

“What do I do when...?”

Discrimination
Duty of Care
NEGLIGENCE
Police
Complaints
Confidentiality
Privacy
CONSENT
Court
Information Sharing
professional boundaries

*A practical guide
to the law
for people who work
with young people*



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Youthlaw

Youthlaw is Victoria's statewide community legal centre for young people. Youthlaw works to achieve systemic responses to the legal issues facing young people through casework, policy development, advocacy and preventative education programs within a human rights and social justice framework.

Youthlaw provides free and confidential legal advice for young people up to 25 years of age.

Drop-in clinic: Monday-Friday 2-5pm (no appointment needed)

Telephone and email information: Monday-Friday 10am-5pm

Youthlaw is based at Frontyard Youth Services in central Melbourne. Frontyard consists of an integrated team of co-located services that work collaboratively to address the needs of young people at risk. Services include accommodation, financial, legal and health services.

Youthlaw can answer questions about:

- public transport and fines
- police and security guards
- alcohol and drugs
- family issues
- violence or abuse at home or in a relationship
- schools
- discrimination
- financial support
- employment
- debts
- and more!

Table of Contents

Acknowledgements	i
<i>Disclaimer</i>	ii
Youthlaw	iii
Introduction	1
<i>Who is this resource for?</i>	1
<i>Victorian law</i>	2
<i>Young people and the law</i>	3
<i>How laws are made</i>	3
<i>Glossary and resources</i>	3
Top five tips	5
Duty of care	7
<i>What is a duty of care?</i>	7
<i>Negligence</i>	11
<i>Accidents and injuries</i>	13
<i>Camps and excursions</i>	16
<i>Staffing levels</i>	17
<i>Driving clients</i>	18
<i>Untrained staff and volunteers</i>	19
<i>Occupational health and safety</i>	19
Confidentiality and privacy	23
<i>What information is confidential?</i>	23
<i>Sharing information between agencies</i>	25
<i>Disposing of information</i>	27
<i>Using client photographs</i>	28
<i>Breaching confidentiality</i>	29
Reporting abuse	33

Parents and guardians.....	35
<i>Parents and your client’s privacy</i>	35
<i>Parental consent</i>	36
<i>Parents picking up clients</i>	37
Working with police.....	39
<i>Diffusing a heated situation</i>	39
<i>Witnessing an arrest or search</i>	40
<i>Police and client privacy</i>	41
<i>Police interviews</i>	44
<i>Complaints about police</i>	46
Court procedures.....	49
<i>Court etiquette</i>	49
<i>Being a witness</i>	50
<i>Oaths and affirmations</i>	50
<i>Giving evidence</i>	50
<i>Supporting your client at court</i>	52
<i>Working with your client’s lawyer</i>	53
<i>Court reports and support letters</i>	54
<i>Writing a support letter</i>	55
<i>Example letter of support</i>	59
Professional boundaries	61
<i>Contact with clients outside work</i>	61
<i>Romantic relationships</i>	61
<i>Taking clients home</i>	62
<i>Driving clients</i>	63
<i>Texting and calling clients</i>	63

Complaints about workers	65
Employment checks	67
<i>Police checks</i>	67
<i>Working with Children Check</i>	67
Banning clients from services	73
Discrimination	75
<i>Exemptions</i>	77
Alcohol and cigarettes	79
<i>Buying alcohol and cigarettes for clients</i>	79
<i>Serving alcohol at a mixed-age function</i>	79
<i>Smoking with clients</i>	80
<i>Smoking in and around agency premises</i>	80
<i>Refusing entry</i>	80
Young people and sex	81
Glossary	83
Useful resources.....	85
Relevant legislation in Victoria	87

Important!

The information provided in this resource is current as at **May 2007**. However, laws, regulations and guidelines do change so it is important that you seek legal advice about your specific legal matters.

Introduction

What do I do when...? is a resource for anyone who works with people aged 12-25 ('young people'). It aims to provide accessible information about the law to help youth workers feel more comfortable in their interactions with the law and the legal system. It details areas of the law that youth workers may come across in their work with young people and provides answers to common legal questions.

This resource details where the law prescribes a course of action for particular situations. However, the law does not provide all the answers for every set of circumstances. Often issues are of an ethical nature rather than a legal one and there is no single answer. To assist with this, tips are provided to help you with your decision-making. In some circumstances the law is complex and only a court can decide whether a law has been broken. As such it is not possible to provide answers to every question.

What do I do when...? is a guide to existing Victorian law. You must seek further legal information and advice regarding the complexities of your particular situation.

Who is this resource for?

This resource is designed for those working with young people in Victoria. These workers are often called youth workers even if they have not undertaken a formal youth work qualification. The Youth Affairs Council of Victoria has developed the following definition to define the role of youth workers:

Youth workers provide formal or informal services for young people, in groups or as individuals. These include advocacy, community development, referral, social education, health

education, rehabilitation, participation programs, skills development (such as leadership skills), rescue and correctional services.

Youth workers work directly with young people as their primary clients. They can act as managers of premises and services for government and non-government agencies. They also work in areas of social policy formation, systemic advocacy, coordination and implementation, as well as in professional education, training and research. They also work to facilitate and advocate for stronger links between young people and their communities, for the voices of young people to be heard and to enhance young people's civic engagement.

In Victoria, youth workers work in a variety of settings with young people. These include (but are not limited to) local governments, youth services and centres, family services, recreational services, schools, juvenile justice centres, community health centres and churches. In addition to this type of generalist youth service provision, youth workers also work in secondary and tertiary services such as residential care units, homelessness services, drug and alcohol services, mental health services and employment assistance services.¹

This guide does not provide information that is specific to teachers. A useful resource in that area is *Teachers, Students and the Law* published by the Victoria Law Foundation.

Victorian law

This resource covers Victorian law only. If you are reading this in another Australian state or territory please check the laws in your state. Some helpful guides for use in other states are provided in the Resources list at the end of this guide.

¹ Youth Affairs Council of Victoria and Victorian Council of Social Service, *Youth Support Services: Who's carrying the can?*, Melbourne, 2006.

Young people and the law

This resource does not provide information about laws relating to the age and capacity of young people (for example, the age at which young people can legally do things). Victoria Legal Aid has a publication, *Am I Old Enough?*, which covers these issues. There are some other useful resources in the Resources list.

How laws are made

Laws are made by Parliament, the government and the courts:

- Parliament passes legislation;
- the Executive Government (government and public service) implements laws and develops policies, regulations and by-laws;
- the courts interpret and apply laws.

There are two types of law:

- statute law – laws made in federal, state and territory Parliaments;
- common law – laws based on court decisions.

Laws change when Parliament passes new legislation or when the courts interpret laws and develop common law principles. If Parliament does not like the way the court has interpreted a law it can pass new legislation to clarify how the laws should be interpreted.

Glossary and resources

The Resources list at the end of this guide details other useful resources and where you can go to seek further advice.

The Glossary provides plain-English definitions of common legal terms that are used throughout this guide.

Top five tips

- ✔ Make sure that your agency has a policy and procedures manual and that the policies comply with relevant legal requirements.
- ✔ Read your policy and procedures manual and understand it. If you identify an issue that is missing, ask management to develop a policy on this issue.
- ✔ Keep a written record of important information in your files such as contacts with clients, complaints made, injuries etc.
- ✔ Make sure all staff are regularly trained in their legal obligations, particularly about privacy, confidentiality and duty of care.
- ✔ Always seek legal advice for your specific situation.

Duty of care

What is a duty of care?

A duty of care is a legal requirement to take *reasonable care* of another person and to protect them from a *foreseeable risk*.

A ‘foreseeable risk’ is a risk that is not completely unexpected.

For example, you take a group of young people rock climbing. In this scenario the activity involves a foreseeable risk of injury. To prevent an injury from occurring, you have a duty to ensure that the group is adequately trained and wears proper safety equipment, and that there is adequate supervision throughout the activity.

Similarly, if you manage a youth refuge, there is a foreseeable risk of conflict between clients. While you may not be able to prevent a young person from becoming angry and harming themselves or others, you have a duty to provide adequate supervision and have trained staff managing the agency who can handle these situations.

If you identify a likely risk, you must take reasonable care to prevent it. Duty of care is part of common law so there is no legal definition of what is considered to be ‘reasonable care’. It will depend on the circumstances of each case. The law of negligence simply requires that you act reasonably in your dealings with someone who you owe a duty of care to.

If a court was trying to determine whether you have breached your duty of care they would assess whether a reasonable person acting in your position would have foreseen the risk. A court would take into account a number of factors, such as:

- *The experience, training and qualification of the worker* – for example, the standard of care that is expected of a team leader is higher than that expected of a new graduate.

- *The relationship between the young person and the worker* – how well did you know the young person?
- *The age and capacities of the client* – for example, if the young person has an intellectual disability or a health condition the standard of duty of care is higher.
- *Agency policy and procedures* – were there policies in place regarding minimum staffing numbers, first aid training etc?
- *Budget and resources* – was it difficult or impractical for you to reduce the risk?

You are running a holiday program. All parents have signed a consent form which indicates that the program finishes at 6 pm. One day, all but one of the young people have been picked up by their parents. Jo is the last person left. She is 16 years old. You have tried to call her parents but no one is answering. Your agency policy and procedures state that you cannot drive clients home. After half an hour Jo says that she will get the bus home. You know that she normally gets the bus home after school so decide that this is OK. You wait until Jo is on the bus.

