

Payment of board members

Legal information for Australian not-for-profit organisations

This fact sheet covers:

- ▶ what is a payment to a board member?
 - ▶ can we pay a board member?
 - ▶ should we pay a board member?
 - ▶ if we decide to pay a board member, how should we go about doing this?
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This fact sheet outlines the matters your organisation will need to consider before deciding to pay a board member

Most not-for-profit organisations choose not to pay their board members. Board members will usually volunteer their time, experience and expertise without the expectation of payment. However, some organisations choose to pay their board members for a variety of reasons. This might include compensation for responsibility, time involved or to attract more skilled board members.

While there is no blanket rule that says you can't pay board members, there are a number of important matters your organisation will need to consider before deciding whether to pay a board member.



Note

According to the Australian Institute of Company Directors (AICD), only 15% of board members are currently paid, meaning over 80% of board members give their time, skills and expertise voluntarily.

For more information see the AICD's article [Should more NFPs consider paying directors?](#)

What is a payment to a board member?

This fact sheet uses the term 'board member.'

A board member is a member of your organisation's committee – one of a group of people that form the decision-making body of an organisation. Your organisation may also refer to your board members as committee members, directors, trustees or responsible persons (depending on your legal structure and whether your organisation is a registered charity).

This fact sheet deals primarily with payments for services as a board member, sometimes known as directors' fees. Reimbursements and contracts with board members (for example for web design or professional advice) are dealt with briefly below.



Note on reimbursements

Your organisation may reimburse members and board members for costs that are reasonably incurred. A reimbursement is not a payment to a board member for the purpose of this fact sheet and will not generally give rise to the same considerations.

Travel expenses related to carrying out functions of the organisation are an example of a reimbursement. For example, if a member is required to drive to a site to carry out the work of the organisation, it would be reasonable to reimburse the member for the fuel costs. Similarly, if a board member needs to travel to attend a board meeting, it would be reasonable to reimburse the member for the costs incurred in attending that meeting.

If your organisation regularly reimburses members for costs incurred, it's a good idea to have a reimbursements policy.



Note on contracts with board members

Your organisation may engage board members to provide goods or services provided this is at normal commercial rates and the board member is not involved in the decision-making

Your organisation should have a conflict of interest policy. If your organisation is a registered charity, your organisation must comply with the ACNC Governance Standards. Governance Standard 2 requires that not for profit organisations be accountable to members. The ACNC recommends that charities provide opportunities for members to raise any concerns over payments to board members. The ACNC also recommends that charities make their policies on paying board members public (for example, by publishing online). This demonstrates a commitment to transparency.

Board members have a duty to manage conflicts of interest and it's important that, where possible, board members should not be involved in decisions affecting their own payments.



Related resources

The ACNC has developed a guide on [managing conflicts of interest](#).

Not-for-profit Law have developed a [guide for board members on the duties](#) that apply, including the duty to disclose and manage conflicts of interest.

The Governance Institute has published a [guide to Related Party Transactions](#) and a [template register of conflicts and related party transactions](#).

Can we pay a board member?

While the majority of not-for-profits choose not to pay board members, the law does not prohibit an organisation from paying its board members. There are, however, a number of important considerations that are discussed below, that you will need to work through to determine whether your organisation in particular is permitted to pay its board members.

Check your organisation's constitution

Before you make a payment to a board member, it's important that you check your organisation's constitution (also known as 'rules') to ensure that the constitution allows payments to board members. Your organisation can't make payments to board members if its constitution doesn't permit this.

Most not-for-profit organisations will have a clause (or clauses) in their constitution that establishes the organisation as a not-for-profit. This means the organisation does not operate for the private benefit or gain of its members. Payments to board members that are made in the best interests of the organisation and in furtherance of the organisation's purpose will not be inconsistent with this clause.



