

Payment of board members

Legal information for Australian not-for-profit organisations

This fact sheet covers:

- ▶ the different ways a board member may receive money or another benefit
- ▶ determining whether your organisation can pay a board member
- ▶ factors that influence your organisation's decision whether to pay a board member
- ▶ steps for making board member payments

This fact sheet explains the legal considerations that apply when a not-for-profit organisation pays a board member for performing their governance role.



Disclaimer

This fact sheet provides general information about paying board members. This 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.

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 recognising the responsibility and time involved in the role or attracting board members with particular skills and experience.

While there is no blanket rule that says a not-for-profit organisation cannot pay board members, there are important matters the organisation must consider before deciding whether to do so.

This fact sheet uses the term **board member** to mean a member of an organisation's governing body.

Depending on the organisation's legal structure and whether it is a registered charity, board members may also be described as committee members, directors, trustees or Responsible People.

Types of payments and benefits

This fact sheet deals primarily with payments for services performed as a board member, sometimes known as directors' fees, board fees or sitting fees.

Other types of payments include:

- reimbursement of expenses actually incurred
- payments for goods or services provided under a separate contract

- payments for separate work performed as an employee, and
- gifts or honorariums

These payments are different from payment for services as a board member and may have different legal, tax and reporting consequences.



Reimbursement of expenses

A reimbursement repays a board member for a reasonable expense they incur in carrying out their role. For example, it may be reasonable to reimburse a board member for travel costs incurred in attending a board meeting.

Reimbursement of reasonable expenses is different from payment for a board member's services.

If the organisation regularly reimburses board members for expenses, it is a good idea to have a reimbursement policy. The policy should explain which expenses may be reimbursed, what evidence is required, who approves reimbursement, and any limits that apply.



Contracts with board members

An organisation may engage a board member to provide goods or services outside their governance role, such as web design or professional advice.

Before entering into the arrangement, the organisation should:

- check its governing document and any applicable legal requirements
- ensure the terms are reasonable and in the organisation's best interests
- disclose and appropriately manage any conflict of interest, and
- obtain any required board or member approval

Payment under a separate contract is different from payment for services as a board member.

The organisation should have a conflict of interest policy. If it is a registered charity, it must also comply with the [ACNC Governance Standards](#), including requirements relating to accountability, conflicts of interest and responsible financial management.



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

Determining whether your organisation can pay a board member

A range of national, state and territory laws apply to how not-for-profit organisations use money obtained through fundraising or other sources. These laws do not generally prohibit an organisation from paying its board members, but restrictions apply to some organisations.



Note – New South Wales and Queensland

In Queensland, under the [Collection Regulation 2008 \(QLD\)](#) only the reimbursement of expenses incurred by volunteers, including directors, in the course of making an appeal for donations is 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 \(NSW\)](#)).

If an organisation operates or fundraises in another state or territory, it should check whether the fundraising laws of that jurisdiction apply and whether they restrict payments to board members.

To determine whether your not-for-profit organisation can pay a board member, consider:

- the organisation's constitution or other governing document
- the laws that apply to its legal structure
- any additional requirements that apply if it is a registered charity
- funding agreements and other contracts, and
- state and territory fundraising laws

Your organisation's governing document

Before paying a board member, check the organisation's constitution, rules, trust deed or other governing document.

The governing document may:

- prohibit payment for services as a board member
- permit payment and specify how it must be approved, or
- be silent about board member payments

If the governing document is silent, check the legislation and other rules that apply to the organisation's legal structure. Do not assume that silence either permits or prohibits payment.

If the governing document prohibits payment, the organisation must not pay a board member for their board services unless it first validly changes the governing document.

The governing document may also specify:

- whether the board or members must approve the payment
- the resolution required
- how conflicts of interest must be managed
- whether the board member can participate in the decision, and
- any limits on the amount or type of payment.

Most not-for-profit organisations have one or more clauses in their governing document that establish the organisation as a not-for-profit. This means the organisation does not operate for the private profit or gain of its members.

