

GUIDE ON VOLUNTEER BEHAVIOR HONG KONG 2020

《香港義工行為指引2020》



HandsOn
HONG KONG

**STEPHENSON
HARWOOD**

罗夏信律师事务所

FOREWORD

HandsOn Hong Kong is pleased to provide this Sector Guide regarding volunteer behavior, screening of volunteers and NGO liability. As a nonprofit organization empowering people to volunteer with a range of service users, ensuring the protection of all involved is of the utmost importance to us.

HandsOn volunteers are required to read and agree to a Code of Conduct that outlines expected behavior prior to joining a service activity. We hope this guide, along with our sample Code of Conduct, will help other nonprofit organizations navigate their own management of volunteers.

We are grateful to the team at Stephenson Harwood for developing the content for both the guide and Code of Conduct and to TrustLaw for enabling this project and connecting us together.

The HandsOn Hong Kong Team

前言

牽手·香港欣然發出本分部指引，說明義工行為、義工審查及非政府機構的法律責任。牽手·香港作為非牟利機構，推動大眾參與義務工作服務不同對象，確保所有參與人士得到保障對我們至為重要。

牽手·香港義工參加服務活動前，須細閱及同意概述應有行為的《行為守則》。我們希望藉著本指引及《行為守則》範本，協助其他非牟利機構自行統籌義工管理。

我們在此鳴謝羅夏信律師事務所團隊擬備本指引及《行為守則》的內容，並且鳴謝TrustLaw牽線促成這個項目。

牽手·香港

01

What liabilities can non-profit organizations or charities (“NGOs”) have in relation to volunteer behavior?

Although NGOs are not liable for the behavior of volunteers in Hong Kong, we recommend our NGO partners to exercise common sense and should, whenever possible, provide relevant briefing or guidelines to volunteers to ensure that they behave appropriately.

非牟利機構或慈善團體（統稱「非政府機構」）就義工行為有何法律責任？

在香港，雖然非政府機構無須對義工行為負上法律責任，我們建議非政府機構伙伴依常識行事，並盡可能為義工提供相關簡報或指引，確保他們行為恰當。

What duty of care do NGOs have to their beneficiaries (especially children and vulnerable persons)?

There are no duties of care specifically imposed on NGOs in their capacity as NGOs. NGOs are however subject to a general duty of care under common law which means they are required to provide a reasonable standard of care while performing any acts which could foreseeably harm others. For example, volunteers who distribute hot meals to beneficiaries should be provided with gloves. NGOs should also ensure the safety of the premises especially when the beneficiaries of volunteer services are children or vulnerable persons. For example, sharp edges and corners should be covered with protectors, safety measures should be taken to prevent children from falling from windows and balconies, and dangerous equipment such as scissors should first be deemed suitable for children.

非政府機構對受助人（特別是兒童受助人及弱勢受助人）有何謹慎責任？

非政府機構並無作為非政府機構而須負的特定謹慎責任。然而在普通法下，非政府機構有一般謹慎責任，即當非政府機構的行為在可預見情況下可能會對他人造成傷害時，則須按合理標準謹慎行事，例如應為分發熱食給受助人的義工提供手套。非政府機構亦應確保處所安全，特別是當義工服務的受助人是兒童受助人或弱勢受助人，例如以保護物料包覆鋒利邊緣及尖角，採取安全措施以防兒童受助人從窗戶及露台墮下，以及應事先考慮剪刀等危險設備是否適合兒童受助人使用。

02

03

Is it legally permissible under Hong Kong law to conduct a criminal record check on a volunteer (as opposed to an employee)?