Did you fulfil your duty of care?

Factors to be taken into account to determine your 'reasonableness' may include:

Jo's parents were informed of the finishing time.

Jo is 16 and often travels home by bus.

You had tried to contact her parents repeatedly.

Your policies and procedures manual stated that you could not take Jo home.

You waited for the bus.

Who do I owe a duty of care to?

We have a duty of care to people who are likely to be affected by what we do or what we don't do.

1. Duty to staff

An organisation owes a duty of care to its staff to provide, as far as reasonably practical:

- a safe work environment;
- the necessary information, instruction, training and supervision required by all staff.

If these are not provided, your agency may be held to have breached the duty of care it owes to its staff.

See also 'Occupational health and safety', p19.

2. Duty to clients

As a youth worker you owe a duty of care towards your clients. Your primary responsibilities are to maintain confidentiality and privacy. You must also take reasonable care to minimise foreseeable injury to a client while they are on agency premises or at an activity organised by your agency. You also have a duty to act professionally, so it is important to act according to your level of expertise and competence.

3. Duty to others

You have a duty of care towards your colleagues while they are at work. You may also have a responsibility to the wider community where people are directly affected by you and your work.

For example, your clients are intravenous drug users. You have a duty to ensure that no needles are left lying around the agency premises or outside the premises where other people may come

into contact with them. You have a duty to ensure that needles are disposed of appropriately and that staff are trained in how to dispose of the needles safely.

I work with a group of 16 – 19-year-olds. Is my duty of care different for different ages?

You will have varying degrees of duty of care for each individual client depending on their age and capacities. While you have a duty of care to all clients, you have a particular duty for clients with additional needs. Younger clients, for example, may be more vulnerable. Similarly, you have a particular duty of care to clients with disabilities or health issues. For these people you have an increased duty to be aware of additional foreseeable risks and to act in a reasonable manner to limit those risks.

Do I owe a duty of care to young people who deliberately engage in risk-taking behaviour?

Young people are bound to take risks sometimes or engage in risky behaviour. The law does not require you to predict and prevent every situation. Your duty is to take whatever steps you can to minimise:

- how frequently this behaviour occurs; and
- the risk of injury as a result.

The courts recognise that when people knowingly put themselves at risk, the duty of care of those around them is reduced. However, given you may be working with some very vulnerable and 'at risk' young people, it is reasonable to expect that you and your agency has in place policies and procedures to minimise the risk of harm they could cause to themselves.

Negligence

If you breach your duty of care you may face disciplinary procedures within your agency or you may be sued for negligence. The consequences will depend on the seriousness of the situation.

Negligence is a legal term. It describes a situation where someone fails to exercise reasonable care and this results in an unintended injury to another person.

Negligence may be caused either by an action or by a failure to act.

If you owe a duty of care and you breach this duty, you and/or your agency may be sued for negligence. In order to prove negligence, the person suing you must prove the following four elements:

- *duty of care* – that the worker or organisation owed a duty of care;
- *breach of duty of care* – that the worker did something that a reasonable person would not have done in a particular situation, or that they failed to act in a reasonable manner;
- *harm* – that harm was suffered by the person because of the unreasonable action of the worker. Harm includes, but is not limited to, personal injuries and illnesses, emotional harm, loss of income and damage to property;
- *causation* – that the damage or injury was directly caused or contributed to by the breach of duty of care.

In assessing negligence a court will consider how a 'reasonable' person would have behaved in the same situation to decide whether the action or failure to act was reasonable.

Suing someone for negligence is normally a civil case, which must be proved 'on the balance of probabilities' rather than 'beyond reasonable doubt', as in a criminal case.

Am I liable or is the agency liable?

The agency will normally be held liable if an accident occurs. If a person is injured, they are more likely to sue the agency as the agency has insurance policies that will cover compensation payouts. However, individual workers may also be sued. If a case goes to court, individual workers may also be called as witnesses to provide evidence.

Employees will generally be protected by their employer as long as they follow agency policies and procedures and relevant laws such as occupational health and safety laws.

There is no guarantee that the agency will cover your costs and expenses if you are sued. Check your agency's policies to see whether they indemnify you against liability.

In certain circumstances where you act in a 'private capacity', for example, you choose to meet the client after hours without your agency knowing, then you will be held liable for any negligence action that arises.

What do I do if I am sued?

If you are named as a defendant (the person being sued), talk to your supervisor and obtain legal advice. Your employer may provide a lawyer on your behalf, but you should also consider separate legal representation in case there is a conflict between the case being argued by you and the case being argued by your employer.

If I have parental consent does that exempt me from liability?

Parental consent does not protect an agency or worker from a negligence claim. You still have a responsibility to ensure the safety and protection of all clients in your care. It is important that you inform clients and their parents or guardians (when they are under 18) of any foreseeable risks involved with an activity.

A signed consent form will protect you from a claim that you took a young person away without parental knowledge. However, it will not protect you if your behaviour was careless or you failed to prevent a foreseeable risk during the activity that parental consent was provided for.

Always keep documentation about the policies and procedures you followed to support your claim of reasonable care.

Accidents and injuries

Joan operates a drop-in centre for young people called Cool it. Jim comes in to talk with his friends and spills a large bottle of coke on the floor. Joan notices the spill but decides to get back to it later. Steph decides to visit Cool it and as she walks in she slips on the coke spilt on the floor and breaks her arm.

Is Joan liable?

Joan owes a duty of care to Steph. As Joan failed to clean up the spill, and it was reasonably foreseeable that someone might step on the spill and injure themselves, Joan breached her duty of care to Steph and could be liable in a negligence claim.

If you have the right to allow or deny a person entry to your premises (including your agency and any premises where an agency event is being held), then you have a legal responsibility to take all reasonable care to protect that person against foreseeable injury.

In deciding whether your agency has fulfilled this duty of care, a court will consider factors such as:

- the gravity of the injury;
- how the young person entered the premises (i.e. it was not through trespass);
- whether you knew or should have known that someone is on the premises;
- the age of the person on the premises;
- the capacity of the person to appreciate the possible danger;
- whether the person entering the premises is intoxicated by alcohol or drugs voluntarily consumed, and the level of intoxication.

A fight broke out in our waiting room and one client punched another client. Is the agency responsible for this injury?

A reasonable person cannot predict or prevent every occurrence that may lead to an injury. However, you have a duty to limit risk, so you do have a duty of care in this instance. To lessen foreseeable risks you need to consider issues such as:

- the level of staff supervision;
- whether staff are properly trained to deal with client conflicts;
- whether staff followed agency occupational health and safety procedures policies in dealing with the fight;

- whether the physical environment was appropriate (for example, whether all the clients in the waiting room can be seen by staff).

Accidents outside the agency – does my duty extend to young people who hang around outside the youth centre?

Vera operates a drop-in centre where a number of young people hang around outside on the steps. Dan starts play-fighting on the steps with some other boys. Vera sees this and knows that it is risky but has an appointment to go to so does not say anything. Dan ends up falling backwards and smacking his head on a step.

Is the centre liable?

As Dan is on the premises the centre owes him a duty of care to prevent reasonably foreseeable risks of injury or harm. As it is foreseeable that play-fighting on steps may cause some kind of injury, and Vera was aware of this, she may be held liable.

When young people hang around outside your building, you have a limited duty of care. However, you should:

- make sure your premises and surrounds are safe (e.g. steps, paths, equipment etc);
- communicate and enforce expectations about behaviour on your premises to those who use it;
- if you are aware of any risky behaviour that is occurring, respond accordingly to try to ensure that someone does not get hurt.

Outside the physical boundary of your premises your duty is minimised, although it is not non-existent. The extent of your duty will depend on the circumstances of each case. In many cases, if someone gets hurt or injured all you can do is call the police or ambulance or provide first aid if required.

Camps and excursions

You owe a duty of care whenever a client is in your care. This includes camps and excursions. Think about the following issues:

- Be satisfied that the venue and any equipment you will use is safe.
- Be clear about any equipment the client needs to bring, including clothing and footwear.
- Know the environment, for example, the degree of difficulty of hikes.
- Know the capacity of your clients, for example, do your clients have the requisite fitness levels?
- Have sufficient supervision for the number of young people you're taking along and trained supervision for specific activities.
- Collect a medical form and consent form which states current medications, previous illnesses, allergies, disabilities etc. All staff should be aware of this information. The consent form should also state that the young person is allowed to receive emergency medical treatment and use of an ambulance. It is best practice to get parents or guardians to sign this form for young people under 18. Be aware, though, that a consent form does not exempt your agency from legal liability if an accident occurs.
- Provide information to the young people and their parents/ guardians about transport arrangements, venue details, activities planned, potential hazards and medical assistance available.

- Carry emergency numbers for each young person.
- Carry first aid equipment.

See also 'Parents and guardians', p35.

Staffing levels

Is there a minimum number of staff required when we take young people on outings?

There is no staff-to-client ratio set out in law. Your agency must decide what is an appropriate level of staff supervision for any given activity or program. Each event will be different. Occupational health and safety laws must also be considered and complied with.

Check whether your agency policy and procedures manual recommends a minimum number of staff. However, just because you follow the recommended minimum number of staff does not mean that you took 'reasonable care'. Even if you exceed the minimum number a court may find the supervision inadequate in a given case.

