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| Chapter 13 – Employees  |
| This chapter looks at the committee’s obligations if it engages employees. |

# 13.1 Introduction

Some committees engage employees, such as a reserve manager, to help with the running of the reserve.

* Major committees that manage reserves of regional or statewide significance are the most likely to engage employees.
* Local committees are less likely to engage employees, usually adopting a more ‘hands-on’ approach.

A committee will only employ paid staff if it has the **need** and the **financial resources** to do so, for example, some committees manage caravan parks.

All committees tend to supplement their activities with the use of volunteers (see chapter 15 ‘Volunteers’) and, where necessary, contractors (see chapter 14 ‘Hiring contractors’).

# 13.2 Only incorporated committees should employ staff

If your committee intends to engage employees, first check that it is incorporated.

It is simple for a committee to become incorporated under section 14A of the *Crown Land (Reserves) Act 1978*. The department can help your committee to do so. Contact your local DELWP [regional office](https://www2.delwp.vic.gov.au/communities-and-regions/regions-and-locations).

Incorporation means that the committee is a legal entity. The committee has the legal obligations of an employer. This helps to protect individual committee members personally.

For further information about incorporation, see 6.3 ‘Benefits and safety of incorporation’.

# 13.3 Who is the employer?

The committee is the employer, not the department or the Victorian Government. This means that the committee must meet all the legal obligations of an employer.

# 13.4 Obligations of employers

Your committee must meet its obligations to each person it employs, regardless of whether they are:

* full-time or part-time
* ongoing, fixed-term, or employed on a casual basis.

Some of the key obligations and recommended workplace practices of an employer are set out in the following pages.

# 13.5 Job description

Although not a legal obligation, a written job description is a vital good workplace practice. It helps the committee to employ the right person for the job. It also provides a clear record for both the committee and the employee of what the job involves.

A job description is a statement that includes:

* the title of the job
* reporting and accountability requirements
* the main duties involved
* the skills required
* any other requirements of the role, such as a driver’s licence
* length of employment, for example, two-year fixed-term contract.

Where appropriate, additional information such as the pay grade can be included in the job description.

# 13.6 Victorian Public Sector requirements

Almost all committees are **public entities** This means they are subject to the *Public Administration Act* *2004*. For example:

* The committee must treat its employees in line with the public sector employment principles in section 8 of the Act. Employment decisions must be based on merit; employees must be treated fairly and reasonably; equal employment opportunity must be provided; the human rights charter must be upheld; and there must be a reasonable avenue of redress against unfair or unreasonable treatment.
* Employees must follow the [Code of conduct for Victorian public sector employees](https://vpsc.vic.gov.au/resources/code-of-conduct-for-employees/).

The Victorian Public Sector Commission has issued [guidance](https://vpsc.vic.gov.au/resources/code-of-conduct-for-employees/) for public sector employers and employees about their respective requirements.

The small percentage of committees which are not public entities have similar standards and codes of conduct under different regulatory regimes. Your committee can contact its local DELWP [regional office](https://www2.delwp.vic.gov.au/communities-and-regions/regions-and-locations) for further information.

# 13.7 Executive employees

The Victorian Public Sector Commission provides advice on executive employment.

* The [public entity executive resource suite](https://vpsc.vic.gov.au/resources/victorian-public-entity-executive-resource-suite/) contains information such as managing executive employment contracts, remuneration and employment. There is also a standard executive employment contract.
* There must be an annual performance assessment of all executives.
* The Victorian Government sets binding levels of [executive remuneration](https://www.vic.gov.au/public-sector-executive-remuneration) for public entities. This process is managed by the [Victorian Independent Remuneration Tribunal](https://www.vic.gov.au/victorian-independent-remuneration-tribunal).

Call the Victorian Public Sector Commission on 03 9651 2020 with questions on executive employment.

# 13.8 Other employees – wages and conditions

The minimum wages and other minimum terms and conditions for a non-executive employee of the committee are set out in:

* an industrial award, or
* an enterprise agreement.

At a minimum, the terms and conditions of the award or enterprise agreement must meet the minimum terms and conditions in the [National Employment Standards](https://www.fairwork.gov.au/employee-entitlements/national-employment-standards) and the national minimum wage.

### National Employment Standards

The national minimum wage and the national employment standards are the **minimum entitlements** for employees in Australia. The national employment standards set out [10 minimum terms and conditions of employment](https://www.fairwork.gov.au/employee-entitlements/national-employment-standards). Some of the topics covered are maximum weekly hours, annual leave, long service leave, public holidays, other types of leave (for example, domestic violence), flexible working arrangements, and notice of termination and redundancy pay. See Part 2.2 of [the *Fair Work Act 2009*](https://www.legislation.gov.au/Details/C2019C00270/Html/Volume_1#_Toc533164836).

