

Placements, internships, work for the dole, mutual obligation and court ordered 'volunteering'

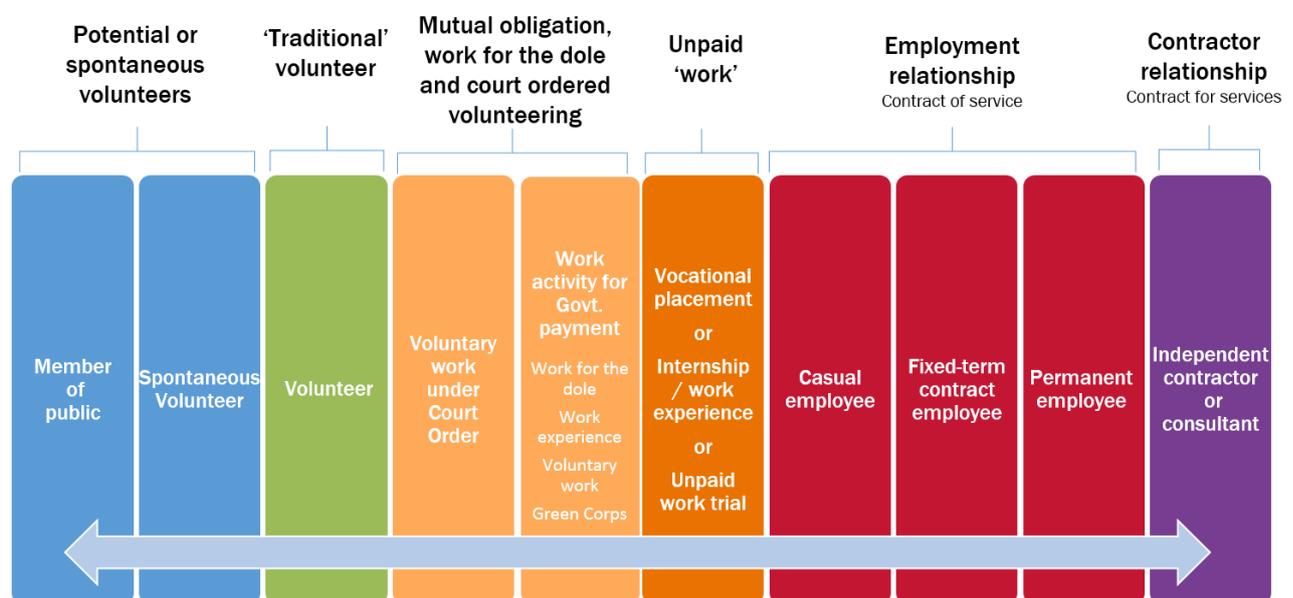
Legal information for community organisations

This fact sheet covers:

- ✓ vocational placements
- ✓ work experience/internships
- ✓ work for the dole
- ✓ mutual obligation 'volunteering', and
- ✓ court ordered 'volunteering'.

There are a number of ways an individual can engage in unpaid work that does not fit within the category of a traditional volunteer.

It is important to understand the difference between these arrangements, as certain obligations (under legislation and contract) and risks may arise when the work performed by these individuals falls outside the scope of a traditional employment or volunteer role.



The diagram above shows how different categories of unpaid work fit on a spectrum of working relationships.

Vocational placements

A vocational placement is a formal work experience arrangement that is part of an education or training course.

Under the *Fair Work Act 2009* (Cth) (**Fair Work Act**), an organisation is not required to pay students under this arrangement, so long as:

- the placement is a requirement for an Australian education or training course
- there is no entitlement to remunerate the student for the work done, and
- the placement is 'authorised' (the institution is authorised to run vocational placements under law or an administrative arrangement).

NOTE

If the arrangement satisfies the definition of a vocational placement, then the organisation is not in an employment relationship with the student and is under no obligation to provide remuneration to the student. However, in most cases, an organisation may exercise its own discretion and provide a gratuity, reimbursement or similar payment without triggering an employment relationship.



