

VOLUNTEERING AND UNPAID WORK PLACEMENTS AMONG CHILDREN AND YOUNG PEOPLE IN NSW

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Inquiry into Volunteering and Unpaid Work Placements Among Children and Young People in NSW

Children and Young People Committee

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Submission by:
Unions NSW



Introduction

1. Unions NSW welcomes the opportunity to make a submission to the Inquiry into volunteering and unpaid work placement among children and young people in NSW.
2. Unpaid and volunteer work is a polarising issue. At one end of the spectrum, unpaid work is a highly positive social good with considerable personal and community benefits. At the other end however, unpaid work can be exploitative and can have negative impacts on the broader labour market.
3. Effective regulation and enforcement is key to ensuring a positive culture of unpaid work that promotes learning and development opportunities while avoiding negative impacts and exploitation.
4. In this submission, Unions NSW will argue that all forms of unpaid work should be covered by a national or NSW code of practice. This code should be enforced by the Fair Work Commission, an existing institution at the Commonwealth level that has the skills and experience to undertake such work.
5. The submission will:
 - Outline a number of the problems and issues around unpaid work;
 - Outline the different types of volunteering and unpaid work placements that exist and offer comments on their use and their legal status;
 - Propose a 'code of practice' to properly regulate lawful unpaid workplace placements and volunteer arrangements;
 - Encourage the NSW Government and all levels of government to take stronger steps towards eradicating the use of unlawful unpaid work arrangements.

Unions NSW

6. Unions NSW is the peak body for trade unions and union members in NSW. It has over 65 affiliated unions and Trades and Labour Councils representing approximately 600,000 workers across the State.
7. Affiliated unions cover the spectrum of the workforce, stretching from workers in finance to footwear and construction to communications. Unions NSW is the largest member based organisation in NSW.

The problems

8. Evidence suggests that many unpaid work experience placements lead to the exploitation and underpayment or non-payment of workers. This is particularly the case for young people. Some broad issues that arise with these 'exploitative' forms of unpaid work have been outlined below.

Undercutting of paid staff

9. The undercutting of paid work is particularly an issue for unpaid work trials and internships that require productive returns from interns. In these circumstances, employers are often using interns and unpaid trial staff to replace paid positions. This may lead to a reduction in entry level 'paid' jobs and the displacement of workers in some industries where 'unpaid work' is becoming the norm for new starters.

Exclusion of disadvantaged young people

10. Many young people, who rely on paid work to support themselves, cannot afford to undertake unpaid work placements or volunteer work. In recent years, internships and even volunteer work has become a gateway to paid work in certain industries

and sectors. This requirement has locked a large number of young people out of jobs in these areas because they aren't able to work for free.

Lack of information and regulation

11. Little is known about how many young people are undertaking unpaid work, what organisations are engaging them or what kind of work they are doing. Anecdotal evidence suggests unpaid work is becoming a common experience for young people. However, concrete data is not available.
12. A lack of information and data on unpaid work makes developing policies to address the issues of unpaid work difficult. It also makes the policing of unlawful and exploitative unpaid work difficult.

The Fair Work Ombudsman

13. The Fair Work Ombudsman recently commissioned a report into the "nature, prevalence and regulation of unpaid work experience, internships and trial periods in Australia". The research was conducted and compiled by Adelaide Law School Professors, Andrew Stewart and Rosemary Owens and was released in January 2013.
14. Unions NSW urges the Committee to review the report and recommendations released as well as the Fair Work Ombudsman's response (summary attached as Appendix A).
15. Unions NSW supports the report and its recommendations.

Types of unpaid work placements and volunteer work

16. Below is an overview of the different types of unpaid work placements and volunteer arrangements.

17. This submission gives an overview of each including their status under the law and comments on how they are commonly being used in workplaces.

Vocational placements

18. A number of education and training courses require students to undertake a vocational placement. These placements need to be authorised under a law or administrative arrangements of the Commonwealth, State or Territory.
19. Vocational placements take place for a pre-determined time period and are designed to complement classroom training while enhancing on-the-job skills.
20. Participants are not paid, even though a student's work for the organisation may be highly productive and valuable. They are not considered to be employees for the purposes of the Fair Work Act.
21. Unions NSW believes that these internships play an important role in education, providing classroom-based studies with a practical element and help ensure that graduates are well prepared for the workplace.
22. While not employees, vocational placement participants are still covered by workers compensation and OHS legislation.
23. As with all other lawful forms of unpaid work, Unions NSW believes that employers using Vocational Placements should be bound by a code of practice as outlined below.