Under Hong Kong law, there is nothing legally preventing NGOs from conducting a criminal record check on a volunteer. However, there is no public channel for NGOs to do so. The Hong Kong Police Force maintains a database on criminal conviction records. Members of the public can use this database to enquire about their own criminal conviction record. NGOs could theoretically engage private investigation companies to conduct searches of individuals but a NGO itself cannot conduct such a search. The Hong Kong Police Force has implemented the Sexual Conviction Record Check (“SCRC”) to enhance protection of children, and mentally incapacitated persons (“MIPs”). However, the SCRC cannot be utilized by volunteers or NGOs engaging volunteers. A SCRC can only be conducted by prospective employees including staff directly employed by schools, staff deployed to work in schools by outsourced service providers and self-employed persons providing service to schools) seeking child or MIP-related work in an organisation or enterprise. We recommend our NGO partners to consider the following actions:

- (a) When hiring employees to undertake work that requires frequent contact with children or MIPs, you may request potential employees to undertake a SCRC and employment should only be offered conditional upon a clear SCRC.
- (b) To request existing employees whose work is related to children or MIPs to undertake a SCRC. If any employee refuses to complete a check you should consider transferring them to another type of work

香港法例是否容許查核義工（而非僱員）的刑事罪行紀錄？

香港法例並無明文禁止非政府機構查核義工的刑事罪行紀錄。然而，並無相關公開渠道可供非政府機構查核紀錄。香港警務處備存刑事定罪紀錄資料庫，公眾人士可使用資料庫查詢其個人刑事定罪紀錄。非政府機構理論上可聘用私人調查公司搜查個別人士資料，但非政府機構本身則不能自行搜查。香港警務處已推出性罪行定罪紀錄查核，以加強保護兒童及精神上無行為能力的人，但義工或招募義工的非政府機構均不能使用性罪行定罪紀錄查核。性罪行定罪紀錄查核只提供予可能獲機構或企業聘用從事兒童或精神上無行為能力的人相關工作的僱員，

包括學校直接僱用的員工、外判服務供應商派駐學校工作的員工及為學校提供服務的自僱人士。我們建議非政府機構伙伴考慮採取以下行動：

(a) 非政府機構聘用僱員負責須經常接觸兒童或精神上無行為能力的人的工作時，可要求應徵者進行性罪行定罪紀錄查核，並只在對方並無性罪行定罪紀錄時方發出聘約。

(b) 要求職務與兒童或精神上無行為能力的人有關的在職僱員進行性罪行定罪紀錄查核。如僱員拒絕查核，非政府機構應考慮調派有關僱員負責其他種類的工作。

Is it legally permissible to conduct other screenings on volunteers?

Conducting screening on volunteers is a form of personal data collection. Under Hong Kong's Personal Data (Privacy) Ordinance ("PDPO"), personal data is any recorded information (including an expression of opinion) relating to a living individual from which his/her identity can be directly or indirectly ascertained. For example, names, addresses, telephone numbers, identity card numbers, dates of birth, occupations, medical records, financial information, etc. Therefore, NGOs will be subject to PDPO when collecting personal data from volunteers. We recommend our NGO partners to consider carefully the types of personal data that are necessary for conducting screening on the volunteers and should not collect more personal data than necessary.

法例是否容許以其他方式的義工審查？

義工審查是一種收集個人資料的方式。根據香港《個人資料（私隱）條例》，個人資料是任何與在世個人有關且能夠從中直接或間接地確定其身分的記錄資料（包括意見表達），例如姓名、地址、電話號碼、身分證號碼、出生日期、職業、醫療紀錄、財務資料等。因此，非政府機構在收集義工的個人資料時須符合《個人資料（私隱）條例》。我們建議非政府機構伙伴審慎考慮義工審查所需的個人資料種類，以免收集並無需要的個人資料。

05

Is consent to screening required from the volunteer?

On or before collecting personal data from the volunteer, NGOs must inform the volunteer of the following:

- (a) the purpose for which the data is to be used;
 - (b) the classes of persons to whom the data may be transferred;
 - (c) whether it is obligatory or voluntary for the volunteer to supply the data;
 - (d) the consequences arising if the volunteer fails to supply the data;
- and
- (e) that the volunteer has the right to request access to and correction of the data.

