legal avenue to enforce



Strengthening the types of notice provided to people when seeking their personal information, particularly to vulnerable people

This means we need to take a look at privacy policies and privacy collection notices



Enhanced privacy and data security laws

What does this mean for volunteer involving organisations?

Privacy must be front of mind and organisations must be **proactive**.

Comply with privacy laws regardless of whether they apply to your group.

Volunteers and clients will **come to expect** robust privacy practices.



Enhanced privacy and data security laws

This year, I encourage you to think about:



How are your volunteers interacting with **personal information** within your organisation? Where could you make improvements?



Need more help?



Need more help?

Area of law	Regulator
Privacy	Office of the Australian Information Commissioner (OAIC)
Workplace safety	SafeWork Australia
	WorkSafe ACT
	SafeWork NSW
	NT WorkSafe
	Workplace Health and Safety Queensland
	SafeWork SA
	WorkSafe Tasmania
	WorkSafe WA
Sexual harassment	Australia Human Rights Commission
	Respect At Work

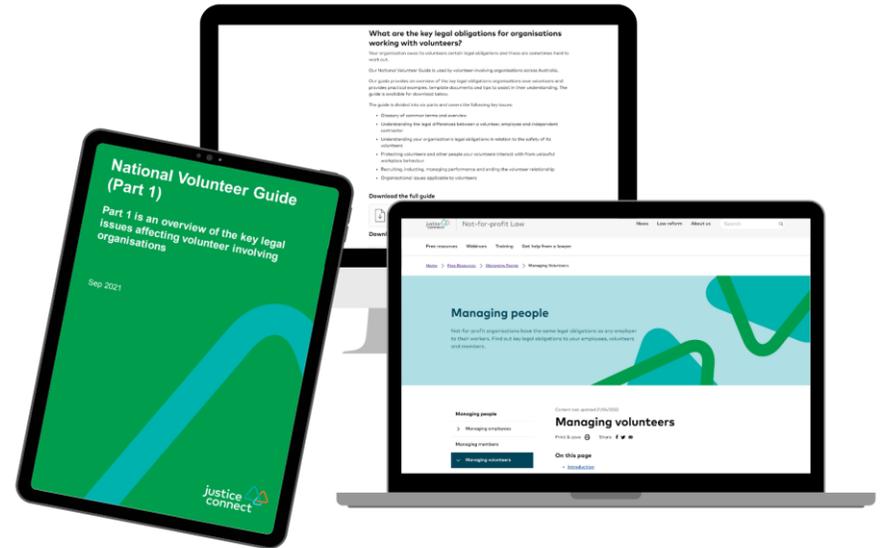


Need more help?

We provide:

- hundreds of **free legal resources** on our website
- **legal advice** and legal referrals to eligible organisations
- **legal training** that is delivered in plain English, is interactive, practical and engaging

We also **advocate** for changes to the laws that impact the not-for-profit and charity sector.



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