Greater supervision should be provided if the circumstances require this, for example, if you have clients with medical needs or the event involves a particularly risky activity. Always take into account factors such as the environment, weather and the client's experience, capacities and maturity.

High-risk activities (for example, abseiling or bushwalking) also require an appropriate number of skilled and trained staff. They may be staff from your agency or professional instructors hired by your agency. You must ensure that the number of skilled people is adequate for the number of young people undertaking the activity. This is largely common sense depending on what the circumstances require.

Driving clients

I often drive clients to court. Will I be held liable in a car accident?

As workers you are liable, just as a normal driver is, for causing injuries to anyone who is travelling in your car. This applies to volunteers as well. If you have an accident while transporting young people in your car, you are liable and can be sued.

If you are going to use your car, it is wise to check with your agency whether you are covered by their insurance, and whether they will reimburse you for damage caused to your car or to other people's property. If not, you will have to cover any expenses.

Can I be held responsible for my client's actions once I have dropped them off?

There is no simple legal answer to this question as it will depend on the particular circumstances. Once a person has exited your car you are not *usually* responsible for their actions. If you have given a young person a lift, your duty of care is the same as that for any other passenger. However:

- If you give a lift to someone who you know or believe is going to commit a crime or who has committed a crime, and the lift helps them in committing the crime or escaping from the police, your actions may be construed as 'aiding and abetting' the crime, which is a crime in itself.
- You should use common sense in situations where you could be dropping off clients into a dangerous or illegal environment. While you are under no legal obligation to prevent a client from engaging in illegal activities, ethical considerations suggest you should try to lessen the exposure of a young person to risky or criminal behaviour.

Untrained staff and volunteers

Volunteers or unpaid staff do not owe the same duty of care as paid and trained staff. However, they still need to be instructed about duty of care issues and should carry out their duties in a safe manner.

It is also important that all paid staff, students and volunteers are trained in your agency's occupational health and safety procedures.

Avoid placing volunteers or untrained staff in a situation where they are left unsupervised (for example, driving clients or running groups by themselves).

Volunteers should be covered by volunteer insurance or your agency's general insurance policy. Ensure that your agency's insurance policy covers volunteers. Students on placement may be covered by your agency's insurance or their school or tertiary institution insurance. You need to check that insurance is in place before you accept a student on placement.

Occupational health and safety

Occupational health and safety is governed by the *Occupational Health and Safety Act 2004* (Vic). The Act has the clear objective of preventing illness and injury at work.

Workers have the right to a healthy and safe workplace. Your employer must protect you while you are at work by making sure that your workplace is safe and without risks to your health, including your psychological health. They must do this 'so far as is reasonably practicable', which basically means doing what a reasonable person would do in the circumstances.

Your employer must:

- make sure that the systems and equipment you use at your workplace are safe, for example, that there are safety procedures in place to protect you from violence;
- maintain your workplace in a condition that is safe and does not risk your health;
- provide you with adequate facilities such as hygienic washrooms;
- give you adequate information, training and supervision so you can work safely and without risking your health.

When you are at work, you have the responsibility to:

- take reasonable care for your own health and safety and the safety of others who might be affected by your actions;
- cooperate with your employer when they are taking action to improve health and safety or to meet their obligations;
- follow safety policies and procedures, attend OHS training, follow the advice you've been given and use safety equipment supplied by your employer.

What should I do if a young person is violent on the premises? Should I intervene?

If a client is acting violently and you intervene, there is a high risk that you will be injured. Your agency's policies and procedures should provide clear guidelines about what you should do in this situation. These policies should be based on occupational health and safety laws.

In general, you should warn the young person to stop the behaviour or you will call the police. If the behaviour continues you may have to call the police.

Try to ensure that other people, for example, other clients or staff, can safely leave the area. If you feel you that you would be at risk by intervening, you should not become involved, but maintain supervision of the scene from a safe distance.

If you do intervene and are injured as a result and wish to make a WorkCover claim, there will be an investigation. This investigation will include an assessment of the nature and circumstances of the situation and the impact of the incident.

Confidentiality and privacy

Client confidentiality is an accepted ethical principle in youth work. It is also a legal requirement. All Victorian youth agencies are required to comply with the Commonwealth *Privacy Act 1988* and the Victorian *Information Privacy Act 2000*.

As a youth worker you can be faced with many situations where you will have to make a decision as to whether to disclose information a client has told you. Knowing what you can and cannot disclose is important: you need to maintain the confidence of your clients as well as avoiding serious legal ramifications.

What information is confidential?

Under the *Information Privacy Act 2000* (Vic) any personal information concerning the client is confidential. The law states that this includes 'information or an opinion that is recorded in any form whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

In practical terms 'personal information' includes (although this is not an exhaustive list) a young person's:

- name, address, date of birth, gender;
- things the young person tells you about themselves;
- things other people tell you about the young person, e.g. a doctor's report;
- the fact a young person was, or is, a client of your agency;
- things that happen involving the young person at your agency, e.g. a fight they were involved in;
- things you observe about the young person, e.g. their behaviour;

- your professional judgements or opinions about the young person;
- physical information like photographs or drawings of the young person.

Personal information recorded in any form, whether in a client file, on paper, on a computer disk or even 'stored in your head', is protected as being confidential.

You should treat all information as private and confidential unless the young person gives you permission to share their information with others.

I am aware that a client has a medical condition – do I have to disclose this information to anyone if I am asked about it?

Under the *Health Records Act 2001* (Vic) if you find out about a client's medical condition you must take all reasonable steps to keep that information confidential. Parents or other people may come to you and demand to know if their child has a medical condition. It is important to remember that, generally, you are under no legal obligation to tell anyone about another person's medical condition.

However, this information can be shared with other staff members if they need to know it in order to fulfil their duty of care, for example, where the client is going on a camp or excursion (see 'Camps and excursions', p16).

Jill tells Ruby, her health worker, that she might have HIV. Ruby sends off some blood tests which confirm that Jill does have HIV. Mary, Jill's mother, calls Ruby and demands to know why her daughter is getting blood tests done and says that she has a right to know if her daughter has HIV.

What should Ruby do?

Ruby has no obligation to breach Jill's confidentiality just because her mother demands to know information.

At times you may be aware that a young person has HIV and is engaged in unprotected sexual activity without having informed their partner of their HIV status. There is no clear law on whether you are able to breach confidentiality if a client with HIV informs you they will engage in unprotected sex.

You should bear in mind, however, that it is a crime to intentionally, knowingly or recklessly infect another person with an infectious disease (such as HIV). If you believe that someone is in serious and immediate danger as a result of unprotected sexual activity, you may need to make an ethical decision to breach your client's confidentiality, but you should first encourage your client to tell their partner and assist them to get legal advice.

Sharing information between agencies

You must take reasonable steps to protect your clients' personal information from misuse, loss, unauthorised access, modification or disclosure.

I am referring a client to another service. What information can I pass on?

There are very strict laws surrounding the use of private information. The safest approach is to get the consent of the young person *before* you share any information with anyone. Written consent is preferable to verbal consent and keep this consent on file.

I have heard that there are new information-sharing provisions in the recently enacted Child, Youth and Families Act 2005. What are they?

In specified circumstances, the provisions of the *Children, Youth and Families Act 2005* (Vic) authorise information exchange over and above what is permissible under the *Information Privacy Act 2000* (Vic). The following types of information exchange are authorised by the *Children, Youth and Families Act 2005*:

1. Community-Based Intake agency (CBI)

Any person may refer a significant concern about a child's wellbeing (or about an unborn child where the concern relates to the child's wellbeing after it is born) to a Community-Based Intake agency (CBI).

After receiving a referral, the CBI may collect information about the child and the child's family from other professionals to complete an initial risk assessment and to determine the most appropriate response. Those other professionals are authorised to disclose information to the CBI for those purposes.

2. Child Protection Service

Any person *may* report a belief that a child is in need of protection to the Child Protection Service.

Mandated reporters (doctors, nurses, teachers and police) *must* report a belief that a child is in need of protection as a result of physical injury or sexual abuse.

After receiving a report Child Protection may collect information about the child and the child's family from other professionals to complete an initial risk assessment. Those other professionals are authorised to disclose information to Child Protection for that purpose.

When investigating a report, Child Protection may collect information relevant to the protection or development of a child from other professionals or any other person specifically authorised by Child Protection to assist in completing the investigation. Those requested to provide information are authorised to disclose information to Child Protection for that purpose.

After completing an investigation, Child Protection may collect information relevant to the protection or development of a child from other professionals to assist in planning ongoing care for the child. Those other professionals are authorised to disclose information to Child Protection for that purpose.

3. Protection Orders

Where the Secretary of the Department of Human Services has responsibilities towards a child subject to a Protection Order, and where information is required to enable appropriate planning for the child's care and protection, the Secretary may compel some other professionals to disclose information relevant to the protection and development of the child.

Disposing of information

My agency has a number of files on clients who are no longer using our services. Do we have to destroy these documents?

Your organisation must take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose. If you do not do this you could face substantial penalties.

If you have confidential information which you no longer need, you should shred it instead of simply placing in the recycling bin.

It is important to note that destroying information does not only mean information recorded on paper. Tapes and computer files must also be destroyed.

