

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 your organisation pay a board member?
 - ▶ should your organisation pay a board member?
 - ▶ if your organisation decides to pay a board member, what steps should you follow?
-

This fact sheet outlines the matters your organisation will need to consider before deciding to pay a board member



Disclaimer

This fact sheet provides general information about the payment of board members. This information is a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

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

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 22% of board members are currently paid, 78% of board members give their time, skills and expertise voluntarily.

For more information, see page 16 of the AICD's [Not-For-Profit Governance and Performance Study](#)

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 – reimbursements

Depending on the state or territory, an organisation might be able to reimburse members and board members for costs that are reasonably incurred (see below for more on this).

Travel expenses related to carrying out functions of the organisation are an example of a reimbursement. So, if a member is required to drive to a site to carry out the work of the organisation, it may be reasonable to reimburse the member for the fuel costs. Similarly, if a board member needs to travel to attend a board meeting, it may 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 – 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 the charity be accountable to members.

The ACNC recommends that charities:

- provide opportunities for members to raise any concerns over payments to board members, and
- 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.



More information

For more information, see:

- the ACNC's [guide on managing conflicts of interest](#)
- our [guide for board members on the duties that apply](#), including the duty to disclose and manage conflicts of interest

Can your organisation pay a board member?

Except for New South Wales and Queensland, the law does not generally prohibit an organisation from paying its board members.



Note – New South Wales and Queensland

In Queensland, under the [Collection Regulation 2008 \(QLD\)](#) only the reimbursement of expenses incurred by individuals who are volunteers (such as directors) are allowed.

In New South Wales, a person who holds any office or is a board member of an organisation may not keep any remuneration, payment or other benefit from the organisation. (See our note below on seeking ministerial approval for remuneration under the [Charitable Fundraising Act 1991 \(NSW\)](#)).

To determine whether your organisation may pay its board members, consider your organisation's constitution, funding agreements that may be in place, as well as state and territory laws.

Your organisation's constitution

Before you make a payment to a board member, in addition to checking the relevant law, it's important to check whether the organisation's constitution allows payments to board members.

Even if payments to board members in a state or territory are permissible, the organisation can't make payments to board members if its constitution doesn't allow this.



Note

Some 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 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

After considering whether payments to board members are legal in the state or territory, a company limited by guarantee (CLG) must also check its constitution to see what it says about payments to board members.

If the constitution expressly allows the payment of directors' fees, provided the necessary approval is given in accordance with any requirements set out in the constitution, it's possible to pay directors' fees. 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, the constitution will need to be changed to allow payments to directors.

Some CLGs will have a licence under [section 150 of the Corporations Act](#), obtained after 1 July 1998, which allows 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 your CLG has a section 150 licence and it changes its constitution to allow payment of directors' fees, you will 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 association 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 in a way that provides monetary gain for its members.



Note

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 five members or 10% of the members make a request for such information.



More information

You can find information specific to organisations incorporated under the CATSI Act on the [Office of the Registrar of Indigenous Corporation's website](#).

Co-operatives

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.

Additional considerations for registered charities

If the organisation is a registered charity with the Australian Charities and Not-for-profits Commission (ACNC), it will also need to make sure any payments to board members are made to further the organisation's charitable purpose.

As long as payments to board members are:

- to further the charity's charitable purpose
- permissible under the charity's rules, and
- properly authorised within the charity,

the ACNC does not prohibit payments to board members.



More information

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. 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, seek legal advice.

State and territory laws

If the organisation is subject to state or territory fundraising laws, check those laws to determine whether there are any limitations or restrictions imposed on payments to board members.



Note – New South Wales

In New South Wales, a charitable organisation subject to the *Charitable Fundraising Act 1991 (NSW)* must obtain written ministerial approval before making a payment to a board member. The request for ministerial approval must be made through [NSW Fair Trading](#) before the board member you wish to remunerate is appointed.

If you are unsure about the application of state or territory fundraising laws, contact the regulator in the state or territory or seek legal advice.



More information

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 your organisation 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 may be consequences of this.

These consequences should be considered 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 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.

Our guide '[Employee, contractor or volunteer?](#)' provides information on different working relationships and the legal obligations an organisation owes to its employees, independent contractors and volunteers.

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.



More information

For more information about board members' duties under Commonwealth, state and territory work health safety laws, see our [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.



Example – Queensland

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 legal 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 are set out below.



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 more information, see [our fact sheet on negligence, accidents and incidents](#).



New South Wales

Are volunteers protected?

Yes – under the *Civil Liability Act 2002 (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.

Impact of remuneration on definition of ‘volunteer’

- **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.