School work experience

24. In years 9, 10 or 11 school students are often required to participate in work experience.

25. Students may be required to undertake productive work or may 'shadow' staff in order to gain an understanding of what a particular profession or industry is like to work in.
26. The student's school assists in organising and overseeing the work experience program.
27. Unions NSW believes that this is a legitimate form of work experience, providing young school students with an opportunity to gain insights into the 'world of work'.
28. Unions NSW believes that school work experience programs should abide by the code of practice as set out below.

Internships

29. Internships have a fairly broad definition, they are a form of work experience that is unpaid and may range from 'work shadowing', to the performance of basic productive tasks.
30. There is a significant difference between lawful and unlawful internships.
31. Lawful internships must be a genuine work experience opportunity where the intern benefits by gaining skills and knowledge. The main tasks of an intern should be observational and all productive tasks should be undertaken as a learning opportunity. Employers should not engage interns in place of paid workers or as a means of gaining unpaid labour. Lawful internships should have a clear start and end date.
32. Internships are unlawful when they require interns to conduct productive work with little or no learning outcomes. In these circumstances the employer will most likely benefit from the arrangement more than the employee. Employers may also use unlawful internships as a form of unpaid labour.

33. It is sometimes difficult to distinguish between a lawful and unlawful internship.

Unions NSW believes the Code of Conduct can be used as a guide to assist in determining if an intern is gaining a positive learning experience out of an internship.

Unpaid work trials

34. Unpaid work trials are used by employers in two main ways:

- a. As a quasi internship that requires workers to undertake productive work for the employer for free under the pretence that they 'may be hired' if they are able to perform. This is common in print and broadcast media, legal services, advertising, marketing PR and event management.
- b. As an unpaid 'probationary period' where an employer is able to decide if they would like to employ a worker by requiring them to perform work for free. This is common in hospitality and retail and is particularly a problem with small business employers.

35. The two forms of unpaid work are very similar in that they place pressure on unpaid workers to work for free and to perform at a high level in order to obtain paid work.

36. Unpaid work trials may be as short as 'one shift' or can last for several weeks or months.

37. Unpaid work trials are exploitative and take advantage of many young people's enthusiasm to gain employment in certain industries. Unpaid work trials may also leave workers vulnerable when it comes to workplace safety and access to workers compensation.

38. Unpaid work trials are and should remain unlawful. If employers are found to engage workers on an 'unpaid work trial' basis they can, and should continue to, be required to pay backpay for hours worked.

Volunteer work

39. Volunteer work is generally restricted to the not-for-profit and community sector and involves the undertaking of productive work, with no remuneration.

40. In order to be considered legitimate and lawful, volunteer opportunities should:

- a. Benefit the community and the volunteer;
- b. Not replace a paid position;
- c. Are not compulsory;
- d. Provides the volunteer with control over their hours of work and level of commitment and;
- e. Should not involve any agreement that the volunteer work could lead to employment.
- f. Volunteers should be covered by all Work Health Safety laws and regulations in the workplace.

41. Volunteers should be covered by the Code of Practice. Within the code of conduct, references to 'learning outcomes' do not necessarily apply to volunteers. However, an emphasis on positive outcomes for the community and the volunteer should be central.

Work for the dole

42. The 'Work for the Dole' program was introduced by the Federal Government in 1998 and requires long term recipients of the Newstart Allowance or Youth Allowance to undertake work experience in order to continue to receive their Government allowance. This work experience is unpaid although participants continue to receive government benefits.

43. In its current form, jobseekers are required to complete 'work for the dole' for a six month period if they are:

- a. an 18 - 19 year old Year 12 school leaver who has been receiving Youth Allowance as a jobseeker for three months or;

