This fact sheet covers:

- What is a consumer representative?
- What is a payment or reward to a consumer representative?
- What are the legal issues for community organisations when making payments to consumer representatives?
- What should community organisations make consumer representatives aware of when engaging them?
- Checklist: considerations for community organisations when engaging consumer representatives

There are legal issues associated with the payment by community organisations to people ("consumer representatives") for their advice on consumer matters.

This may include, for example, incorrectly classifying and treating the consumer representative as a volunteer, employee or independent contractor. It could also include implications for the person particularly in relation to income tax or Centrelink payments if the consumer representative takes a payment or reward for their work.

This fact sheet will help your organisation to understand some of the legal considerations when engaging or paying consumer representatives, and some of the matters your organisation may wish to advise a person of when they are considering becoming a consumer representative.

1. 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 fact sheet.

Community organisations engage consumer representatives in different ways and for different purposes, including contributing 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 once off basis, while others work with the organisations on a more regular basis.

The following are examples of different types of consumer representative engagements:

- **Example 1**: 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 3 hours. The organisation provided $50 vouchers to the consumer representatives in recognition of their time and opinions.

- **Example 2**: 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 8 meetings per 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 last year this payment has amounted to about $11,500.

- **Example 3**: A state wide disability service provider engages a person with more than 30 years’ experience in 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 was paid $4,800 for the committee work and $1,900 for speaking at two conferences.

- **Example 4**: A regional rehabilitation charity organised 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 8 weeks). The payment was $720 and the organisation hopes to run it again, with the same person in six weeks’ time.

- **Example 5**: A preventative health organisation engages a local community member – the local community member engages in as many opportunities as he can. The organisation values his contributions and over the past year engaged him 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 he has completed 59 hours over a 12 month period and received $2,980 for his time. The organisation hopes to continue to him in the same way over the coming years.

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**NOTE – DEFINITION OF ‘CONSUMER REPRESENTATIVE’**

It should be noted that the term, “representative” in this context is contested by organisations operating in this space. When defined, a “representative” is generally seen as someone who is selected and informed through consultation with others, and seen as representing the views of others – which is not always the case with “consumer representatives.” A role or task performed by these individuals 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.
2. What is a payment or reward to a consumer representative?

2.1 Payments and rewards

As demonstrated in the examples above, consumer representatives can receive payment or rewards in many 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 is 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.

However, how a payment occurs and the level of payment can impact upon 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 less important consideration). See ‘can we pay our volunteer’ for more detail below.

2.2 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 fact sheet 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 was 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 needed to travel to attend a committee meeting, it would be reasonable to reimburse the costs incurred in attending that meeting.

If your organisation is regularly reimbursing consumer representatives for costs incurred, it is a good idea to have a reimbursements policy.
3. What are the legal issues for community organisations to consider when paying consumer representatives?

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

The law recognises many different categories of relationships where one party (a worker) performs work for another party in exchange for payment or reward. These include, among others, the relationships of 'employer and employee' and 'principal and independent contractor'. The law also recognises a separate category of worker known as a 'volunteer'.

Different legal entitlements and obligations apply, depending on whether the worker is a volunteer, employee or an independent contractor. This means that the nature of the relationship between your organisation and the consumer representative has implications for a wide range of laws, for example employment, tax, insurance and workplace health and safety law. Organisations need to be clear on 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.

The question of whether a person is a volunteer, employee or independent contractor under law depends on the entire relationship between the person and your organisation, rather than the name given to the relationship. Your organisation should be aware of its obligations in relation to each of these categories. However, the legal distinction is not always easy and your organisation may need to seek legal advice.

3.2 Is our consumer representative a volunteer?

Many organisations seek to engage their consumer representatives as volunteers. Whilst 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 and state volunteering peak bodies use the non-legal definition of volunteering as: “Time willingly given for the common good and without financial gain.”
The Fair Work Ombudsman (FWO) has identified the following characteristics of a genuine volunteering arrangement, based on its own review of limited case law (judge-made law) in this area:

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

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).

