



Not-for-profit Law  
Guide

# Employee, contractor or volunteer?

A guide for community organisations

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# Overview

## This guide covers

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- the importance of correctly classifying different working relationships
  - the basic legal differences between employees, independent contractors and volunteers, and
  - an overview of some of the main legal obligations an organisation owes to its employees, independent contractors and volunteers.
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**The law recognises many different categories of relationships where one party (a worker) performs work for another party in exchange for payment or reward. These include, among others, the relationships of 'employer and employee' and 'principal and independent contractor'.**

The law also recognises a separate category of worker known as a 'volunteer'. This type of worker performs work for another without an expectation of, or legal requirement of, payment or reward.

It is important for your community organisation to know which category of 'worker' is undertaking work in your organisation. This is because different legal entitlements and obligations apply, depending on whether the worker is an employee, an independent contractor or a volunteer.

If your organisation incorrectly classifies a worker as a contractor, you may fail to provide them with their legal entitlements or fail to meet your obligations under tax, insurance and superannuation law. This could result in legal claims being made against your organisation, and your organisation may be found liable to pay penalties.

This fact sheet is to help not-for-profit community organisations to understand how the law treats different kinds of working relationships.

# 1. Employees

## When is a worker an 'employee'?

The legal distinction between a worker who is an 'employee' and a worker who is an 'independent contractor' or 'volunteer' is not always easy to make.

Although a great deal of employment law is now prescribed by legislation, the issue of whether a worker is an employee, independent contractor or volunteer is based on principles that have been established through case law over time (ie. judge-made law). In such cases, the courts and other relevant tribunals have considered whether a 'worker' is an 'employee' by assessing the entire relationship between the worker and the organisation.

To determine whether a worker is an 'employee' or an 'independent contractor' requires consideration of a number of different elements of the working relationship. A worker will normally be found to be an employee when the following elements exist:

### Employee attributes

Type of work	Payments and Benefits
<ul style="list-style-type: none"><li>performs ongoing work under the control, direction and supervision of the employer</li></ul>	<ul style="list-style-type: none"><li>is paid for time worked</li></ul>
<ul style="list-style-type: none"><li>must perform the duties of their position</li></ul>	<ul style="list-style-type: none"><li>is paid regularly (ie. weekly, fortnightly or monthly) and has income tax withheld from their salary by their employer</li></ul>
<ul style="list-style-type: none"><li>provides their personal services and cannot delegate their work to 'outsiders' (ie. arrange for their work to be done by someone else who is not another employee)</li></ul>	<ul style="list-style-type: none"><li>is entitled to have superannuation contributions paid into a nominated superannuation fund by their employer</li></ul>
<ul style="list-style-type: none"><li>work hours set by the employer, an enterprise agreement or modern award</li></ul>	<ul style="list-style-type: none"><li>is entitled to paid and unpaid leave (eg. sick leave, personal/carers' leave, annual or recreation leave, or long service leave)</li></ul>
<ul style="list-style-type: none"><li>is recognised as a part of the employer's business and/or holds themselves out to the public as being part of that business (eg. wearing a uniform, using a business card)</li></ul>	<ul style="list-style-type: none"><li>is covered by professional indemnity, public liability and workers compensation insurance premiums paid by the employer</li></ul>
<ul style="list-style-type: none"><li>does not take commercial risks and cannot make a 'profit' or 'loss' from the work performed</li></ul>	<ul style="list-style-type: none"><li>generally has all 'tools of the trade' provided by the employer to carry out the work (eg. desk, computer, stationery)</li></ul>

Other factors may also be relevant and of importance in particular cases. While it is often straightforward to determine whether or not a worker is an employee, where there is doubt, the organisation should seek legal advice.

## What does it mean for our organisation if a worker is an ‘employee’?

The law requires that employers provide their employees with certain benefits. Examples of these benefits include paid leave and superannuation, but there are many others. The law also requires that employers treat their employees in a certain way. An example may be to provide an employee with a notice period (or payment instead of notice) before terminating their contract of employment. A summary of the basic legal entitlements that employers owe to their employees is set out below in this document at ‘Legal obligations owed by community organisations’.