- b. an 18 to 39 year old jobseeker who has been receiving Newstart Allowance or Youth Allowance for 12 months or more.
- 44. There is a lower threshold for 18-19 year olds to be required to participate in Work for the Dole. Young people are also overrepresented in unemployment figures. As such, a significant proportion of work for the dole participants are young people.
- 45. Currently, work for the dole activities are restricted to community, charity and not-for-profit organisations. The work experience is designed to provide employees with on-the-job learning and work skills that will assist them find future employment.
- 46. Unions NSW is concerned by recent announcements made by the Commonwealth Government regarding the expansion of the work for the dole program. Commentary on the issue has suggested that the program may be expanded to other organisations including for-profit and the government sector.
- 47. Unions NSW does not believe that the work for the dole program is the most productive or successful way of assisting unemployed people find work.
- 48. Unions NSW acknowledges that policy and legislative changes affecting the work for the dole program are out of the control of the NSW State Government and beyond the scope of this inquiry.
- 49. However, the NSW Government can and should play an important role in educating host employers about best practice when hosting work for the dole participants.
- 50. Within the current system, and any future system, Unions NSW believes that the work for the dole work experience should be treated like any other work experience, internship or volunteering program. It should operate under a code of practice and the principles described in this submission. In particular, the NSW Government can assist in disseminating this code to host employers.

51. Unions NSW does not support the broadening of the work for the dole scheme to government organisations or for profit employers. However, if this policy change were to be implemented, Unions NSW would argue that the expanded program should also be subject to the code of practice.

Code of Practice

52. The Code of Practice outlined below should apply to lawful unpaid work, including:

- work placements;
- internships;
- school work experience
- work for the dole

53. In the Code of Practice lawful unpaid work opportunities are collectively referred to internships.

54. The Code of Practice should also apply to volunteers. In the case of volunteer work, 'learning outcomes' may not apply.

Organisational capacity and planning

55. Before advertising for an internships or volunteer work, organisations must consider their capacity to provide an intern/volunteer with a positive learning experience. This will involve initial planning on what the day-to-day activities of the internship would look like and what type of work the intern would be exposed to. The organisation should be confident that an intern will benefit more than the organisation from the internship.

56. A planning checklist for an organisation should include:

- There is an employee who can supervise the intern and organise activities;
- There are a range of learning activities and meaningful tasks that the intern can take part in;
- The intern is not being used to complete what would otherwise be considered paid work;
- There is a clear list of learning outcomes that the internship should achieve;

- An employee will be assigned to discuss and debrief workplace activities and ensure that learning outcomes are being achieved;
- The intern will benefit more from the internship than the organisation.

Induction

57. When an intern begins their internship it is important that they are properly 'inducted' into the workplace.

58. This induction might look similar to that of a paid employee. The induction should include:

- Introduction to work colleagues/team. This should also include who the intern's direct report is and who their point of contact is;
- Any relevant safety inductions. This should include information about emergency exits, and who the first aid officers and fire wardens are;
- An overview of their rights and obligations under WHS legislation (including bullying and harassment);
- An overview of what learning outcomes they should expect to achieve;
- Information about how to claim re-imbursements or allowances, if applicable;
- An explanation of the dispute resolution process. This should include how and to who the intern can make complaints and the process undertaken to ensure they are resolved;
- Information on any other relevant staff policies or procedures.

Dignity and respect

59. As with all workers, interns should be treated with dignity and respect in the workplace.

60. For many young people, an internship may be their first experience of paid work or a professional working environment. Organisations must take this into consideration when introducing an intern into their workplace and take extra care to ensure they feel included and respected in their workplace.

61. All anti-bullying laws and the rights and regulations that accompany them apply to all interns.
62. Interns should not be used to replace paid workers in the workplace. They should also not be required to perform work of a productive nature. Interns may be asked to perform work, however this should always be in order to develop learning outcomes and should not be used by employers as 'unpaid labour'. As a rule, internship work should always be meaningful.

Clear learning outcomes

63. Organisations should prioritise the learning opportunities and outcomes of interns. In preparing for an intern, the organisation should consider what learning outcomes they are able to offer an intern.
64. Learning outcomes should be discussed with the intern when they begin. The intern and the organisation should be able to agree on all the proposed outcomes and assess whether they are achievable. The intern should be given the opportunity to add their own learning outcomes.
65. During the internship the intern and the employee responsible for the intern should have a discussion about the outcomes. They should assess whether the outcomes are being achieved, and if they aren't, how this can be resolved. At this stage there should also be the opportunity to include more learning outcomes.
66. Learning outcomes may include:
 - Learning how to apply academic learning and knowledge into the work environment;
 - Learning what technical skills and knowledge are required to work in a certain industry or profession;
 - Developing interpersonal and communication skills in a workplace environment;

- Learning skills that are very specific to a certain industry, profession or workplace (for example, how to use a particular computer program)

Support in the workplace

67. Organisations should appoint an employee in the workplace who will act as a 'mentor' or 'point person' for the intern. The role of this employee should be to:

- Be a first point of contact for the intern;
- Help plan activities for the intern;
- Act as a support in the workplace for any questions the intern may have;
- Discuss learning outcomes with the intern and how they can be achieved;
- Assist the intern with any workplace grievances they may have;
- Conduct debrief activities with the intern.