<table>
<thead>
<tr>
<th>Volunteer – type of work</th>
<th>Volunteer – payments and benefits</th>
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<tbody>
<tr>
<td>• 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</td>
<td>• generally, has no legally enforceable right to receive payments such as honoraria, allowances or expenses</td>
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<tr>
<td>• 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 Not-for-profit Law’s National Volunteer Guide for more information about what should and shouldn’t be included in a volunteer agreement.</td>
<td>• may be reimbursed for out-of-pocket expenses</td>
</tr>
<tr>
<td>• the volunteer arrangement can end at any time, either by the volunteer or the organisation</td>
<td>• may receive payments like an ‘honoraria’, or allowances, or non-cash benefits such as free use of facilities or free or reduced-price entry into an event</td>
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3.2.1. Can volunteers be paid for their work?

Some payments to volunteers are acceptable. It is 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. The following are examples where a payment or pattern of payments may be deemed to be a wage or payment for services:

- 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 part 4 of this fact sheet – information your organisation should provide to consumer representatives), and if regularly received and 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.

### 3.2.2 What does it mean if our consumer representative is a volunteer?

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

### CASE STUDY – VOLUNTEER CONSUMER REPRESENTATIVE

The consumer representative 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 3 hours to provide 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 amount 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.

### 3.3 Is our 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. In such cases, the courts and other relevant tribunals have considered whether a ‘worker’ is an ‘employee’ by assessing the entire relationship between the worker and your organisation.

Generally, a worker will be found to be an employee when the following below attributes exist (other factors may also be relevant in particular cases).
Employee - type of work

- performs ongoing work under the control, direction and supervision of the employer
- must perform the duties of their position
- provides their personal services and cannot delegate their work to ‘outsiders’ (i.e. arrange for their work to be done by someone else who is not another employee)
- work hours set by the employer, an enterprise agreement or modern award
- is recognised as a part of the employer’s business and/or holds themselves out to the public as being part of that business (e.g. wearing a uniform, using a business card)
- does not take commercial risks and cannot make a ‘profit’ or ‘loss’ from the work performed

Employee - payments and benefits

- is paid for time worked
- is paid regularly (i.e. weekly, fortnightly or monthly) and has income tax withheld from their salary by their employer
- is entitled to have superannuation contributions paid into a nominated superannuation fund by their employer
- is entitled to paid and unpaid leave (e.g. sick leave, personal/carers’ leave, annual or recreation leave, or long service leave)
- is covered by professional indemnity, public liability and workers compensation insurance premiums paid by the employer
- generally has all ‘tools of the trade’ provided by the employer to carry out the work (e.g. desk, computer, stationery)

CASE STUDY – EMPLOYEE CONSUMER REPRESENTATIVE

The consumer representative 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 8 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 were very specific about what they wanted her to do, including providing all the equipment, setting her hours of work and providing a uniform which she wore. She was carefully supervised by their operations manager. They agreed she be paid $40 per hour, and she was paid every two weeks. They paid her into her nominated bank account. As it is arguable that the consumer representative is an employee of the organisation, the organisation may (particularly given they intend to hire her again) owe her 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 individual and have work, health and safety obligations.

3.3.1 What does it mean if our consumer representative is an employee?

If your consumer representative is an employee, as an ‘employer,’ your organisation must be aware that the law requires it to provide employees with certain benefits. Examples of these benefits include paid leave and superannuation, but there are many others. The law also requires that employers treat their employees in a certain way. For example, an employer must provide an employee with a notice period (or payment instead of notice) before terminating their contract of employment.

RELATED RESOURCES

For a summary of the basic legal entitlements and obligations that apply to employees see section 3 below and our employee related resources

https://www.nfplaw.org.au/employees
3.4 Is our consumer representative an independent contractor?

The legal test to determine whether a worker is an employee or an independent contractor requires consideration of a number of different elements of the working relationship. Unlike employees who are seen to be subject to the control and direction of their employer, independent contractors are often recognised as running their own business and provide services under commercial, rather than employment, contracts. Generally, a worker will be found to be an independent contractor when the following below attributes exist (other factors may also be relevant in particular cases).