Example: Consistent with not-for-profit clause

An organisation wants to pay board members a 'sitting fee' of \$50 each time the members attend a board meeting. They want to do this because they believe that paying the board members in this way will encourage the members to attend the meetings and vote on matters that are directly relevant to the organisation's purpose. Payments for this purpose are not inconsistent with the organisation's not-for-profit clause.



Example: Not consistent with not-for-profit clause

An organisation has a surplus of funds at the end of the financial year. The board decide to distribute the surplus funds among the board members. The payment has not been made in the best interests of the organisation, but rather, has been made because it is in the private interests of the board members. A payment of this type is likely to be in breach of the organisation's not-for-profit clause.

Companies limited by guarantee

Companies limited by guarantee (CLGs) will need to check their constitution to check what it says about payments to board members.

If the constitution **expressly allows** the payment of directors' fees, then it's possible to pay directors' fees provided the necessary approval is given in accordance with any requirements set out in the constitution. The normal requirement would be that approval be given by the company (the members at a general meeting) or the directors.

If the constitution **prohibits** the payment of directors' fees, you would need to change the constitution.

Some CLGs will have a licence under [section 150 of the Corporations Act](#), obtained after 1 July 1998, which permits them to omit the word Limited from their name, on the condition that the CLG is a registered charity and has a constitution which prohibits the payment of fees to directors. If you have a section 150 licence and change your constitution to allow payment of directors' fees, you would need to notify ASIC that the company is no longer entitled to that licence.

If the constitution is **silent** on the payment of directors' fees, an amendment should be made to expressly allow it.



Note

If your CLG obtained a licence to omit 'Limited' from its name before 1 July 1998, different conditions apply – see section [151 of the Corporations Act](#), and refer to the actual wording of the licence issued to you by ASIC.

Incorporated associations

The laws that regulate incorporated associations prohibit an organisation from securing a financial profit or gain for its members. A payment to a board member who is also a member of the association will not ordinarily be considered a financial gain, where it is remuneration for services related to a person's role as a board member. The payment must be reasonable and must be made in good faith.

Incorporated associations should also check their constitution (rules) to check what it says about payments to board members.

Indigenous corporations

Organisations that are incorporated under and regulated by the *Corporations (Aboriginal and Torres Strait Islander) (CATSI) Act 2006* (Cth) are only permitted to pay board members where their constitution expressly permits this. If the organisation's constitution is silent on the matter, members can't be paid.

The remuneration to be paid to the board member must be decided by the organisation at a general meeting. CATSI organisations are accountable to their members and must disclose the details of all payments made to board members where requested by the Registrar, or where the greater of either 5 members, or 10% of the members make a request for such information.



Related resources

Information specific to organisation's incorporated under the CATSI Act can be found on the Office of the Registrar of Indigenous Corporation's website. See FAQ [What approvals are needed for the remuneration of directors?](#)

Cooperatives

The *Cooperatives National Law Application Act 2013* (Cth) (**the national cooperative laws**) provides that a director of a cooperative must not receive payment other than where that payment is a fee, concession or benefit that has been approved at a general meeting, or where the payment is reimbursement for costs incurred in carrying out the role of director.



Note

The national cooperative laws are progressively being rolled out across all states and territories. If your organisation is operating in a state or territory in which the national laws are yet to be implemented, you will need to check the applicable state or territory laws before making any payments to board members.

Additional considerations for registered charities

If your organisation is a registered charity with the Australian Charities and Not-for-profits Commission (**ACNC**), you will also need to ensure any payments to board members are made in furtherance of your organisation's charitable purpose.

As long as payments to board members are in furtherance of the charity's charitable purpose, are permissible under the charity's rules and are properly authorised within the charity (see the 'how do we pay a board member?' section of this resource), the ACNC does not prohibit payments to board members.



Related resources

The ACNC has published a fact sheet which outlines the [ACNC's position on payments made to board members](#).