Payment to a board member is not necessarily inconsistent with a not-for-profit clause. Genuine and reasonable payment for services may be consistent with the clause if the payment is:

- permitted by the governing document and applicable law
- properly authorised
- reasonable in amount
- made in the organisation's interests, and
- connected with advancing the organisation's purposes

An excessive or unauthorised payment, or a payment made mainly for a board member's private benefit, may be inconsistent with the organisation's not-for-profit status.



Example – payment consistent with not-for-profit clause

An organisation wants to pay each board member a modest sitting fee for attending board meetings. It considers the board members' responsibilities, the time involved and comparable payments made by similar organisations.

If the amount is reasonable, properly authorised and paid to support the effective governance of the organisation, the payment may be consistent with its not-for-profit clause.



Example – payment not consistent with not-for-profit clause

An organisation has surplus funds at the end of the financial year. The board decides to distribute the surplus among the board members because they are members of the board.

The payments are not for services provided to the organisation and are made for the board members' private benefit. They are likely to be inconsistent with the organisation's not-for-profit clause.

Companies limited by guarantee

Most companies limited by guarantee (CLGs) can pay directors' fees if the payment is permitted under the CLG's constitution and properly authorised.

The CLG should check:

- whether its constitution permits or prohibits directors' fees
- whether the replaceable rule in section 202A of the *Corporations Act 2001* (Cth) applies, and
- who must approve the payment

If the CLG's constitution prohibits directors' fees, the CLG must not pay them unless it first validly changes its constitution. If the constitution is silent, the CLG should check whether section 202A applies and what approval is required.

Some CLGs can leave out the word 'Limited' from their name under [section 150 of the Corporations Act](#). To qualify, the CLG must:

- be a registered charity, and
- have a constitution that prohibits the payment of fees to directors and requires directors to approve all other payments made by the CLG to directors

A CLG must notify ASIC as soon as practicable if it stops being a registered charity, does not comply with these constitutional requirements or changes its constitution to remove them. This includes changing its constitution to allow payment of directors' fees.



Note

If the CLG obtained a licence to omit 'Limited' from its name before 1 July 1998, different conditions apply. Check [section 151 of the Corporations Act](#) and the terms of the licence issued to the CLG.

Incorporated associations

The laws that regulate incorporated associations generally prohibit an association from operating for the financial gain of its members. These laws may permit genuine and reasonable remuneration for services. However, the requirements differ between jurisdictions.

An incorporated association should check:

- the incorporated association legislation that applies to it
- its constitution or rules
- the process required to approve the payment, and
- any restrictions relating to payments or benefits provided to committee 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, but section 5(2)(d) provides that this does not include a member obtaining remuneration for services to the association.



Note

A genuine and reasonable payment to a board member for services is different from distributing the association's income or assets among its members. The payment must be properly authorised, made in the association's interests and consistent with the organisation's governing document and applicable law.

Indigenous corporations

An Aboriginal and Torres Strait Islander corporation registered under the [Corporations \(Aboriginal and Torres Strait Islander\) Act 2006 \(Cth\)](#) (**CATSI Act**) can pay director remuneration only if its rule book permits the payment.

If the rule book permits director remuneration, the members must decide the amount by resolution at a general meeting.

Director remuneration is different from:

- reimbursement of expenses incurred on corporation business
- remuneration received by a director as an employee, and
- payment for goods or services supplied under a separate contract

A payment to a director for goods or services supplied under a separate contract is a related-party benefit and may require member approval.



For further information, see the [Office of the Registrar of Indigenous Corporations guidance on payments to directors](#).

Co-operatives

The Co-operatives National Law provides rules concerning payments, fees, concessions and benefits received by directors of co-operatives.

A co-operative should check:

- the Co-operatives National Law as applied in its state or territory
- its rules
- the approval required for directors' fees or other benefits, and
- the requirements that apply to reimbursement of directors' expenses

The rules applying to payment for services as a director may differ from those applying to reimbursement or payment under a separate contract.