<table>
<thead>
<tr>
<th>Independent contractor - type of work</th>
<th>Independent contractor - payments and benefits</th>
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<tbody>
<tr>
<td>• has control over how to carry out their work and has the expertise to do so</td>
<td>• is paid for results achieved (for example, submits an invoice for work completed or is paid at the end of a project)</td>
</tr>
<tr>
<td>• is free to provide services to the general public and other businesses</td>
<td>• pays their own GST, tax, superannuation and holds own insurance policies</td>
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<tr>
<td>• 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</td>
<td>• 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)</td>
</tr>
<tr>
<td>• is free to accept or refuse work beyond the requirements of any current contract with the organisation</td>
<td>• provides all or most of the necessary materials and equipment to complete the work (for example, uses their own tools)</td>
</tr>
<tr>
<td>• is usually free to delegate work to others</td>
<td>• is in a position to make a profit or loss from work</td>
</tr>
<tr>
<td>• does not hold themselves out as part of the organisation (i.e. does not wear the organisation's uniform or use its business cards)</td>
<td>• is not entitled to accrue any annual leave, sick leave or long service leave</td>
</tr>
</tbody>
</table>

**TIP**

The Australian Tax Office (ATO) has developed a decision tool which your organisation can use to help understand whether individual workers in your organisation are employees or contractors (in order to comply with your tax and superannuation obligations as distinct from employment law obligations). See the Resources section at the end of this document or access the tool [here](#).

**CASE STUDY – INDEPENDENT CONTRACTOR CONSUMER REPRESENTATIVE**

The consumer representative 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 does not withhold any tax and does not provide the professor with other benefits. The professor covers his own insurance and provides a copy to the organisation. The professor also works for many other like organisations.
3.4.1 What does it mean if our consumer representative is an independent contractor?

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

3.5 Legal obligations owed by community organisations to volunteer, employee and independent contractor consumer representatives

Different legal entitlements and obligations apply, depending on whether the consumer representative is a volunteer, employee or an independent contractor. The following is a very brief overview of some of the different legal obligations that a community organisation owes to its volunteers, employees and independent contractors.

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

Volunteers

- do not have any legally enforceable right to hours of work or payment (the Fair Work Act 2009 (Cth) and the Independent Contractors Act 2006 (Cth) do not 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
• are not 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 10 minimum standards of employment called National Employment Standards which are set out in the Fair Work Act 2009 (Cth) i.e. maximum hours or work, paid leave, minimum notice upon termination, minimum redundancy pay, requests for flexible working arrangements and the Fair Work 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 and paid $450 or more (before tax) in a calendar month 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 National Employment Standards (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.

3.5.2 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, and do not apply to some not-for-profit organisations (but this is in limited circumstances). For more information about work health and safety laws, and whether or not they apply to your organisation, see https://www.nfplaw.org.au/OHS

3.5.3 Insurance

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

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

RELATED RESOURCES

For more information about risk management and insurance, see Not-for-profit Law’s Insurance and Risk Management for Community Organisations Guide available at https://www.nfplaw.org.au/insurance

3.5.4 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”). This section provides a general overview of your organisation’s taxation responsibilities depending on whether the consumer representative is
classified as a volunteer, employee or independent contractor. Section 4 of this factsheet details some of the tax obligations for consumer representatives as well as further taxation obligations for organisations.

**Volunteers** as a general rule, do not have to pay tax on payments or benefits they may receive in their capacity as a volunteer for a not-for-profit organisation. Community organisations are similarly not liable to withhold income tax or pay fringe benefits tax for payments or benefits they provide to volunteers. There are, however, exceptions to these general rules (see section 4 of this factsheet for more information).

**Employees** as a general rule, are required to pay income tax. If your community organisation is an employer, it is 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 (see the Resources section at the end of this factsheet). 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 (e.g. the spouse of an employee).

**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 does not 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.

It is important to note that certain tax laws (such as payroll tax laws) apply an expanded definition of employee or deem an independent contractor to be an employee in some cases. 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 from an accountant.

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**TIP: VOLUNTARY AGREEMENTS**

You can use any form of written agreement, including electronic, as long as all the information contained required by the ATO is included. You can access a voluntary agreement in the ‘approved form’ on the ATO website at https://www.ato.gov.au/Forms/Voluntary-agreement-for-PAYG-withholding/

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**CAUTION**

Organisations may wish to encourage consumer representatives to seek independent advice on their own individual taxation circumstances as taxation obligations can vary from individual to individual.
4. What should community organisations make consumer representatives aware of when engaging them?

4.1 Organisations should ensure consumer representatives are aware of whether they are a volunteer, employee or independent contractor

When engaging a consumer representative, it is 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.

There are certain practices and procedures that organisations can put in place to assist both the organisation and consumer representatives to be clear on the nature of the working relationship:

Volunteer

- When advertising for volunteer community representatives, organisations should make sure the advertisement clearly states the position is a volunteer position. Organisations should make sure that 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, organisations should clarify the relationship in writing, for example, by using a volunteer agreement (and accompanying position description). Using the written document as a base, organisations should 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).