Other considerations

Funding agreements and contracts

Your organisation may have entered into a funding agreement or contract with a third party that prohibits the payment of board members. Make sure you check any agreements or contracts for these types of terms before making a payment to a board member. If you are unsure about the application of any agreements or contracts, you should obtain legal advice.

State and territory laws

If your organisation is subject to state or territory fundraising laws, it's important that you check those laws to determine whether there are any limitations or restrictions imposed on payments to board members. For example, in NSW, if your organisation is a charitable organisation subject to the *Charitable Fundraising Act 1991* (NSW) (**CF Act**), your organisation must obtain ministerial approval before making a payment to a board member. You will need to contact [NSW Fair Trading](#) to obtain this approval. If you are unsure about the application of state or territory fundraising laws, you should contact the regulator in your state or territory or seek legal advice.



Note

State and territory fundraising laws are complex. If you are unsure on their application, you should seek legal advice. For more information about fundraising see [Not-for-profit Law's webpage on fundraising](#).

Should we pay a board member?

Payment to a board member can affect the volunteer nature of the relationship between the organisation and the board member. There are a number of consequences that can flow as a result of this.

These consequences should be considered in detail by both the organisation and the board member before deciding whether payment to board members is an appropriate strategy for your organisation. The definition of volunteer differs under different types of legislation, and in different jurisdictions, as outlined below.



Caution

The law recognises many different categories of relationships where one party (a worker or volunteer) performs work for another party in exchange for payment or reward, or without an expectation of, or legal requirement of, payment or reward.

The Not-for-profit Law fact sheet, '[Employee, contractor or volunteer?](#)' can help your organisation assess whether certain laws apply (but as this can be complex, it can be a good idea to get legal advice).

The [Fair Work Ombudsman's website](#) also contains information to help you determine whether a person is an employee or volunteer.

Personal liability

Work health safety laws

Under work health and safety laws across Australia, where they apply to the organisation, board members will owe a health and safety duty to employees and volunteers. A board member can be found personally liable for failing to act in accordance with that duty.

Personal liability means that the penalty for any breach of the law applies to the individual rather than the organisation, however, an exception applies to volunteer board members acting in their capacity as volunteer board member. This means that a board member will not be found personally liable where they are a volunteer.

Paying board members may mean they can be personally liable as individuals for failing to carry out their duties in relation to work health and safety.



Related Not-for-profit Law resource

For further information about board members' duties under Commonwealth, state and territory work health safety laws, see Not-for-profit Law's [webpage on Work Health and Safety](#).

Civil liability laws

In addition to potential personal liability for work health and safety issues, paying a board member could mean they may be personally liable for injury, damage or loss to a person under civil liability laws.

Civil liability laws vary in scope across states and territories, however, in general, they allow a person who is injured, suffers damage to property or financial loss to take legal action, and be compensated by the person who caused or contributed to that injury, damage or loss.

State and territory civil liability laws include an exemption from personal liability for volunteer board members in certain circumstances. For example, The *Civil Liability Act 2003* (QLD) provides that volunteers don't incur personal civil liability in relation to acts or omissions done or made in good faith when doing community work as an office holder of a community organisation. A volunteer board member is a member who is not in receipt of payment for their services. If board members are remunerated, they may lose the exemptions that apply to volunteers.



The table below refers to provisions in each state and territory that are relevant when considering whether a payment to a board member may impact on the exception to personal liability that exists for volunteers in that particular state or territory.



Caution

The varied civil liability laws across Australia has long been a complex area of law. Your organisation may need to seek legal advice on specific legislative or common law provisions. For further information, you can read Not-for-profit Law's [Negligence fact sheet](#).