Recommendations

Recommendation One

All forms of unpaid work should be covered by a national or NSW code of practice. This code should be enforced by the Fair Work Commission, an existing institution at the Commonwealth level that has the skills and experience to undertake such work.

Recommendation Two

Further research into the use and prevalence of internships, work placements, volunteer work and other forms of unpaid work is needed and should be facilitated by the relevant federal and state agencies.

Recommendation Three

Unlawful job advertisements for internships, volunteering and unpaid work trials need to be better policed. The Commission for Children and Young People could play this role for young workers or Workplace Inspectors. Alternatively, unions could be empowered to take disputes about such matters in their areas of coverage to the Fair Work Commission or NSW IRC.

Recommendation Four

School based education should be introduced around the different forms of unpaid work placements, which are lawful and unlawful and how students can ensure they are not exploited.

Recommendation Five

Support all recommendations outlined in the Fair Work Ombudsman report.

Appendix A

Fair Work Ombudsman Report

“Experience of Exploitation”

Experience or Exploitation?



- Report summary – Key findings
- Report recommendations and Fair Work Ombudsman responses
- Fair Work Ombudsman case studies

A report commissioned by the Fair Work Ombudsman into the nature, prevalence and regulation of unpaid work experience, internships and trial periods in Australia.

Research completed in January 2013 by Adelaide Law School Professors, Andrew Stewart and Rosemary Owens.

Experience or Exploitation? The nature, prevalence and regulation of unpaid work experience, internships and trial periods in Australia.

Report summary – Key findings

- The report examines three categories of unpaid work: unpaid trial work, unpaid internships and other forms of unpaid work experience. The report does not consider unpaid work performed at home within familial relations, in a family business, or volunteer work in the not-for-profit sector.
- The report also acknowledges the importance and legitimacy of unpaid work within formal vocational placements. The report does not intend to undermine the use of these legitimate arrangements.
- It is difficult to accurately quantify the number of workers undertaking unpaid work experience. But the report draws on a wide range of sources to conclude that such arrangements are a growing feature of the Australian labour market.
- In particular, it appears that a significant number of workers, particularly young workers, are asked or required to undertake unpaid job trials or unpaid training which go beyond what is reasonably required to assess an applicant's ability or suitability. Such arrangements effectively require the performance on an unpaid basis of work that would normally be undertaken by a paid employee.
- In addition to unpaid trials, the report identifies unpaid internships as a growth area both in Australia and internationally.
- The term 'internship' has a broad meaning, covering a wide spectrum of work experience arrangements. It may include everything from simple 'work shadowing' opportunities, through to 'work integrated learning' that sometimes (but not always) forms part of a formal vocational placement, through to the other extreme, to unpaid or paid entry level jobs.
- Unpaid internships are particularly popular in industries that are considered attractive to job-seekers or where there is an oversupply of qualified graduates.
- While unpaid internships are more prevalent in certain industries, the report concludes that the majority of professional industries are affected, including (but not limited to) print and broadcast media, legal services, advertising, marketing, PR and event management. Such arrangements are often considered a prelude to paid work.
- The report concludes that there is reason to suspect that a growing number of businesses are choosing to engage unpaid interns to perform work that might otherwise be done by paid employees.
- The report recommends that FWO focus on those businesses that are systematically using unpaid work arrangements to exploit workers, and gain competitive advantage over businesses complying with workplace laws.
- On the other hand, there is no evidence to suggest that work experience conducted under the aegis of secondary school programs involves the exploitation of young people.