Employee

- When advertising for employee community representatives, organisations should make sure the advertisement clearly states the consumer representative position is an employee position. Organisations should make sure that the description of the role aligns with the characteristics of an employee.
- Organisations will need to 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).

RELATED RESOURCES

Refer to Part 5 of the National Volunteer Guide available at www.nfplaw.org.au/volunteers for an example Volunteer Agreement and volunteer Position Description and more information about what should and shouldn’t be included in both.
• On engaging an employee, they should be issued with a written employment contract setting out the terms of their engagement. The contract should include:
  
  o detail of their salary or hourly rate, leave entitlements, how much notice is required to terminate their employment and their obligations as an employee
  
  o 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.

Independent contractor

• When advertising for independent contractor consumer representatives, organisations should make sure the advertisement clearly states the consumer representative position is an independent contractor position. Organisations should make sure that the description of the role aligns with the characteristics of an independent contractor.

• On engaging an independent contractor, they should be issued with a written contract setting out the specific task or period for which the contractor is carrying out work and the money the contractor will be entitled to receive for the work. The contract should confirm:
  
  o whether or not the contractor will be entitled to superannuation, and
  
  o whether the contractor must have their own workers' compensation, public liability insurance and (if appropriate) professional indemnity insurance.

• It is good practice to require that the contractor provide certificates of currency confirming the insurance they hold.

4.2 Organisations should ensure 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 answers:

• 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.

• A consumer representative may need to submit a ‘statement by supplier’ or provide reasons for why they do not need an ABN.
4.2.1 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.

A declaration may be made regardless of whether the consumer representative is a volunteer, employee or independent contractor.

Volunteers - payments received from an organisation should not be assessable income if they are received for activities undertaken as a hobby (see below for more information on how to determine if an activity is a hobby). Generally, if the payment is not relied upon by the volunteer 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 if the payment is a token amount compared to the services provided or expenses incurred by the volunteer, then the payment should not be treated as assessable income.

Employees - payments received from an organisation should form part of their assessable income.

Independent contractors - payments received in the course of a contractor's business should form part of the assessable income of their business.

4.2.2 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.

4.2.3 Is the payment for a supply of goods or services made in the course of an enterprise or a hobby carried on by the representative?

When paying a consumer representative, it is 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 does not 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 (amongst 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 does not 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. See more in the 'Tip' section below and the ATO’s website. It is the responsibility of the consumer representative to determine whether their activities constitute a business or a mere hobby and it will turn on the personal circumstances of the consumer representative. The following table summarises the characteristics of a business and hobby which should be considered by the consumer representative:

<table>
<thead>
<tr>
<th>Business</th>
<th>Hobby</th>
</tr>
</thead>
<tbody>
<tr>
<td>• the consumer representative has undertaken actions to start a business e.g. registered a business name or obtained an ABN</td>
<td>• the consumer representative has undertaken actions for personal enjoyment or satisfaction, rather than with a commercial aim to make a profit</td>
</tr>
<tr>
<td>• the consumer representative intends or expects to make a profit. There is no minimum threshold which determines ‘profit’</td>
<td>• the activities can be undertaken in the consumer representative’s own spare time</td>
</tr>
<tr>
<td>• the activities are similar in nature and repetitive</td>
<td>• the consumer representative’s services and goods can be supplied at cost (i.e. any payments received are applied towards incurred or anticipated expenses)</td>
</tr>
<tr>
<td>• the consumer representative’s activities are planned, organised and carried out in a businesslike manner. E.g. there are business records, business bank accounts, relevant licences, registrations and qualifications</td>
<td>• the consumer representative has no reporting obligations of a business</td>
</tr>
</tbody>
</table>
FURTHER READING

See the ATO’s website page ‘Are you in business?’ for more information about the differences between a hobby and a business for tax and other purposes.

TIP

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 so that the organisation can either correctly withhold or not withhold an amount from the payments. The organisation should encourage the consumer representative to complete and return an ATO issued ‘Statement by supplier’ form which can be found here.

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 has a requirement to withhold an amount from the payment (e.g., 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 does not match the supplier’s name according to the Australian Business Register or given the nature of the supply, the organisation would not 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 5 years as the ATO may audit the organisation’s compliance at any time during this period.

