Purpose

This document briefly explains some of the key risks and issues that UQ staff need to be mindful of when engaging volunteers.

Any staff proposing to engage volunteers within UQ should be aware of the rights and responsibilities associated with volunteering.

This document contains general guidance designed to assist UQ staff and does not constitute legal advice.

What is ‘volunteering’?

The current Australian definition of volunteering is as follows:

Volunteering is time willingly given for the common good and without financial gain.

This definition was announced by Volunteering Australia, the national peak body for volunteering, in July 2015.

It is important that volunteering be for “the common good”. Volunteering should therefore directly or indirectly benefit people outside a volunteer’s family or household, or else benefit a cause.

Genuine volunteering is not exploitive, or used to replace paid employment.

Key legal characteristics of volunteering

The key characteristics of a genuine volunteering arrangement include:

1. the parties did not intend to create a legally binding employment relationship;
2. the volunteer is under no obligation to attend the workplace or perform work; and
3. the volunteer doesn’t expect to be paid for their work.

Regulation

The concept of ‘volunteering’ is not governed under a sole source of legislation in Australia. However, codes of practice are in place. Although not law, the codes provide best practice guidelines to help ensure a volunteering arrangement is genuine and lawful:

- National Standards for Volunteer Involvement
- Volunteering Queensland Code of Practice, 2017

Where a volunteering arrangement is not genuine, penalties may apply under the Fair Work Act 2009 (Qld) as discussed below.

Under the Work Health and Safety Act 2011 (Cth), UQ also owes a duty to provide a safe environment to all its volunteers. Penalties apply for failing to do so.
What are the risks?

Risks to UQ will arise where a person is called a “volunteer”, and has been engaged for unpaid work, when the key characteristics of genuine volunteering have not been met.

In these circumstances, it is very possible that the relationship is in fact an employment relationship, and the person is entitled to pay and other benefits for the tasks they perform.

As they will not have received these entitlements, not only will UQ be required to provide them, but it may also be exposed to penalties under the *Fair Work Act 2009* (Qld). In addition, damage may be done to UQ’s reputation.

Checklist for volunteering arrangements

Legal Services recommends consulting the checklist below before engaging a volunteer within UQ, and continuing to abide by it throughout any volunteering arrangement. It is adapted from the Queensland Volunteering *Queensland Code of Practice*, which contains more exhaustive best practice guidelines. We encourage you to consult this Code.

<table>
<thead>
<tr>
<th><strong>DO NOT</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>×</td>
<td>Ask a volunteer to work in a voluntary capacity more than 16 hours per week.</td>
</tr>
<tr>
<td>×</td>
<td>Place volunteer staff in roles that were previously held by paid staff or have been identified as paid jobs.</td>
</tr>
<tr>
<td>×</td>
<td>Require volunteers to work a regular roster or place them under an obligation to attend the workplace and perform volunteering activities.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>DO</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>✓</td>
<td>Ensure a <a href="#">Volunteer Registration Form</a> is completed for each volunteer.</td>
</tr>
<tr>
<td>✓</td>
<td>Provide orientation and training to volunteers.</td>
</tr>
<tr>
<td>✓</td>
<td>Differentiate between paid and unpaid roles.</td>
</tr>
<tr>
<td>✓</td>
<td>Ensure that all volunteers are made aware of the organisational unit's relevant OH&amp;S policy and procedures, and of the University's <a href="#">OH&amp;S website</a>.</td>
</tr>
<tr>
<td>✓</td>
<td>Ensure the tasks and activities undertaken by volunteers benefit the community at large, or some philanthropic or benevolent purpose. This can extend to volunteering within UQ as UQ itself is a not-for-profit organisation with an overall community purpose of promoting and furthering education and research.</td>
</tr>
</tbody>
</table>
What if I am unsure about a current arrangement?

If you are unsure whether an existing arrangement is volunteering or employment, consider the questions below.

| How formalised is the work arrangement? | • Where there is an expectation to work to a regular roster, there is a greater possibility that an employment relationship will be found.  
• Volunteers should be under no obligation to attend the workplace and perform the volunteering activities. |
| Is money changing hands? | • It is generally accepted that volunteers can receive reimbursement for out of pocket expenses, as well as stipends or similar payment as recognition for voluntary services.  
• Any other payments should be discussed with Legal Services due to the risk that the payment is, at law, a ‘fee for services’ and in breach of Fair Work laws. |
| What is the nature of the activities performed by the volunteer? | • If the volunteer did not perform the activities, would those activities be performed instead by an employee (either newly hired or existing)? If so, there is a greater possibility that an employment relationship will be found. |
| Is there an indication that the parties intend to create a legally binding arrangement? | • The primary intention of engaging the volunteer should be to provide the volunteer with the experience of serving the common good or a charitable cause.  
• Volunteers should not be engaged in order for an organisation to receive a tangible benefit from the volunteer’s work (ie: as a substitute for paid employees). |

More information

If you have any questions or require more information, please contact Legal Services:

P: (07) 3365 2078  
E: LegalServices@uq.edu.au  
W: https://legalservices.app.uq.edu.au/