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- Some workers, predominantly international students or graduates, are paying agencies to place them in unpaid internships. Migrant workers, particularly international students and those engaged on temporary working visas, are especially vulnerable to pressure to perform unpaid work because they have the urgency of seeking to maximise the possibility of securing access to permanent residency.
- Some of the views represented in the report express a belief that unpaid internships are mutually beneficial arrangements that should not be discouraged or suppressed.
- There also seems to be a misconception that, if a worker is undertaking some form of work integrated learning, then the worker would be exempt from the **Fair Work Act 2009** (the Act) and therefore can be unpaid.
- However, under provisions which were first introduced into federal law in 1996 through the **Workplace Relations Act 1996**, the only current exemption is for those who are engaged on a vocational placement which is a requirement of an education or training course and is authorised under a law or an administrative arrangement of the Commonwealth, a state or territory.
- If an unpaid work experience arrangement is not a formal vocational placement, and the person is actually an employee working under a contract of employment, then the person is entitled to the conditions and entitlements under the Act and Fair Work instruments – including a minimum wage.
- Whether a person performing work is doing so under a contract of employment requires a determination based on the circumstances of each particular case. As such, it is not possible to provide a simple or comprehensive analysis of the legal status of various forms of unpaid work.
- A contract of employment may exist even without any formal agreement to that effect. It is a question of determining whether the parties have entered into an arrangement that involves mutual commitments (for example, to perform work in return for the opportunity to gain experience).
- There are relatively few decided cases that explore the status of work experience arrangements. Some short-term trials have been found not to involve employment. But longer arrangements in particular have been more likely to be characterised as involving an employment relationship.
- There is a clear need for cases to be brought before the courts to test out the legality of arrangements that appear to undermine the standards established by the Act.
- The report extrapolates that, if the trend in unpaid internships is left unchecked, it is likely to gather pace as it has done in other countries like the United States, where employers are forced by their competitors into a ‘race to the bottom’. However, the report also notes that concern about unpaid work arrangements, especially as they impact on young people, has become a focus in other developed economies in recent years, especially since the Global Financial Crisis. In the United Kingdom, for instance, the present government has made a concerted effort in recent years to end any exploitation and to ensure fair access by all to the labour market.
- The report makes a series of recommendations as to how the Fair Work Ombudsman might improve education and compliance in this important area, in particular by working with stakeholders and encouraging greater community debate.

Experience or Exploitation? The nature, prevalence and regulation of unpaid work experience, internships and trial periods in Australia.

Report recommendations and the Fair Work Ombudsman's proposed education and compliance response

1. Defining unpaid work experience

The report recommends that the Fair Work Ombudsman (FWO) determines the legality and legitimacy of unpaid work experience in order to inform its approach to education and its operational decisions regarding investigations, and potentially prosecutions, by assessing the seriousness of any unpaid work issues.

In particular, this requires the FWO to determine its view regarding each element of the 'vocational placement' exception in the **Fair Work Act 2009**.

The FWO intends to develop its position on what constitutes unlawful unpaid work arrangements, with particular attention to the 'vocational placement' exception under the **Fair Work Act 2009**. This position will inform the FWO's education and compliance initiatives.

2. Expanding guidance and education activities

The FWO should develop more detailed guidance on unpaid internships, including more information regarding the elements of the 'vocational placement' exception. It should also set out its general approach to these arrangements in a policy statement.

The FWO should consider providing specific information for particular types of work experience and industries.

Educating the Australian community about the legitimacy and legality of unpaid work arrangements will be a primary element of the FWO's response to the report. In particular, the FWO intends to:

- Review and expand the content relating to unpaid work arrangements published on www.fairwork.gov.au by July 2013.
- Develop industry-specific educative materials by June 2013 for key industries identified in the report: Hair and Beauty, Hospitality, Cafes and Restaurants and Professional Services (which includes media, legal, creative services).
- Deliver a handbook (including an e-book version) and appropriate templates addressing frequently asked questions, scenarios and practical assistance for employers and young workers applicable across all industry sectors by July 2013.
- Following consultation with industry, develop an e-learning module on the appropriate way to engage young people on work experience and developmental programs.

3. Proposed education and compliance activity concerning unpaid work

The FWO should institute one or more targeted campaigns (combining compliance and education activities) around extracurricular unpaid work, in industries where the practice is relevant.

It is recommended that at least one targeted campaign is undertaken in the hair and beauty, retail and hospitality industries.

It is also recommended that one or two further industries in which unpaid internships are prevalent outside the scope of an authorised education or training course are targeted. The print and/or broadcast media should be one of those industries, other options may include legal services, advertising, marketing or event management.

The FWO is concerned about the instances of unpaid work identified in the report, particularly as it relates to vulnerable workers.

The FWO will also assist employees who want to lodge complaints regarding unpaid work by establishing a special complaint handling procedure whereby workers who feel they have been denied their lawful entitlements can contact the FWO via a dedicated email address.

