For the love and/or for the money

Good governance remuneration practice for NFP non-executive directors

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December 2019

Precis of Paper

(a) Historically, the provision of board services by non-executive directors to NFP organisations has largely been on a voluntary, gratuitous and non-remunerated basis.

(b) This paper analyses the continued suitability of this approach given the emerging needs of, and demands for, the NFP sector, and the ability of NFPs to recruit the best talent to their boards.

(c) The paper discusses good governance practices and different bases for non-executive director remuneration, depending on the needs and circumstances of NFPs.

1 Introduction

In one form or another – whether registered as companies limited by guarantee under the Corporations Act (Cth) or as associations incorporated under State/Territory legislation – there are hundreds of thousands of entities comprising the not-for-profit ('NFP' or 'for purpose') sector of the Australian economy.

The official Australian National Accounts: Non-Profit Institutions Satellite Account (2012 – 2013, released in August 2015), indicates that around 57,000 'economically significant'[1] NFPs accounted for:

- $79 billion per annum value added to the Australian economy;
- 1,081,000 employed persons; and
- 3,882,000 volunteers contributing 521 million hours per annum (or approximately 265,0000 FTEs).

The principal industry sectors covered by these economically significant NFPs included:

- education and research (approx. 30%)
- social services (approx. 20%)
- health (incl. hospitals) (approx.19%)
- culture/recreation (approx.14%)
- environment (approx. 7%)
- unions (approx. 3%)
- religion (approx. 3%)
- other (approx. 4%)

All incorporated NFPs, whether 'economically significant' or otherwise, are governed by a board or management committee typically of between 5-10 people. The majority of these individuals act in a non-executive capacity to help guide, direct and support the organisation towards the achievement of its strategic mission and operational goals.

The performance expectations on NFPs, and those in charge of them, are increasing with:

- more traditional government welfare services being outsourced to NFPs with a resultant 'responsibility transfer' from the government to the NFP sector;
- greater regulatory and compliance requirements and expectations, with potential liability consequences for those falling short of prescribed standards;
- high community and social expectations for organisational outcomes and probity standards of those in charge of NFPs; and
- reputational risks for NFPs, and those in charge of them, in an age of heightened information awareness and social media activism.

This growth in performance expectations exists, notwithstanding increasing funding challenges for NFPs. These challenges arise both from competition between NFPs for limited government grant funding and private philanthropy, as well as tensions as to funding responsibility between government, private philanthropy and 'user pay' advocates.

These drivers have led to the need for:

- greater economies of scale for NFP operations to deliver the required standard and level of service delivery, especially within funding constraints;
- strategic outcomes to be delivered through more sophisticated business and commercial models than traditionally have been the case; and
- more developed governance and management frameworks, practices and responsibilities for NFPs.

Those in charge of NFPs need to have greater and more refined skills, acumen, experience and personal commitment to address these expectations and drivers.

[1] Revenue base in excess of $50,000 per annum, so as to exclude the vast majority of small community, sporting and other NFPs.

This paper draws upon several key findings from the Australian Institute of Company Directors' 'Not-for-Profit Governance and Performance Study' (10th Edition, 2019), including:

- *"NFP board workloads are rising as regulatory and community expectations of boards increase and as governance becomes more complex"*;
- *"… some NFP boards have found it hard to recruit younger directors …"*;
- *"… there has been little change [over recent years] in the proportion of NFPs that pay board fees, despite rising workloads and risks."*
- *"The responsibilities of NFP directors are increasing and we need more of their time, which may be beyond reasonable volunteer expectations."*

Traditionally in Australia (with some exceptions), the services of non-executive board and management committee members of NFPs have predominantly been on a voluntary, gratuitous and non-remunerated basis. This paper examines whether or not this approach should remain the norm, or, alternatively, whether it may not always be in the best interests of the NFP.[2]

2 Overarching Principles

(a) From the perspective of the best interests of an NFP (or any organisation), remuneration of directors, officers and/or employees is largely a means to an end; the 'end' is the procurement of the services of an appropriately skilled, experienced and committed human resource to add value to the organisation in the pursuit of its strategic and/or operational goals.

(b) Remuneration is a tangible benefit exchanged in return for services rendered. It is important to note that in the NFP sector:

- a relatively high level of volunteer labour has traditionally been available; and
- other non-monetary, less tangible benefits may be available to incentivise the provision of services (refer sections 2(e)(ii) and 5(b) following).

