

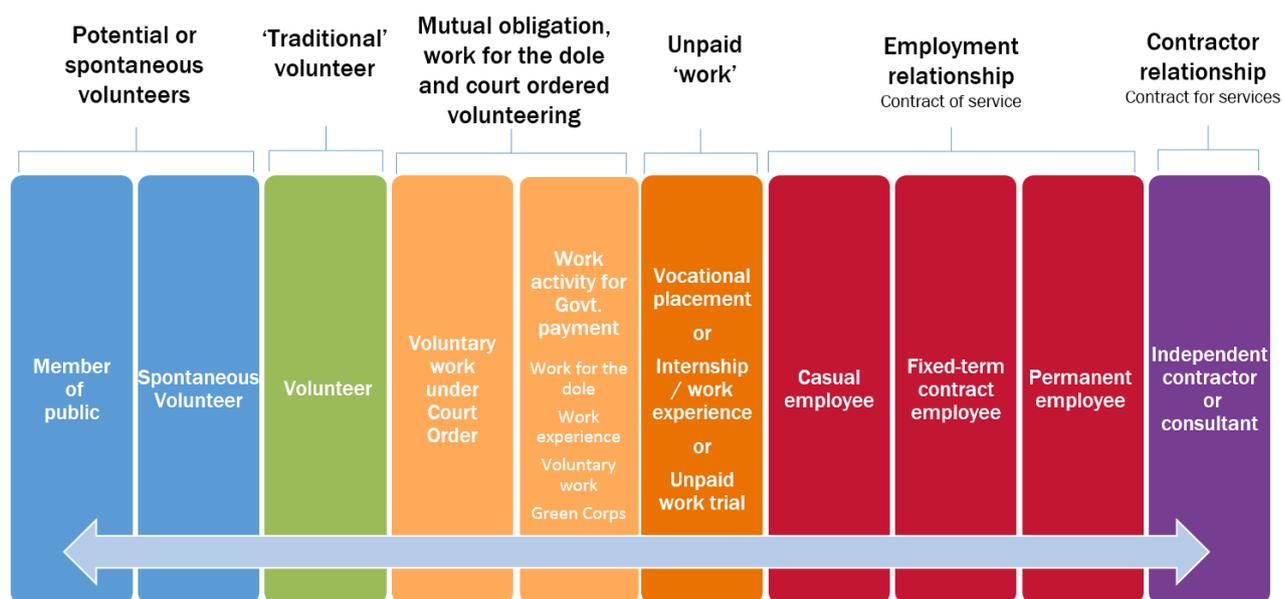
Placements, internships, work for the dole, mutual obligation 'volunteering', work and development orders, and court ordered 'volunteering'.

This fact sheet covers:

- vocational placements
- work experience/internships
- work for the dole
- mutual obligation 'volunteering'
- work and development orders, 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 may still owe duties under WH&S legislation and/or under negligence laws 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 expectation or requirement that the individual attend the workplace or perform productive work.	There is an expectation or 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	<p>The Department of Employment (Cth) has insurance that extends to WFTD participants in certain circumstances. There are limits and exceptions to the coverage of the Department’s insurance. 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 (for example, damage caused while driving a motor vehicle or liability arising from direct client contact). 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.</p> <p>The Department of Employment recommend that, at a minimum, host organisations have public liability insurance, with a limit of indemnity of at least \$10 million for each and every occurrence.</p> <p>More information about the types of situations that will and will not be covered can be found in the Keeping you safe at Work for the Dole fact sheet.</p>

Issue	Considerations
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.
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	<p>If a WFTD host organisation based in New South Wales employs anybody (whether casually, part time or as a contractor) they will have to meet all health and safety requirements under the <i>Work Health and Safety Act 2011</i> (NSW), as well as comply with the WFTD program requirements. Jobactive providers will notify the Department's insurance provider within 24 hours when there is any incident involving a WFTD activity.</p> <p>In New South Wales, under the <i>Civil Liability Act 2002</i> (NSW) (Civil Liability Act), some 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 may 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 Civil Liability Act, that is, whether or not they are performing 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.</p>
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.

EXAMPLE



Your organisation runs a community garden project for young, recently arrived migrants in your local community. You rely upon and regularly recruit volunteers to assist with maintaining the lawns surrounding the garden. You are a Work for the Dole host organisation, so some of these volunteers are assigned to you through the Work for the Dole scheme.