The FWO will increase levels of compliance through:

- Community awareness activities and engagement with key industry stakeholders and other government organisations.
- The development, distribution and delivery of specific education, social media and information products and services and the provision of specialised advice via the FWO advisory contact points such as the Fair Work Infoline.
- A targeted approach to compliance activity and building partnerships with employee and employer representative groups in the hairdressing and beauty, hospitality, retail and media sectors. The FWO will work with key employers and stakeholders in these sectors to ensure the boundaries of employment relationships are clarified, monitored and enforced.

In line with the report's recommendations, the FWO will also examine opportunities to commence compliance activities focusing on unpaid training and work experience in specific locations. Using recruitment advertising and the activities of placement intermediaries as a trigger for the identification of such matters, the FWO will engage with these industries and their representatives about the removal of problems. The FWO will also monitor online job advertisements and design strategic interventions to assist with ensuring compliance.

4. Commencing test cases

The FWO should consider instigating, where appropriate, test cases to help provide greater clarity and certainty in understanding the application of the legislation to unpaid work arrangements. This should include cases dealing with both relatively short periods of unpaid trial work and with lengthier internships that may have an element of training but mostly include productive work.

The FWO will give consideration to initiating proceedings in relation to relevant matters that involve exploitative unpaid work arrangements. Any decisions to initiate proceedings will be made in accordance with the Fair Work Ombudsman's Guidance Note – Litigation Policy.

The FWO has initiated legal proceedings previously in relation to unpaid work trials. For example, in November 2012, the FWO commenced proceedings against two Melbourne IT companies, Konsulteq Pty Ltd and Konsulteq Upskilling & Training Services Pty Ltd, and their operator, Pradeep Gaur, for alleged breaches of workplace laws relating to sham contracting, unlawful termination, falsification of records and underpaying two foreign workers more than \$17,000. The FWO alleges that the two employees were not paid wages during a period of purported training over several months during 2010.

The report recommends that FWO focus on those businesses that are systematically using unpaid work arrangements to exploit workers, and gain competitive advantage

Experience or Exploitation? The nature, prevalence and regulation of unpaid work experience, internships and trial periods in Australia.

The FWO will also continue to consider other compliance mechanisms as an alternative to litigation where appropriate. For example, the FWO entered into an enforceable undertaking with McDonald Real Estate, Dandenong, in December 2012, after the company admitted underpaying a salesman more than \$10,000 between October 2010 and February 2011. The salesman was unlawfully required to perform an initial four week period of unpaid work under a purported training program and was underpaid thereafter. Under the enforceable undertaking, the company was required to develop processes for ensuring future compliance with workplace laws, undertake professional audits and rectify any underpayments identified, provide professional workplace relations training for all managerial, human resources, recruitment and payroll staff and publish public notices detailing their contraventions of workplace laws.

5. Liaison with other government agencies

The FWO develop more effective liaison with other government agencies interested in or in a position to influence the conduct of unpaid work arrangements, including with the:

- Department of Immigration and Citizenship (DIAC), to alert visa holders of the potential illegality of unpaid work and
- Australian Competition and Consumer Commission (ACCC), to take a stronger position in relation to the advertisement of employment-like internships.

The FWO intends to liaise with government agencies that can influence the practice of unpaid work arrangements. The FWO will commence discussions with DIAC and ACCC and will liaise with the Australian Public Service Commission (APSC) to encourage the distribution of information to APS agencies about unpaid work arrangements and provide any assistance required by the APSC in developing tailored information for this purpose.

6. Stakeholder engagement

The FWO should engage with a broad range of stakeholders, including young people and migrant workers, educational institutions, and particular industry groups.

The FWO should provide an enabling capacity which assists compliance with the legislation within a context of developing best practice approaches to the issue of work experience.

The FWO will engage with a broad range of stakeholders in order to assist others to not only comply with their legal obligations, but to advocate for best practice business processes. Specifically, in addition to the sectors identified above, the FWO will:

- Provide a free and voluntary educative program to the higher education sector. This includes a review for compliance with the [Fair Work Act 2009](#); the delivery of an educational seminar to relevant personnel; the provision of a self-audit tool that higher education providers can use and distribute to check the legitimacy of any unpaid arrangements; and the development of tailored information such as a fact sheet for the Higher Education sector addressing this issue. Collaboration with key stakeholders to develop the program will commence in April 2013 with a view to commence the program in July 2013.
- Invite employers in industries identified as commonly utilising unpaid work arrangements to participate in the FWO's National Employer Program throughout the second half of 2013. The FWO will engage with a number of stakeholders during the planning and execution of targeted education and compliance campaigns.