(c) In purely economic terms, to justify remuneration – which necessarily results in a depletion of financial resources to the NFP organisation – there must at least be a compensating factor or benefit that flows to the organisation to warrant that financial resource depletion. That compensating factor or benefit might be accountable against the following test:

Were it not for the remuneration, or the relevant level of remuneration:

- *the relevant services (including political, business and/or social influence);*
- *the standard or quality of the relevant services;*
- *the level of commitment and/or longevity of the relevant services; and*
- *the competitive pool and diversity of personnel who could provide the relevant services,*

would not be available to the NFP in furtherance of its strategic and/or operational objectives.

[2] Note: this paper is not directed towards large multi-million/billion-dollar co-operative and mutual based corporations, commonly operating on commercial principles in the agricultural, health insurance, insurance or financial sectors, notwithstanding their technical not-for-profit status. It is the author's understanding and experience that such enterprises remunerate their directors at commercial rates benchmarked against their for-profit counterparts.

(d) The corollary to that test, in purely economic or financial terms, is the statement that *"unless that compensating factor or benefit flow for the NFP organisation is present, and its value exceeds the amount of remuneration to be paid, then remuneration, or remuneration at the relevant level, should not be paid."*

(e) However, matters must be considered not merely in pure economic or financial terms. Other factors also need to be taken into consideration:

(i) Social and cultural considerations

An NFP's practices should reflect the organisation's ethos and culture, which typically might include concepts of fairness, equity, ethics, integrity, community, support, inclusion etc. The manner in which the organisation deals with its personnel who contribute to its mission outcomes should be consistent with these values. On the one hand, this lends itself to principles of fair reward for effort and skills contributed, responsibilities assumed and risks undertaken. Yet on the other hand, in practice, the organisation may pay some staff yet call upon other 'volunteers' to provide their services gratuitously without remuneration.

Perhaps 'volunteering' in such organisations is highly respected, with that respect and knowing contribution to the cause (or organisational mission) being the 'benefit' sought by the volunteer in exchange for the services. But how does the organisation culturally reconcile a material change in treatment of one group of volunteers, i.e. its board or management committee members, if they were to move to a remunerated basis for their services, compared with another group e.g. the op-shop or front-line service volunteers who are not offered remuneration?

(ii) Benefits accruing to a volunteer board member other than financial remuneration

Financial remuneration is one form of benefit or reward available to a non-executive director/volunteer on an NFP organisation board or management committee. Other benefits, depending on the NFP organisation and the individual volunteer, may include:

- personal ethical alignment and support of the cause;
- "giving back" to society;
- helping to give them a purpose;
- practical board experience and skill development;
- attendance at professional development and educational courses funded by the NFP organisation;
- business and social networking;
- complimentary or privileged seating/entertainment at events in which the NFP organisation is involved (perhaps more relevant for arts and sporting NFP organisations); and/or
- paid travel and accommodation expenses for meetings, events or conferences.

(iii) Ensuring a diverse and competitive pool of prospectively suitable personnel

If service on an NFP's board or management committee is on a voluntary, gratuitous and non-remunerated basis, many people who cannot afford to offer their time on such a basis are implicitly excluded from providing their services. If financial remuneration was offered, then the pool of prospective candidates for the role, and the diverse nature of that pool, would likely increase. Within this more diverse pool of candidates are likely to be people who can significantly contribute to the NFP organisation's needs and goals.

(f) A decision concerning whether to remunerate non-executive directors, and, if so, how much, will be made by the NFP organisation and its board, in conjunction with the approval of the members of the organisation (as applicable), and in compliance with any relevant constraints:

- in the organisation's constitution and/or governance charter; and
- in the legislation or regulatory framework governing the organisation.

The decision must be made in good faith for a proper purpose in the organisation's best interests.

3 Legal and regulatory considerations

(a) Legislatio**n**

(i) Most Australian NFP organisations are typically constituted either as:

- companies limited by guarantee under the Corporations Act (Cth) – commonly larger NFP organisations, those with international or multi-State/Territory activity, and those with more commercial service offerings (even if for charitable causes);
- associations incorporated under the various association incorporation legislation of the applicable State or Territory in which the organisation primarily operates or had its origins.