TIP

Your organisation should be very clear about whether or not the educational institution's insurance covers the student. If it doesn't, check with your insurer to make sure it has coverage if the student is injured or harmed and if the student injures or harms someone else. Also, make sure there are no age limits that will prevent a claim. Your organisation will still owe duties under OH&S legislation and could be liable for criminal fines if it doesn't comply with its health and safety duties.



Work experience/internships

A work experience placement or internship is when a person works for an organisation to gain experience in a particular occupation or industry.

This arrangement differs from a vocational placement as it is outside of a placement that is organised as part of an approved training course.

Your organisation should make sure that any arrangements are genuine unpaid internships and work experience placements. Even if a person has been undertaking work under the title of a 'work experience' or 'internship' arrangement, the nature of the arrangement may be an employee relationship if the work that is being undertaken is work that should be paid work.

To avoid this circumstance, your organisation will need to make sure that the placement provides benefits such as learning and exposure. The table below sets out the key differences between a work experience/internship and employment relationship.

It may be useful to consider the following factors when engaging someone for a work experience placement/internship or reviewing current arrangements:

	Work experience/internship	Employee relationship
Who receives the main benefit?	The individual	The organisation
Purpose/nature of the arrangement	For the individual to gain experience in a particular occupation or industry. The individual is receiving a meaningful learning experience, training or skill development. Emphasis on observation and learning over productive work.	To help with the ordinary operation of the organisation.
Length of the arrangement	Generally finite (though may lead to ongoing employment)	Generally longer or ongoing and defined in an employment contract.
Significance to the organisation	The organisation does not need the individual to perform the work. The organisation seeks out work for the individual that would best aid in his/her development.	The organisation needs the work to be done. The individual is doing work that would otherwise be done by employees.
Obligations of the individual	There is no requirement that the individual attend the work place or perform productive work.	There is a requirement that the individual attend the workplace and perform productive work.

If your organisation has been incorrectly using a work experience student or intern to do what should have been paid work, that person may be entitled to back pay and other entitlements such as superannuation.

CASE EXAMPLE - CROCMEDIA

In the case of *Fair Work Ombudsman v Crocmedia* [2015] FCCA 140, the Court found that two students undertaking 'work experience' were actually 'employees' and were entitled to back pay and other entitlements.

The two students commenced work for Crocmedia to gain industry experience as radio producers while they were studying at university. They produced radio programs for the SEN network and often worked multiple weekly shifts, including the "graveyard" shift from midnight to 6am. The arrangement lasted for 6 months for one student and 1 year for the other.

Crocmedia characterised both students as 'volunteers' and paid both students a sum of money for each shift, which was called a 'reimbursement of expenses'. The amount of the payment was about 80% of the minimum wage in Australia.

The first three weeks that the students worked for Crocmedia was validly a period of work experience. However, after that, the correct classification for the students at law was that they were 'casual employees'.

The Court discussed some of the factors that may lead to a finding that a worker is actually an employee

rather than a work experience volunteer. For example:

- longer periods of placement with the organisation
- the performance of productive activities by the work experience volunteer (or an expectation that they will be productive), and
- the organisation obtaining a significant benefit from the work (as opposed to the work experience volunteer receiving the predominant benefit from the arrangement).

Crocmedia was required to back pay the students at the correct casual rate of pay. As a result of their failure to correctly characterise the students as employees, Crocmedia also breached other sections of the Fair Work Act, including the requirement to provide employees with a payslip and in relation to the frequency of payment of wages (which must be paid in full at least monthly).

In addition to back paying the employees (each was owed \$22, 168.08), Crocmedia was also required to pay a penalty of \$24, 000.

The Court acknowledged that work experience is a complex area, but made it clear that “profiting from volunteers is not acceptable conduct within the industrial relations scheme applicable in Australia”.

Work for the Dole

Work for the Dole is a Federal Government initiative for eligible job seekers. The Government states that the program is designed to help individuals gain skills and experience and hopefully transition into the workforce. “Jobactive providers” facilitate these placements by linking Work for the Dole participants (**WFTD participants**) with host organisations.

WFTD participants can only be hosted by not-for-profit organisations and government agencies. Your organisation is not obliged to host a participant.