Check whether your agency or profession has specific time limits on keeping documents. For example, lawyers must retain records for seven years. Medical records must also be kept for seven years for adults and life for children. It is important you are aware of any time limits that exist in your particular profession or at your agency, or are imposed on you by a funding body.

Using client photographs

Can I use photos of young people in our newsletters and brochures, or allow the media to take photographs at events?

The Commonwealth *Privacy Act 1988* refers to personal information as including images as well as words.

In relation to publication of photographs, it is best practice to obtain the informed and voluntary consent of the young person before taking the photograph and again before using it in any newsletter, brochure or on your agency's website. Consent can be gained either verbally or by a written consent form that can be kept on file.

Young people of any age can give their own consent if they understand the issues involved. If they do not understand, you should consider getting a parent or guardian to give consent.

If a client requests that they are not included in any photographs you must take all reasonable steps to respect the client's wish and protect their privacy.

It is also important to remember that at any time a client can withdraw their consent to have photographs published in the future. If this happens, you must remove the images immediately, particularly if they are on the agency's website.

Be aware that there are some children and young people who should not be identified in any publications either by photographs or by name. For example, children who are involved in Family Court matters or family violence cases cannot be identified. The identity of a child (under 18) who is involved in Children's Court proceedings should also not be published without permission of the President of the Children's Court.

Some agencies have policies about not taking photographs of some young people, for example, young people in foster care. This is not a legislative requirement but is considered good practice given there may be additional privacy issues regarding these young people.

Also, under the *Health Records Act 2001 (Vic)* you *must* get consent to take or use photographs of young people attached to a service which clearly discloses information about their health condition.

Breaching confidentiality

I am concerned that my client is about to harm himself. Can I tell anyone?

You owe a duty of care towards young people which includes maintaining their confidentiality and privacy. You are allowed to breach confidentiality if:

- your client is threatening suicide and you believe that they will do so. You can also use reasonable force to prevent someone from attempting to or committing suicide;

- your client threatens to harm themselves or others and you believe that they will carry such threats out.

If a young person leaves your service and you have serious concerns about their safety (for example, they are threatening self-harm) you can try and persuade them to stay somewhere safe, contact someone else who could help, or call the police and/or ambulance services.

What do I do if I believe that one of my clients is about to commit a crime?

If you believe a client is about to commit a crime, you may be justified in breaching confidentiality to prevent the crime but you are under no duty or legal obligation to do so. If you are seriously concerned about threats made by a client against another person, you would be justified in breaching confidentiality in the interests of protecting the potential victim. This is an ethical issue and you should seek advice from your supervisor or manager.

Luke tells his caseworker, John, that he intends break into an electronic shop to steal a TV and that he will be taking an iron bar in case there is a security guard.

Does John have to tell the police?

John has a duty of care to his client which includes maintaining his confidentiality. John does not have to tell the police that Luke intends to commit a crime. However, if he believes that Luke may hurt other people, he does owe a duty to the community. This is an ethical question, not a legal one.

A 16-year-old client has told me she is being abused by her uncle. Can I tell anyone?

Youth workers are not mandated to report the sexual assault of young people. You are not required by law to report the abuse although you may choose to do so if you have significant concerns. You may also encourage your client to report the abuse to the police or their parents, or refer them to appropriate counselling. For more detail, see 'Reporting abuse', p33.

Reporting abuse

The *Children, Youth and Families Act 2005* (Vic) is scheduled to commence in **April 2007**. It will repeal the *Children and Young Persons Act 1989* (Vic).

There is some new language in the *Children, Youth and Families Act 2005* (Vic). The term 'notifications' was previously used to describe reporting concerns to the Child Protection Service. The terms 'reports' and 'referrals' are now used. You make a *referral* to a Community-Based Intake agency and a *report* to Child Protection.

A 16-year-old client has disclosed that she is being physically abused by her father. Do I have a legal obligation to report this to the police or Child Protection?

In Victoria youth workers are not mandated by law to report suspected cases of abuse to Child Protection. The people who are mandated under the *Children, Youth and Families Act 2005* (Vic) to report physical or sexual abuse in the home are:

- registered medical practitioners,
- nurses,
- teachers and principals,
- police officers.

Mandated reporters must report a belief that a child is in need of protection as a result of physical injury or sexual abuse.

There is still some confusion about which professionals are mandated to make child protection notifications because youth, social and welfare workers are listed in the *Children, Youth and Families Act 2005*, but this section has not been implemented.

If you suspect abuse or a young person discloses abuse, it is more appropriate to assist the young person to seek help, such as going to the police. It may be important for you, as someone who has a trusting relationship with the young person, to support them to report the abuse rather than breach their confidentiality.

If the young person is unwilling to report the abuse, and you believe that they are in serious danger, you may feel the need to breach their confidentiality and report the suspected abuse but talk to your supervisor first. You can report abuse to Child Protection or to a member of the police force.

It is important to check your agency's policies and procedures on the reporting of suspected abuse. See also 'Sharing information between agencies', p25.

I am concerned about a client who is 14 and homeless. Can I report this?

If you have concerns about a client's wellbeing you can contact Community-Based Intake (CBI) child and family services in each region. The CBI agency will link the client into appropriate services. Concerns about abuse can still be made directly to Child Protection.

A 14-year-old client is going out with a 30-year-old. Should I report this?

You are under no legal obligation to report this relationship to authorities. Support the young person and ascertain if it is a consensual relationship. Point out that the older person could be charged with a criminal offence given that they are more than two years older than your client.

Parents and guardians

Your primary client is the young person. However, your work may bring you into contact with a young person's parents or guardian. Therefore it is important to know your rights and responsibilities with respect to parental involvement.

Parents and your client's privacy

A client has run away from home and her mum keeps ringing me asking if our agency has had contact with her. She is very upset and I want to let her know that her daughter is safe, but can I tell her that her daughter is one of our clients?

Families can experience a sense of frustration and helplessness when workers refuse to tell them information about their children or exclude them from client interviews.

Remember that you have a duty to protect the confidentiality of your client. If the young person gives you permission to tell their parents information then you are allowed to do so. However, if you are not *expressly* given consent by the young person then you must maintain the privacy of your client.

You are under no legal obligation to disclose to a parent any information that a client tells you. This includes the client's medical history, substance use, criminal activity, sexuality or whereabouts. You cannot tell family members whether their child is even a client of your service. A parent has no legal right to force you to breach a young person's confidentiality.

Nevertheless, family and friends should always be treated with respect. If they want to know information that is private, you need to explain to them that you cannot tell them because this would breach the young person's confidentiality and you would be breaking the law.

You may encourage the young person to get back into contact with their family, if only to say that they are safe. However, this decision is up to the young person.

Parental consent

I am running a holiday program for 15-year-olds. Do I need parental consent before the young people can participate?

There is no set legal age below which you must get consent from the parent instead of the young person themselves. You can accept a young person's consent if the young person has the capacity (that is, they understand the issues involved) and is of sufficient maturity. Most young people of high school age will understand the issues and implications of consenting to activities and excursions.

However it is *best practice* to obtain the parent/guardian's consent as well as the client's when the young person is under 18. This is usually done by providing a parental consent form which can then be signed by parents or guardians.

If a young person is under the age of 18 and they live independently they can usually provide their own consent.

In order for consent to be effective it must be informed. This means you must make the parent and young person *fully* aware of what the activity/trip involves, including:

- transport arrangements,

- planned activities,
- any potential hazards,
- safety arrangements,
- availability of medical assistance,
- anything else relevant to the activity.

Parental consent will not protect your agency from a negligence claim if you fail in your duty of care. However, it does provide evidence of the information you provided to parents and protects your agency from claims that you took a young person away without their parent's knowledge.

Parents picking up clients

If a parent arrives at an overnight camp and wishes to take their child home, can I stop them if they have signed a consent form?

If a parent arrives during an activity or trip and tells you that they want to take their child (if under 18) home, then even though you have a parental consent form you cannot prevent them from taking their child.

However, you should ensure that you are not releasing a child into a dangerous situation. If the child becomes distressed or does not want to go with the parent, or you feel you would be releasing them into a dangerous situation then you should draw this to the attention of your supervisor as they may be aware of some background or dispute. If there are still doubts about a child's safety you should call the police.

See also 'Confidentiality and privacy', p23.

Working with police

Working with young people may bring you into contact with the police. It is important to know your rights and responsibilities in dealing with the police to ensure you are acting appropriately on behalf of the young person while also maintaining a cooperative working relationship with the police.

Diffusing a heated situation

Situations involving young people and the police can easily escalate and may land the young person in serious trouble. Youth workers can help to ensure that a young person's rights are not violated as well as preventing them from getting into more trouble.

You have an opportunity to act as mediator between police and a young person, and you should make all reasonable attempts to calm a young person down and make sure they do not act in a way that attracts possible charges.

It may be appropriate to intervene between the police and an individual or group to diffuse the situation, but you must be prepared to withdraw if the young people or the police ask you to.

If you decide to intervene, when possible directly approach the police officer and make yourself known. State who you are, your occupation, where you work and indicate that you intend to try to diffuse the situation.

You must remember that you have no special rights as a youth worker and if a situation gets out of control you should step back and let the police do their job. Be careful not to hinder the police as charges could be laid against you.

If you feel that the young person or you have been treated unlawfully you may file an official complaint (see 'Complaints about police', p46). Note down the name and ID number of the police officer(s) involved as this information will help you file a complaint.