(ii) In the case of companies limited by guarantee under the Corporations Act, and given that such companies are regarded as 'public companies', there are a number of legislative provisions that may be relevant in the context of non-executive director remuneration (subject to some exceptions) including:

- board approval of payments to directors;
- disclosure in statutory reports of the remuneration paid;
- whether the remuneration of a director constitutes a "related party financial benefit" which may have compliance restrictions attaching to it;
- fiduciary style duties owed by directors to the organisation on which they serve.

(iii) Conflict of interest considerations and protocols where the director has a material personal interest in matters being considered by the board. In the case of organisations incorporated under State/Territory associations incorporation legislation, regard should be had to the specific provisions of each piece of legislation applicable to the organisation. These may include:

- clarification that an association does not lose its eligibility for incorporation under the legislation merely because a member derives remuneration or salary paid in good faith as an employee or member of the board/management committee;
- that payments to be made to members of the board/management committee out of funds of the organisation (other than for proper out-of-pocket travel/accommodation expenses) must be authorised by resolution of members of the organisation;
- fiduciary duties and conflict of interest issues generally.

(b) Constitution, articles or rules of the organisation

The constitution, articles or rules of the organisation may also contain constraints concerning the payment of remuneration to board/management committee members. By way of example:

- Rule 15 of the 'Model Rules' for associations incorporated under the WA Associations Incorporation Act 2015 prohibits the payment of remuneration (other than travel and other expenses properly incurred in attending meetings and business on behalf of the organisation), although such 'Model Rules' may be amended by a special resolution of members.
- The following example from the constitution of a prominent sporting organisation provides a constraint to protect members of the organisation against the 'agency risk' of those in charge of the organisation unduly favouring themselves with remuneration without prior reference to the members:

  "5.9 Payment to Directors prohibited

  (a) Subject to Article 5.9(b), the Organisation must not pay any fees to a Director for performing his or her duties and responsibilities as a Director unless the Members in general meeting have approved the payment or the Members in general meeting have approved payment of fees to Directors, at the discretion of the Board, with a maximum annual pool or cap amount for all Directors in any one year, and the payment is within that annual pool or cap amount.

  (b) A payment of the kind referred to in Article 1.5(b) may be made to a Director if that payment has been approved by the Board.

  [Article 1.5(b) refers, as relevant, to remuneration that complies with Article 5.9(a) and out-of-pocket expenses properly incurred by the Director in connection with the affairs of the Organisation.]"

(c) Governance or Board Charter and/or Policies

Many organisations have a governance or board Charter, and/or a range of governance related policies, relating to the organisation's structures, policies and procedures. Due regard should be had to any relevant provisions or constraints relating to board/management committee member remuneration.

(d) Legislation protecting volunteers from civil liability

All States and Territories have passed legislation which provides a modicum of protection and exclusion of liability for those providing or being engaged in 'community work' in a voluntary, gratuitous and non-remunerated capacity for community/charitable organisations. These protections do not apply where non-executive directors are remunerated.

Relevant legislation includes:

- Volunteer Protection Act 2001 (SA)
- Volunteer Protection Act 2002 (VIC)
- Civil Liability Act 2003 (QLD)
- Civil Liability Act 2002 (NSW)
- Volunteer (Protection from Liability) Act 2002 (WA)
- Personal Injuries (Liabilities and Damages) Act 2003 (NT)
- Civil Law (Wrongs) Act 2002 (ACT)
- Civil Liability Act 2002 (TAS)

The following aspects of the legislation should be more fully considered, with professional advice taken having regard to the relevant jurisdiction involved:

(i) Any exclusion is for civil liability only.

(ii) The relevant State/Territory legislation will be subordinate to Federal legislation, including under the Corporations Act which prescribes duties (and liability for breach of those duties) of directors of companies limited by guarantee. The Corporations Act contains no comparable provisions concerning limitation or exclusion of liability for volunteer directors. Accordingly, at best, subject to the below comments, the legislation may limit or exclude liability (subject to exceptions described in the relevant legislation) of voluntary non-remunerated board/management committee members of NFP organisations incorporated under the associations incorporation legislation of the relevant State/Territory.

(iii) The legislation in some States/Territories (e.g. NSW) expressly provides that the performance of responsibilities of office of a board/management committee member of an NFP organisation is to be regarded as 'community work', so as to attract the exclusion of liability (to the extent provided) for volunteer, non-remunerated directors and officers. The legislation in other States/Territories (e.g. WA) does not so expressly provide. Specific legal advice should be sought if protection under these legislative enactments is to be relied upon.

