# Consumer representative payments

## A guide for community organisations

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# Contents

# Part 1

## What is a consumer representative?

# What is a consumer representative?

Community organisations often engage consumer representatives to provide advice, feedback or lived-experience perspectives about the organisation's services, programs or activities.

Consumer representatives may be engaged on a one-off or ongoing basis and may receive payments, benefits or reimbursements for their participation.

These arrangements can raise legal issues. In particular, the way a consumer representative is engaged and paid may affect whether they are a volunteer, employee or independent contractor, and what legal obligations apply.

This guide will help your organisation understand and manage those issues.

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### Disclaimer

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.

## Consumer representatives

Community organisations engage consumer representatives in a variety of ways.

A consumer representative may be engaged because of:

- their lived experience
- their knowledge of consumer issues
- their professional expertise, or
- their connection to a particular community

Consumer representatives may contribute to advisory groups, committees, consultations, research projects, co-design activities, focus groups and other initiatives.

Some consumer representatives are engaged for a single activity or project, while others work with an organisation on an ongoing basis.

### Examples of consumer representative engagements

The examples below illustrate the different ways organisations engage and pay consumer representatives.

### 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 its research committee. The person is paid $1,200 per meeting and attends about eight meetings a year. The same person is also engaged on an ad hoc basis to attend meetings, including with government officials, to provide advice on behalf of the organisation. In the past year, the payments totalled about $11,500.

### Example 3 – chair of advisory committee with lived experience

A statewide disability service provider engages a person with more than 30 years' experience in the disability sector to chair 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 committee work and $1,900 for speaking at two conferences.

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

A regional rehabilitation charity engages a former member with gardening skills to help co-design and run a new gardening program for clients. The work involves planning, delivery and evaluation of the program over eight weeks. The payment is $720 and the organisation hopes to engage the same person again in future.

### Example 5 – community member engaged in multiple projects

A preventative health organisation regularly engages a local community member in a range of projects, including research, a short-term working group and a panel. Over a 12-month period the person performs 59 hours of work and receives $2,980 for their time. The organisation expects to continue engaging the person in a similar way in future years.

### Note

Consumer representatives are commonly used by health care providers. The Australian Charter of Healthcare Rights recognises the importance of involving consumers in health policy development, service planning, implementation and evaluation. Many health care providers also have policies governing the recruitment and engagement of consumer representatives.

# Payments and rewards

Consumer representatives may receive payments or rewards in different forms.

These payments are sometimes described as rewards, allowances, honoraria, participation payments or recognition payments. They may be made in cash or provided as vouchers or other non-cash benefits.

### Why the nature of the relationship matters

The legal status of a consumer representative is important because different rights and obligations apply depending on whether the person is a volunteer, employee or independent contractor.

How a person is paid, and the nature of the arrangement, may affect that classification. For example, regular payments may indicate an employment relationship rather than a volunteer relationship.

For more information about **worker classification**, see part 2 of this guide and our guide Employee, contractor or volunteer?

### Caution

This guide does not deal with payments to board members of community organisations. Different legal issues apply to these payments.

See our fact sheet on payments to board members for more information.

# Reimbursements

Payments are different from reimbursements.

Organisations may reimburse consumer representatives for reasonable expenses incurred in carrying out their role. **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 legal considerations**.

Travel expenses are a common example. For example, if a consumer representative travels to attend a committee meeting or speaking engagement on behalf of an organisation, it may be appropriate to reimburse the reasonable costs of that travel.

If your organisation regularly reimburses consumer representatives, consider adopting a reimbursement policy that includes appropriate approval and accountability processes.

# Part 2

## Identifying the legal status of a consumer representative

# Identifying the legal status of a consumer representative

**This part covers:**

- why the legal status of a consumer representative matters
- when a consumer representative may be a volunteer, employee or independent contractor, and
- the legal risks that can arise if a consumer representative is incorrectly classified

## Why the legal status of a consumer representative matters

The legal status of a consumer representative is important because different legal rights, protections and obligations apply depending on whether the person is engaged as a volunteer, employee or independent contractor.

The way a consumer representative is engaged, the work they perform and the payments they receive may affect that classification.

For example, regular payments that are linked to hours worked or services performed may indicate an employment or independent contractor relationship rather than a volunteer relationship.

**Note**

If a consumer representative is incorrectly classified, your organisation may fail to provide the person with their legal rights and entitlements, fail to comply with legal obligations, and face legal claims or penalties.