Independent contractors and volunteers are not owed all of the same entitlements as employees. This is why it is important for your community organisation to be clear about the terms on which a person becomes ‘involved’ in your community organisation.

### TIP

It is a good idea to have a written agreement documenting the nature of the relationship between your community organisation and any person doing work for it. This way both parties will be clear about the nature of the relationship. However, merely labelling a worker an employee or independent contractor does not mean they are in fact an employee or independent contractor. If the matter went to court, the court would look beyond the label to the substance of the work relationship as a whole. To understand more about the risks of inaccurately describing a worker’s status, see the section “Calling an employee, a ‘contractor’ or a ‘volunteer’”.



## Can legislation make someone an ‘employee’ for particular purposes?

Yes. Some legislation may provide that a worker that is not an ‘employee’ at law may still be entitled to particular protections as if they were an employee. For example, the laws governing workplace health and safety, workers’ compensation and superannuation contain ‘deeming’ provisions or provide a definition of an employee that is broader than the standard legal tests established by the courts. In such instances, ‘employee’ has a broader meaning than the tests in the ‘employee attributes’ table above. The effect of this is that an organisation may owe duties to certain independent contractors and be liable to provide them with certain entitlements, as if the independent contractor was actually an employee.

## 2. Independent contractors

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### When is a worker an 'independent contractor'?

There are many circumstances where a community organisation may wish to engage an independent contractor or consultant to provide services to the organisation. This may be when the organisation has a short term project which it requires someone with specialist skills to complete, such as an independent evaluation of the organisation's services or programs.

The legal test to determine whether a worker is an employee or an independent contractor requires consideration of a number of different elements of the working relationship. Unlike employees who are seen to be subject to the control and direction of their employer, independent contractors are often recognised as running their own business and provide services under commercial, rather than employment, contracts.

A worker will normally be found to be an 'independent contractor' when the following elements exist:

#### Independent contractor attributes

Type of work	Payments and Benefits
<ul style="list-style-type: none"><li>has control over how to carry out their work and has the expertise to do so</li></ul>	<ul style="list-style-type: none"><li>is paid for results achieved (for example, submits an invoice for work completed or is paid at the end of a project)</li></ul>
<ul style="list-style-type: none"><li>also provides services to the general public and other businesses</li></ul>	<ul style="list-style-type: none"><li>pays their own superannuation and GST and holds own insurance policies</li></ul>
<ul style="list-style-type: none"><li>is contracted to work for a set period of time or do a set task and can decide what hours of work are required to complete that work</li></ul>	<ul style="list-style-type: none"><li>may have their own registered business and Australian Business Number (ABN)</li></ul>
<ul style="list-style-type: none"><li>is free to accept or refuse work beyond the requirements of any current contract with the organisation</li></ul>	<ul style="list-style-type: none"><li>provides all or most of the necessary materials and equipment to complete the work (for example, uses their own tools)</li></ul>
<ul style="list-style-type: none"><li>is usually free to delegate work to others</li></ul>	<ul style="list-style-type: none"><li>is in a position to make a profit or loss from work</li></ul>

Other factors may also be relevant in particular cases.

The Australian Tax Office (**ATO**) has developed an employee/contractor decision tool which you can use to help you understand whether individual workers in your organisation are employees or contractors in order to comply with your tax and superannuation obligations. For details, see the ATO tools in Resources at the end of this document.

## What does it mean for our organisation if a worker is an ‘independent contractor’?

Many of the laws which protect employees’ rights and provide for their entitlements do not apply to independent contractors, or will apply differently. A summary of the basic legal entitlements and obligations that apply to independent contractors is set out below in this document at ‘Legal obligations owed by community organisations’.

## 3. Volunteers

### Who is a ‘volunteer’?

There is no single definition of what makes a worker a volunteer.

In Australia, there is no legal definition of a volunteer but the following definitions are useful.

Volunteering Australia and state volunteering peaks use the non-legal definition of a volunteering as: “Time willingly given for the common good and without financial gain.” Volunteering Australia has also released guidelines around this definition that can be found on its website. For more information go to [www.volunteeringaustralia.org](http://www.volunteeringaustralia.org)

The Fair Work Ombudsman (**FWO**) has identified the following characteristics of a genuine volunteering arrangement, based on its own review of limited case law (judge-made law) in this area:

- a volunteer is someone who does work for the main purpose of benefiting someone else
- the organisation and individual did not intend to create a legally binding employment relationship
- a volunteer is under no obligation to attend the workplace or perform work, and
- a volunteer does not expect to be paid for their work.