4 Remuneration structure

4.1 Flexibility of approach

Existing legislative, constitutional and 'good practice' requirements allow significant flexibility and discretion to a board/management committee to determine whether and, if so, the way, its non-executive board/management committee members are remunerated. The following prudential practices are strongly recommended for NFP organisations:

(a) prior approval by the organisation's members as to the structure and process by which the remuneration is to be set;

(b) clear limitations on the quantum of total non-executive director remuneration, without prior informed member approval; and

(c) reasonable transparency and accountability of non-executive director remuneration outcomes.

The balance of this section 4 assumes that remuneration of non-executive board/management committee members is warranted, having regard to the factors in section 2 of this paper, and that any relevant legislative, constitutional or governance charter/policy constraints (see section 3) have been addressed.

4.2 Approaches to remuneration

(a) Non-executive director remuneration policies may vary significantly from organisation to organisation:

(i) from the 'egalitarian' approach (i.e. all non-executive directors are rewarded in equal measures) to a 'differential reward' approach (i.e. recognising that some non-executive directors may contribute more than others, or that higher fees need to be paid to attract certain non-executive directors);

(ii) from the 'swings and roundabouts' approach (sometimes the work of boards/management committees is busier and more demanding than at other times), with non-executive directors' fees relatively flat or constant irrespective of the complexity, duration or scope of exertion required from time to time, to a variable 'fee for service' approach (i.e. which may see a relatively lower base fee, but with incremental extra fees payable to non-executive directors for extra responsibilities, committee work and exertion from time to time).

(b) This variation is perceived to be healthy in an open competitive market for services, and may well also respond to the diversity of NFPs from large trans-national organisations, to national multi-million dollar enterprises, to small project or cause specific or local community based organisations.

(c) Further areas for consideration by NFPs include whether:

(i) the 'headline amount' of remuneration payable is to be inclusive or exclusive of superannuation paid by the organisation on behalf of the non-executive director;

(ii) further remuneration may be paid to the non-executive director on account of 'extra-ordinary exertion' at times of organisational crisis, where the demands of office may well exceed any reasonable contemplation of the continued provision of services;

(iii) payment by the organisation of:

- premiums for D&O insurance;
- professional advice taken by a non-executive director, in accordance with organisational policy, concerning matters arising in the performance of his/her duties of office,

should be considered within the scope of non-executive director remuneration (although generally the commonly accepted approach is that such items are not regarded as 'remuneration').

(d) For the purposes of this analysis it is assumed that payment or reimbursement of out-of-pocket expenses properly incurred in the performance of a non-executive director's responsibilities of office is an 'entitlement' and is not regarded as 'remuneration'.

4.3 Approaches to the quantum of remuneration and how it is shared among non-executive directors

(a) Anecdotal evidence suggests a range of approaches to non-executive director remuneration, especially between:

- different industry sectors; and
- larger, more complex NFPs compared with smaller, less sophisticated community-based NFPs.

Approaches also differ between comparable organisations in the same or similar industry sectors, which may have different philosophies and organisational cultures.

(b) Listed below are some common approaches to NFP non-executive director remuneration:

(i) The determination of an annual maximum remuneration "pool" approved of by the organisation's members, giving the board discretion to award remuneration to individual non-executive directors provided that the aggregate remuneration awarded in any year does not exceed that "pool". Such an approach:

- merely provides a 'cap' to manage the agency risk of board members benefitting themselves in excess of the expectations and authority of the organisation's members;

- leaves to board discretion the amount of remuneration awarded to all or any board/management committee members, or the basis of such awards, provided the "pool" is not exceeded.

(ii) Non-executive director remuneration benchmarked against that received by a non-executive director of a commercial/for-profit corporation of comparable size, revenue, employee base, business complexity and industry sector. Benchmark data of non-executive directors of public listed entities is readily available due to Corporations Act and ASX Listing Rule disclosure requirements.

(iii) Non-executive director remuneration benchmarked against that received by a non-executive board member of a public sector board or statutory authority of comparable size and operational base and complexity, given that such remuneration is usually objectively set by an independent public sector commission or authority.

(iv) Non-executive director remuneration more in the nature of an honorarium or relatively modest payment, either on an annualised basis or on a per meeting/sitting basis.

(v) In most cases, payment or reimbursement of proper out-of-pocket expenses incurred by the non-executive director in the performance of his/her responsibilities of office in the affairs of the organisation.