Your organisation should be aware of the limitations on the type of work activities that WFTD participants can undertake. For more information about this, or if you wish to become a Work for the Dole host, you can contact your local Work for the Dole Coordinator at www.employment.gov.au/work-dole-coordinators.

There are a number of legal issues that can arise, many of which are unclear due to the relatively short time the Work for the Dole program has been in place. It is worth discussing these in detail with a Jobactive provider, clarifying any concerns before proceeding.

Issue	Considerations
Insurance	The Department of Employment (Cth) has insurance that extends to WFTD participants in certain circumstances. Your organisation should be very clear about what circumstances this insurance covers and whether there are any exclusions that would affect WFTD participants or your organisation. It is important to make sure that an insurance policy (either the Department’s insurance or your organisation’s) covers circumstances where a WFTD participant is injured or becomes ill, or causes injury, illness, loss or damage to someone else.
Contracts	Carefully check the contract your organisation signs with the Jobactive provider and Department in order to understand the status of WFTD participants. You may wish to enter into an agreement that outlines the arrangement with certainty.

Issue	Considerations
Payment	The Department of Employment provides a payment for hosting a WFTD participant. The Jobactive provider may seek to retain this payment, rather than pass it onto your organisation. Therefore, you may need to negotiate this with the provider and make receipt of this payment part of the agreement when taking on a WFTD role. Note that the payment accompanies each position, not each participant (you might have 6 people in the space of 12 months in the same position – you will only receive one payment).
Safety	WFTD host organisations have to meet all health and safety requirements under the <i>Occupational Health and Safety Act 2004</i> (Vic), as well as comply with the WFTD program requirements. Jobactive providers will notify the Department’s insurance provider within 24 hours when any incident involving a WFTD activity. In Victoria, under the <i>Wrongs Act 1958</i> (Vic) (Wrongs Act), volunteers are not personally liable (legally responsible) for anything done (or not done) in good faith while doing community work that is organised by a community organisation. Instead, the organisation will be liable in the same way that organisations are liable for the acts or omissions of their employees. The law is currently unclear as to whether WFTD participants are considered ‘volunteers’ under the Wrongs Act, that is, whether or not they are providing a service in relation to community work on a truly voluntary basis. If your organisation is concerned about whether your organisation is legally responsible for the actions of WFTD participants, we recommend you seek tailored legal advice, and appropriate insurance coverage.
Screening & induction	Even if the Jobactive provider undertakes a police check and informs your organisation that the WFTD participant is suitable for the role, you may want to conduct your own checks so you can determine suitability. As a matter of best practice, your organisation should implement the same processes it follows when engaging and managing traditional volunteers (eg. screening, induction, training and health and safety).
Discrimination	There may be an agreement between your organisation and the Jobactive provider about what to do if a WFTD participant does not work out. If you do choose to end the arrangement, be careful this is not done on the basis of a protected attribute under discrimination laws or following a complaint made by the participant, as this could be viewed as victimisation.

FURTHER READING

Volunteering Victoria at www.volunteeringvictoria.org.au has published useful resources about taking on a WFTD participant including:

- a [sample Position Statement](#)
- a [Host Induction Kit](#), and
- [frequently asked questions](#).



Mutual obligation volunteering

Under social security legislation, certain job seekers may choose to satisfy their mutual obligation requirements relating to Centrelink benefits in part or in full (usually satisfied by work, study or training) by undertaking approved voluntary work.

Eligible job seekers can choose to fully satisfy their mutual obligation requirements if they undertake at least 30 hours per fortnight of approved voluntary work, paid work (including self-employment) or a combination of both.

In order to take on mutual obligation volunteers, your organisation must submit a [‘Request for Organisational Approval’](#) to Centrelink and provide evidence that you are a ‘not-for-profit’ community organisation and have ‘appropriate’ insurance. Once approved, and you take on a mutual obligation volunteer, you will be required to verify the number of hours worked by that volunteer.