## Determining the nature of the relationship

The law recognises different categories of relationships under which a person performs work or services for another person or organisation.

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. A volunteer performs work without an expectation of, or legal right to, payment or reward.

The legal distinction between volunteers, employees and independent contractors is not always straightforward.

Whether a person is an employee, independent contractor or volunteer depends on the nature of the relationship between the parties. Depending on the circumstances, this may involve considering:

- the terms of any agreement between the parties
- how the relationship operates in practice, or
- both the agreement and the practical reality of the relationship

For a detailed explanation of worker classification, see our guide Employee, contractor or volunteer?

### Note – examples 3 and 5 (above)

Some consumer representative arrangements may require a more detailed assessment because factors pointing towards volunteering, employment and independent contracting may all be present.

For example, examples 3 and 5 involve ongoing engagements and payments, but the correct classification will depend on the overall nature of the relationship and how it operates in practice.

## Volunteer consumer representatives

Many organisations engage consumer representatives as volunteers.

While Australian law does not contain a single legal definition of a volunteer, guidance from the Fair Work Ombudsman, Volunteering Australia and the courts can assist organisations to identify volunteer arrangements.

### Volunteering Australia

Volunteering Australia describes volunteering as:

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

Volunteering Australia has published resources with more information about this definition.

### The Fair Work Ombudsman

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

- the person performs work mainly to benefit another person or organisation
- the organisation and the person did not intend to create a legally binding employment relationship
- the person is not legally required to attend the workplace or perform work, and
- the person does not expect to be paid for their work

## Volunteer indicators

A consumer representative is more likely to be a volunteer where:

- they do not expect payment for work performed
- they are not under a legally enforceable obligation to attend or perform work
- the arrangement can be ended at any time by either party
- any payments are limited to reimbursements, modest recognition payments or non-cash benefits, and
- the arrangement does not otherwise have the characteristics of employment or contracting

## Payments to volunteer consumer representatives

It is common and appropriate for organisations to reimburse volunteers for authorised expenses incurred while carrying out their role.

Organisations may also provide modest recognition payments or non-cash benefits in some circumstances.

However, payments that resemble wages or payment for services may indicate that the person is an employee or independent contractor rather than a volunteer.

Concerns may arise where:

- payments are linked to hours worked
- allowances significantly exceed expenses actually incurred
- payments are made regularly, or
- lump sum payments are made in exchange for services

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### Caution – payments can affect volunteer status

Payments or benefits provided to volunteers may affect whether the arrangement is characterised as a volunteer, employment or independent contractor relationship and may also have taxation consequences.

If your organisation provides a volunteer with a payment or benefit, clearly document its nature and purpose and consider any taxation, superannuation or employment law consequences.

### Case study – focus group tester (example 1 above)

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

The person participates in a one-off three-hour focus group and receives a $50 voucher in recognition of their contribution.

The engagement is short, there is no ongoing commitment and the voucher is not linked to hours worked or services performed. The participant is also under no obligation to attend future activities.

## What does this mean?

If your consumer representative is a volunteer, many employment laws will either apply differently or not apply at all.

However, organisations may still owe volunteers legal duties, including duties relating to workplace health and safety, negligence, discrimination, privacy and child safety.

For more information, see our guide Employee, contractor or volunteer?

# Employee consumer representatives

A consumer representative may be an employee if the arrangement has the characteristics of employment.

Whether a person is an employee depends on the real substance, practical reality and true nature of the relationship.

## Employee indicators

A consumer representative is more likely to be an employee where:

- the organisation controls how, when and where the work is performed
- the work is ongoing
- the person performs the work personally
- the organisation provides equipment and resources
- the person is paid regularly for time worked
- tax is withheld from payments
- superannuation contributions are paid, and
- the person is integrated into the organisation's operations

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

The former member in example 4 above, may be an employee.

The organisation determines the work to be performed, provides equipment, sets work hours and supervises the person's activities. The person is paid regularly for time worked and may be engaged again in the future.

These factors may indicate an employment relationship.

## What does this mean?

If your consumer representative is an employee, your organisation may be required to provide entitlements such as:

- minimum rates of pay
- leave
- superannuation
- notice of termination, and
- other rights and protections under employment law

For more information, see our guide Employee, contractor or volunteer?

# Independent contractor consumer representatives

Some consumer representatives may operate as independent contractors.

Independent contractors generally provide services through their own business and have greater control over how their work is performed.