Additional considerations for registered charities

If the organisation is a registered charity with the ACNC, it must ensure any payment to a board member is:

- in furtherance of the charity's charitable purposes
- permitted under the charity's governing document
- properly authorised
- reasonable and justifiable, and
- in the charity's best interests

A registered charity must continue to operate on a not-for-profit basis and comply with the ACNC Governance Standards.

A payment that is unreasonable, unauthorised or unjustifiable may indicate that the charity is not complying with those standards.



For further information, see the [ACNC's guide on remunerating Responsible People](#).

Funding agreements and contracts

The organisation may have entered into a funding agreement or contract that restricts or prohibits payments to board members.

Check relevant agreements before making a payment. In particular, check whether an agreement:

- restricts how funding may be used
- requires the funder's consent
- limits administrative or governance expenses
- requires disclosure of related-party payments, or
- requires the organisation to follow a particular remuneration policy

If it is unclear whether a proposed payment is permitted, seek legal advice.

State and territory fundraising laws

If the organisation is subject to state or territory fundraising laws, check whether those laws restrict payments to board members or the use of fundraising income.



Note – New South Wales

Section 48 of the *Charitable Fundraising Act 1991 (NSW)* generally prohibits a person who holds office or acts as a member of the governing body of an organisation that holds an authority under that Act from accepting and keeping remuneration, payment or another benefit from the organisation.

The prohibition is subject to exceptions. These include where:

- the Minister has given written approval for the person to accept and keep the payment
- an applicable ministerial order or regulatory exemption applies, or
- the person holds the position because they are a minister of religion or member of a religious order

A travelling or subsistence allowance is not included in the statutory prohibition.

An application for ministerial approval must be made in writing by the organisation. The Minister may impose conditions on the approval.



State and territory fundraising laws are complex. For more information, see [our webpage on fundraising](#).

Factors that influence your organisation's decision whether to pay a board member

Payment to a board member can affect the volunteer nature of the relationship between the organisation and the board member. It may also affect legal protections available to volunteers and have consequences under work health and safety, employment, tax and superannuation laws.

The organisation and the board member should consider these consequences before deciding whether payment is appropriate.

Relevant matters include:

- the organisation's purposes, size, resources and financial position
- the responsibilities and time involved in the board role
- whether payment will support effective governance
- community, member, donor and funder expectations
- whether the amount is reasonable compared with similar organisations
- how conflicts of interest will be managed
- how payments will be approved, recorded and disclosed
- whether payment affects legal protections available to volunteers
- whether a separate employment relationship exists, and
- tax, superannuation, withholding and reporting obligations



Caution

The law recognises different relationships where a person performs work or services for another party. The legal consequences depend on the nature of the arrangement and not only on the label used by the parties.

Our guide '[Employee, contractor or volunteer?](#)' explains the differences between these relationships and the obligations that may apply.

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

Personal liability

A board member can be personally liable for failing to comply with their legal duties and responsibilities, whether they are paid or act as a volunteer.

However, some laws provide specific protections for volunteer board members that may not apply to paid board members.

Work health and safety laws

Under the model work health and safety laws, a board member who is an officer may have a duty to exercise due diligence to ensure that the organisation complies with its work health and safety duties.

A volunteer board member cannot be prosecuted for failing to comply with this due diligence duty. However, this protection may not apply if the board member is paid for performing their board role.

A volunteer board member may still have duties in another capacity. For example, if they also perform work for the organisation as a volunteer worker, they must take reasonable care for their own health and safety and that of others.



Example – effect of payment on WHS protection

A volunteer board member participates in a board review of the organisation's health and safety policies and procedures. As a volunteer board member, they may be protected from prosecution for failing to comply with the due diligence duty that applies to officers under the model work health and safety laws.

The organisation later decides to pay the board member an annual fee for performing their board role. Depending on the law that applies, the board member may no longer be entitled to rely on that protection.

This does not mean that payment itself makes the board member personally liable. Liability will only arise if the relevant work health and safety law applies and the legal requirements for an offence are established.