(c) To give some very broad context as to the quantum of 'base' non-executive director remuneration that might be paid under some of the approaches referred to in paragraph (b), based on the author's experience and anecdotal research, the following estimates are provided:

- [paragraph (b)(ii) – commercial/for-profit corporation comparators, although such comparison is likely only to be applicable for a relatively small number of significant and commercially complex NFPs]

  $50,000 to $100,000(+) p.a.

- [paragraph (b)(iii) – public sector boards/statutory authority comparators]

  $20,000 to $50,000(+) p.a.

- [paragraph (b)(iv) – relatively modest/remuneration/honorarium style comparators]

  $5,000 to $20,000 p.a.

(d) Data from the AICD 'Not-for-Profit Governance and Performance Study' 10th Edition 2019 shows that there is a strong correlation between remuneration of non-executive directors and the size of the NFP organisation.

Size of NFP organisation (revenue p.a. $m)	**% of NFP organisations which remunerate non-executive directors**
>$100	45%
$20m to $100m	≈39%
$5m to $20m	19%
$1m to $5m	9%
<$1m	1%

4.4 Governance considerations in setting non-executive director remuneration

(a) Generally, the control, direction and management of incorporated organisations is assigned to the board/management committee of the organisation (subject to any reservations of authority retained by the members of the organisation in general meeting).

(b) In the context of the board/management committee of an NFP organisation having the authority to set, or at least recommend to members of the organisation for approval, the remuneration of members of the board/management committee, there is a risk of conflicts of interest arising and the ‘agency risk’ of such authority or recommendation needs to be addressed.

(c) Depending on how the board/management committee addresses this issue, questions and concerns may arise as to:

- the probity of the decision or recommendation;
- conflicts of interest, and/or
- the ethics,

of those non-executive directors involved.

(d) Mitigation of the risks are more likely to be achieved if:

- there is open and transparent communication between the board/management committee and the members and stakeholders of the NFP;
- the NFP has adopted a governance policy concerning remuneration of non-executive board/management committee members, which has been openly shared with the organisation’s members and stakeholders;
- usual conflict of interest protocols (disclosure of conflict, abstention from involvement in deliberations and from voting on the matter, with due recording of such matters in the relevant meeting minutes) be observed so that to the greatest extent practicable no board/management committee member is ultimately determinative of their own remuneration; and
- independent and objective professional advice and/or comparative analysis against other NFP organisations (of comparable size, complexity and industry sector) is undertaken to provide base data against which to benchmark the decision taken to pay or recommend remuneration, and the quantum of that remuneration.

5 Special industry sector organisational size and other considerations

(a) NFPs cover an extraordinarily broad array of industry sectors, strength of balance sheets, funding models, mission outcomes, organisational size and strategic/operational/regulatory compliance complexity.

(b) Some NFPs provide attractive non-financial benefits to their board/management committee members, in addition to the personal satisfaction derived by the member in supporting the cause or mission of the NFP, so that financial remuneration is not as relevant in order to attract quality non-executive directors. For example:

- For some major arts and sporting NFP organisations: Event attendance, seating and celebrity fraternising opportunities;
- For many NFP organisations with national or international meeting attendance requirements: Paid travel and accommodation expenses.
- For some profile NFP organisations: The business or community status that comes with being a board/management committee member of that particular NFP.
- For many NFP organisations: Relevant professional education and training courses for board/management committee members.

Where such benefits are material and attractive to the organisation's board/management committee members, then the question may be asked whether the 'Overarching Principles' in section 2 of this paper have been satisfied to warrant the payment of remuneration.

(c) Many other small community, arts, sporting, religious, educational, humanitarian, charitable or welfare organisations, especially those which provide a community gathering or support that is more focussed on the individual interests of their members, might not:

- be culturally attuned to the award of remuneration;
- have the financial means to offer remuneration;
- have the degree of organisational or business sophistication to warrant the payment of remuneration,

for their board/management committee members.

(d) There are also some NFPs where material financial or other in-kind support from a passionate benefactor to the organisation may be tied (expressly or implicitly) to the expectation of a position being offered on the board/management committee of the organisation. The offer of remuneration to that benefactor would not be relevant to the attraction of that benefactor to the organisation (or its board/management committee).