## Independent contractor indicators

A consumer representative is more likely to be an independent contractor where they:

- control how the work is performed
- provide services to multiple organisations
- are engaged for a particular project or task
- submit invoices for payment
- manage their own taxation and GST obligations
- provide their own equipment, and
- may make a profit or loss from the work

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

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

The expert invoices the organisation, charges GST, maintains their own insurance and provides services to multiple organisations.

These factors are consistent with an independent contractor relationship.

## What does this mean?

If your consumer representative is an independent contractor, many employment entitlements will not apply.

Instead, the rights and obligations of the parties will generally be determined by the contract and applicable legislation.

For more information, see our guide Employee, contractor or volunteer?

# Part 3

## Legal obligations when engaging consumer representatives

# Legal obligations when engaging consumer representatives

### This part covers:

- legal obligations that may arise when engaging consumer representatives
- how those obligations vary depending on whether the representative is a volunteer, employee or independent contractor, and
- where to find further information about specific legal obligations

The legal obligations that apply to a consumer representative will depend largely on whether they are engaged as a volunteer, employee or independent contractor.

The following sections provide a high-level overview of some of the most important legal issues.

For more detailed guidance about worker classification and legal obligations, see our guide Employee, contractor or volunteer?

# Employment entitlements and benefits

Different employment entitlements and benefits apply depending on the nature of the relationship.

## Volunteers

Volunteers:

- do not have a legally enforceable right to work, hours of work or payment
- are not covered by modern awards or enterprise agreements
- are generally not entitled to paid leave, long service leave or superannuation, and
- can generally end the volunteer arrangement, or have it ended by the organisation, at any time

## Employees

Employees are entitled to a range of minimum rights and protections under employment laws, including:

- the National Employment Standards
- applicable modern award or enterprise agreement entitlements
- leave entitlements
- superannuation contributions
- workplace protections, and
- notice of termination and other employment protections

## Independent contractors

Independent contractors:

- are generally not entitled to employee benefits such as paid leave
- are not covered by modern awards or enterprise agreements
- may, in some circumstances, be entitled to superannuation contributions, and
- generally rely on their contract and applicable legislation to determine their rights and obligations

For more detailed guidance about employment entitlements and worker classification, see our guide Employee, contractor or volunteer?

# Work, health and safety

Organisations generally owe duties to provide a safe environment for consumer representatives regardless of whether they are volunteers, employees or independent contractors.

These obligations arise under:

- workplace health and safety or occupational health and safety laws, and
- negligence law

Organisations should take reasonably practicable steps to:

- provide a safe environment
- provide safe systems of work
- provide appropriate information, training and supervision, and
- manage risks associated with the work being performed

Workplace health and safety laws differ across states and territories. For more information, see our webpage on work health and safety laws.

# Insurance

Insurance obligations vary depending on the nature of the relationship.

## Volunteers

Volunteers are not always covered by workers' compensation schemes. Organisations should consider whether volunteer personal accident insurance and public liability insurance are appropriate.

## Employees

Employers are generally required to maintain workers' compensation insurance for employees.

## Independent contractors

Independent contractors commonly arrange their own insurance cover, including public liability, professional indemnity or other relevant insurance.

**Tip**

Check whether the consumer representative is adequately covered by insurance and whether your organisation's policies extend to the activities being performed.

For more information about risk management and insurance, see our guide to insurance and risk management for community organisations.

# Taxation

Payments made to consumer representatives may have taxation consequences.

Whether a payment is taxable depends on:

- the nature of the payment
- the legal status of the consumer representative, and
- the personal circumstances of the consumer representative

Different taxation obligations may apply to volunteers, employees and independent contractors.

For example:

- organisations generally withhold PAYG amounts from employee wages
- independent contractors are generally responsible for their own tax affairs
- some payments made to volunteers may not be taxable, while others may have taxation consequences

**Caution**

The way a payment is described does not determine its taxation treatment. Honoraria, allowances, reimbursements and non-cash benefits may all be treated differently for taxation purposes.

The legal obligations that apply to consumer representatives will depend on the nature of the relationship and the surrounding circumstances.

For more detailed information about:

- employee, contractor and volunteer relationships
- employment entitlements
- work health and safety obligations
- superannuation
- insurance, and
- termination of working relationships,

see our guide Employee, contractor or volunteer? and related managing people resources

# Part 4

## Information consumer representatives need to know

# Information consumer representatives need to know

### This part covers:

- helping consumer representatives understand their legal status
- possible taxation implications of payments, and
- possible impacts on Centrelink payments

When engaging consumer representatives, organisations should take reasonable steps to ensure representatives understand:

- whether they are engaged as a volunteer, employee or independent contractor
- any taxation consequences that may arise from payments or benefits they receive, and
- any possible implications for Centrelink payments

# Clarity about a consumer representative's status

When engaging a consumer representative, it is important to be clear about whether the person is a volunteer, employee or independent contractor.