In order to comply with the above requirement, we recommend our NGO partners to provide a personal information collection statement (“PICS”) and privacy policy statement (“PPS”) to the volunteers when collecting personal data from them. When preparing the PICS and PPS, NGO partners should refer to the Guidance Note published by the Office of the Privacy Commissioner for Personal Data, Hong Kong: https://www.pcpd.org.hk/english/publications/files/GN_picspps_e.pdf.

進行義工審查是否需要先取得義工同意？

向義工收集個人資料之時或之前，非政府機構必須告知義工以下各項：

- (a) 該資料將會用於甚麼目的；
- (b) 該資料可能移轉予甚麼類別的人；
- (c) 他有責任提供該資料抑或是可自願提供該資料；
- (d) 他若不提供該資料便會承受的後果；及
- (e) 他有權要求查閱該資料及要求改正該資料。

為符合以上規定，我們建議非政府機構伙伴在收集義工的個人資料時向義工提供「個人資料收集聲明」及「私隱政策聲明」。非政府機構伙伴擬備「個人資料收集聲明」及「私隱政策聲明」時應參考香港個人資料私隱專員公署發佈的指引資料：

https://www.pcpd.org.hk/chinese/publications/files/GN_picspps_c.pdf。

How long should records be stored and how often should screening checks be renewed?

There is no legal requirement for NGOs to keep records of or renew screening checks on the volunteers. However, we recommend our NGO partners to handle and store volunteers' personal data with care. Under the PDPO, volunteers have the right to access and correct their personal data. We recommend our NGO partners to have a system in place to deal with volunteer's request which has to be complied with within 40 calendar days. If you no longer hold the requested data, you are still required to inform the requestor in writing stating the reason within the same time limit.



義工紀錄應儲存多久？審查應相隔多久更新？

法例並無規定非政府機構須保留義工紀錄或更新審查。然而，我們建議非政府機構伙伴謹慎處理及儲存義工的個人資料。根據《個人資料（私隱）條例》，義工有權查閱及改正個人資料。我們建議非政府機構伙伴建立制度處理義工的要求，有關要求須於40個曆日內處理。如非政府機構不再持有義工要求的資料，仍須在上述時限內書面通知對方及列明有關原因。



Are there other steps that NGOs can take to limit their liability and protect their beneficiaries?

In order to ensure that volunteers are aware of behavior expectations when they carry out volunteer work related to children or vulnerable people, we recommend that our NGO partners consider (i) requiring volunteers to agree to a code of conduct and (ii) elicit positive confirmation from volunteers that they have not been convicted of a child or sexual related crime, before allowing the volunteers to participate in the volunteering activities

非政府機構還可採取甚麼步驟以限制法律責任及保障受助人？

為確保義工了解進行與兒童受助人或弱勢受助人有關的義務工作時應有的行為，我們建議非政府機構伙伴准許義工參與義工活動前，考慮(i)要求義工同意遵守《行為守則》；及(ii)請義工正面確認並無兒童有關罪行或性罪行的定罪記錄。

HandsOn Hong Kong requires all volunteers to review and agree to a Volunteer Policy (found at www.handsonhongkong.org/about-membership) which outlines the organization's approach to data usage, privacy, liability and volunteer participation requirements. Volunteers are also required to review and agree to a Code of Conduct (found at www.handsonhongkong.org/code-of-conduct) as part of the registration process. The Code aims to provide guidance to volunteers in the context of their service to members of the community.

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牽手·香港要求所有義工細閱及同意「義工政策」

(載於<https://www.handsonhongkong.org/about-membership>)。

「義工政策」概述牽手·香港對資料用途及私隱的方針、其法律責任及義工的參加要求。

義工亦須在登記過程中細閱及同意《行為守則》

(載於<https://www.handsonhongkong.org/code-of-conduct>)，

《行為守則》旨在為義工提供服務社群方面的指引。

有關羅夏信律師事務所及／或其相關聯經營的詳情，

請瀏覽<https://www.shlegal.com/legal-notice>。

本指引所載資料於首次公佈當日有效，僅提供一般資料。

本指引由羅夏信律師事務所協助牽手·香港編製，有關內容並不構成法律意見。

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改變，由義工彰顯！

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