Similarly, you could compliment a police officer where you believe they have dealt with a situation well. This will assist you to build a good working relationship with local police.

Witnessing an arrest or search

What sort of things should I take note of if I am witnessing an arrest or search of a young person?

If you observe a search or arrest of a young person make sure you take note of the date and time. Ask the police officer:

- on what grounds the arrest or search is being made;
- for their name, ID number and station;
- where the young person is being taken if they are being arrested.

Do not get in the way of a police officer who is searching or arresting a young person or try to physically intervene as you may be charged with hindering police.

If the young person is arrested, ask them if they would like you to accompany them to the police station or to attend the station separately if police tell you that you cannot accompany the young person.

You should always make sure that a young person seeks legal advice *before* they are interviewed by the police.

Police and client privacy

The following section provides a brief overview of what you are legally bound to disclose to the police.

Police have arrived at reception and say that they 'just want to talk' to one of our clients. How should we respond?

Police may enter your agency while conducting 'routine inquiries', wanting to know information about a young person, their whereabouts or information generally about who uses the service.

You are under no obligation to talk to the police about your client(s) unless police have a subpoena for that information. A subpoena is a written court order signed by a magistrate.

You do not have to answer any questions. However, you do have to tell the police your name and address if they ask you. You should be firm yet polite when refusing to answer any questions and inform the police that you cannot give out confidential information about clients and that you are bound by privacy laws.

I know that one of my clients has recently committed a crime. Do I have to disclose this to the police?

You are under no legal obligation to tell the police about any illegal activity your clients have engaged in.

Police may threaten to charge you with obstructing or hindering police. Mere failure to provide information does not amount to obstruction or hindering. To be guilty of obstruction, you would usually need to try to stop or make it difficult for police to execute a search warrant.

However, providing false information (with the intention of deceiving the police) may amount to hindering. For example, if the police arrive and ask where the client is and you tell them he or she is at home when you know the client is at your agency, you could be charged with hindering or obstruction.

Do not lie to the police, but remember you are under no obligation to talk to police about your clients unless they have a court order.

My client has committed a crime and asked me to help them conceal stolen goods. What should I do?

You must not do anything which helps your client with a crime they have committed, such as helping them store or get rid of stolen goods, helping them to flee or giving them a place to hide from police.

You must not accept any kind of benefit in exchange for not telling the police information. If you do you could be charged as an accessory.

The police have arrived with a subpoena for an incident report. Do I have to give this report to them?

A subpoena is a written court order which demands the appearance of a person or the production of specified documents in court. If police have a subpoena for written information, you should give the police the documents specified in the subpoena. If you refuse, you could be held in contempt of court.

The police say they have a warrant to search the premises for a client. What are my obligations in this situation?

Police cannot search premises without your permission unless they have a warrant. A warrant is a document issued by a court. To get a warrant, police must apply to a magistrate and provide sworn evidence. There are two main types of warrants.

1. Search warrant

A search warrant allows police to break into, enter and search a particular place for specific items. If the police come into your agency and say they have a warrant to search the premises, they must:

- identify themselves; and
- give you a copy of the warrant.

You should check that the warrant states the following:

- the name/description of the premises (check they have the right address);
- the purpose of the search;
- whether the police are allowed to search at any time of the day or night or only at particular times as stated in the warrant;
- an expiry date, after which the warrant is invalid; and
- any conditions to which the warrant is subject.

The police are allowed to take anything specified in the warrant. You should witness the search and make sure it complies with the warrant. If it does not, do not try to stop the police, simply make a note so you can lodge a complaint later.

2. Arrest warrant

An arrest warrant allows the police to break into, enter and search any place where the person named in the warrant is suspected to be, and to arrest that person. This means that if a young person is in your agency and the police have an arrest warrant for that person they can search your premises.

An arrest warrant must state:

- the name of the person who is to be arrested; and
- the charge against the person.

If the police have a valid warrant you must not do anything to prevent or obstruct them from carrying out the search and arrest. If the police have an arrest warrant for a young person and you intentionally hide them or warn them of the police presence, you could face criminal charges.

Police interviews

One of my clients has been taken to the police station for an interview. Can I accompany them to give them support?

Under Victorian law, a police interview must not be carried out with a person under 18 unless a parent or guardian is present – if a parent or guardian is not available, an independent person must be present at the interview. Anyone over 18 (except a police officer) can be an independent person, and youth workers sometimes play this role.

The young person must also have the opportunity to speak to their parent, guardian or the independent person in private before the questioning begins. A young person has a right to speak to a

lawyer and you should encourage your client to seek legal advice before the interview. The police must also inform the young person of their right to seek legal advice.

If you are asked by a young person or the police to be an independent person, remember you are not there to provide legal advice or information. You are there to ensure that the young person feels supported and that the interview is carried out lawfully.

During the interview you:

- should be impartial and objective;
- may make notes;
- may ask questions of the police to gain more information about what the young person is to be charged with or what offences they are suspected of committing;
- can ask to speak to the young person in private;
- cannot answer the questions for the young person in the interview;
- cannot advise them whether to answer the question or not;
- should explain to the young person that you are there to assist them with the process of the interview but that you cannot give legal advice and that they should request to speak to a lawyer;
- should remind the young person that they have the right to silence;
- can ask the police to explain any words that you think the young person will not understand;
- should ensure the young person is not pressured into giving any answers in the interview.

After the interview make sure that you ask the police what the next steps are. Ensure the young person has a way to get home and understands what has happened during the interview process.

The Youth Referral and Independent Person's Program (YRIPP) trains volunteers to be independent persons to assist young people when they are brought in for police questioning. The program is due to be rolled out across Victoria in 2007 so check if the program operates in your area.

Complaints about police

I think that the police acted unlawfully and I want to make a complaint. What should I do?

If you believe the police have acted unlawfully or have used unreasonable force in dealing with young people or workers in your agency, you may have grounds for a complaint.

If you want to complain about the police you should do it as soon as possible after the incident. Write down everything that happened during the incident, including:

- the names of the police officers involved and their identification numbers if you have them;
- what happened;
- the date and time it happened.

If anyone has been hurt, get a doctor to see them straightaway or as soon as possible and get someone to take a photo of the injuries if possible.

You can make a complaint to any police officer in charge of a police station, a police duty inspector or the following agencies:

- **Office of Police Integrity**

Handles complaints about police and investigates police corruption and serious misconduct.

Tel: 8635 6188 or Toll free: 1800 818 387

- **Ethical Standards Department**

This department is part of Victoria Police and investigates complaints about Victoria Police.

Tel: 1300 363 101

- **Ombudsman (Commonwealth)**

Handles complaints about the Australian Federal Police.

Tel: 9654 7355 or 1300 362 072

Court procedures

Different cases are heard in different courts, depending on the seriousness of the offence:

- *Magistrates' Court* – hears offences that are less serious (summary offences), for example, behavioural offences and minor assaults. There is a magistrate present.
- *County Court* – hears offences that are more serious, such as aggravated burglary, rape and armed robbery. There is a judge and jury present.
- *Children's Court* – the Family Division of the Children's Court hears applications relating to the protection and care of children and young people, and applications for intervention orders. The Criminal Division hears matters relating to criminal offences by children and young people aged between 10-18 years.

Court etiquette

What should I wear and what do I do?

- It is best to wear clothing that is smart casual. Clothing such as tracksuit pants, jeans and hats are not appropriate.
- It is customary to bow to the magistrate or judge when you enter or leave the courtroom.
- Address the magistrate or judge as 'Your Honour' if you are called to give evidence.
- If you are waiting for your client's case in the courtroom do not walk around or talk loudly. You can wait in the foyer outside the courtroom.
- If you enter (or get up to leave) the court as the oath is being administered to a witness, stand still until the oath is finished.

- Turn off your mobile phone before you enter the courtroom and tell your client to do the same.

Being a witness

If you are called as a witness you will receive a witness summons or subpoena before the court date. This will advise that you have to give evidence in a particular court on a particular date.

You can be a witness of fact or of character. The court may ask you to give evidence about facts related to the case or about your client's character. If you are a witness of fact, you cannot give your opinion on the matter, just evidence of what you saw and did.

At the beginning of a contested case, the magistrate or judge will ask all witnesses to leave the courtroom to ensure that all evidence is independent and that you are not influenced by what other witnesses may say.

Oaths and affirmations

When called as a witness, you will be asked to swear on oath that what you are about to say is the truth. If you are willing to swear on the bible or other holy book, you will be asked to hold the holy book and repeat the oath after the court officer administering the oath.

If you are not religious, you may feel more comfortable making an affirmation, which usually involves saying that you 'solemnly affirm to tell the truth'. This has the same legal effect as taking an oath.

Giving evidence

You may be asked questions by both the prosecution and the defence lawyers. The magistrate or judge may also question you about aspects of your evidence. In answering the questions, be

concise and to the point. Avoid repeating conversations that you have heard as this is regarded as hearsay evidence and is not allowed in court.

When giving evidence it is important to:

- project your voice when answering questions;
- take your time;
- understand the question – ask the lawyer to repeat or clarify the question if you do not understand it;
- remain calm and polite;
- state the facts;
- say ‘I do not know’ if you are unsure about what you are being asked;
- be confident.

What if my credibility as a youth worker is undermined by the lawyers?

