

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 18% of board members are currently paid, meaning over 80% of board members give their time, skills and expertise voluntarily.

For more information see page 53 of the AICD's [Not-For-Profit Governance and Performance Study 2020](#)

What is a payment to a board member?

This fact sheet uses the term 'board member.'

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

The 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 the organisation regularly reimburses members for costs incurred, it's a good idea to have a reimbursement policy.



Note on contracts with board members

The 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

The organisation should have a conflict of interest policy. If the organisation is a registered charity, the 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 published a [guide on managing conflicts of interest](#).

Not-for-profit Law has published 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 the 'issues to consider when developing a policy or process for managing related party transactions'](#) as well as 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 the 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 to check the organisation's constitution (also known as 'rules') allows payments to board members. The organisation can't make payments to board members if its constitution doesn't allow this.



Note

Certain organisations include clauses in their constitutions that expressly prohibit board members from being paid any remuneration for their services (except for out-of-pocket expenses incurred while performing their duties). Other organisations include constitutional clauses outlining the circumstances in which board members can receive payment (for example, where the member supplies goods and services for the organisation's ordinary course of business or where the member leases their premises to the organisation).

Most not-for-profit organisations will have a clause (or clauses) in their constitution that establish 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 charitable 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 is 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 leave out 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 and requires directors to approve all other payments made by the CLG to directors

If you have a section 150 licence and change the constitution to allow payment of directors' fees, you would need to notify ASIC as soon as practicable 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 the 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.

For example, [section 40 of the Associations Incorporation Act 2009 \(NSW\)](#) prohibits an incorporated association in NSW from conducting its affairs so as to provide pecuniary 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 or 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, board members cannot be paid. If the organisation wishes to remunerate board members, at least 75% of the members of the organisation must pass a resolution to amend the constitution.

The remuneration to be paid to the board member must be determined by a resolution 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 organisations incorporated under the CATSI Act can be found on the [Office of the Registrar of Indigenous Corporation's website 'Director Remuneration'](#).

Cooperatives

The Co-operatives National Law (CNL) 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 CNL was progressively rolled out across all states and territories, and as at 1 December 2020, all states and territories had adopted the legislation.

Additional considerations for registered charities

If the 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 the 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 that outlines the [ACNC's position on payments made to board members](#).

Other considerations

Funding agreements and contracts

The 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 the organisation is subject to state or territory fundraising laws, it is 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 the organisation is a charitable organisation subject to the *Charitable Fundraising Act 1991* (NSW) (**CF Act**), the organisation must obtain written 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 the 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 [our 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 the 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 the 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 a 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, section 39 of the *Civil Liability Act 2003* (Qld) provides that volunteers will not 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. The organisation may need to seek legal advice on specific legislative or common law provisions.

For further information, you can read [our fact sheet on negligence, accidents and incidents](#)'.

State or territory	Protection of volunteers	Impact of remuneration on definition of 'volunteer'
New South Wales	Yes – section 61 of <i>Civil Liability Act 2002</i> (NSW), a volunteer will not incur any personal civil liability in respect of any act or omission done or made by the volunteer in good faith when doing community work either organised by a community organisation, or as an office holder of a community organisation.	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), a volunteer is not liable in any civil proceeding for anything done, or not done, in good faith by him or her in providing a service in relation to community work organised by a community organisation. Rather, liability attaches instead to the community organisation.	Section 35 <ol style="list-style-type: none"> 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— <ol style="list-style-type: none"> 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. Section 36 <ol style="list-style-type: none"> 1) Community work is any work that is done, or to be done— <ol style="list-style-type: none"> a) for a religious, educational, charitable or benevolent purpose; b) for the purpose of promoting or encouraging literature, science or the arts; c) for the purpose of sport, recreation, tourism or amusement; d) for the purpose of conserving or protecting the environment; e) for the purpose of establishing, carrying on or improving a community, social or cultural centre; f) for a political purpose;



State or territory	Protection of volunteers	Impact of remuneration on definition of 'volunteer'
		<ul style="list-style-type: none"> g) for the purpose of promoting the common interests of the community generally or of a particular section of the community; or h) for any other purpose specified in the regulations for the purposes of this section.
South Australia	<p>Yes – pursuant to section 4 of the <i>Volunteers Protection Act 2001 (SA)</i>, and subject to exception, a volunteer incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in the course of carrying out community work for a community organisation.</p>	<p>Section 3 of the <i>Volunteers Protection Act 2001 (SA)</i></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> <ul style="list-style-type: none"> 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. <p>'community work' means—</p> <ul style="list-style-type: none"> a) work for any one or more of the following purposes: <ul style="list-style-type: none"> (i) for a religious, educational, charitable or benevolent purpose; (ii) for promoting or encouraging literature, science of the arts; (iii) for looking after, or providing medical treatment or attention for, people who need care because of a physical or mental disability or condition; (iv) for sport, recreation or amusement; (v) for conserving resources or protecting the national environment from harm; (vi) for preserving historical or cultural heritage; (vii) for a political purpose; (viii) for protecting or promoting the common interests of the community generally or a particular section of the community; or b) work classified by regulation as community work, <p>but does not include work excluded by regulation from the ambit of this definition.</p>
Queensland	<p>Yes – pursuant to section 39 of the <i>Civil Liability Act 2003 (Qld)</i>, a volunteer does not incur any personal civil liability in relation to any act or omission done or made by the volunteer in good faith when doing community work organised by a community organisation, or as an office holder of a community organisation.</p>	<p>Section 38</p> <p>'volunteer' means an individual who—</p> <ul style="list-style-type: none"> a) does community work on a voluntary basis... <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	<p>Yes – pursuant to section 47 of the <i>Civil Liability Act 2002 (Tas)</i>, and subject to exception, a volunteer does not incur civil liability for anything that the volunteer has done in good faith when doing community work.</p>	<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> <ul style="list-style-type: none"> a) receives no remuneration for doing that work other than –