TIPS

- ⚡ unlike WFTD participants, the Government does not provide insurance for mutual obligation volunteers. Therefore, you should make sure you have the appropriate insurance to cover circumstances where the mutual obligation volunteer is injured or harmed and/or they cause injury or harm to another person or property.
- ⚡ as a matter of best practice, your organisation should implement the same process it follows when engaging and managing traditional volunteers (eg. screening, induction, training and health and safety) when it engages and manages mutual obligation volunteers).

NOTE

A new scheme called the ‘Work and Development Permit Scheme’ will soon be operating in Victoria (at this stage, it may be in 2016 or 2017). This will be similar to the scheme currently in place in New South Wales, whereby certain disadvantaged groups can undertake unpaid work with an approved ‘sponsor’ organisation to reduce or satisfy their outstanding fines. For more information about the scheme’s implementation and operation, go to the [Law Handbook](#) or visit the [Department of Justice and Regulation website](#) for future updates as the scheme is rolled out.

Court ordered ‘volunteering’

Victorian Courts (Magistrates’, County and Supreme) may make community corrections orders if a person is found guilty of certain criminal offences and the Court does not think a fine is appropriate. Every order has terms and conditions that must be followed, and a condition of the order may be that a person must undertake unpaid community work for up to 600 hours.

There is some debate about whether volunteering ordered by a Court satisfies the meaning of ‘volunteering’, as in some circumstances the volunteering is arguably not voluntary!

Under the Wrongs Act, court ordered ‘volunteering’ is not considered the kind of volunteering where legal responsibility for volunteers’ actions is deemed by the Act to be borne by the organisation. This means that organisations using court-ordered ‘volunteers’ will not be legally responsible for the actions of court ordered volunteers under the Wrongs Act like they are for other volunteers (although they may be liable under common law negligence and other principles), and those participating in court ordered ‘volunteering’ may need to seek advice about their potential legal responsibility for their actions and how they can achieve protection for themselves (eg through insurance).

The Community Correctional Services branch of the Victorian Department of Justice and Regulation is responsible for organising and maintaining the list of community work partner agencies, including not-for-profit organisations.

If you are interested in having your organisation partner with the Community Correctional Services or have questions about court ordered 'volunteering', we suggest you contact your closest regional Community Work Program Office.

FURTHER READING

For more information about court ordered 'volunteering' and how to involve your organisation, go to the Corrections Victoria website at www.corrections.vic.gov.au.



Resources

Related Not-for-profit Law Resources

✔ Volunteers www.nfplaw.org.au/volunteers

The Volunteers page on the Information Hub features further information on specific issues covered in this fact sheet and the laws as they relate to volunteers, including resources on:

- Volunteers and unlawful workplace behaviour
- Engaging and working with youth volunteers
- Safety, risk management and volunteers
- Is our organisation liable for the actions of its volunteers under the *Wrongs Act 1958* (Vic)?
- Visas and Volunteers

✔ Insurance and risk www.nfplaw.org.au/riskinsurance

This Information Hub page provides resources covering the risks that may arise from operating and interacting with others.

Other Related Resources

✔ Corrections Victoria www.corrections.vic.gov.au

The Corrections Victoria [website](#) provides information on court ordered volunteering.

✔ Fair Work Ombudsman www.fairwork.gov.au

Visit the Fair Work website for useful [fact sheets](#) on all kinds of unpaid work.

✔ Department of Human Services www.humanservices.gov.au

See the Department of Human Services for information about [Mutual Obligation Requirements](#).

✔ Department of Social Services (DSS) www.dss.gov.au

DSS offers a detailed [guide on the social security laws](#) relating to mutual obligation volunteering.

✔ Department of Employment www.employment.gov.au

Visit this website for more information on [Work for the Dole](#) arrangements.

✔ Volunteering Victoria www.volunteeringvictoria.org.au

The state peak body for volunteering provides information on volunteering, policy and research.

✔ Joabactive www.jobsearch.gov.au

This website provides services and information for eligible job seekers and host organisations (relevant to Work for the Dole and mutual obligation volunteering)

Legislation

✔ [Fair Work Act 2009](#) (Cth)

✔ [Social Security Act 1991](#) (Cth)

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