You are entitled to legal advice before going to court to give evidence. It is possible that you may feel that your credibility is being undermined by the defence or prosecution lawyers or other witnesses. If this occurs, it is important to remain calm and answer the questions honestly. Do the best you can at answering the questions. The magistrate or judge may step in if the defence lawyer or prosecutor is going too far.

By law, a witness is not allowed to be asked questions that will undermine their character. It is up to the court to decide whether you will be compelled to answer a question of this nature.

What should I say if I am a character witness?

Character witnesses are usually heard during the sentencing process, which will occur if your client has been found guilty of an offence. Courts can take into account the previous character of the offender when sentencing. You may be called to speak about the general character of your client, including how long you have worked with them, your experiences of them and their individual circumstances. This information will assist the magistrate or judge to sentence them appropriately.

Supporting your client at court

My client has to go to court to answer a criminal charge. Should I be involved in the proceedings?

If your client has requested that you accompany them to court, it is fine to do so. You may be able to help them understand what their lawyer is saying to them and it may be a comfort to them to be with someone they know. You can help calm their nerves and keep them company during the long waiting periods that may be encountered.

Having a support person may also make a good impression on the court as it shows that your client has someone to assist them to manage difficult aspects of their life. You are permitted to sit next to your client at the front of the courtroom.

It is important to remember that you are not your client's legal adviser and must not attempt to give them any advice regarding the law.

My client is on bail. Should I accompany them to court?

If your client is on bail, they must attend court every time their case is listed, even if it is only to adjourn the case. If your client does not appear in court when required they could face further charges of failing to answer their bail. If your client is ill, they need to go to a doctor and get a medical certificate faxed to the court to have the case adjourned in their absence. If they are in detox, the agency needs to fax to the court a letter stating this. You may need to accompany your client on a number of occasions to assist them to keep to their bail conditions.

My client's case has been adjourned. What does this mean?

An adjournment is simply asking the court to put off the case for a while longer in order to prepare the case. Adjournments are issued by the magistrate or judge. A duty lawyer at court will be able to assist your client. After the first adjournment, even if your client is not on bail, they must still appear in court.

Working with your client's lawyer

It is important that you respect your client's lawyer and be aware that there is confidentiality between your client and their lawyer. Your client's lawyer can only give you information about the case if your client consents.

Your client has no duty to give you information regarding their case nor does their lawyer.

If your client is charged with an offence, it is important to support your client to get legal advice at an early stage once charges are received. Contact Youthlaw, your local community legal centre or Victoria Legal Aid.

Court reports and support letters

When is a court report or letter of support used?

After a young person has pleaded guilty or has been found guilty of a criminal offence, the court must decide what sentence or punishment to give them. Court-ordered reports and letters of support are used by the court at this stage during sentencing and may help the young person to get a better outcome.

The most important objective in sentencing young people is their rehabilitation. As a result, it is important for the magistrate or judge to have details of a young person's personal character and circumstances.

1. Letters of support

A young person or their lawyer may ask you to write a letter of support. This is essentially a character reference. It contains information about the personal character and circumstances of the offender. You do not have to provide a letter of support; equally, you are free to provide a letter, even though you have not been asked to provide one, if you feel it would help your client's case.

2. Court-ordered reports

Sometimes a magistrate or judge may order a 'pre-sentence report' to be presented to the court to assist in the sentencing process. This is a court-ordered report about the personal character and circumstances of the young person. The report may include details of the young person's education, health, leisure activities, family relationships and future plans. The person who writes this report is usually a corrections officer (for over-18-year-olds) or juvenile justice officer (for under-18-year-olds). They may ask you, as someone who works with the young person, for input.

When considering both a court-ordered report and a letter of support, it is important to think about the implications of what you say. Anything you say should be positive and the main purpose of your input should be to help the young person. If you cannot say something that is encouraging, it is best not to write it.

Do workers have to write these references or attend court?

You are not obliged to write a support letter. It is entirely voluntary. The lawyer or young person may decide not to present your letter of support to the court even after you have written it.

Likewise, you are not required to attend court if you decide to write either reference. This is voluntary. You should mention in your letter if you are unable to be present. For example, you could say 'due to other commitments, I am unable to attend court to give character evidence on his/her behalf'.

However, it is recommended that you attend court, if possible, to provide support to the young person and answer any questions that may be asked of you by the magistrate or judge. The young person's lawyer will inform the magistrate or judge that you are present in court. Where a young person is unrepresented, you may inform the court yourself and explain who you are and that there is no lawyer.

Writing a support letter

Key points:

- If possible type the letter on your organisation's letterhead.
- Make sure the letter is signed and dated.
- Be brief and get straight to the point.

- Be positive. If you have only negative things to say about the young person, it would be better not to write the reference.

The letter should include the following details.

1. Address:

- If the case is in the Magistrates' Court or the Children's Court, address the reference to 'The Presiding Magistrate' of the relevant court. If the case is in the County Court or Supreme Court, address the letter to the 'The Presiding Judge'.
- With all courts, commence the letter with 'Your Honour'. 'Dear Sir/Madam' is also acceptable.
- In an opening subject line or reference, clearly state the young person's name and date of birth in bold, for example, **Re: John Citizen, D.O.B: 01/01/90.**

2. Your role and relationship to the young person:

- State clearly who you are and your role. State any formal positions, qualifications or experience you have. Include the nature and functions of your work and that of your organisation.
- State how you know the young person, how long you have been working with them and how often you have contact with the young person.

3. Your knowledge of the court case and your reason for writing a reference:

- State that you are aware that the young person has been charged, for example, 'I am aware of the charges before the court'.
- Do not comment about the facts relating to the offence or what the young person has told you about it.

4. Your knowledge of the young person's character:

- If applicable, give your opinion of the young person's general character and reputation in the community.
- State whether you believe the offences are out of character and why.
- Refer to what you know of the young person's personal background (i.e. family, education and employment) and any hardships or special achievements they have experienced in their life.
- Mention any activities or programs that you are aware the young person has participated in, for example, volunteer or charity work.
- Note any referrals to other agencies.

Example letter of support

City Base Youth Services
1 Flinders Street
Melbourne 3000

1 January 2007

The Presiding Magistrate
Melbourne Magistrates' Court
William Street
Melbourne 3000

Your Honour,

Re: Angelina Place, D.O.B: 01/01/88

I am writing this letter in my capacity as City Base Youth Services Support Worker and I understand the purpose for which this letter will be used.

City Base Youth Services has been providing support and outreach services to young people experiencing homelessness aged between 15-25 years in the inner city since 1990. The program aims to facilitate the housing stability of clients and links them into other community agencies.

Angelina Place has been attending our agency for three years and I have been her youth worker for approximately 12 months. Angelina presented with complex problems including family breakdown, drug and alcohol concerns and criminal issues.

Since entering our program, Angelina has attended all appointments and has actively started working towards addressing the issues which were impacting on her life. Angelina was linked to a drug and alcohol counsellor who assisted her to enter a 15-day detox program in November 2005. Angelina is linked with Youthlaw to assist her with her criminal issues and has recently begun a mediation program to assist her to re-engage with her family. Angelina has also recently completed her VCE, showing her commitment to her education.

I have found Angelina to be an enthusiastic young woman who has been keen to tackle her problems and change her behaviour. It is my opinion that the program has given Angelina the skills to assist her to make positive lifestyle choices in the future.

Yours sincerely

Brad Goldy
Support Worker
City Base Youth Services

Professional boundaries

Contact with clients outside work

A client has invited me to her birthday party. Am I allowed to socialise with clients outside work?

While there is no law prohibiting you from having contact with your clients outside work, it is important to consider the ethical issues regarding the client–youth worker relationship.

It is important to ensure that you try to keep your professional life and private lives separate. This includes:

- not socialising with young people who are your clients outside work;
- not having a romantic or sexual relationship with clients;
- not allowing clients to visit you at your home.

A youth worker's relationship with their client should be professional. This is to protect the young person and the worker. Boundaries help to ensure that young people are not exploited or let down in any way and also help to protect workers from complaints about inappropriate behaviours.

Romantic relationships

What should I do if I am aware that one of my clients is attracted to me?

Reinforcing the boundaries is particularly important in this situation. You should make it clear to your client that your relationship with them is purely professional and that you will not be pursuing a romantic or sexual relationship with them.

It is important not to encourage this kind of behaviour. If you see that your client wants more than a professional relationship with you, you should ensure that you put a stop to it immediately.

Seek advice from your manager and ensure they are aware of the situation. Make notes to assist you if the client makes a complaint against you.

You also need to be aware of laws relating to sexual consent. If your client is under 16 and you are more than two years older than your client, it is illegal for you to have a sexual relationship. If your client is between 16 to 18 years old, it is still illegal to have a sexual relationship if you are in a position of authority (for example, their caseworker). You could be charged with sexual assault.

Taking clients home

My client has nowhere to live. Is it ok for them to stay at my place?

This issue is once again an ethical one as there is no law prohibiting a youth worker from allowing a client to stay at their home. It is not advisable to allow clients to stay with you as this will undermine the professional boundaries that you have in place and can leave you vulnerable to complaints about your behaviour.

Try to find alternative accommodation for your client through crisis accommodation. This is understandably difficult in some regions.