6 Arguments for and against the payment of remuneration in appropriate cases

(a) The "for" case

This section seeks to summarise the rationale for payment of remuneration in appropriate cases, subject to the considerations mentioned elsewhere in this paper.

(i) Fair reward for the board/management committee members':

- time commitment;
- expertise, acumen and skill;
- assumption of responsibilities of office; and
- assumption of risks (liability and reputational) associated with the responsibilities assumed,

noting that the legal and regulatory compliance and overall performance expectations upon non-executive board/management committee members of NFPs have increased materially over recent decades.

(ii) Incentivisation to attract high quality directors who are prepared to commit to the responsibilities of office.

(iii) Increasing the availability and diversity of the pool of prospective directors to include those who might be suitable but could not otherwise afford to offer their time and services on a gratuitous basis.

(iv) Securing the time, commitment and prioritisation of workload of board/management committee members through payment for such time, commitment and prioritisation. Although such expectations may be able to be secured culturally, even without remuneration, the psyche of the board/management committee member is likely to be more attuned if remuneration is paid.

(v) The organisation notionally being in a stronger position to 'hold to account' the relevant board/management committee member for his/her responsibilities and duties of office and performance outcomes by reason of the 'fee for service' paid, rather than a psyche of 'mere gratuitous contribution'.

(vi) Finally, and importantly, the payment of remuneration 'monetarises' the value of the contribution of the relevant board/management committee member. For example, a benefactor who contributes (say) $50,000 p.a. to a charitable organisation would be highly regarded, yet a board/management committee member's voluntary gratuitous, non-remunerated contribution may be of comparable commercial value, but not comparably recognised.

(b) The "against" case

This section seeks to summarise the rationale for why remuneration should not be paid, subject to the considerations mentioned elsewhere in this paper:

(i) If the services of appropriately skilled, experienced and committed non-executive directors can be secured through non-remunerated volunteers, then it is questionable as to why it is in the best interests of the organisation to deplete its financial resources by paying non-executive directors.

(ii) Where the NFP enjoys the benefit of a range of services from volunteers, then unless the organisation intends to remunerate all its volunteers, why should the non-executive directors be singled out for special differential treatment?

(iii) Generally, many NFPs are 'mission' driven. The underlying reason for being involved in such organisations is typically passion for the mission or purpose of the organisation. There is risk of loss, or dilution, of that culture if those sitting on the ultimate decision making body of the organisation do not necessarily share that passion without financial incentivisation. The potential loss or dilution of the NFP's culture may have longer term unintended consequences.

(iv) As volunteers, non-executive directors of incorporated associations (i.e. non-Corporations Act entities) in at least a number of States/Territories gain the benefit of certain exclusions of personal liability for their endeavours, which exclusions would not apply if they were remunerated (refer Section 3(d) of this paper).

(v) Even if not financially remunerated, non-executive directors of many NFPs derive other compensatory benefits from their service (refer section 2(e)(ii) and 5(b) of this paper).

(vi) Finally, and importantly, for many NFPs (especially smaller community, charitable, social, arts and sporting NFP organisations), the organisation does not have sufficient financial resources to warrant the payment of such remuneration.

7 A potentially innovative approach especially for NFP organisation with DGR tax status

NFPs could pay remuneration so as to deliver the benefits recognised in section 6(a) of this paper (including 6(a)(vi)), yet at the same time, the board/committee member could elect to donate all or part of that remuneration back to the organisation as a financial benefactor.

This approach certainly has greater appeal if the NFP has deductible gift recipient (DGR) status with the Australian Taxation Office, as the tax otherwise payable by the non-executive director on the remuneration paid would be offset by the tax deductibility of the donation made.

8 Sample Policy Framework for Non-Executive Board/Management Committee Director Remuneration

For NFPs wishing to provide remuneration to their non-executive board/management committee members, Attachment "A" to this paper provides a Sample Policy template that may assist the organisation in developing its own policy on such matters.

9 Conclusion

Although board/management committee members of NFPs may historically largely have provided their services on a voluntary gratuitous and non-remunerated basis, the environment is changing. This paper reviews various legal, economic, governance and cultural issues that arise with respect to the remuneration of board/management committee members of NFPs.

About the Author

Steven Cole has over 40 years of experience on ASX, commercial, proprietary, public sector and NFP boards. Relevantly Steven's board and committee experience in the NFP sector has covered sporting and community associations; educational institutions (secondary and tertiary); business and professional associations; philanthropic fundraising causes; and charitable organisations in the aged/disability care, youth at risk and welfare sectors.

