

Guide to consumer representative payments

A guide for community organisations

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Part 1

Introduction

Introduction

This part covers:

- ▶ What is a consumer representative?
 - ▶ What is a payment or reward?
-

Community organisations make payments to people ('consumer representatives') for their advice on consumer matters. There are legal issues associated with this.

This guide will help your organisation understand some of these issues.



Note

This guide provides general information about payments to consumer representatives. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this guide.

What is a consumer representative?

Many community organisations (particularly health providers) engage consumers to provide independent advice on the organisation's goods and services.

Often these consumers are chosen because they have particular skills and knowledge, and the organisation has confidence in them to report on the concerns and issues that impact consumers. The term 'consumer representative' is used to describe these people in this guide.

Community organisations engage consumer representatives in different ways and for different purposes, including to contribute to statutory bodies, committees, advisory groups, research projects, forums or focus groups and participating in other forms of work, such as surveys.

Consumer representatives might work with an organisation on a one-off basis, while others work with the organisations on a more regular basis.



Examples of consumer representative engagements

Example 1 – focus group tester

A community organisation runs a focus group to test user experience with a new online resource. It engages a small number of people for a total of three hours. The organisation provides \$50 vouchers to the consumer representatives in recognition of their time and opinions.

Example 2 – medical expert on research committee

A health care provider in NSW engages a retired medical professor on their research committee. The person is paid \$1,200 per meeting and attends about eight meetings a year. The same person is also used on an ad hoc basis to attend meetings, including with government officials to provide advice on behalf of the organisation. In the past year, this payment has amounted to about \$11,500.

Example 3 – chair of advisory committee with lived experience

A state wide disability service provider engages a person with more than 30 years' experience in the provision of disability services to be the chair of its advisory committee. As chair, the person also speaks publicly on behalf of the organisation on consumer issues. Over the year, the person is paid \$4,800 for the committee work and \$1,900 for speaking at two conferences.

Example 4 – former member co-designs and runs a program

A regional rehabilitation charity organises one of its former members with gardening skills to help co-design and run a new gardening program for its clients. The work involves planning, delivery and evaluation of the program (18 hours over eight weeks). The payment is \$720 and the organisation hopes to run it again, with the same person in six weeks' time.

Example 5 – a community member is engaged to assist in projects

A preventative health organisation engages a local community member – the local community member engages in as many opportunities as they can. The organisation values their contributions and over the past year engaged them in a research project (of about 14 hours), a short-term working group (10 hours) and as a panel member (about 35 hours). In total, they have completed 59 hours over a 12-month period and received \$2,980 for their time. The organisation hopes to continue to engage them in the same way over the coming years.



Note

Consumer representatives are often used by health care providers.

The Australian Charter of Healthcare Rights acknowledges consumers in health policy development and service planning, implementation and evaluation.

Many health care providers have policies for recruiting and engaging consumer representatives.



Meaning of 'consumer representative'

A 'representative' is usually seen as someone who is selected and informed through consultation with others, and is seen as representing the views of others, but this is not always the case with 'consumer representatives.'

A role or task performed by a consumer representative may be better described as providing a 'consumer perspective,' which acknowledges that their contribution is informed by both their own lived experience, and knowledge of consumer rights.

What is a payment or reward?

Payments and rewards

As demonstrated in the examples above, consumer representatives can receive payment or rewards in different forms. Sometimes these payments are called rewards, allowances, honorariums, participation payments or recognition of effort payments. Sometimes these payments are in cash, and sometimes they may be a voucher or other non-cash benefit.



The importance of the nature of the relationship

It's the nature of the entire relationship between the organisation and a worker that is important in the eyes of the law.

The nature of the relationship is important because different legal entitlements and obligations will apply depending on whether the worker is a volunteer, employee or an independent contractor.

How a payment occurs and the level of payment can impact on the nature of the relationship. For example, regular payments may indicate an employment relationship rather than a volunteer relationship (what the payment is called is a less important consideration).

See '[can volunteers be paid for their work](#)' in part 2 of this guide for more information.



Caution

This guide doesn't deal with payments to board members of community organisations. Different legal issues apply to these payments.

See our fact sheet '[payment of board members](#)' for more information.

Reimbursements

Payments are different to reimbursements. Your organisation is permitted to reimburse a person for costs that are reasonably incurred in their capacity as a consumer representative.

A reimbursement is not a 'payment' to a consumer representative for the purposes of this guide and will not generally give rise to the same considerations.