You may feel pressured into allowing a client to stay with you if the young person is in danger. You may also feel the need to allow your client to stay with you as a last resort if all other alternatives have been exhausted. Remember that as a youth worker you have the right to say no.

You should ensure that your agency has developed policies and procedures regarding this issue so everyone knows what is acceptable. Consider different alternatives such as paying for motel rooms. If an agency policy specifically prohibits clients being taken home and you do this, then you will be in breach of this policy and could face disciplinary action.

Driving clients

Is it ok to drive a young person home in my car?

Youth workers may be asked to drive clients between agencies or events. In this situation, it is important that you remember that you are responsible for them and may be held liable for any harm that happens to them. You should read your agency's policies regarding this issue and consider whether you wish to take on the extra responsibility.

Driving in a car can also make you vulnerable to complaints about your behaviour. To avoid any false allegations it is a good idea to ensure that another worker accompanies you in the car.

Always make notes about the trip, where you took the client and any incidents that occurred.

Texting and calling clients

Can I call or text a young person outside work hours or for work purposes?

Mobile phone may be the only way you can keep in touch with clients so it is fine to contact them by mobile.

However, as with any form of contact, make a note of when the call was made and what information you gave them. This can protect you from allegations that you behaved inappropriately or gave incorrect information.

It is not a good idea to give advice via a text message unless absolutely necessary, but if you do, treat the text as any other form of written communication – that is, make a note of it in your files.

Complaints about workers

While there is no law governing the handling of complaints, it is very important that complaints are handled in an appropriate way to demonstrate to clients that your agency values their feedback. Every young person has the right to make a complaint. Complaints may be made for a number of reasons including:

- the way that services are provided to the client;
- the way the client has been treated by staff;
- information that has been disclosed about clients;
- the way an incident has been handled by staff members.

If the complaint is about another youth worker, ask the client whether they would like to speak directly to that person as in many instances this results in the complaint being resolved quickly.

If the young person does not want to speak to the youth worker they are complaining about, or they are unable to resolve the issue with them, refer the young person to a senior staff member.

If the complaint is about you and the client wishes to speak to you about it, it is important to ensure that you:

- treat them with respect, even if you do not agree with what they are saying;
- do not interrupt them or raise your voice in an attempt to defend yourself;
- record on paper all the relevant discussions that you have with the client and any agreements that may have resulted;
- attempt to resolve the complaint by offering an explanation for the action and ask the client whether they are happy with the way the complaint has been resolved;

- if they are not satisfied, refer them to a senior staff member to deal with the complaint.

Check your agency policy and procedures manual for information on how your agency deals with complaints. If your agency does not have a policy, make sure that one is developed.

If the complaint cannot be resolved by your agency, the client may wish to take the complaint to an external body such as the Victorian Equal Opportunity and Human Rights Commission, the Office of Housing or the Department of Human Services.

It is imperative that all complaints are taken seriously by your agency and that all complaints are dealt with in a timely manner. It is inappropriate to ignore a complaint or to take an excessive amount of time to investigate and resolve a complaint.

It is also recommended that your agency keeps all complaints on file, regardless of how minor the matter or whether it was resolved quickly. This will assist to improve your services and in case the complaint is taken further, will ensure you have written documentation about the steps you have already taken.

A complaint has been made about me. Can I get legal advice?

Youth workers can obtain legal advice regarding a complaint made against them particularly where the complaint is serious and could lead to legal action. Your agency may have in-house lawyers. While you can seek their legal advice, it is preferable to get your own independent lawyer in case a conflict arises between you and your employer.

Employment checks

Police checks

Your employer may ask you to have a police check before you start work to check your criminal history.

Victoria Police undertakes checks for individuals and organisations wishing to obtain national police certificates for employment and voluntary work. Victoria Police does not release information about an individual's criminal history to an organisation without written consent so you must give consent for a police check to take place.

You must complete the 'Consent to Check and Release Police Record' form, which can be obtained from the Victoria Police website.

The check releases criminal history information on the basis of findings of guilt and may also release details of matters currently under investigation. Offences remain on your record for ten years if you were 18 or older when last found guilty of an offence, or for five years if you were under 18 when you were found guilty of an offence.

Findings are presented as a 'National Police Certificate' and are sent to organisations or individuals by post.

Working with Children Check

The Victorian Government has introduced legislation which mandates people who work with children and young people (under the age of 18) to have their criminal history checked. The check is called the Working with Children Check. It is administered by the Department of Justice.

What is the purpose of these checks?

The Check was introduced so that Victoria has a uniform checking system to ensure that all people who work with children (in both paid and voluntary capacities) are suitable for the job. The system provides a minimum checking standard about a person's suitability to work with children.

Who does the Check apply to?

This Check involves employees and volunteers who are in regular contact with children. You may be exempt if you are a student on placement (as long as the arrangement was organised by an educational institution) or you are under 18 years of age.

When should I apply for a Check?

This new system will be phased in over five years. When you have to apply depends on the type of work you do. Check the website for more information: www.justice.vic.gov.au

What does the Check involve?

The Check involves a review of your criminal record at a national level, in the areas of:

- serious sexual offences,
- serious violence offences,
- serious drug-related offences.

The Check can also include information about:

- any 'spent' convictions you have (see Glossary);
- charges and convictions from when you were a child (under 18);
- any pending charges you may have;

- the circumstances surrounding any of these charges or convictions.

In addition, the Check will also review findings from professional disciplinary bodies.

This Check is different from a police check as not all offences are relevant. The Check focuses on serious sexual, violence and drug offences. Other offences such as dishonesty will not be taken into account but will show up on a police check.

The Check is also continually monitored in order to ascertain whether new convictions or findings may prevent you from working with children.

What are my obligations as a youth worker?

Once you have the Check you will receive an Assessment Notice and a Working with Children Check Card, which you must keep in a safe place.

Cards are valid for five years. You must apply for a new Check before the expiry date – you may apply for a new Assessment Notice six months before or up to three months after the expiry date on your Card.

If your circumstances change, for example, you are charged with a relevant offence, you must notify the Department of Justice and your employer *within seven days*.

What are the employer's obligations?

It is the responsibility of employers to ensure that relevant employees have the Check. Remember that this Check also applies to unpaid workers, including volunteers who have contact with children.

What are the possible outcomes of a Check?

There are three possible outcomes:

- *Assessment Notice*

This means you have passed the Check and can continue to work with children. This will be accompanied by a card which verifies that you are able to work with children, valid for five years. You do not have to apply for a new check every time you change employment. It is transferable.

- *Interim Negative Notice*

This means that the Department of Justice is considering issuing you with a Negative Notice but that a final decision has not been made. If you receive this, you can submit a letter to the Department stating why you would not be a risk to children. You are required to notify your employer within seven days if you have been issued with this notice.

- *Negative Notice*

This is issued when you are considered not suitable to work with children. You will be given reasons by the Department as to why you have been issued with this notice. You can appeal to the Victorian Civil and Administrative Tribunal (VCAT).

What happens if I work with children without having a Check?

It is an offence to work with children without having a Check and the offence is punishable by imprisonment of up to two years. It is also an offence to work once you have been issued with a Negative Notice and this is punishable by up to two years imprisonment or a fine of up to \$25,000.

It is also an offence for an agency to allow you to work if they are aware you do not have a Check. This offence is also punishable by up to two years imprisonment, a fine or both.

If you use a false Assessment Notice or use someone else's you may be liable to up to two years imprisonment, a fine or both.

What if I do not tell the truth on my application form?

It is considered an offence to provide misleading information on your application and punishable by up to two years imprisonment, a fine or both.

What happens if my circumstances change?

You must inform your employer and the Department of Justice if your circumstances change, including if you are charged with a criminal offence. This must be done within seven days.

If you fail to inform the Department or your employer if your circumstances change, you may be liable for a fine.

For more information, contact the Working with Children Check Information Line on 1300 652 879.

Banning clients from services

One of our clients is particularly disruptive and threatens workers and other clients. Can we exclude him from our service?

At times it may be necessary to exclude or 'ban' a young person from your agency in order to maintain the safety and wellbeing of staff and other clients. Legally, an agency can ban a young person from their agency. However you must:

- give the person a fair hearing before deciding whether to ban them; and
- make a decision based on that young person's behaviour and not assumptions about them or the group they belong to as this could be discrimination.

Banning should be used as a last resort. You should always try and talk to the client first to identify any underlying problems. The kind of behaviour that will attract a ban will depend on your agency's guidelines. As a general guide, behaviour which might justify a ban may include:

- repeated drug dealing to other young people on your premises;
- violence or serious threats of violence; or
- physical or verbal intimidation of staff and/or other clients.

Remember that if you are considering banning a young person they may have already been banned from other support services so you should try to find ways to continue to provide services to the young person safely, such as:

- asking the person to leave for the rest of the day, so they can cool down;

- banning them from group activities but continuing to provide casework services;
- banning them from your premises for a stated period but providing casework services at other safe venues or providing phone support.

If a ban is needed, you should try to provide the client with appropriate contacts for other services that they can access.

A ban should be for a limited period of time (for example, 24 hours or up to one week) and should be reviewed at the expiry of that time period.

Your agency may also want to develop a clear behaviour policy which sets out what conduct your agency will not tolerate. Ensure this is clearly displayed and understood by the young people who use your service.

What if the client refuses to accept the ban?

