

SEXUAL ABUSE OF THE VULNERABLE FACT SHEET

2015

KEY POINTS

- > Liability
- > Mitigating Risk
- > Action Steps

There is no doubt that physical and sexual abuse has occurred in this country and will continue to occur. People who want to abuse will exploit organisations that provide care, education, religious and community services as long as they are seen as easy targets for access to vulnerable people.

The opportunity to exploit will only be reduced when organisations make risk management a fundamental part of their operating culture by following comprehensive policies and procedures. Wherever there are organisations that operate to provide services to the vulnerable, there will be those people who look for opportunities to exploit and abuse.

With the focus of the Royal Commission into organisational response to sexual abuse of children, there is a tendency for commentators to focus on the abuse of children. It must however be remembered that where a position of trust exists, there is the potential for any vulnerable person to be abused.

Your legal obligations

There are many good reasons why your organisation should take preventative measures, not least are the legal obligations you must comply with. Protection legislation varies from state to state. It is important that you understand the laws relevant to your location.

In addition to the laws drafted by governments you also have Common Law obligations. In particular you have a 'duty of care' which requires you to take all reasonable steps to provide a safe environment for people involved with your organisation.

As the law now stands, an organisation is not liable for the acts of a perpetrator. There needs to be an act, error or omission on the part of an organisation to give rise to a breach of the duty of care. A survivor of abuse, who wishes to make a claim for negligence against an



organisation, needs to prove that the organisation could have stopped or prevented the abuse from occurring.

You need to know your legal obligations and you need to ensure that there are high standards of risk management procedures in place to make it as hard as possible for perpetrators to prey on people in your care. Making risk management a priority in your organisational culture will also help defend any claim that is made against your organisation for a lack of care.

It is important to be aware that an incident today may give rise to a claim for negligence against an organisation in perhaps 20 or more years' time. With this situation, there are complex long-term 'abuse' exposure issues for policyholders and insurers alike. Good risk management is now seen as a major underwriting factor in the prevention of abuse and the damaging consequences of possible wrongful accusations.

Who needs to be aware of the laws?

Organisations working with children or vulnerable people should check their legal requirements and keep up with changes and/or updates. Laws drafted to reduce the likelihood of abuse will have significant impact on Community Service Organisations; Education and Care facilities; Religious organisations; Medical facilities; Sports and Youth Clubs; and more.

It is also important for unincorporated associations and body corporates to address their legal obligations, even if working outside of Australia.

Other Resources and Sites Available

Visit the Ansvr Insurance website to access:

- > Public Liability policy documents
- > Sample Client Protection Policy, including working with children interview questions and application forms

Government sites:

- ACT - www.dhcs.act.gov.au
- NT - www.childrenandfamilies.nt.gov.au
- QLD - www.communities.qld.gov.au
- NSW - www.community.nsw.gov.au
- SA - www.families.sa.gov.au
- TAS - www.dhhs.tas.gov.au
- VIC - www.dhs.vic.gov.au
- WA - www.dcp.wa.gov.au



Ways to Mitigate Risk

Developing a policy statement on Client Protection

Policy statements demonstrate the seriousness with which you view the prevention of abuse and allow you to draft a framework to guide your future actions. This can be presented to all paid and unpaid staff to ensure the issue of Client Protection is communicated clearly.

Documenting the way in which staff are selected

In this document the terms staff and employee encompass: paid employees, unpaid employees, volunteers, students, people on work experience, management, board members, contractors, and others who may act on behalf of the organisation.

The way in which positions are appointed may leave your organisation exposed to infiltration by those with predatory motives. Many organisations have already adopted “best-practice” procedures, without appropriate screening protocols your organisation may be seen as an easy target.

As a first step, ensure appropriate working with children and police checks are regularly carried out. Reference checking must be done; a sole reliance on police checking is not enough.

Implementing sound supervision practices

Screening applicants is not a total solution and it can never be assumed that your processes are 100% effective. It is essential to create an environment where the opportunity for incidents of abuse is reduced. As part of your Client Protection Policy include a section that describes the qualities and behaviours that are expected of people who work with clients, as well as behaviours that are considered inappropriate. This “Code of Practice” should be detailed in its expectations as it will make them easier to monitor and enforce with your staff.

Developing an appropriate response plan

Whilst it is hoped that you will never have to deal with an allegation of abuse, it is important that you have a response plan in place so that from the moment the allegation first arises, you will know what to do.

Insurance Options

Ansvr offers insurance cover for claims of negligence in respect to sexual abuse. This cover is only offered to organisations that can demonstrate quality risk management. Our focus is always to educate our clients on prevention.

As experts in this field Ansvr offer a product that protects insured organisations on an “occurrence” basis meaning the organisation is covered for the long term. If the event occurs whilst Ansvr is on risk, the organisation is protected no matter when the claim emerges or if the insured organisation has transferred cover to another insurer. Most other insurers offer cover on a “claims made” basis which may not provide protection later on.

Staff Training

Conduct regular training to ensure all staff and volunteers have a full understanding of protection policies and procedures. Provide updates and additional training when changes to internal policies are made and always record dates and topics as evidence that regular training has been provided.

Action Steps

Organisations working with children and the vulnerable have a moral and legal responsibility to protect those in their care. We recommend that organisations:

- Schedule training to make their people aware of the laws
- Continuously update their client protection policies and procedures to take into account any changes to legal requirements
- Update their staff and volunteer induction materials continuously
- Ensure the effective selection of suitable staff;
- Constantly manage situational and environmental risk
- Adopt ‘best practice’ procedures and initiatives to create a safe organisational culture.