Travel expenses related to carrying out functions of your organisation are an example of a reimbursement. For example, if a consumer representative is required to drive to a regional city to attend a speaking event on behalf of your organisation, it would be reasonable to reimburse that consumer representative for the



fuel costs. Similarly, if a consumer representative needs to travel to attend a committee meeting, it would be reasonable to reimburse the costs incurred in travelling to that meeting.

If your organisation is regularly reimbursing consumer representatives for costs incurred, it's a good idea to have a reimbursements policy.



Part 2

What legal issues arise when your organisation makes payments to consumer representatives?

What legal issues arise when your organisation makes payments to consumer representatives?

This part covers:

- ▶ The nature of the relationship - volunteer, employee or independent contractor?
 - ▶ Is your consumer representative a volunteer?
 - ▶ Is your consumer representative an employee?
 - ▶ Is your consumer representative an independent contractor?
-

The nature of the relationship - volunteer, employee or independent contractor?

The law recognises different categories of relationships where one party (a worker) performs work for another party in exchange for payment or reward.

These include 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 a legal right to, payment or reward.

The legal distinction between the different types of workers is not always easy to make.

Different legal entitlements and obligations apply, depending on whether the worker is a volunteer, employee or an independent contractor.



Note

This means that the nature of the relationship between your organisation and the consumer representative has implications for a wide range of laws – such as employment, tax, insurance and workplace health and safety law.

Organisations need to be clear about the nature of the relationship between it and the consumer representatives it engages.

If your organisation incorrectly classifies a consumer representative as the wrong category of worker, you may fail to provide the consumer representative with the legal entitlements you owe and meet your obligations under law. This could result in legal claims being made against your organisation, and your organisation may be found liable to pay penalties.

Conversely, if the consumer representative is unclear on what 'true' category of worker they are, it can cause confusion about their own legal entitlement and obligations.



Volunteer, employee or independent contractor?

While much employment law is now set out in 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 (judge-made law).

Where there is doubt about whether a worker is an employee or an independent contractor, the courts have previously considered numerous factors relating to what actually occurred in the working relationship (which may have differed to what was in the written contract) to make a determination on the true classification of the worker. This sometimes resulted in a worker who, for example, may be an independent contractor but deemed to be an employee by the courts if, in practice, there were a number of factors consistent with an employee relationship.

This approach has recently shifted, with the High Court moving away from an examination of the totality of the relationship between the employer and employee or contractor. Instead, the Court is now placing a higher importance on the terms of the written contract to determine whether a relationship is one of employee or independent contractor.



More information

For more information about the importance of being clear on the nature of the relationship between an organisation and a 'worker', see:

- [our guide 'Employee, contractor or volunteer?'](#), and
- part 2 of [our National Volunteer Guide](#)

Is your consumer representative a volunteer?

Many organisations seek to engage their consumer representatives as volunteers.

While there is no accepted legal definition of a volunteer, Volunteering Australia and the Fair Work Ombudsman provide useful definitions, and case law (that is judge-made law) provides useful guidance on the 'attributes' of a volunteer.



Volunteering Australia

Volunteering Australia describes volunteering as:

'Time willingly given for the common good and without financial gain.'



The Fair Work Ombudsman

The Fair Work Ombudsman has identified the following characteristics of a genuine volunteering arrangement:

- 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

Generally, a worker will be found to be a volunteer when the following below attributes exist (other factors may also be relevant in particular cases).

Volunteer attributes

Volunteer – type of work	Volunteer –payments and benefits
<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • generally, has no legally enforceable right to receive payments or benefits
<ul style="list-style-type: none"> • 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 in relation to the work being carried out. See Part 5 of our National Volunteer Guide for more information about what to include in a volunteer agreement. 	<ul style="list-style-type: none"> • may receive payments like ‘honoraria’ or allowances, or non-cash benefits such as free use of facilities or free or reduced-price entry into an event (although as above, no legally enforceable right) 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
<ul style="list-style-type: none"> • the volunteer arrangement can be brought to an end at any time, either by the volunteer or the organisation 	<ul style="list-style-type: none"> • may be reimbursed for out-of-pocket expenses

Can volunteers be paid for their work?

Some payments to volunteers are acceptable.

It’s common, and appropriate, for volunteers to be reimbursed for authorised expenses they incur while performing their role and sometimes organisations provide some kind of monetary reward or other recognition to show gratitude for a volunteer’s contribution.