South Australia

Are volunteers protected?

Yes – under the *Volunteers Protection Act 2001 (SA)*, 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.

Expressed exceptions apply.

Impact of remuneration on definition of ‘volunteer’

- **volunteer** means a person who carries out community work on a voluntary basis
- a person works on a **voluntary basis** if the person:
 - receives no remuneration for the work, or
 - is remunerated for the work but within limits fixed by regulation for the purposes of this definition, but a person who carries out community work under the order of a court or a condition of a bond is not to be regarded as working on a voluntary basis.
- **community work** means:
 - work for any one or more of the following purposes:
 - for a religious, educational, charitable or benevolent purpose
 - for promoting or encouraging literature, science of the arts
 - for looking after, or providing medical treatment or attention for, people who need care because of a physical or mental disability or condition
 - for sport, recreation or amusement
 - for conserving resources or protecting the national environment from harm
 - for preserving historical or cultural heritage
 - for a political purpose
 - for protecting or promoting the common interests of the community generally or a particular section of the community, or
 - work classified by regulation as community work, but does not include work excluded by regulation from the ambit of this definition



Victoria

Are volunteers protected?

Yes – under the *Wrongs Act 1958 (Vic)*, a volunteer is not liable in any civil proceeding for anything done, or not done, in good faith by the volunteer in providing a service in relation to community work organised by a community organisation. Instead, liability attaches instead to the community organisation.

Expressed exceptions apply.

Impact of remuneration on definition of 'volunteer'

- a **volunteer** is an individual who provides a service in relation to community work on a voluntary basis. A person is still a volunteer even if, in providing a service, they receive:
 - remuneration they would receive whether they provided that service or not
 - out-of-pocket expenses incurred in relation to providing that service, or
 - remuneration that is not more than the amount (if any) specified in regulations
- the following people are not volunteers:
 - a volunteer officer or member within the meaning of the *Country Fire Authority Act 1958* while exercising any power conferred, or performing any duty imposed, on them by or under that Act or the *Dangerous Goods Act 1985*
 - an officer or member of an industry brigade within the meaning of the *Country Fire Authority Act 1958* while exercising any power conferred, or performing any duty imposed, on them by or under that Act or the *Dangerous Goods Act 1985*
 - a volunteer auxiliary worker within the meaning of the *Country Fire Authority Act 1958* engaged in an authorized activity under that Act
 - a person complying with a direction given to them under the *Country Fire Authority Act 1958*
 - a volunteer emergency worker within the meaning of the *Emergency Management Act 1986* engaged in an emergency activity within the meaning of that Act
 - a volunteer emergency worker within the meaning of the *Emergency Management Act 1986* exercising any power conferred, or performing any duty imposed, by or under the *Victoria State Emergency Service Act 2005*
 - any person who would otherwise be a volunteer under this part if the Act while they are engaged in any activity in respect of which an act absolves them from civil liability for anything done, or not done, while they are so engaged
 - a person who does community work under an order imposed by a court
- **community work** is any work that is done, or to be done:
 - for a religious, educational, charitable or benevolent purpose
 - for the purpose of promoting or encouraging literature, science or the arts
 - for the purpose of sport, recreation, tourism or amusement
 - for the purpose of conserving or protecting the environment
 - for the purpose of establishing, carrying on or improving a community, social or cultural centre
 - for a political purpose
 - for the purpose of promoting the common interests of the community generally or of a particular section of the community, or
 - for any other purpose specified in the regulations for the purposes of this part of the Act

For the purposes of this part of the Act, community work does not include any work of a kind that is specified in the regulations as work that is not community work for the purposes of this part of the Act.



Tasmania

Are volunteers protected?

Yes – under the *Civil Liability Act 2002 (Tas)*, a volunteer does not incur civil liability for anything that the volunteer has done in good faith when doing community work.

Expressed exceptions apply.

Impact of remuneration on definition of 'volunteer'

- **volunteer** means a person who does community work on a voluntary basis ...
- ...a person does community work on a voluntary basis if the person:
 - receives no remuneration for doing that work other than:
 - remuneration that the person would receive whether or not the person did that work, or
 - the reimbursement of reasonable expenses incurred by the person in doing that work, or
 - receives remuneration that is not greater than the amount, if any, prescribed by regulations

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.

Western Australia

Are volunteers protected?

Yes – under the *Volunteers and Food and Other Donors (Protection from Liability) Act 2002 (WA)*, 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.