ATTACHMENT "A"

SAMPLE POLICY FRAMEWORK FOR REMUNERATION OF NON-EXECUTIVE BOARD/MANAGEMENT COMMITTEE MEMBERS OF LARGER NFP ORGANISATIONS

10 Introduction to Framework

(a) Statement of Purpose of Framework

The purpose of this Framework is to describe the organisation's policies and practices for non-executive director remuneration so as to:

- constitute sound non-executive director remuneration policy and practice within the existing governance, legislative and regulatory requirements and expectations that apply; and
- assure members, stakeholders and the community of integrity of process and outcome.

(b) Principles upon which this Framework is Premised

There are 5 key principles which have guided the development of this Framework:

(i) Alignment with contemporary accepted good governance standards and principles including:

- remunerate fairly and responsibly;
- compliance with legislative and regulatory spirit and intent;
- accountability and oversight by the board.

(ii) Integrity and probity of process and outcomes;

(iii) Transparency of process and outcomes

(iv) Benchmarking against objectively determined market and industry practices and reasonable expectations;

(v) Periodic review.

(c) Review and amendment of the Framework

The organisation accepts that corporate governance best practice continues to evolve. To this end, the organisation commits to the periodic review of this Framework to maintain alignment with contemporary best practice from time to time.

11 Context of the Framework

(a) Constitution

This Framework is complementary to the organisation's constitution and should be read in conjunction with it.

(b) Governance Charter

This Framework constitutes a policy of governance of the organisation adopted by the organisation's board in accordance with the terms of its Governance Charter.

(c) Remuneration Oversight

The board of the organisation itself, with the assistance, as required, of a relevant committee established by the board under the terms of its Governance Charter, is charged with responsibility for the implementation and oversight of this Framework.

(d) Principles of Sound Practice for Non-executive Director Remuneration Setting and Review

In applying this Framework regard will be had to the following:

(i) Processes that incorporate market benchmarking and/or independent advice (as appropriate), however *not* overly relying on advisers at the expense of the mature discussion and judgement of the board;

(ii) Scenario testing of proposed remuneration arrangements to ensure their reasonableness, having regard to cost/benefit/risk analysis in the best interests of the organisation;

(iii) Ensuring non-executive director remuneration outcomes are fair, reasonable and publicly justifiable;

(iv) Stakeholder and general market sentiment on non-executive remuneration issues for similar organisations;

(v) The importance of clearly communicating the organisation's approach to non-executive director remuneration and the policies applying from time to time;

(vi) The importance of accounting to the members of the organisation the actual remuneration paid from time to time by the organisation to its non-executive directors;

(vii) The importance of engaging with members and other relevant stakeholders about the organisation's approach to non-executive director remuneration;

(viii) The need to review the organisation's non-executive director remuneration arrangements and policies at least annually.

12 Determination and Approval of Maximum Non-Executive Director Remuneration Pool ("Pool")

(a) The Pool must be of appropriate value to meet the objectives of the Framework and policy determinations made under it.

(b) In determining the value of the Pool from time to time the following considerations should apply:

(i) The principle of remunerating fairly and responsibly having regard to the relevant work load, time commitments, skills and experience required, business complexity and risks assumed;

(ii) The number of non-executive directors required to properly, effectively and efficiently discharge the role, responsibilities and work of the board;

(iii) The quality, experience and skills of the non-executive directors;

(iv) Market benchmark, with other like NFP organisations, remuneration for non-executive directors of the quality, experience and skills required by the organisation having regard to the organisation's size (revenue and employee base), industry sector, regulatory compliance requirements, governance arrangements and business/operational complexity;

(v) The capacity of the organisation to pay non-executive director remuneration;

(vi) Any policy constraints applicable to the organisation's employed personnel generally in accordance with the organisation's HR policies and practices;

(vii) Reasonable contingency allowance to give some discretionary flexibility to the board to accommodate the organisation's short to medium term board succession planning and recruitment, strategic development and growth expectations including inflationary pressures, as well as contingency needs for extraordinary exertion circumstances that may arise.

(c) Only the members of the organisation by resolution in general meeting may set the value of the Pool. It is the responsibility of the board to adequately inform the members of relevant considerations and to recommend to the members in general meeting a resolution as to the value of the Pool to meet the organisation's reasonable needs.