Some organisations provide benefits to volunteers that they may call an honorarium, allowance or one-off payment. Sometimes volunteers may receive payments like cash or non-cash benefits such as free use of facilities or free or reduced-price entry into an event.

However, if these payments are comparable to wages or a salary in disguise, then this may point to an employment relationship, and such payments should not be made to volunteers.

Examples of where a payment or pattern of payments may be deemed to be a wage or payment for services include:

- if a payment is calculated with reference to time with the organisation or hours worked
- if an allowance far exceeds the expenses actually incurred or is paid on a regular basis, or
- a lump sum payment is in exchange for services provided



Caution – non-cash benefits

Sometimes volunteers may receive payments like cash or non-cash benefits such as free use of facilities or free or reduced-price entry into an event.

Such payments or benefits may attract taxation obligations (see below for more information), and if regularly received or of considerable value, may mean that (at law) the worker is not a volunteer but an employee or independent contractor. This will impose obligations on your community organisation, including employment law and taxation obligations.

What does it mean if your consumer representative is a volunteer?

If your consumer representative is a volunteer, your organisation needs to be aware that many laws which protect employees' rights and entitlements apply differently to volunteers or not at all.



Case study – focus group tester (example 1 above)

The focus group tester in example 1 above is likely to be a 'volunteer consumer representative'.

In this example, the community organisation runs a one-off focus group to test user experience with a new online resource. It engaged a small number of people for a total of three hours to give their opinion on one program. At the end of the focus group, it offers \$50 vouchers in recognition of their time and opinions.

In this example, the person was engaged on a once off basis, for a relatively small period of time and offered a nominal amount unconnected with the number of hours that the person participated as a consumer representative. The consumer representative was also given the option to accept the voucher. There was no obligation on the consumer representative to attend, or to turn up again in the future.

Is your consumer representative an employee?

Although a great deal of employment law is now prescribed by legislation, the issue of whether a worker is an employee is based on principles that have been established through case law over time.

Depending on the circumstances, a court or tribunal may determine whether a person is an employee by examining:

- the terms of the contract between the parties
- the relationship between the parties, or
- both the contract and the relationship between the parties

As noted above, Australian courts are now placing a higher importance on the terms of the written contract. Making a multi-factorial assessment of the relationship between a worker and an organisation (including considering the conduct of the parties) will still be relevant and allowed in certain circumstances, including:

- where the contract (or agreement) is not in writing, or is partly written and partly oral,
- where the terms of the written contract are being challenged as invalid (as a sham) or varied (changed), or
- where a party to the contract may be asserting rectification, estoppel or any other legal, equitable or statutory rights or remedies

Evidence of the attributes listed below in a working relationship will suggest the worker is an employee. These attributes may be evident from the contract between the parties, the relationship between the parties, or both.

Employee attributes

Employee – type of work	Employee – payments and benefits
<ul style="list-style-type: none"> performs ongoing work under the control, direction and supervision of the employer 	<ul style="list-style-type: none"> is paid for time worked
<ul style="list-style-type: none"> must perform the duties of their position 	<ul style="list-style-type: none"> is paid regularly (ie. weekly, fortnightly or monthly) and has income tax withheld from their salary by their employer
<ul style="list-style-type: none"> provides their personal services and can't delegate their work to 'outsiders' (ie. arrange for their work to be done by someone else who is not another employee) 	<ul style="list-style-type: none"> is entitled to have superannuation contributions paid into a nominated superannuation fund by their employer
<ul style="list-style-type: none"> work hours are set by the employer, an enterprise agreement or modern award 	<ul style="list-style-type: none"> is entitled to paid and unpaid leave (such as, sick leave, personal/carers' leave, annual or recreation leave, or long service leave)
<ul style="list-style-type: none"> is recognised as a part of the employer's business or holds themselves out to the public as being part of that business (for example, wearing a uniform, using a business card) 	<ul style="list-style-type: none"> is covered by professional indemnity, public liability and workers compensation insurance premiums paid by the employer



Case study – former member co-designs and runs a program (example 4 above)

The former member in example 4 above, is likely to be an 'employee consumer representative.'

In this example, a regional rehabilitation community organisation organises for one of its former members with gardening skills to help co-design and run a new gardening program for its clients. The work involved planning, delivery and evaluation of the program (18 hours over eight weeks). The payment was \$720 and the organisation hopes to run it again, with the same person in six weeks' time.