If a client is asked to leave and they refuse to comply then legally they are trespassing and can be removed through the use of reasonable force, or the police can be called. Police should only be called as last resort if the situation is getting out of hand or there is danger to others. The mere threat of calling the police is often enough to get the person to leave.

Discrimination

Equal opportunity laws are contained in the *Equal Opportunity Act 1995* (Vic). The law states that everyone has the right to be treated equally with respect and dignity. It is unlawful to discriminate against someone on the basis of various attributes including race, age, disability or gender.

It is important that your agency's policies and procedures are non-discriminatory and that your service is accessible to all young people. For example, this may involve having interpreters available or publishing information in different languages to ensure that young people from culturally and linguistically diverse backgrounds can use your services. Similarly, physical access needs to be appropriate to ensure those with physical disabilities can use your services.

In order to avoid discrimination your agency should review current services and policies and ensure that all people are able to use your service without being discriminated against. All employees should be educated about discrimination laws and the needs of different young people.

Can I refuse to take a young person on an activity because of their disability?

You should not refuse an activity to a young person based on their disability. You must first find out about their capacities and identify any risks that may be involved for them. It is only when a risk genuinely cannot be managed after much consideration that you may be able to refuse to allow a client to undertake an activity. Everyone in Australia is protected from discrimination with regard to disability under the *Disability Discrimination Act 1992* (Cth).

If it is not possible to allow a young person to participate in an activity because of their disability because it would mean excessive costs for your organisation, it may be acceptable to not allow the young person to be involved. This is regarded as the defence of 'unjustifiable hardship'. You should first consider all the alternatives, and consult various resources including the Youth Disability Advocacy Service (see Useful Resources, p85).

You need to:

- ask the person about any disabilities, symptoms and management strategies (for example, medications) which are relevant to their safe participation in the activity. Handle this sensitively and avoid unnecessary invasion of privacy by only asking about things that are relevant to the activity, and do not record or share with your team any information which is not relevant;
- identify any genuine risks they may face as a result of their participation;
- identify reasonable adjustments you can make to include the person and to manage the risks. Considering reasonable adjustments is a legal obligation under disability discrimination law.

Only if the risks cannot be managed with reasonable adjustments can you consider excluding the young person from the activity.

What happens if our agency does discriminate against a client?

The young person may make a complaint to your agency. If this occurs you should attempt to resolve the matter by discussing the issue with the young person directly.

If the matter is unable to be resolved, the young person may decide to make a formal complaint to the Equal Opportunity and Human Rights Commission of Victoria. If this occurs, you may then be offered a free and impartial mediation service with the aim of achieving a mutually satisfying agreement.

Exemptions

I run a young women's program and have funding to employ a young facilitator. I want to employ a young woman under the age of 25. Will I be breaking discrimination laws?

The Victorian Civil and Administrative Tribunal (VCAT) may grant exemptions from any of the provisions of the *Equal Opportunity Act 1995* (Vic). An exemption remains in force for the period that is specified in the notice not exceeding three years.

VCAT has discretion as to whether or not to grant an exemption. In exercising that discretion VCAT will look at whether or not the exemption is appropriate. VCAT will consider:

- whether an exemption is unnecessary – that is, the exemption will not be granted where another statutory exception applies, or where there is no arguable case of discrimination;
- whether an exemption is futile – that is, the exemption will not be granted where the conduct sought to be exempted is clearly prohibited by another law;
- whether an exemption promotes the objectives of the legislation and is consistent with the spirit of the legislation;
- whether there is some overriding public interest that justifies conduct being taken out of the statutory prohibitions on discrimination;
- all the relevant circumstances of the particular case.

In the case above, it may be appropriate for the recruitment to be limited to a young woman under the age of 25 given that these criteria underpin the program. However, it would not be appropriate to state that a person with a disability cannot apply.

Alcohol and cigarettes

Buying alcohol and cigarettes for clients

A client has asked me to buy them cigarettes and alcohol. Can I do this?

If your client is under 18, it is illegal for you or any other person who is over 18 to buy them cigarettes and alcohol. You can be fined if you do so.

However, it is not illegal for a person under 18 to smoke cigarettes or carry them.

As a youth worker, if you give alcohol to someone under 18 you could receive an on-the-spot fine. A young person who is under 18 and receives alcohol may also be fined.

It is illegal for a person under 18 to possess and consume alcohol in a public place, so it is important to consider the implications if you were to purchase alcohol for a client as it could lead to criminal charges against them.

Serving alcohol at a mixed-age function

Our agency is holding a function where people of all ages will attend. Are we allowed to supply alcohol?

It is generally fine to serve alcohol at mixed-age functions. However, it is your responsibility to take all reasonable steps to ensure that young people under 18 do not consume alcohol, unless you have permission from their parents. If you are concerned about supervising this, it may be wise to consider an alcohol-free event.

Smoking with clients

Is it ok to smoke with clients who attend my agency?

While you are not committing an offence by smoking with young people provided that you did not supply the cigarettes, it may not be appropriate to do so as it may be seen as encouraging smoking.

Smoking in and around agency premises

Smoking is not allowed in work premises under any circumstances. In addition, any covered areas outside your agency are also deemed to be non-smoking. Your service has a duty of care to ensure a safe and clean environment and prevent any passive smoking. You are required by law to display a non-smoking sign on your premises to ensure that people are aware that smoking is prohibited.

Refusing entry

Can we refuse entry to people who are under the influence of drugs and alcohol?

You have the right to ask young people who are behaving inappropriately to leave. When you hold events and refuse young people entry on the grounds that they are under the influence of drugs/alcohol, you do not have a duty to report them to police, and you have no legal right to take the drugs or alcohol from them. Generally your duty is limited to calling an ambulance or providing first aid if you think it is necessary.

Young people and sex

Am I allowed to give out condoms to clients?

There is no law that prohibits you from handing out condoms as there is no age limit on who can buy them or use them. While providing contraception to clients is not part of your duty of care, it also is not a breach of your duty of care.

What should I do if a client wants to go on the pill?

In these cases you should direct your client to a doctor or community health service. If the client is under 18, they can use the pill if they go to a doctor and the doctor believes that they are mature enough to make this decision.

A 14-year-old client is going out with a 16-year-old. Should I report this?

It is against the law for someone under the age of 16 to have sex with someone who is more than two years older than them. In this case no law is being broken. See also 'Reporting abuse', p33.

Glossary

Adjournment – the case has been postponed to another time or date.

Bail – a written undertaking that the defendant will appear at court.

Common law – law made by through judgments in court and through precedents.

Contested case – if the defendant is pleading not guilty, the matter may be listed for a contested hearing where evidence is presented and the magistrate or jury makes a decision as to whether the defendant is guilty or not guilty.

Defendant – a person charged with a criminal offence.

Spent conviction – a conviction for a criminal offence which no longer exists after a certain time without re-offending.

Subpoena – a written court order which demands the appearance of a person or the production of specified documents in court.

Summons – a document requiring a person to appear in court on a specified date.

Warrant – a document issued by the court directing a police officer to take a course of action – may be a search warrant or an arrest warrant.

Useful resources

Victoria

- **Youthlaw**

At Frontyard
19 King Street, Melbourne 3000

Tel: 9611 2412

Fax: 9620 3622

Email: info@youthlaw.asn.au

Web: www.youthlaw.asn.au

- **Community legal centres**

For contact details visit www.communitylaw.org.au

- **Victoria Legal Aid**

Legal Information Service

Tel: 9269 0120

Web: www.legalaid.vic.gov.au

- **Youth Disability Advocacy Service**

Level 2, 172 Flinders Street, Melbourne

Tel: 9267 3733

TTY via the National Relay Service: 1800 555 630

Toll Free (from outside Melbourne): 1300 727 176

Email: ydas@ydas.org

Web: www.ydas.org/

- ***Am I Old Enough? Common legal issues for young people***

Victoria Legal Aid

Web: www.legalaid.vic.gov.au

- ***Teachers, Students and the Law (2005)***

Drew Hopkins

Victoria Law Foundation

Available from Information Victoria, Tel:1300 366 356

- ***Taking Care: Law for Human Services CDROM (2004)***

Victoria Law Foundation

Available from Information Victoria, Tel:1300 366 356

- ***The Law Handbook***

Fitzroy Legal Service

Web: <http://fitzroy-legal.org.au/bookshop/home.php>

Western Australia

- ***@ law: a legal information handbook for people who work with young people (2004)***

Youth Legal Service, Western Australia

Web: www.youthlegalserviceinc.com.au

New South Wales

- ***Is it OK? Duty of care, law and ethics in NSW youth work: A guide to common legal and ethical dilemmas (2006)***

Nick Manning

Youth Action and Policy Association

Web: <http://www.yapa.org.au/youthwork/facts/ok/>

Relevant legislation in Victoria

Child Wellbeing and Safety Act 2005 (Vic)

Children, Youth and Families Act 2005 (Vic)

Disability Discrimination Act 1992 (Cth)

Equal Opportunity Act 1995 (Vic)

Health Records Act 2001 (Vic)

Information Privacy Act 2000 (Vic)

Occupational Health and Safety Act 2004 (Vic)

Privacy Act 1988 (Cth)

Working with Children Act 2005 (Vic)

Discrimination
Duty of Care
NEGLIGENCE
Complaints
Police
Confidentiality
Privacy
CONSENT
Court
Information Sharing
professional boundaries

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