State or territory	Protection of volunteers	Impact of remuneration on definition of 'volunteer'
		<ul style="list-style-type: none"> (i) remuneration that the person would receive whether or not the person did that work; or (ii) the reimbursement of reasonable expenses incurred by the person in doing that work; or <p>b) receives remuneration that is not greater than the amount, if any, prescribed by the regulations.</p> <p>A person is not to be regarded as doing community work on a voluntary basis if the person is doing that work under an order imposed by a court.</p>
<p>Western Australia</p>	<p>Yes – pursuant to section 6 of the <i>Volunteers and Food and Other Donors (Protection from Liability) Act 2002 (WA)</i>, and subject to exception, a volunteer does not incur civil liability for anything that the volunteer has done in good faith when doing community work.</p>	<p>Section 4</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> <ul style="list-style-type: none"> a) 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 the person did that work; or (ii) the reimbursement of reasonable expenses incurred by the person in doing that work; or b) receives remuneration that is not greater than the amount, if any, prescribed by the regulations. <p>'community work' means means work organised by a community organisation to be done —</p> <ul style="list-style-type: none"> a) for a religious, educational, charitable or benevolent purpose; or b) for the purpose of promoting or encouraging literature, science or the arts; or c) for the purpose of sport, recreation or amusement; or d) for the purpose of caring for, treating or otherwise assisting people who need assistance because of a physical or mental disability or condition; or e) for the purpose of conserving or protecting the environment; or f) for the purpose of promoting or preserving historical or cultural heritage; or g) for the purpose of establishing, carrying on, or improving a community, social or cultural centre; or h) for the purpose of promoting the interests of a local community; or i) for a political purpose; or k) for a purpose prescribed by the regulations,



State or territory	Protection of volunteers	Impact of remuneration on definition of 'volunteer'
<p>Australian Capital Territory</p>	<p>Yes - pursuant to section 8 of the <i>Civil Law (Wrongs Act) 2002</i> (ACT), a volunteer does not incur personal civil liability for an act done or omission made honestly and without recklessness while carrying out community work for a community organisation on a voluntary basis. Expressed exception apply.</p>	<p>but does not include work of a kind that is prescribed by the regulations as work that is not to be regarded as community work for the purposes of this Act.</p> <p>Section 6 'volunteer' means a person who carries out community work on a voluntary basis. a person works on a voluntary basis if the person—</p> <ul style="list-style-type: none"> a) receives no remuneration for the work; or b) is remunerated for the work but within limits prescribed by regulation for this definition. <p>Section 7 'community work' means—</p> <ul style="list-style-type: none"> a) work for 1 or more of the following purposes: <ul style="list-style-type: none"> (i) a religious, educational, charitable or benevolent purpose; (ii) promoting or encouraging literature, science or the arts; (iii) looking after, or giving attention to, people who need care because of a physical or mental disability or condition; (iv) sport, recreation or amusement; (v) conserving resources or protecting the natural environment from harm; (vi) preserving historical or cultural heritage; (vii) a political purpose; or (viii) protecting or promoting the common interests of the community generally or a particular section of the community; or b) work declared by regulation to be community work.
<p>Northern Territory</p>	<p>Yes – pursuant to section 7 of the <i>Personal Injuries (Liabilities and Damages) Act 2003</i> (NT), a volunteer does not incur personal civil liability for a personal injury caused by an act done in good faith and without recklessness while doing community work for a community organisation. Expressed exception apply.</p>	<p>Section 7 'volunteer' in relation to a community organisation, means a person doing community work for that organisation:</p> <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; or (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. <p>'community work' means work done for any of the following purposes:</p> <ul style="list-style-type: none"> a) for a religious, educational, charitable or benevolent purpose; b) for promoting or encouraging literature, science or the arts; c) for the purposes of sport, recreation or amusement; d) for conserving or protecting the environment;



State or territory	Protection of volunteers	Impact of remuneration on definition of 'volunteer'
		<ul style="list-style-type: none"> e) for establishing, carrying on or improving a community, social or cultural centre; f) for promoting the interests of a local community; g) for a political purpose; h) for any purpose prescribed by the Regulations

Employee obligations

A payment made to a board member could alter the nature of the relationship between the 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 (such as the fee for service referred to above) they receive in their income tax return and therefore, pay tax on the received payment. For further information, the board member should contact the Australian Taxation Office (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 the organisation can pay board members – see the section 'Can we pay a board member?'
2. If the 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 the organisation's policy on paying board members.
4. Obtain any necessary approvals as required under the 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

▶ [Governance and legal duties of office holders](#)

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).

▶ [Insurance and risk guide](#)

Information to help the 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 CLGs

Legislation

▶ [Australian Charities and Not-for-profits Commission Act 2012 \(Cth\)](#)

▶ [Australian Charities and Not-for-profits Commission 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 \(Cth\)](#)