In this instance, the organisation:

- was very specific about what it wanted the person to do
- provided all the equipment
- set their hours of work, and
- provided a uniform

They were carefully supervised by the operations manager. The organisation agreed to pay them \$40 per hour, and they were paid every two weeks. They paid them into their nominated bank account.

In these circumstances, it's arguable that the consumer representative is an employee of the organisation and the organisation may (particularly as they intend to hire them again) owe them paid and unpaid leave, superannuation and other employment entitlements.

The organisation would also be required to take out and maintain workers compensation insurance for the person and would have work, health and safety obligations.

What does it mean if your consumer representative is an employee?

If your consumer representative is an employee, the law requires your organisation, as an 'employer', to provide the employee 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. For example, an employer must provide an employee with a notice period (or payment instead of notice) before terminating their contract of employment.



More information

For a summary of the basic legal entitlements and obligations that apply to employees see part 3 of this guide and [our employee related resources](#).

Is your consumer representative an independent contractor?

The courts now place an emphasis on the terms of the written agreement between the parties to determine the working relationship. If there is an intention to engage someone as an independent contractor, it's therefore important that the written agreement specifies that the worker is an independent contractor, and the terms of the agreement are consistent with that type of working relationship.

There are key factors that separate an employee from an independent contractor. 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 providing services under commercial, rather than employment, contracts.

Evidence of the attributes listed below in a working relationship suggest the worker is an independent contractor. These attributes may be evident from the contract between the parties, the relationship between the parties, or both.

Independent contractor attributes

Independent contractor – type of work	Independent contractor – payments and benefits
<ul style="list-style-type: none"> has control over how to carry out their work and has the expertise to do so 	<ul style="list-style-type: none"> is paid for results achieved (for example, submits an invoice for work completed or is paid at the end of a project)
<ul style="list-style-type: none"> also provides services to the general public and other businesses 	<ul style="list-style-type: none"> pays their own superannuation and GST and holds their own insurance policies
<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> may have their own registered business as a sole trader with an Australian Business Number (ABN) or a proprietary limited company with an Australian Company Number (ACN)
<ul style="list-style-type: none"> is free to accept or refuse work beyond the requirements of any current contract with the organisation 	<ul style="list-style-type: none"> provides all or most of the necessary materials and equipment to complete the work (for example, uses their own tools)
<ul style="list-style-type: none"> is usually free to delegate work to others 	<ul style="list-style-type: none"> is in a position to make a profit or loss from work



More information

The Australian Tax Office (**ATO**) has [an employee/contractor decision tool](#) to help you understand whether individual workers in your organisation are employees or contractors so you can comply with tax and superannuation obligations.



Case study – medical expert on research committee (example 2 above)

The medical expert in example 2 above, is likely to be an ‘independent contractor consumer representative.’

In this example, a health care provider in NSW engages a retired medical professor on their research committee. The person is paid \$1,200 per research committee meeting. The professor is also paid an agreed fee for additional work, such as attending meetings on behalf of the organisation. The professor provides an invoice to the organisation after each meeting and charges the organisation GST.

The organisation doesn't withhold any tax and doesn't provide the professor with other benefits. The professor covers his own insurance and provides a copy to the organisation. The professor also works for other organisations.



Caution – incorrectly labelling an employee as an independent contractor

Be careful not to falsely or incorrectly label an employee as an independent contractor (for example, in a written contract or letter of engagement).

If you are unsure of the true nature of the relationship between your organisation and a worker, you should seek legal advice.

What does it mean if your consumer representative is an independent contractor?

If your consumer representative is an independent contractor, your organisation needs to be aware that many of the laws which protect employees' rights and provide for their entitlements don't apply to independent contractors, or will apply differently.



More information

For more information about basic legal entitlements and obligations that apply to independent contractors, see part 3 of this guide and:

- [our guide 'Employee, contractor or volunteer?'](#), and
- part 2 of [our National Volunteer Guide](#)



Part 3

What are your organisation's legal obligations to consumer representatives?

What are your organisation's legal obligations to consumer representatives?

This part covers:

- ▶ Minimum employment standards, industrial instruments, long service leave and superannuation and termination
- ▶ Work, health and safety
- ▶ Insurance
- ▶ Taxation

Different legal entitlements and obligations apply, depending on whether the consumer representative is a volunteer, employee or an independent contractor.