4.3 Organisations should ensure consumer representatives are aware of possible implications on any Centrelink payments

How much a consumer representative earns from participating (e.g., 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 is broad in these circumstances 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.

Click here for further information on income reporting to Centrelink.

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 upon their Centrelink payments.
5. Checklist: considerations for community organisations when engaging consumer representatives

Organisations can use the following checklist as guidance to assist with appropriately engaging their consumer representatives as volunteers, employees or independent contractors:

<table>
<thead>
<tr>
<th>Checklist of Items</th>
<th>Completed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Think ahead and determine whether the consumer representative should be engaged as a volunteer, employee or independent contractor</td>
<td>□</td>
</tr>
<tr>
<td>Carefully draft any advertisement or position description to accurately reflect whether the consumer representative will be engaged as a volunteer, employee or independent contractor</td>
<td>□</td>
</tr>
<tr>
<td><strong>Volunteer consumer representative</strong></td>
<td></td>
</tr>
<tr>
<td>Ensure a Volunteer Agreement is signed and Volunteer consumer representative informed of important issues like they:</td>
<td>□</td>
</tr>
<tr>
<td>- are a volunteer</td>
<td></td>
</tr>
<tr>
<td>- will not be paid for their volunteer work</td>
<td></td>
</tr>
<tr>
<td>- are free to attend or not attend for volunteering work</td>
<td></td>
</tr>
<tr>
<td>Ensure appropriate insurance (personal accident and public liability insurance) is taken out to cover the volunteer consumer representative</td>
<td>□</td>
</tr>
<tr>
<td>Take all reasonably practicable steps to ensure the health and safety of the volunteer consumer representative while they are volunteering</td>
<td>□</td>
</tr>
<tr>
<td>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</td>
<td>□</td>
</tr>
<tr>
<td>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)</td>
<td>□</td>
</tr>
<tr>
<td>If required, ensure that the volunteer consumer representative completes and returns a ‘Statement by supplier’</td>
<td>□</td>
</tr>
<tr>
<td><strong>Employee consumer representative</strong></td>
<td></td>
</tr>
<tr>
<td>Determine what modern award or enterprise agreement covers the employee (if any)</td>
<td>□</td>
</tr>
<tr>
<td>Ensure the proposed terms of employment comply with applicable modern award or enterprise agreement</td>
<td>□</td>
</tr>
<tr>
<td>Issue the employee with a written employment contract to review and sign prior to their commencement</td>
<td>□</td>
</tr>
<tr>
<td>Issue the employee with a Fair Work Information Statement</td>
<td>□</td>
</tr>
<tr>
<td><strong>Ensure appropriate insurance, including workers' compensation, public liability and (if appropriate) professional indemnity insurance is taken out to cover the employee</strong></td>
<td>☐</td>
</tr>
<tr>
<td><strong>Take all reasonably practicable steps to ensure the health and safety of the employee while at work</strong></td>
<td>☐</td>
</tr>
</tbody>
</table>

**Independent contractor consumer representatives**

| **Issue a contract setting out the terms of the contractors engagement, to be signed and returned prior to the commencement of any work** | ☐ |
| **Check that 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** | ☐ |
Resources

Related Not-for-profit Law Resources

The Not-for-profit Law website at www.nfplaw.org.au has resources on the following related topics:

- **Volunteers** – www.nfplaw.org.au/volunteers

  This page provides a National Volunteer Guide, detailing a range of issues for volunteer involving organisations such as the difference between volunteers, employees and independent contractors, volunteer safety, volunteers and unlawful workplace behaviour, recruiting, inducting and managing volunteers and other organisational issues applicable to volunteers.

- **Employees** – www.nfplaw.org.au/employees

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


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


  Not-for-profit Law’s National WHS Guide can help your organisation understand its obligations under the occupational health and safety laws, whether it is bound by these laws and how it can ensure it complies. A separate Guide also exists for Victorian and Western Australian organisations as their laws differ slightly.


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

Other Related Resources

- **Australian Tax Office** (ATO)

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

  - Employee/contractor decision tool
  - Superannuation Guarantee eligibility decision tool
  - Tax withheld calculator

- **Centrelink**

- **Fair Work Ombudsman** (FWO)

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

Legislation

- **Fair Work Act 2009 (Cth)**
- **Superannuation Guarantee Charge Act 1992 (Cth)**
- **Income Tax Assessment Act 1997(Cth)**
- **Independent Contractors Act 2006 (Cth)**