### Volunteer attributes

Type of work	Payments and Benefits
<ul style="list-style-type: none"><li>• works or provides services on an ‘ex-gratia’ basis, which means that they do so voluntarily, without a legally enforceable obligation to do so and with no expectation of payment for work performed</li></ul>	<ul style="list-style-type: none"><li>• generally, has no legally enforceable right to receive payments such as honoraria, allowances or expenses</li></ul>
<ul style="list-style-type: none"><li>• any agreement between the volunteer and the organisation (whether verbal or written) does not contain any evidence that the parties intended to enter into a legally binding contract</li></ul>	<ul style="list-style-type: none"><li>• may be reimbursed for out-of-pocket expenses</li></ul>
<ul style="list-style-type: none"><li>• the volunteer arrangement can end at any time, either by the volunteer or the organisation</li></ul>	<ul style="list-style-type: none"><li>• may receive payments like an ‘honoraria’, or allowances, or non-cash benefits such as free use of facilities or free or reduced price entry into an event.</li></ul> <p>However, such payments or benefits may attract taxation obligations, and if regularly received and/ or of considerable value, may add weight to an argument that the ‘volunteer’ is an employee or contractor.</p>

In circumstances where it appears that a volunteer is in receipt of some benefit for the services they provide, distinguishing between an employee and a volunteer can be difficult. This may also pose problems in determining an organisation's tax liabilities.

#### TIP

The best way to be clear about the relationship between your community organisation and a volunteer is to write it down. As a general rule, if a person is described as a volunteer in a document governing the arrangement, then it would usually be considered that there is no intention to create a contractual or legal relationship (as long as, in reality, the relationship is truly a voluntary one). Such an agreement should ideally include an express acknowledgement from the volunteer that he or she:

- (i) is a volunteer and not an employee
- (ii) does not have a contract with the organisation, and
- (iii) does not have any intention to create a legal relationship with the organisation.

The volunteer may also acknowledge that he or she has a social, cultural, religious or other community motivation for performing the work. However, this is not essential.

#### RELATED RESOURCES

For more information about distinguishing between volunteers and other types of workers, see Not-for-profit Law's fact sheet 'Volunteer, employee or independent contractor', on the Information Hub at [www.nfplaw.org.au/volunteers](http://www.nfplaw.org.au/volunteers).

## What does it mean for our organisation if a person is a 'volunteer'?

Many laws which protect employees' rights and entitlements apply differently to volunteers or not at all. A summary of the basic legal entitlements and obligations that apply to volunteers is set out below in this document at 'Legal obligations owed by community organisations'.

## 4. Legal obligations owed by community organisations

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We have included a brief overview of some of the different legal obligations that a community organisation owes to its:

- employees
- independent contractors, and
- volunteers.

The main obligations owed by an organisation employer to its employees are quite detailed and are only summarised very briefly below. For more information on employees and their entitlements see Resources at the end of this document.

### Minimum employment standards

#### Employees

All employees are entitled to 10 minimum standards of employment which are set out in the *Fair Work Act 2009* (Cth). These minimum standards are known as the National Employment Standards (NES) and relate to the following basic entitlements:

- maximum weekly hours
- requests for flexible working arrangements
- parental leave and related entitlements
- annual leave
- personal/carer's leave and compassionate leave
- community service leave
- long service leave
- public holidays, and
- notice of termination and redundancy pay.

#### Independent contractors

Independent contractors have no statutory entitlement to minimum wages or other benefits such as paid leave. They are free to negotiate the terms of their contracts with the organisations that hire them. However, independent contractors are entitled to some 'general protections' set out in the *Fair Work Act* including protection from unlawful discrimination.

Independent contractors and organisations may also have rights under the *Independent Contractors Act 2006* (Cth) if either party is a 'constitutional corporation' (see note below). Under that Act, either party can apply to a court for an order to have the contract (or a part of it) revoked or varied on the grounds that it is 'harsh' or 'unfair'. This could happen if the independent contractor believes that he or she is being paid at a rate that is, or is likely to be, less than an employee would get for performing

similar work.