(d) Directors and key management personnel should not vote on a resolution of the members to approve the value of the Pool.

(e) When seeking member approval in setting the value of the Pool from time to time, relevant principles of this Framework, and the rationale for them, should be addressed in explanatory notes to the relevant proposed member resolution.

13 Structure of Non-Executive Director Remuneration

(a) Remuneration for the organisation's non-executive directors, within the limit of the Pool, will be determined by resolution of the board, after consideration of any advice from the remuneration committee (as applicable), and will be structured on the following basis:

(i) "Base Fee"

An annual base fee payable on a monthly or quarterly accruals basis to each non-executive director including by reference to the scope and extent of the services ("Base Services");

(ii) "Additional Service Fee(s)" [as applicable]

An annual additional services fee(s) payable on a monthly or quarterly accruals basis to relevant non-executive directors whose responsibilities include additional services of a serial nature for the organisation ("Additional Services"). For administrative convenience, the board may suggest such Additional Services Fee(s) be a set percentage of the Base Fee. Such Additional Services Fee(s) are to recognise the extra services, over and above Base Services, provided by:

- the organisation's chair;
- non-executive directors serving on standing board committees (e.g. Audit, Risk, Governance etc as applicable);
- chairs of those standing board committees.

(iii) "Superannuation Fees"

Determination by the board as to whether or not the Base Fees and Additional Service Fees are exclusive or inclusive of superannuation, having regard to statutory base superannuation payment obligations for the organisation.

(iv) "Extraordinary Exertion Fees" [if appropriate, perhaps for larger NFPs]

The board retaining discretion to award “Extraordinary Exertion Fees” to non-executive directors, in addition to Base Fees, Additional Service Fees and Superannuation Fees, subject to the following considerations:

- The aggregate amount of Extraordinary Exertion Fees in any annual financial period may not exceed the difference between the value of the Pool and the aggregate of the Base Fees, Additional Service Fees and Superannuation Fees without prior approval of the members in general meeting;

- Conflict of interest protocols will be observed, including proposals for Extraordinary Exertion Fees to be considered for each non-executive director (in the absence of that non-executive director) by the remaining directors;

- Due consideration being given to taking independent consultancy advice as to the appropriateness and quantum of any prospective Extraordinary Exertion Fees to assure objectivity and integrity in decision making.

- Without limiting the discretion of the board in awarding Extraordinary Exertion Fees:

  - the nature of the circumstance or criteria that might warrant consideration for the award of such fees is more likely to apply where extraordinary issues arise requiring material and extraordinary exertion by a non-executive director(s), such as dealing with an organisational crisis, major acquisition or divestment, or other demanding event;
  - the quantum of the award of such fees may be based on an hourly rate, per diem rate, gross award or other reasonable basis having regard to the circumstances.

(b) The board, through and having regard to the role of the relevant board committee with responsibility for such matters (as appropriate), will:

- monitor the implementation of this Framework;
- monitor the market for non-executive director remuneration and good governance practices concerning such matters;
- annually review non-executive director remuneration levels and the value of the Pool approved by members;
- act in such manner to ensure that the principles upon which this Framework is premised continue to be honoured.

14 Expectations of arrangements with non-executive directors

Each non-executive director, by virtue of his/her appointment to office, acknowledges:

- the expected time and commitment expectations of them;
- there is a reasonable threshold tolerance expectation upon extra exertion and time which the non-executive director may be called upon from time to time without expectation of Extraordinary Exertion Fees;
- the fiduciary duties owed by non-executive directors to the organisation may preclude the non-executive director from withholding or limiting his/her services (other than resigning from office) at times of crisis, even if

reasonable remuneration and compensation for the extra time, effort, commitment and risk cannot be assured.

15 Generally

(a) This Framework is to be published as a policy determination under the organisation's Governance Charter.

(b) Nothing in this Framework in any way limits:

- the entitlement of a non-executive director to be reimbursed out of pocket expenses reasonably and properly incurred by him/her in accordance with organisational policy in that behalf;
- the organisation properly incurring professional development expenses from which a non-executive director may gain personal benefit;
- the organisation effecting and paying the premium for a policy of Directors and Officers Indemnity Insurance, to the extent not prohibited by law, under which a non-executive director may incidentally gain benefit as an insured party;
- the organisation indemnifying a non-executive director, to the extent not prohibited at law, from liabilities incurred by a non-executive director in the proper performance of their duties as a director.