A very brief overview of some of the different legal obligations that a community organisation owes to its volunteers, employees and independent contractors follows.

Minimum employment standards, industrial instruments, long service leave and superannuation and termination

Volunteers

- don't have any legally enforceable right to hours of work or payment (the *Fair Work Act 2009 (Cth)* and the *Independent Contractors Act 2006 (Cth)* don't apply to volunteers)
- are not covered by the terms of modern awards or enterprise agreements
- have no legal entitlement to paid leave including annual leave, personal leave or long service leave
- have no legal entitlement to superannuation, and
- aren't entitled to a notice period or other requirements in relation to ending the relationship – the voluntary nature of the relationship means that it can be ended by either party at any time

Employees

- are entitled to the 11 minimum standards of employment called **National Employment Standards (NES)** which are set out in the *Fair Work Act 2009 (Cth)*
These are:
 - maximum weekly work hours
 - requests for flexible working arrangements
 - offers and requests to convert from casual to permanent employment
 - parental leave and related entitlements
 - annual leave
 - personal/carer's leave, compassionate leave and unpaid family and domestic violence leave
 - community service leave
 - long service leave

- public holidays
- notice of termination and redundancy pay
- Fair Work Information Statement and Casual Employment Information Statement
- in certain industries and occupations may be bound by an industrial instrument such as a modern award, enterprise agreement or determination of the Fair Work Commission
- are generally entitled to long service leave after a long period of working for an employer
- are entitled to superannuation contributions (whether full time, part time or casual) when aged between 18 and 69 or under the age of 18 who work more than 30 hours per week. This is required by the Superannuation Guarantee (Administration) Act 1992 (Cth), and
- are generally entitled to a termination notice period (or pay in lieu of such a notice period) in accordance with the NES (full-time and part-time employees). Legal advice should always be sought before proceeding with the termination of any employee's employment

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 2009 (Cth) including protection from unlawful discrimination. Some may have rights under the Independent Contractors Act 2006 (Cth)
- are not covered by the terms of modern awards, enterprise agreements or determinations of the Fair Work Commission
- have no legal entitlement to long service leave
- in certain circumstances are entitled to superannuation payments being made by community organisations on their behalf, and
- will ordinarily end the contract when they have 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

Work, health and safety

As long as your organisation exercises a degree of control over the place at which the work is performed, it will have a broad obligation to provide, so far as reasonably practicable, a safe working environment for consumer representatives regardless of whether they are volunteers, employees or independent contractors.

The legal obligation to provide a safe working environment stems from two primary sources of law:

- the common law (judge made law) of negligence and the negligence provisions in state and territory legislation, and
- work health and safety (or occupational health and safety) laws in each state and territory

Generally speaking, under both sets of laws, if your organisation exercises a degree of control over the place at which the work is performed, it will have a broad obligation to provide, so far as reasonably practicable, a safe working environment and safe practices and systems of work. If your organisation fails to take steps to protect the safety of volunteers, employees or independent contractors there may be legal repercussions.

Organisations should have in place work, health and safety policies, procedures and training for all consumer representatives, regardless of whether they are volunteers, employees and independent contractors.



Note

The work health and safety laws in Australia differ in each state and territory. For more information, see [our webpage on work health and safety laws](#).

Insurance

Volunteers

Volunteers are not covered by workers' compensation insurance. Therefore, it's a good idea for your organisation to take out personal accident and public liability insurance to cover your volunteers.

Employees

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

Independent contractors

Independent contractors are typically required to organise their own insurance cover, such as accident compensation, public liability and professional indemnity.



More information

For more information about risk management and insurance, see [our guide to insurance and risk management for community organisations](#).

Taxation

As outlined above, **payments to consumer representatives** may include cash payments, non-cash benefits, or both. These payments are given various descriptions, including honoraria, reimbursements and allowances.

How an amount is described does not determine its treatment for tax purposes – it is the nature of the payment and the recipient's circumstances that are relevant

In some circumstances, payments made to a consumer representative could constitute income that can be taxed (called 'assessable income').

Volunteers

Volunteers, as a general rule, don't 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 pay fringe benefits tax for payments or benefits they provide to volunteers. There are, however, exceptions to these general rules (see part 4 of this guide for more information).

Employees

Employees, as a general rule, are required to pay income tax. If your community organisation is an employer, it's required to withhold income tax from wage payments to employees each pay period. The organisation must then provide this tax to the ATO.