## NOTE

Your organisation may be a 'constitutional corporation' even if it is a not-for-profit incorporated association or a not-for-profit company limited by guarantee, if its trading activities form a substantial or significant part of its overall activities. Trading activities are activities which generate money regardless of whether or not they are for a profit. Examples of trading activities include: providing services to clients or members for a fee or subscription, selling goods, fundraising through auctions, raffles, lotteries and charging admission to an event that you host.?



## Volunteers

The *Fair Work Act 2009* (Cth) and the *Independent Contractors Act 2006* (Cth) do not apply to volunteers. A volunteer does not have any legally enforceable right to hours of work or payment. Some organisations may have policies about paying out-of-pocket expenses and other payments for volunteers, but generally there is no legally enforceable obligation for the organisation to do so. Your organisation may wish to be guided by Volunteer Australia's National Standards for volunteer involvement in respect to best practice for management of volunteers (note this does not cover legal issues in managing volunteers).

## Application of industrial instruments (industry awards, collective agreements and determinations)

### Employees

Employees and employers in certain industries and occupations may be bound by an industrial instrument such as a modern award, enterprise agreement or determination of Fair Work Australia. These instruments contain additional minimum entitlements that supplement the National Employment Standards (for example, penalty and overtime rates, loadings and allowances).

### Independent contractors

Independent contractors are not covered by the terms of modern awards, enterprise agreements or determinations of Fair Work Australia. An independent contractor's entitlements are set out in the contract between the contractor and the organisation.

### Volunteers

Volunteers are not covered by the terms of industrial instruments.

## Long service leave

### Employees

Employees are generally entitled to long service leave after a long period of working for an employer. For most employees, their long service leave entitlements come from the laws in the state or territory where they are working. These laws set out how long an employee has to work to get long service leave and details of how long service leave is calculated.

## RELATED RESOURCES

To find out more about long service leave entitlements, contact the long service leave agency in your state or territory. For a list of these agencies, see the FWO website at [www.fairwork.gov.au/leave/long-service-leave](http://www.fairwork.gov.au/leave/long-service-leave).



# Superannuation

## Employees

Your organisation is required to make superannuation contributions for all employees (whether full time, part time or casual) who are aged between 18 and 69 and paid \$450 or more (before tax) in a calendar month. Your organisation may also be required to make superannuation contributions for employees under the age of 18 who work more than 30 hours per week. This is required by the *Superannuation Guarantee Charge Act 1992* (Cth).

## Independent contractors

Under superannuation law, the definition of an employee is expanded to include a person who is paid under a contract for the hours they work (rather than to achieve a result). The effect of this is that in certain circumstances your organisation may be required to make superannuation payments on behalf of workers you consider to be independent contractors.

The ATO has developed a Superannuation Guarantee (**SG**) eligibility decision tool to help you understand whether you need to make superannuation contributions for individual workers (including any contractors who are treated as employees). For details see the ATO tools in Resources at the end of this document.

However, these situations can be difficult and you should seek legal advice in case of doubt.

## Volunteers

Volunteers have no legal entitlement to superannuation.

# Work health and safety

## Employees

Your organisation has a legal duty under common law to take reasonable care to avoid exposing employees to likely risks of injury. While different legislation operates across Australia in respect to workplace health and safety (**WHS**), a common element is a duty is to provide, so far as is reasonably practicable, a safe working environment and safe practices and systems of work. If your organisation falls under these laws, it will owe the duty to all people at the workplace, irrespective of their status. You should ensure that your workplace and any machinery and facilities used are safe, and that all workers have adequate training and supervision.

## Independent contractors

Even if your organisation does not 'employ' anyone, it will still be required to comply with WHS laws if it controls or operates a 'workplace' or is a person in control of a business or undertaking. As long as your organisation exercises a degree of control over the place at which the work is performed, it will have a duty to provide, so far as reasonably practicable, a safe working environment and safe practices and systems of work. This duty applies to all people in the 'workplace' including employees, independent contractors, volunteers and visitors.