The model work health and safety laws apply in the Commonwealth and all states and territories except Victoria. Victoria has separate occupational health and safety legislation, under which different provisions apply.



For more information about board members' duties under Commonwealth, state and territory work health and safety laws, see our [webpage on work health and safety](#).

Civil liability laws

State and territory laws may protect volunteers from personal civil liability for acts or omissions made in good faith. Protection for unpaid board members is clearest in New South Wales and Queensland but remains uncertain in other jurisdictions. As the protections depend on the particular circumstances, their application should be assessed on a case-by-case basis and legal advice may be required.

These protections are limited and do not provide general immunity from directors' or officers' duties. Remuneration may also prevent a board member from being treated as a volunteer except for permitted expenses or limited payments.



For more guidance, see:

- [our national volunteering guide](#), which explains state and territory protections from personal civil liability for volunteers when performing community work for community organisations
- [our fact sheet on negligence](#), which explains civil liability and managing risk, and
- [our fact sheet on protections for board members](#), which explains other legal and practical protections available to board members

Employee obligations

A payment made to a board member could result in an employment relationship between the organisation and the board member.

Factors that may indicate a genuine volunteering arrangement include:

- 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

Payment to a board member can affect the volunteer nature of the relationship between the organisation and the board member. In some circumstances, it may also affect whether the board member is regarded as a volunteer for the purposes of employment and other laws.

Where there is an expectation of payment, the board member may no longer be considered a volunteer and additional legal obligations may arise.

If an employment relationship is created, additional obligations may arise for the organisation, including:

- compliance with the National Employment Standards
- payment of superannuation contributions
- workers' compensation obligations, and
- other obligations that apply to employees

Board members typically serve for a fixed period, but subject to the organisation's governing document they may hold office for longer periods. Depending on the circumstances, a board member who is also an employee may be entitled to employment-related benefits and protections.



Example – likely employment relationship

To attract a more competitive field of candidates for a director role, an organisation decides to pay an annual fee of \$25,000 for the role. The organisation expects the board member to remain on the board and perform their duties under the organisation's constitution in return for the fee.

These circumstances indicate that the arrangement is likely to be an employment relationship. The organisation will need to consider the employment obligations that apply, as well as any tax and superannuation obligations.



Example – gift that does not create an employment relationship

An organisation is celebrating a milestone and wants to give its board members a token gift to thank them for their contribution. The organisation decides to give each board member a commemorative plaque and a \$100 gift voucher.

In this situation, there is no intention to create a legally binding relationship between the parties as a result of the gift. The board members do not expect the gift and the organisation does not expect any additional work in return.

On these facts, an employment relationship has not been created.

Tax, superannuation and reporting

Payments to a board member may have:

- income tax consequences for the board member
- PAYG withholding obligations for the organisation
- superannuation consequences, and
- payment and reporting requirements

The outcome depends on the nature of the payment and the arrangement. Directors' fees and honorariums may need to be declared as income.

Seek accounting or tax advice before making payments.

Steps to follow for making board member payments

Once you have determined that your not-for-profit organisation can pay its board members and has decided to do so:

- obtain any approval required under the organisation's governing document or applicable law
- record the decision, including the reasons for the payment and how the amount was determined
- manage conflicts of interest, including any restrictions on participating in discussion or voting
- adopt a board member payment policy if the organisation does not already have one
- comply with the policy and review it regularly
- document the payment arrangement, including the amount, payment basis and review arrangements
- check insurance and indemnity arrangements, including whether the insurer must be told about the payment
- make payment, withholding, superannuation and reporting arrangements that reflect the legal nature of the payment and the board member's relationship with the organisation, and
- keep appropriate records and make required disclosures



A policy for paying board members might cover:

- which board roles may be paid
- how the organisation will determine a reasonable amount
- who will approve payments
- how conflicts of interest will be managed
- how payments will be recorded and disclosed
- how often payment arrangements will be reviewed, and
- the steps the organisation must follow before making a payment