The [ATO website contains a tax withheld calculator](#).

Other taxes, such as fringe benefits tax, may also apply to payments or benefits provided to employees, or, in some cases, an associate of an employee (for example, the spouse of an employee).

Independent contractors

Independent contractors are typically 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 doesn't have to withhold income tax in respect of payments made to independent contractors. However if:

- a contractor fails to provide you with an ABN, you may have an obligation to withhold PAYG tax, or
- an ABN is provided, the contractor can suggest entering into a voluntary agreement authorising your organisation to withhold amounts from their payments. If you are unsure about whether a voluntary agreement is in the approved form, you should seek legal advice.

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.

Note – 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. This may mean that in some circumstances your organisation may be liable to pay tax in relation to independent contractors. If your organisation is unsure, seek legal advice.



Tip – voluntary agreement for PAYG withholding

You can download [a voluntary agreement for PAYG withholding in the 'approved form' from the ATO website](#).



Caution

Organisations may wish to encourage consumer representatives to seek independent advice on their own individual taxation circumstances as taxation obligations can vary from person to person.



Part 4

**What do consumer representatives
need to know?**

What do consumer representatives need to know?

This part covers things your organisation can do to ensure consumer representatives:

- ▶ know whether they are a volunteer, employee or independent contractor
- ▶ are aware of possible taxation implications, and
- ▶ are aware of possible implications for Centrelink payments

When your organisation engages consumer representatives, take steps to ensure representatives are aware of:

- whether they are a volunteer, employee or independent contractor
- possible taxation implications, and
- possible implications for any Centrelink payments

Ensuring consumer representatives know whether they are a volunteer, employee or independent contractor

When engaging a consumer representative, it's important that an organisation is clear about whether the consumer representative is engaged as a volunteer, employee or independent contractor.

If the consumer representative is unclear on what 'true' category of worker they are, it can cause confusion about their own legal entitlements and obligations.

Organisations can put certain practices and procedures in place to assist both the organisation and consumer representatives to be clear on the nature of the working relationship.

Volunteers

- When advertising for volunteer community representatives, make sure
 - the advertisement clearly states the position is a volunteer role
 - the description of the role aligns with the characteristics of a volunteer (for example, it shouldn't advertise an hourly rate of pay as this is more descriptive of an employment relationship)
- On engaging a volunteer, clarify the relationship in writing, for example, by using a volunteer agreement (and accompanying position description).
- Using the written document as a base, also verbally explain and discuss the nature of the relationship with the consumer representative (for example, that they will not be paid for the work performed and are under no obligation to attend the workplace).



More information

Refer to [Part 5 of the National Volunteer Guide](#) for an example volunteer agreement and volunteer role description and more information about what should and shouldn't be included in both.

Employees

- When advertising for employee community representatives, make sure:
 - the advertisement clearly states the consumer representative position is an employee position, and
 - the description of the role aligns with the characteristics of an employee
- Determine if the employee is covered by a modern award or enterprise agreement and inform the employee of this (legal advice may be required to determine coverage).
- On engaging an employee, provide a written employment contract setting out the terms of their engagement. The contract should include:
 - details of their salary or hourly rate, leave entitlements, how much notice is required to terminate their employment and their obligations as an employee
 - key obligations such as the requirement to protect and not misuse the organisation's confidential information, the employee agreeing to grant ownership of any intellectual property created in the course of their work to the organisation and reporting of conflicts of any interest
- All new employees must be provided with a [Fair Work Information Statement](#). (And a [Casual Employment Information Statement](#) for new casual employees)

Independent contractors

- When advertising for independent contractor consumer representatives, make sure:
 - the advertisement clearly states the consumer representative position is an independent contractor position, and
 - the description of the role aligns with the characteristics of an independent contractor
- On engaging an independent contractor, provide a written contract setting out the specific task or period for which the contractor is working and the money the contractor will be entitled to receive for the work. The contract should confirm:
 - whether the contractor will be entitled to superannuation, and
 - whether the contractor must have their own workers' compensation, public liability insurance and (if appropriate) professional indemnity insurance
- It's good practice to require that the contractor provide certificates of currency confirming the insurance they hold.

Ensuring consumer representatives are aware of possible taxation implications

In some circumstances, payments made to consumer representatives may constitute 'assessable income.' Assessable income is income that can be taxed.

Whether payment is assessable income in the hands of the consumer representative depends on the nature of the payment and the recipient's circumstances.