Uncertainty about a person's legal status can create confusion about rights, obligations and taxation responsibilities for both the organisation and the consumer representative.

Organisations can reduce this risk by accurately describing the arrangement from the outset and documenting it appropriately.

## Volunteer consumer representatives

When engaging a volunteer consumer representative:

- clearly state that the position is a volunteer role
- ensure the role description reflects the characteristics of a volunteer arrangement
- use a written volunteer agreement and role description
- explain that the representative is not entitled to payment for volunteer work and is generally not required to attend or participate, and
- discuss any potential taxation or Centrelink implications of payments or benefits

For more information, see our National Volunteering guide, including guidance on volunteer agreements and volunteer role descriptions

## Employee consumer representatives

When engaging an employee consumer representative:

- clearly describe the position as an employment role
- ensure the role description reflects the characteristics of an employment relationship
- determine whether a modern award or enterprise agreement applies
- provide a written employment contract before work commences
- explain relevant employment entitlements and obligations, and
- provide a Fair Work Information Statement and, where relevant, a Casual Employment Information Statement

## Independent contractor consumer representatives

When engaging an independent contractor consumer representative:

- clearly describe the arrangement as an independent contractor engagement
- ensure the role description reflects the characteristics of a contractor relationship
- use a written contract that clearly sets out the services to be provided and payment arrangements
- clarify any superannuation obligations that may apply, and
- confirm appropriate insurance arrangements, including obtaining certificates of currency where appropriate

# Possible tax implications

Payments made to consumer representatives may have taxation consequences.

Whether a payment is taxable depends on:

- the nature of the payment
- the legal status of the consumer representative, and
- the personal circumstances of the consumer representative

Different taxation rules may apply depending on whether the consumer representative is engaged as a volunteer, employee or independent contractor.

# Payments that may form part of assessable income

In some circumstances, payments made to consumer representatives may constitute assessable income.

Depending on the circumstances:

- a consumer representative may need to declare a payment in an income tax return
- a consumer representative may need to obtain and provide an Australian Business Number (**ABN**)
- an organisation may be required to withhold amounts from a payment, or
- a consumer representative may need to provide a Statement by Supplier explaining why an ABN is not required

Different taxation rules may apply depending on the capacity in which the representative receives the payment.

## Volunteer consumer representatives

Payments received as part of genuine volunteer activities will not necessarily form part of a person's assessable income.

In general, a payment is less likely to be assessable income where:

- the person does not rely on the payment for day-to-day living
- the organisation is not obliged to make the payment
- the payment is not the primary reason the person participates, and
- the payment is only a token amount compared with the services provided or expenses incurred

For more information about payments to volunteers, see the Australian Taxation Office’s webpage on paying volunteers.

## Employee consumer representatives

Payments received as an employee will generally form part of the consumer representative's assessable income.

## Independent contractor consumer representatives

Payments received in the course of a contractor's business will generally form part of the assessable income of that business.

# Payments offered as participation incentives

Some organisations offer payments or benefits as an incentive for people to participate in consultations, focus groups, market research sessions or similar activities.

Where a payment is offered as an incentive to participate and the recipient participates because of that payment, the amount received may be assessable income, even if the person would otherwise be regarded as a volunteer.

This is because the payment may be characterised as remuneration or reward in exchange for participation.

For more information, see the Australian Taxation Office guidance on payments to participants in market research sessions.

# Is the activity a business or a hobby?

When engaging a consumer representative, organisations should consider whether the representative is carrying on a business or participating as part of a hobby.

This distinction may affect:

- taxation obligations
- ABN requirements
- GST obligations, and
- whether no-ABN withholding rules apply

If a consumer representative is carrying on a business, they generally must obtain an ABN.

Where a consumer representative does not provide an ABN, the organisation may be required to withhold an amount from the payment unless an exception applies.