Impact of remuneration on definition of 'volunteer'

- **volunteer** means a person who does community work on a voluntary basis
- a person does **community work** on a voluntary basis if the person:
 - receives no remuneration for doing that work other than:
 - remuneration that the person would receive whether or not the person did that work, or
 - the reimbursement of reasonable expenses incurred by the person in doing that work, or
 - receives remuneration that is not greater than the amount, if any, prescribed by regulations
- **community work** means work organised by a community organisation to be done:
 - for a religious, educational, charitable or benevolent purpose
 - for the purpose of promoting or encouraging literature, science or the arts
 - for the purpose of sport, recreation or amusement
 - for the purpose of caring for, treating or otherwise assisting people who need assistance because of a physical or mental disability or condition
 - for the purpose of conserving or protecting the environment
 - for the purpose of promoting or preserving historical or cultural heritage
 - for the purpose of establishing, carrying on, or improving a community, social or cultural centre
 - for the purpose of promoting the interests of a local community
 - for a political purpose, or
 - for a purpose prescribed by regulations,

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 the Act.



Australian Capital Territory

Are volunteers protected?

Yes – under the *Civil Law (Wrongs Act) 2002 (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 exceptions apply.

Impact of remuneration on definition of ‘volunteer’

- **volunteer** means a person who carries out community work on a voluntary basis
- a person works on a **voluntary basis** if the person:
 - receives no remuneration for doing that work other than:
 - remuneration that the person would receive whether or not the person did that work, or
 - the reimbursement of reasonable expenses incurred by the person in doing that work, or
 - receives remuneration that is not greater than the amount, if any, prescribed by regulations
- **community work** means work organised by a community organisation to be done:
 - for a religious, educational, charitable or benevolent purpose
 - for the purpose of promoting or encouraging literature, science or the arts
 - for the purpose of sport, recreation or amusement
 - for the purpose of caring for, treating or otherwise assisting people who need assistance because of a physical or mental disability or condition
 - for the purpose of conserving or protecting the environment
 - for the purpose of promoting or preserving historical or cultural heritage
 - for the purpose of establishing, carrying on, or improving a community, social or cultural centre
 - for the purpose of promoting the interests of a local community
 - for a political purpose, or
 - for a purpose prescribed by the regulations,

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 the Act.

Queensland

Are volunteers protected?

Yes – under the *Civil Liability Act 2003 (Qld)*, 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.

Impact of remuneration on definition of ‘volunteer’

- **volunteer** means an individual 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, recreational, political, educational or cultural purpose...



Northern Territory

Are volunteers protected?

Yes – under the *Personal Injuries (Liabilities and Damages) Act 2003 (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 exceptions apply.

Impact of remuneration on definition of ‘volunteer’

- **volunteer** in relation to a community organisation, means a person doing community work for that organisation:
 - who receives no remuneration for doing that work other than:
 - remuneration that the person would receive whether or not they did that work, or
 - the reimbursement of reasonable expenses incurred by the person in doing that work, or
 - who receives remuneration that does not exceed the amount, if any, prescribed by regulations
- **community work** means work done for any of the following purposes:
 - for a religious, educational, charitable or benevolent purpose
 - for promoting or encouraging literature, science or the arts
 - for the purposes of sport, recreation or amusement
 - for conserving or protecting the environment
 - for establishing, carrying on or improving a community, social or cultural centre
 - for promoting the interests of a local community
 - for a political purpose, or
 - for any purpose prescribed by regulations,

but does not include work done under a community work order made under the *Sentencing Act 1995*, *Youth Justice Act 2005* or *Fines and Penalties (Recovery) Act 2001*.

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, 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)

To help attract a more competitive field of candidates for a director role, an organisation decides to pay an annual fee of \$25,000 as remuneration for the role.

The organisation has an expectation that the board member will provide certain services for this fee. The successful board member expects payment of the fee in exchange for the services they provided.

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 and wants to give the directors with a token gift to thank them for their contribution to the organisation. The organisation decides to give the board members a commemorative plaque and a \$100 gift voucher each.

In this case, there is no intention to create a legally binding relationship between the parties as a result of the gift. The board members don't expect a gift from the organisation and the organisation doesn't expect any additional work in return for the gifts. 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 pay tax on the payment.

For more information, the board member should contact the Australian Taxation Office (ATO), visit the ATO's webpage [types of income](#) or speak to their accountant.

Steps to follow for making a payment to a board member

Find out whether your organisation can pay board members.
See 'Can your organisation pay a board member?' above.



If your organisation can pay board members, but doesn't have a policy for paying board members, it may want to put one in place.

A policy 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 the organisation must take



Comply with the organisation's policy on paying board members.



Obtain any necessary approvals that may be required under the organisation's constitution.



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?