Different taxation rules will apply, and depending on the circumstances:

- a consumer representative may need to declare a payment they receive in their income tax return and pay tax on that payment
- a consumer representative may need to apply for and supply an ABN, or have 47% from the total payment for the supply withheld from their payment by the community organisation, or
- a consumer representative may need to submit a 'statement by supplier' or provide reasons for why they do not need an ABN



More information

See the [ATO's webpage on 'paying volunteers'](#) for more information about the characteristics of assessable income for volunteers.

Does the payment form part of the consumer representative's assessable income?

Different taxation rules will apply, depending on the capacity in which the consumer representative is receiving payment.

Volunteers	<p>Payments received from an organisation should not be assessable income if they are received for activities conducted as a hobby (see below for more information on how to determine if an activity is a hobby).</p> <p>Generally, if:</p> <ul style="list-style-type: none"> • the volunteer doesn't rely on the payment for day-to-day living • there is no obligation on the part of the organisation to make the payment and the volunteer is not participating in the market research session with the incentive of receiving a payment (see below), or • the payment is a token amount compared to the services provided or expenses incurred by the volunteer, <p>then the payment should not be treated as assessable income.</p>
Employees	<p>Payments received from an organisation should form part of their assessable income.</p>
Independent contractors	<p>Payments received in the course of a contractor's business should form part of the assessable income of their business.</p>

Is the payment offered to a consumer representative as an incentive to participate in a market research session?

Where a payment (whether cash or non-cash benefit) is offered to a consumer representative as an incentive to participate in a market research session and the consumer representative is incentivised to participate due to that payment (rather than participating as part of a hobby), the payment may be assessable income to the consumer representative, even if the consumer representative is a volunteer attending the session on a one-off basis.

This is because the predominant character of the payment would be of remuneration or reward in return for the consumer representative's services.



More information

See [ATO interpretive decision 'Assess ability of payments to participants in market research sessions' ATO ID 2002/822](#) for more information.

Is the payment made in the course of an enterprise or a hobby carried on by the representative?

When paying a consumer representative, it's important that an organisation is clear about whether:

- the payment is for a supply of goods or services made in the course of an enterprise or a hobby carried on by the representative, and
- if the supply is made in the course of a business (an enterprise), the representative has provided their ABN to the organisation

If the consumer representative is carrying on a business in Australia, they must register for an ABN.

Payments (whether cash or other non-monetary payment such as a gift voucher of a certain value) made to the community representative carrying on a business may form part of their assessable income. There may also be GST registration and compliance obligations for the representative.

If a consumer representative doesn't provide their ABN, your organisation may need to withhold an amount (at a rate of 47%) from the payment for that supply – this is referred to as 'no ABN withholding'.

However, payments made to a community representative are generally not subject to 'no ABN withholding' in the following circumstances (among others):

- the payment to the consumer representative is \$75 or less (excluding GST)
- the consumer representative was acting in their private capacity or undertaking a hobby (discussed further below), and
- the consumer representative is a non-resident who does not have their own enterprise in Australia

If the consumer representative doesn't provide an ABN to your organisation (because they believe they fit into one of the above circumstances – for example, the activity is a hobby), the consumer representative should provide a 'Statement by supplier' confirming that no ABN is required as the activity is a hobby.

This statement justifies the organisation not withholding an amount from a payment made to the consumer representative.



More information

See the ATO webpages:

- ['Are you in business?'](#), and
- ['Statement by a supplier not quoting an ABN'](#)

for more information about the differences between a hobby and a business for tax and other purposes.

It's the responsibility of the consumer representative to determine whether their activities constitute a business or a hobby and this will turn on the personal circumstances of the consumer representative.

The table below summarises the characteristics of a business and hobby:

Business	Hobby
<ul style="list-style-type: none"> the consumer representative has taken actions to start a business (for example, registered a business name or obtained an ABN) 	<ul style="list-style-type: none"> the consumer representative has taken actions for personal enjoyment or satisfaction, rather than with a commercial aim to make a profit
<ul style="list-style-type: none"> the consumer representative intends or expects to make a profit. There is no minimum threshold which determines 'profit' 	<ul style="list-style-type: none"> the activities can be done in the consumer representative's own spare time
<ul style="list-style-type: none"> the activities are similar in nature and repetitive 	<ul style="list-style-type: none"> the consumer representative's services and goods can be supplied at cost (ie. any payments received are applied towards incurred or anticipated expenses)
<ul style="list-style-type: none"> the consumer representative's activities are planned, organised and carried out in a businesslike manner. (For example, there are business records, business bank accounts, relevant licences, registrations and qualifications) 	<ul style="list-style-type: none"> the consumer representative has no reporting obligations of a business



Tips

Ask the consumer representative to consider whether their activities are done as a hobby or as part of a business.