Logan has been assigned compulsory Work for the Dole hours with your organisation through a Work for the Dole Jobactive provider.

Logan has progressed through the usual induction process (that your implements for all volunteers) including work, health and safety training specific to the role.

Recently, Logan was asked to fertilise the garden. Whilst picking up a 20 kilogram bag of fertiliser, Logan twisted his back and fell over. Logan has had to undergo surgery to repair damage to his back and is now undertaking rehabilitation physiotherapy. Logan will not be able to work for 8 weeks.

Logan is covered for the cost of his medical treatment under the Jobactive personal accident insurance. However, costs that can be claimed against Medicare are not covered by this insurance. Further, insurance doesn't usually cover the 'Medicare gap', that is, any balance of money payable after the deduction of any Medicare benefit. As Logan is not an employee, he does not qualify for workers' compensation.

In order to ensure that your organisation is not liable for any of Logan's medical costs not covered by Commonwealth government's Jobactive personal accident insurance, we recommend that your organisation take out Volunteer Personal Accident Insurance (however, you will first need to check with your insurance provider that their Volunteer Personal Accident Insurance policy provides protection for WFTD participants and for the activities the participants will be undertaking). Personal accident or volunteer insurance will generally cover members and volunteers of a community organisation for expenses incurred in the event of accidental injury, disability or death which occurs while the volunteer is doing work for the community organisation.

NOTE



Volunteering Australia has released a definition of 'volunteering'. Whilst this is not a legal definition, it is interesting to note that one of the concepts considered by Volunteering Australia to be outside its definition of volunteering is 'mandatory government programs'. Work for the Dole might be considered a type of mandatory government program, outside of the Volunteering Australia definition of 'volunteering'.

FURTHER READING



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

- [Checklist of issues for Not-for-Profits to consider](#) (available in Attachment B of the Position Statement)
- [Host Induction Kit](#), and
- [frequently asked questions](#).

Caution: these Volunteering Victoria resources were developed for Victorian organisations. They provide useful information, but at times are focussed on Victorian laws.

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).

Work and Development Orders

The Work and Development Order (**WDO**) scheme is a fine/penalty mitigation scheme established under the *Fines Act 1996* (NSW) (**Fines Act**). The scheme is administered by Legal Aid NSW in partnership with the Aboriginal Legal Service, State Debt Recovery Office (**SDRO**) and the Department of Police and Justice.

The scheme allows eligible people to clear (all or part) of a fine (which includes a court fine or a penalty notice) by undertaking:

- unpaid voluntary work for or on behalf of an approved organisation (see 'Example' box)
- educational, vocational or life skills courses
- financial or other counselling
- medical or mental health treatment programs,
- drug or alcohol treatment programs, or
- mentoring program for under 25 year olds.

A person is eligible for a WDO if he or she:

- has a mental illness

EXAMPLE

Examples of unpaid voluntary work under WDOs include:

- cooking
- property maintenance
- cleaning, and
- assistance with administrative duties.

There a range of activities that are not considered WDO activities (see the [Work and Development Order Guidelines 2012](#).)

You can contact Legal Aid NSW or SDRO to confirm that an activity run by your organisation fits under the WDO scheme.

- has an intellectual disability or a cognitive impairment
- is homeless
- is experiencing acute economic hardship, or
- has a serious addiction to drugs, alcohol or volatile substances.

BECOMING AN APPROVED WDO ORGANISATION

To become a WDO organisation, your organisation must fill out an application form and meet the following criteria:

- Be a not-for-profit with an ABN, a government agency or a statutory body representing the Crown.
- Have established work, health and safety policy and procedures.
- Have current public liability and other appropriate insurance.
- Have appropriately trained or accredited staff (approval will only be given to applications within the organisation's expertise).
- If previously government funded, have complied with the terms of that funding and performance agreement.
- If not previously government funded, evidence of accountability, integrity and good governance standards.