### RELATED RESOURCES

For more information about WHS laws, see the Not-for-profit Law Information Hub at [www.nfplaw.org.au/OHS](http://www.nfplaw.org.au/OHS).

## Volunteers

Even if your organisation is completely volunteer-based, it will be bound by WHS laws if it controls or operates a 'workplace', or is a person in control of a business or undertaking.

Organisations also have a general duty of care to their volunteers and should adopt effective practices to ensure the safety of volunteers while working for the organisation. In particular, you should be aware of volunteers with special needs, who may require a higher standard of care and a more intensive level of supervision in their work for the organisation.

## Insurance

### Employees

Employers are generally required by state and territory health and safety laws to take out workers' compensation insurance to cover the employees and the organisation.

Depending on its activities and functions, your organisation may also need to take out public liability and professional indemnity insurance to cover its own liability and that of its employees to other people.

### Independent contractors

Unlike employees, independent contractors are typically required to organise their own insurance cover, such as accident compensation, public liability and professional indemnity. In some cases, both the organisation engaging a contractor and the contractor itself may have insurance and compensation obligations.

When you engage a contractor, you should check whether they have the necessary insurance because your organisation's policies may not cover them (you should understand what your policies do and do not cover). These situations can be difficult and you should seek legal advice in case of doubt.

### Volunteers

Generally, volunteers are not covered by employee compensation insurance. Therefore, it is a good idea for your organisation to take out personal accident insurance to cover your volunteers for out of pocket medical expenses if they are injured whilst performing working on behalf of your organisation. You should also ensure that your public liability policy covers your organisation for loss caused by negligent acts or omissions of your volunteers.

If you are a volunteer, it is important to check that the organisation you volunteer for has insurance that covers you and the activities you are engaging in.

## RELATED RESOURCES

For more information about insurance for your community organisation, see Not-for-profit Law's Risk and Insurance guide on the Information Hub at [www.nfplaw.org.au/insurance](http://www.nfplaw.org.au/insurance). For more information about the workers' compensation scheme in your state or territory, contact the relevant regulator. For a list of the different regulators, see the Resources section at the end of this guide.



## Taxation

### Employees

If your community organisation is an employer, it is required to withhold income tax from wage payments to employees (**PAYG withholding**) each pay period. The organisation must then provide this tax to the Australian Taxation Office (**ATO**). The ATO website contains a tax withheld calculator that you can use to work out how much tax you need to withhold from payments you make to your employees and other workers each pay period (week, fortnight or month). See the ATO tools in Resources at the end of this document.

Other taxes, such as fringe benefits tax, may also apply to employees. In addition, depending on the size of your organisation and the total remuneration paid by it in its payroll, it may also be liable to pay payroll tax to the State Revenue Office.

## CAUTION

Some not-for-profit community organisations are eligible for an exemption from paying income tax. This means the organisation does not have to pay tax on any income that comes into the community organisation (for example, on money received as part of a grant).

However, this exemption only applies to the community organisation income tax liability. It does not mean that employees of the community organisation are exempt from paying income tax. All employers are required to comply with the ATO's income tax withholding obligations in relation to payments of income to employees.



### Independent contractors

Typically independent contractors are paid after they provide a tax invoice to your organisation. The independent contractor is responsible for any income tax liability that may flow from that payment. As a general rule, the community organisation usually does not have to withhold income tax in respect of payments made to independent contractors.

However, there is also scope under taxation laws for independent contractors to enter into voluntary agreements authorising their hirers to withhold taxation from payments. Before entering into such a voluntary agreement with an independent contractor, your organisation should contact the ATO or seek legal advice to ensure that the necessary requirements for an arrangement of this type are met.

If your organisation is registered or required to be registered for GST purposes, your organisation may have GST obligations in relation to services provided by an independent contractor.

It is important to note that certain tax laws (such as payroll tax laws) apply an expanded definition of employee or deem an independent contractor to be an employee in some cases. The effect of this is that in certain circumstances your organisation may be liable to pay tax in relation to workers that would otherwise be considered independent contractors.