The representative should then provide a statement to the organisation as to whether the activities are done as a hobby or as part of a business. The organisation can then either correctly withhold or not withhold an amount from the payments. Encourage the consumer representative to complete and return an [ATO issued 'Statement by supplier' form](#).

The consumer representative must complete the statement truthfully as penalties apply for deliberately making a false or misleading statement.

If the organisation has reasonable grounds to believe that the information supplied by the consumer representative is false or misleading, the organisation is required to withhold an amount from the payment (from the cash amount paid or from the value of the non-cash benefit provided).

For example, it would be unreasonable for the organisation to rely on the statement where the organisation finds that the ABN provided doesn't match the supplier's name according to the [Australian Business Register](#) or given the nature of the supply, the organisation wouldn't expect the consumer representative's activities to be made through the consumer representative's business for the ABN quoted.

The organisation should keep a copy of the Statement for at least five years as the ATO may audit the organisation's compliance at any time during this period.

Ensuring consumer representatives are aware of possible implications for Centrelink payments

How much a consumer representative earns from participating (cash and non-cash benefits) may affect their own Centrelink payment and their partner's (if any) Centrelink payment.

This is because the definition of income for social security purposes is broad and may include an amount you earn, derive or receive for your own use or benefit, profits and some regular payments you get as a gift or allowance, whether in Australia or overseas.

A payment may be reportable to Centrelink as ordinary income even if it's not subject to income tax.



More information

For more information, see [Services Australia's webpage on income reporting](#).



Tip

Organisations may wish to encourage consumer representatives to consider seeking advice on whether any payments they receive (including where the payment is classified as a 'hobby') impacts their Centrelink payments.



Part 5

Checklist for engaging consumer representatives

Checklist – engaging consumer representatives

- ☐ Think ahead and determine whether the consumer representative should be engaged as a volunteer, employee or independent contractor
- ☐ Draft any advertisement or position description to accurately reflect whether the consumer representative will be engaged as a volunteer, employee or independent contractor

Volunteer consumer representative

- ☐ Review our volunteer induction checklist, in [part 5 of our National Volunteer Guide](#).
- ☐ Ensure a volunteer agreement is signed and the volunteer consumer representative is informed of important issues like: they are a volunteer, they will not be paid for their volunteer work, and they are free to attend or not attend for volunteering work
- ☐ Ensure appropriate insurance (personal accident and public liability insurance) is taken out to cover the volunteer consumer representative
- ☐ Take all reasonably practicable steps to ensure the health and safety of the volunteer consumer representative while they are volunteering
- ☐ Carefully consider payments (if any) you make to the volunteer consumer representatives; ensure that payments are NOT comparable to wages or a salary in disguise
- ☐ Make sure the volunteer consumer representative is aware of any implications that payment may have on their tax or Centrelink obligations (or that they seek advice)
- ☐ If required, ensure that the volunteer consumer representative completes and returns a 'Statement by supplier'

Employee consumer representative

- ☐ Determine what modern award or enterprise agreement covers the employee (if any)
- ☐ Ensure the proposed terms of employment comply with applicable modern award or enterprise agreement
- ☐ Provide a written employment contract for the employee to review and sign before they start work
- ☐ Issue the employee with a Fair Work Information Statement (and a Casual Employment Information Statement if they are a casual employee)
- ☐ Ensure appropriate insurance, including workers' compensation, public liability and (if appropriate) professional indemnity insurance is taken out to cover the employee
- ☐ Take all reasonably practicable steps to ensure the health and safety of the employee while at work

Independent contractor consumer representatives

- ☐ Provide a contract setting out the terms of the contractors engagement, to be signed and returned before the start of any work
- ☐ Check the insurance held by the contractor is sufficient
- ☐ Take all reasonably practicable steps to ensure the health and safety of the independent contractor while at work
- ☐ Ensure that the independent contractor has provided their ABN or a 'Statement by supplier' if relevant. Alternatively, check whether the independent contractor has requested to enter into a voluntary agreement which will require your organisation to withhold from payments