	Protection of volunteers	Impact of remuneration on definition of 'volunteer'
New South Wales	Yes – section 59 of <i>Civil Liability Act 2002</i> (NSW)	Section 60 'volunteer' means a person who does community work on a voluntary basis. 'community work' means work that is not for private financial gain and that is done for a charitable, benevolent, philanthropic, sporting, educational or cultural purpose, and includes work declared by the regulations to be community work but does not include work declared by the regulations not to be community work.
Victoria	Yes – section 37 of the <i>Wrongs Act 1958</i> (Vic)	Section 35 1) A 'volunteer' is an individual who provides a service in relation to community work on a voluntary basis. 2) A person is still a volunteer even if, in providing a service, he or she receives— a) remuneration that he or she would receive whether or not he or she provided that service; or b) out-of-pocket expenses incurred in relation to providing that service; or c) remuneration that is not more than the amount (if any) specified in the regulations for the purposes of this section.
South Australia	Yes – protection from liability under the <i>Civil Liability Act 1936</i> (SA) through section 4 of the <i>Volunteers Protection Act 2001</i> (SA)	Section 3 of the <i>Volunteers Protection Act 2001</i> (SA) 'volunteer' means a person who carries out community work on a voluntary basis. a person works on a 'voluntary basis' if the person— a) receives no remuneration for the work; or b) is remunerated for the work but within limits fixed by regulation for the purposes of this definition.
Queensland	Yes – section 39 of the <i>Civil Liability Act 2003</i> (QLD)	Section 38 'volunteer' means an individual who:



	Protection of volunteers	Impact of remuneration on definition of 'volunteer'
		<p>a) does community work on a voluntary basis...</p> <p>'community work' means work that is not for private financial gain and that is done for a charitable, benevolent, philanthropic, sporting, recreational, political, educational or cultural purpose</p>
Tasmania	Yes – section 47 of the <i>Civil Liability Act 2002</i> (Tas)	<p>Section 45</p> <p>'volunteer' means a person who does community work on a voluntary basis</p> <p>...a person does community work on a voluntary basis if the person –</p> <p>a) receives no remuneration for doing that work other than</p> <p>(i) remuneration that the person would receive whether or not the person did that work</p> <p>(ii) the reimbursement of reasonable expenses incurred by the person in doing that work; or</p> <p>b) receives remuneration that is not greater than the amount, if any, prescribed by the regulations.</p>
Western Australia	Yes – protection from civil liability under the <i>Civil Liability Act 2002</i> (WA) through the <i>Volunteers and Food and Other Donors (Protection from Liability) Act 2002</i> (WA)	<p>Section 4 of the <i>Volunteers and Food and Other Donors (Protection from Liability) Act 2002</i> (WA)</p> <p>'volunteer' means a person who does community work on a voluntary basis</p> <p>a person does community work on a voluntary basis if the person —</p> <p>a) receives no remuneration for doing that work other than:</p> <p>(i) remuneration that the person would receive whether or not the person did that work;</p> <p>(ii) the reimbursement of reasonable expenses incurred by the person in doing that work;</p> <p>b) receives remuneration that is not greater than the amount, if any, prescribed by the regulations.</p>
Australian Capital Territory	Yes - section 8 of the <i>Civil Law (Wrongs Act) 2002</i> (ACT)	<p>Section 6</p> <p>'volunteer' means a person who carries out community work on a voluntary basis.</p> <p>a person works on a voluntary basis if the person—</p> <p>a) receives no remuneration for the work; or</p> <p>b) is remunerated for the work but within limits prescribed by regulation for this definition.</p>



	Protection of volunteers	Impact of remuneration on definition of 'volunteer'
Northern Territory	Yes – section 7 of the <i>Personal Injuries (Liabilities and Damages) Act (NT)</i>	Section 7 'volunteer' in relation to a community organisation, means a person doing community work for that organisation: <ul style="list-style-type: none"> a) who receives no remuneration for doing that work other than: <ul style="list-style-type: none"> (i) remuneration that the person would receive whether or not he or she did that work; (ii) the reimbursement of reasonable expenses incurred by the person in doing that work; or b) who receives remuneration that does not exceed the amount, if any, prescribed by the Regulations.