## Volunteers

In certain circumstances volunteers may be provided with payments or other benefits in the course of undertaking work for an organisation. This may include cash payments, non-cash benefits, or both. These payments are given various descriptions, including honoraria, reimbursements and allowances. Honorary or ex-gratia payments by the organisation to a volunteer are generally not legally enforceable.

How an amount is described does not determine its treatment for tax purposes. Whether a payment is assessable income in the hands of a volunteer depends on the nature of the payment and the recipient's circumstances.

As a general rule, volunteers do not have to pay tax on payments or benefits they may receive in their capacity as a volunteer for a not-for-profit organisation. Community organisations are similarly not liable to withhold income tax or fringe benefits tax for payments or benefits they provide to volunteers. There are, however, exceptions to these general rules and the ATO has further information on this issue.

For more information about the tax obligations of community organisations, see Resources at the end of this document.

## Termination

### Employees

In relation to the termination of their employment, most full-time and part-time employees are entitled to a notice period (or pay in lieu of such a notice period) in accordance with the National Employment Standards. If the employee is covered by a modern award or enterprise agreement or has a written contract of employment, that award, agreement or contract may specify a greater period of notice. Casual employees are not entitled to notice of termination.

If your organisation dismisses an employee for a reason that contravenes the general protections provisions of the *Fair Work Act 2009* or for a reason that is discriminatory, or the termination is 'harsh, unjust or unreasonable', the employee may be able to make a claim against your organisation.

Legal advice should always be sought before proceeding with the termination of any employee's employment.

### RELATED RESOURCES

For more information about termination of employment, see Not-for-profit law's fact sheet 'What are our legal obligations if we want to terminate our employee's employment?' on the Information Hub at [www.nfplaw.org.au/terminationandresignation](http://www.nfplaw.org.au/terminationandresignation).



## Independent contractors

If your organisation has a contract with an independent contractor, that contract will ordinarily end when the independent contractor has completed the work and received payment from your organisation. However, if your organisation wants to terminate the agreement before the completion of the work, it can only do so in accordance with the terms of the contract or if otherwise allowed by the law (for example, it may be possible to terminate the contract if it cannot be completed for reasons outside the control of either party). You need to check the terms of your contract to see whether (a) your organisation can terminate by giving notice; and (b) whether you are required to pay the contractor for costs they incurred up to the date of termination. These situations can be difficult and you should seek legal advice particularly if the contract does not have any express provision dealing with termination.

Depending on the terms of your contract, your organisation may also be able to terminate a contract if the contractor is in serious breach of the contract. Again, it is important to look carefully at the terms of the contract because some contracts require you to give the independent contractor a 'notice to remedy a breach' and an opportunity to fix it before terminating the agreement.

Unlike employees, independent contractors cannot make unfair or unlawful dismissal claims. However, if your organisation attempts to terminate its contract with an independent contractor, other than in accordance with the terms of that contract, the independent contractor may take legal action against your organisation for breach of contract.

It is also worth noting that if a person whom your organisation regards as an 'independent contractor' can establish in court that they are properly classified as an employee (see table above for attributes of an employee), then they will be able to make any claims available to an employee, including an unfair dismissal application.

## Volunteers

There is no notice period or other requirements to terminate a volunteer relationship – the voluntary nature of the relationship means that it can be ended by either party at any time.

Volunteers cannot make unfair or unlawful dismissal claims. However, it is worth noting that if a person who your organisation said was a 'volunteer' is able to establish in court that they had the attributes of an employee (see table above for attributes of an employee) and the court accepts that they were an employee, then they may be entitled to lodge an action for unfair dismissal.

## 5. Calling an employee, a 'contractor' or a 'volunteer'

Often the parties to a contract for the performance of work will try to describe the legal nature of the relationship between them. For example, a contract may state 'this agreement does not create a relationship of employment' or that 'the parties agree that their relationship is one of principal and independent contractor'. While it is a good idea to write down the terms of the relationship in a contract so both parties are clear about the arrangement, the label you give your worker is not decisive.

The question of whether a person is an 'employee', an 'independent contractor', or 'volunteer' is decided by looking at the entire relationship between the worker and the other party. The way a contract classifies or labels a worker is just one factor that will be considered. If the matter went to court, the court would look behind the description of a situation in documents to what is actually occurring in practice.