Fair Work Ombudsman case studies on unpaid work experiences

Unpaid trial in a real estate company

A worker applied for a position as a real estate agent at McDonald Real Estate Dandenong Pty Ltd. He was told by the company that he would only be employed if he attended a four-week 'bootcamp' training program. He undertook this program, under the terms of a 'training agreement' that stated, among other things, that neither he as the trainee, nor the company, must represent to the public that he was an employee or member of the company during the training period. He was provided with leaflets containing his details, a photograph and the company logo, together with company ties and a badge. He spent the four weeks attempting to gain listings, without any assistance from a trainer.

The worker was subsequently engaged under an 'employment contract'. He was paid on a commission-only basis, despite not meeting the requirements for such a payment arrangement under the **Real Estate Industry Award 2010**.

Following an investigation by the Fair Work Ombudsman (FWO), the firm agreed to pay the worker for his work in accordance with the Award, including for the four-week 'training' period. The company and two of its directors signed an enforceable undertaking with the FWO, agreeing among other things to publicise their contraventions, develop compliance programs for any agencies in which they might be involved, and donate \$1000 to a local Community Legal Centre.

Recruiting firm internship

A recruiting firm was investigated by the FWO following an advertisement that appeared on SEEK.com.au, seeking graduates to work on a voluntary basis for one day a week over a 6 month period. The placement (which was not linked to any education or training course) offered hands on experience with a potential for job opportunities.

The firm's HR manager explained that the internships were observational in nature, with no expectations of productive work. The interns, who would each sign agreements that detailed the training they would receive, would typically observe the firm's consultants undertaking candidate selection and screening, shortlisting and reference checks, and would also sit in interviews; but they would not undertake those activities themselves, other than on a 'dummy' or test basis.

This account was largely corroborated by evidence from two current and two past interns at the firm, who confirmed that most of what they had done was of the 'watch and learn' variety, though in a few cases they had done some 'hands on' work under supervision.

On the basis of the investigation, the FWO was satisfied there was neither significant benefit to the firm from the work, nor any expectation to perform productive work, and accordingly that there was no employment relationship.

Some short-term trials have been found not to involve employment

Unpaid trial in a law firm

J, a law graduate with a year's experience in legal practice, applied for what was clearly advertised as a paid position with a law firm. He was interviewed, along with two other candidates and was asked to complete various tests, including the preparation of a memorandum of advice on a given set of facts. On the evening of the day on which he was interviewed he received an e-mail advising him that he had been 'successful' and asking him if he was available to attend 'a week-long trial placement' starting the following day.

J arrived the following morning, a Thursday, to find that he was expected to work with another candidate, who appeared to be a competitor for the same position. They were set a number of tasks, the most significant of which involved researching a novel argument in a multi-million dollar matter being handled for a client by one of the directors of the firm. They were advised that they would receive little or no supervision, but would be expected to relate their findings to the director at the end of each day, usually after 7:00pm.

J put a great deal of time and effort into working on these tasks, including over the weekend. On the following Wednesday, their fifth day in the office, he and his colleague presented their memo on the major matter, to which they were asked to make some minor changes. Some 45 minutes later, the director came out for a cursory conversation, saying that he hoped J had enjoyed the week there. He explained that he didn't have time to talk, but asked J to email him a phone number so that he could call J and give him some feedback. From this, J inferred that he had not been successful. His colleague, it turned out, had not been offered a position in the office either, but had been told he was being 'put forward' for another job in an interstate office of the same firm. He was unsure whether this would involve an actual job, or another trial.

When J subsequently contacted the firm to clarify the terms of his 'employment' there, he was told that 'the week you worked with us is unpaid', and that 'the terms of the work experience placement was made clear to you during the interview'. J had no recollection of any conversation to that effect. Following an investigation by the FWO, the firm agreed to rectify what the FWO assessed as a contravention of the obligation to pay J in accordance with the Legal Services Award 2010. J was paid for his week's work and the FWO decided to take no further action.

...there is reason to suspect that a growing number of businesses are choosing to engage unpaid interns to perform work that might otherwise be done by paid employees