Employee obligations

A payment made to a board member could alter the nature of the relationship between your organisation and the board member.

The Fair Work Ombudsman has identified the following characteristics of a genuine volunteering arrangement, based on its review of (limited) case law (judge-made law) in this area:

- 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

Where there is an expectation of payment, the board member may no longer be considered a volunteer and instead an employee.

If an employer-employee relationship is created, then additional obligations may arise for the organisation such as:

- National Employment Standards apply
- superannuation accrues
- workers' compensation applies
- paid sick and annual leave accrues
- paid long-service leave accrues
- unfair dismissal laws apply, or
- contractual redundancy rights apply



Example: fee for service (likely employment relationship)

An organisation determines that offering directors a fee for their service may be an incentive that will help attract a more competitive field of candidates. The organisation decides to pay directors a fee of \$25,000 per annum as remuneration for the role.

The successful board member expects this payment in exchange for their services provided. In return, the organisation has an expectation that the work will be completed by the board member. Drawing on the Fair Work Ombudsman's criteria for an employee, it's likely that the arrangement in this situation is one of employer/employee. The organisation will need to consider the employer obligations listed above.



Example: gift (non-employment relationship)

An organisation is celebrating a milestone. The organisation wants to provide the directors with a token gift to thank them for their contribution to the organisation. They decide to provide all board members with a commemorative plaque and a \$100 gift voucher. In this instance, there is no intention to create a legally binding relationship between the parties as a result of the gift. There is no expectation of the gift from the board members and the organisation does not expect any additional work in return for the gifts. In this instance, an employer/employee relationship has not been created.



Caution

A board member may need to declare a payment they receive in their income tax return and pay tax on that payment. For further information, the board member should contact the ATO or visit the ATO's webpage, [What is income?](#), or speak to their accountant.

How do we go about making a payment to a board member?

Steps to follow

1. Check whether your organisation can pay board members – see the section ‘Can we pay a board member?’
2. If your organisation can pay board members and doesn't have a policy, it may want to put one in place. It might cover things such as:
 - How will the board determine which members are paid?
 - How will the board determine the amount of the payment?
 - How will the board be accountable and transparent about the payment?
 - The steps that must be taken
3. Comply with your organisation's policy on paying board members.
4. Obtain any necessary approvals as required under your constitution.
5. Make practical arrangements for making the payments. For example, will the board members be added to the payroll system as employees, or will they provide invoices for services rendered?

Resources

Not-for-profit Law resources

▶ [Duties Guide](#)

Our governance pages include a detailed guide on the legal duties for board members, along with guides on the role of board members, how to induct a board member and the ACNC governance standards.

▶ [Employees](#)

Our pages cover important information including the difference between an employee, independent contractor or volunteer.

▶ [Fundraising](#)

We have comprehensive guides on each of the states and territories fundraising laws (and application processes for licences, authorities, permissions and sanctions).

▶ [Risk and Insurance Guide](#)

Information to help your organisation identify and address risks.

ACNC resources

The following ACNC resources may be useful for not-for-profit organisations that are also registered charities

▶ [Remunerating charity board members](#)

▶ [Managing charity money](#)

▶ [Managing conflicts of interest](#)

▶ [Related party transactions](#)

Other useful links

▶ [Fair Work Ombudsman's](#) website contains information on employer obligations.

▶ [ORIC's](#) website contains information specific to indigenous corporations

▶ [ASIC's website](#) contains information specific to CLG's

Legislation

▶ [Australian Charities and Not-for-profit Commission Act 2013 \(Cth\)](#)

▶ [Australian Charities and Not-for-profit Regulation 2013 \(Cth\) \(includes the ACNC Governance Standards\)](#)

▶ [Corporations \(Aboriginal and Torres Strait Islander\) Act 2006 \(Cth\)](#)

▶ [Corporations Act 2001 \(Cth\)](#)

▶ [Work Health and Safety Act 2011 \(Cth\)](#)