A representative who does not provide an ABN because the activity is a hobby should generally provide a Statement by Supplier confirming that position.

| Characteristics of a business and a hobby | |
| --- | --- |
| **Business** | • the person has taken steps to establish a business, such as obtaining an ABN<br>• the person intends or expects to make a profit<br>• activities are repeated or undertaken on an ongoing basis<br>• activities are organised and conducted in a business-like manner |

| | |
|---|---|
| **Hobby** | • activities are undertaken primarily for personal enjoyment or satisfaction<br>• activities are conducted in the person's spare time<br>• any payments generally offset costs rather than generate profit<br>• there are no business reporting requirements |

For more information about the differences between a hobby and a business for tax and other purposes, see the ATO webpages:

- Are you in business?, and
- Statement by a supplier not quoting an ABN

**Tips**

Ask consumer representatives to consider whether they are undertaking the activity as a hobby or as part of a business.

Where appropriate, ask them to provide a completed ATO Statement by Supplier form and retain a copy for your records.

# Centrelink implications

Payments received by consumer representatives may affect Centrelink entitlements.

This is because the definition of income for social security purposes is broad and may include:

- payments received for a person's benefit
- profits and earnings, and
- some gifts, allowances and other regular payments

A payment may therefore be relevant for Centrelink purposes even if it is not assessable income for taxation purposes.

For more information, see Services Australia's webpage on income reporting.

**Tip**

Organisations may wish to encourage consumer representatives to seek independent advice about whether payments or benefits they receive could affect their Centrelink entitlements.

# Part 5

## Checklist for engaging consumer representatives

# Checklist for engaging consumer representatives

Use this checklist when engaging a consumer representative.

The steps that apply will depend on whether the person is engaged as a volunteer, employee or independent contractor.

| Before engaging a consumer representative | |
|---|---|
| Decide whether the consumer representative should be engaged as a volunteer, employee or independent contractor. | ☐ |
| Ensure any advertisement, position description or invitation accurately reflects the nature of the proposed relationship. | ☐ |
| Consider how any payments, benefits or reimbursements may affect the person's legal status. | ☐ |
| Consider whether the proposed arrangement may create employment, taxation, insurance or workplace health and safety obligations. | ☐ |

| Volunteer consumer representatives | |
|---|---|
| Ensure the role has the characteristics of a genuine volunteer arrangement. | ☐ |
| Use a written volunteer agreement and role description. | ☐ |
| Explain that:<br>• the role is a volunteer role<br>• the representative is generally free to accept or decline participation, and<br>• the arrangement does not create an employment relationship | ☐ |
| Carefully consider any payments or benefits provided to the representative. | ☐ |
| Ensure appropriate insurance arrangements are in place. | ☐ |
| Take reasonably practicable steps to protect the representative's health and safety. | ☐ |

| | |
|---|---|
| Encourage the representative to seek advice about any tax or Centrelink consequences that may arise from payments or benefits. | ☐ |
| **Employee consumer representatives** | |
| Determine whether a modern award or enterprise agreement applies. | ☐ |
| Ensure the proposed employment terms comply with any applicable workplace laws and industrial instruments. | ☐ |
| Provide a written employment contract before work starts. | ☐ |
| Provide a Fair Work Information Statement and, where required, a Casual Employment Information Statement. | ☐ |
| Put appropriate insurance arrangements, including workers' compensation insurance in place. | ☐ |
| Take reasonably practicable steps to protect the employee's health and safety. | ☐ |
| **Independent contractor consumer representatives** | |
| Use a written contract that clearly describes the services to be provided and payment arrangements. | ☐ |
| Confirm whether any superannuation obligations apply. | ☐ |
| Check that the contractor has appropriate insurance and obtain certificates of currency where appropriate. | ☐ |
| Take reasonably practicable steps to protect the contractor's health and safety. | ☐ |
| Obtain the contractor's ABN or, where appropriate, a completed Statement by Supplier. | ☐ |
| Consider whether any PAYG withholding obligations or GST obligations may apply. | ☐ |
| **Before making payments** | |
| Determine whether the payment is:<br>• a reimbursement<br>• an honorarium or recognition payment<br>• payment for services, or<br>• another form of benefit | ☐ |
| Consider whether the payment could affect the person's legal status. | ☐ |

| | |
|---|---|
| Consider any taxation implications. | ☐ |
| Consider whether the payment may affect any Centrelink entitlements. | ☐ |
| Keep appropriate records of payments and reimbursements. | ☐ |

See our guide Employee, contractor or volunteer? and our National Volunteering guide for detailed information about:

- employee, contractor and volunteer relationships
- employment entitlements
- work health and safety obligations
- taxation issues, and
- insurance

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