TIPS

- 💡 Organisations operating interstate may be approved to participate provided they meet the eligibility criteria.
- 💡 Approved WDO organisations are required to keep comprehensive records about WDO clients and report to SDRO monthly on the progress of each WDO participant.
- 💡 There are a number of legal issues that can arise if your organisation decides to host a WDO participant. Make sure:
 - The work undertaken by the WDO participant is covered under your insurance policy. It is important to make sure that an insurance policy covers circumstances where a WDO participant is injured or becomes ill, or causes injury, illness, loss or damage to someone else.
 - You clearly understand your obligations under the agreement with SDRO, including ensuring that your organisation has robust record keeping systems in place for the reporting obligations to the SDRO and Department of Attorney General and Justice.
 - You implement the same processes when engaging and managing traditional volunteers (eg. screening, induction, training and health and safety).
 - You abide by the work, health and safety obligations that your organisation already has in place.

CAUTION

- Like WFTD participants, the law is currently unclear as to whether WDO participants are considered 'volunteers' under the Civil Liability Act and therefore protected from legal responsibility resulting from their actions.
- If your organisation is concerned about whether your organisation is legally responsible for the actions of WDO participants, we recommend you seek tailored legal advice, and appropriate insurance coverage.



FURTHER READING

For more information on the meaning of the approved activities, eligibility terms and proof of eligibility requirements, see the Work and Development Order Guidelines 2012.

For more information about the service, visit the Legal Aid NSW website, State Debt Recovery Office website or phone the State Debt Recovery WDO Hotline on 1300 478 879.



Court ordered 'volunteering': Community Service Orders

Under the *Crimes (Sentencing Procedure) Act 1999* and *Crimes (Administration of Sentences) Act 1999*, NSW Courts (Supreme Court, Court of Criminal Appeal, the District Court or the Local Court) may make community service orders (**CSOs**) if:

- a person is found guilty of certain criminal offences
- the person is suitable for community service work
- it is appropriate that the person be required to perform community service work
- arrangements for community service work are available in the area that the person resides, intends to reside or in another state or territory, and
- those arrangements for community service work can be provided.

NOTE

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!

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 500 hours.

Under the Civil Liability Act, a person undertaking court ordered 'volunteering' is not considered to be a volunteer and as such does not have the benefit of the protection afforded by the legislation. 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).

Under the legal doctrine of 'vicarious liability', the community organisation may be liable for its volunteer's acts or omissions regardless of whether the volunteer is protected by the Civil Liability Act or not. Your organisation may need to seek legal advice about its own liability in these circumstances.

CAUTION

Organisations working with individuals under court orders will need to carefully manage their own risks and should advise the individuals to consider whether there is insurance covering their participation.



The CSO program is administered by Corrective Services NSW community corrections officers who allocate offenders to work with voluntary community organisations. Corrective Services NSW is responsible for the accreditation of community organisations that participate in the program.

If you are interested in having your organisation partner with Corrective Services or have questions about court ordered 'volunteering', we suggest you contact your closest regional [Community Corrections Office](#).

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:

- Volunteer civil liability protection
- Visas and Volunteers

The following additional resources are currently being developed and will be available on the Volunteers page in October 2016:

- Volunteers and unlawful workplace behaviour
- Engaging and working with youth volunteers
- Safety, risk management 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

✔ Corrective Services NSW <http://www.correctiveservices.justice.nsw.gov.au/>

The Corrective Services NSW [website](#) provides information on court ordered volunteering.

✔ [Legal Aid NSW website](http://www.legalaid.nsw.gov.au/) <http://www.legalaid.nsw.gov.au/>

The Legal Aid NSW [website](#) provides information on Work and Development orders.

✔ State Debt Recovery Office website <http://www.sdro.nsw.gov.au/>

The State Debt Recovery Office [website](#) provides information on Work and Development orders.

✔ NSW Volunteering <http://www.volunteering.nsw.gov.au/home>

The Volunteering NSW [website](#) provides information on Work and Development orders.

✔ 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.

✔ 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 \(Cth\)](#)
- [Crimes \(Administration of Sentences\) Act 1999 \(NSW\)](#)
- [Crimes \(Sentencing Procedure\) Act 1999 \(NSW\)](#)
- [Civil Liability Act 2002 \(NSW\)](#)
- [Fines Act 1996 \(NSW\)](#)
- [Work Health and Safety Act 2011 \(NSW\)](#)

A NFP Law Information Hub resource. Access more resources at www.nfplaw.org.au.

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