### RELATED RESOURCES

For more information about clarifying a volunteer relationship, go to the volunteers page on the Not-for-profit law Information Hub at [www.nfplaw.org.au/volunteers](http://www.nfplaw.org.au/volunteers).

So, if a person who is called an 'independent contractor' actually has all or many of the attributes of an employee (see table above for employee attributes), the court may decide that the person is an 'employee', and entitled to the legal benefits of being an employee.

Similarly, if a person who is called a 'volunteer' actually has all or many of the attributes of an employee, then that person could try to argue in a court that they are an 'employee' and entitled to the legal benefits of being an employee.

Where an employer intentionally tries to disguise an employment relationship as an independent contracting arrangement (usually for the purpose of avoiding having to pay the worker minimum rates of pay and leave or superannuation entitlements), they may face serious penalties under the *Fair Work Act 2009*. The Act prohibits these kinds of 'sham contracting arrangements' by making it an offence for organisations to:

- intentionally disguise a worker's employment or an offer of employment as an independent contracting arrangement
- dismiss or threaten to dismiss a worker for the sole or dominant purpose of re-engaging the worker as an independent contractor, or
- make a knowingly false statement for the purpose of persuading a worker to become an independent contractor.

### TIP

Be careful not to falsely or incorrectly label an employee as an independent contractor (eg. in a written contract or letter of engagement). If the true legal nature of the relationship between the parties is that of employer and employee, the parties cannot alter the truth of that relationship by calling it something else. If you are unsure of the true nature of the relationship between your organisation and a worker, you should seek legal advice.

# Resources

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## Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub at [www.nfplaw.org.au](http://www.nfplaw.org.au) has resources on the following related topics:

✔ Volunteers – [www.nfplaw.org.au/volunteers](http://www.nfplaw.org.au/volunteers)

This section of the Information Hub is designed to help organisations understand the laws that apply to it and its volunteers.

✔ Employees – [www.nfplaw.org.au/employees](http://www.nfplaw.org.au/employees)

This page provides resources on the recruitment and engagement of employees, employee entitlements, the Fair Work System, termination and resignation and disputes with employees.

✔ Insurance and risk – [www.nfplaw.org.au/riskinsurance](http://www.nfplaw.org.au/riskinsurance)

This section covers insurance, negligence, work health and safety, Personal Property Securities Register and criminal conduct.

✔ Tax – [www.nfplaw.org.au/tax](http://www.nfplaw.org.au/tax)

The section explains Deductible Gift Recipient Endorsement, Fringe Benefits Concessions, Goods and Services Tax, income tax exemptions and state tax laws.

## Legislation

✔ [Fair Work Act 2009 \(Cth\)](#)

✔ [Independent Contractors Act 2006 \(Cth\)](#)

✔ [Superannuation Guarantee Administration Act 1992 \(Cth\)](#)

## Other Related Resources

✔ Australian Tax Office (ATO)

The ATO has designed the following tools which may help you work out your obligations:

- [Employee/contractor decision tool](#)
- [Superannuation Guarantee eligibility decision tool](#)
- [Tax withheld calculator](#)

✔ [Fair Work Ombudsman \(FWO\)](#)

The FWO provides information and advice for both workers and organisations about workplace rights and obligations.

✔ [Volunteering Australia](#)

Volunteering Australia has published National Standards for Volunteer Involvement, that reflect best practice for volunteer management in Australia (note: these do not cover the legal views in managing volunteers).

## Workplace Health and Safety Regulators

To find out more about workplace health and safety and the workers' compensation scheme that applies to your organisation, contact the regulator in your state or territory:

- ✔ Australian Capital Territory (ACT): [Worksafe ACT](#)
- ✔ New South Wales (NSW): [SafeWork NSW](#)
- ✔ Northern Territory (NT): [NT WorkSafe](#)
- ✔ Queensland (QLD): [Workplace Health and Safety Queensland](#)
- ✔ South Australia (SA): [SafeWork SA](#)
- ✔ Tasmania (Tas): [WorkSafe Tasmania](#)
- ✔ Victoria (Vic): [WorkSafe Victoria](#)
- ✔ Western Australia (WA): [WorkSafe WA](#)





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