An award, enterprise agreement or other [registered agreement](https://www.fairwork.gov.au/Dictionary.aspx?TermID=2034) cannot provide for conditions that are less than the national minimum wage or the National Employment Standards.

## Awards

A modern award is a legal document which sets out the minimum terms and conditions of employment **on top of** the national employment standards. They include minimum wages, hours of work, overtime and penalty rates, allowances, rosters and breaks.

Many awards operate in Victoria. They are industry or occupation-based and apply to employers and employees who perform work covered by the award. Generally, employees of a committee of management are employed in the personal and other services industry. For further information contact the [Fair Work Commission](https://www.fwc.gov.au/). See also below.

## Enterprise agreements

If your committee has a number of employees, it may be appropriate to negotiate an enterprise agreement. However, this is unlikely to be a suitable option for all but a few major committees. Your committee can contact Industrial Relations Victoria about whether an agreement may be appropriate (irv.info@dpc.vic.gov.au).

An enterprise agreement made between a committee as employer and its employees:

* **cannot reduce terms and conditions included in the national employment standards**
* operates to the exclusion of the relevant modern award(s). However, each employee **must be better off overall** than under the award
* must have annual wage increases that comply with the Government’s Wages Policy for the public sector (see 13.10 ‘Public sector industrial relations policies’).

An advantage of having an enterprise agreement is that it allows tailoring terms and conditions that are specific for a particular employer, compared to an award that covers the whole industry or occupation.

### For further information contact the [Fair Work Commission](https://www.fwc.gov.au/) (see also below).

### Fair Work Commission

The [Fair Work Commission:](https://www.fwc.gov.au/)

- provides education, assistance, advice and guidance on workplace matters such as pay rates, leave, employee entitlements, awards and agreements, resolving workplace issues, and ending employment

- promotes and monitors compliance with workplace law

- investigates breaches of the Fair Work Actand related employment laws and obligations

- where appropriate, takes enforcement action.

### Victorian Fair Work Ombudsman

For further information about award rates and conditions, or about enterprise agreements, contact Victoria’s [Fair Work Ombudsman](http://www.fairwork.gov.au/Pages/default.aspx) (phone 131 394 from 8 am to 5.30 pm Monday to Friday).

The Fair Work Ombudsman’s [website](https://www.fairwork.gov.au/) has useful information on topics such as [hiring employees](https://www.fairwork.gov.au/find-help-for/small-business/hiring-employees), including the *Guide to hiring new employees* and the [Fair Work Information Statement](https://www.fairwork.gov.au/employee-entitlements/national-employment-standards/fair-work-information-statement) that must be provided to all new employees. There is also a *Guide to starting a new job*, which can be provided to new employees.

# 13.9 Employment contracts

Once your committee decides toengage a person as **an employee under an award or enterprise agreement**, it draws up **a contract of employment.**

* Open-ended contracts are applicable for employment of ongoing full-time and part-time employees where there is not a definite end date for the employment.
* The second type, fixed-term contracts, are used when a committee wishes to engage an employee for a specific period of time or task. These contracts include start and end dates of employment, for example, a six-month contract. Reasons for using fixed-term contracts may include, for example:
* the replacement of an employee on approved leave
* an unexpected increase in workloads
* undertaking a specified task funded for a specified period.

Full-time or part-time fixed term employees are generally entitled to the same terms and conditions as permanent employees.

Your committee should be mindful it is government policy that:

* The engagement of fixed term employees cannot be used for the purpose of undermining the job security or conditions of ongoing employees.
* Public sector employers should give preference to ongoing forms of employment over fixed-term and casual arrangements wherever possible.

# 13.10 Public sector industrial relations policies

The Victorian Government’s [Public Sector Industrial Relations Policies 2015](https://www.vic.gov.au/sites/default/files/2019-05/IR_Public_Sector_Industrial_Relations_Policies_2015.pdf):

* apply to all public sector employers and their **non-executive** level employees
* outline thekey **principles** underpinning the government’s approach to industrial relations and its **position** on key issues.

Example – key principle

A key principle is promoting industrial relations based on consultation and cooperation between employers, employees and their unions, and the right of employees to belong to a union and have access to effective union representation.

Example – key position

A key position is a commitment to making employees redundant as a last resort and giving priority to redeployment of employees whose roles have been declared surplus to needs.

An important part of the [2015 policies](https://www.vic.gov.au/sites/default/files/2019-05/IR_Public_Sector_Industrial_Relations_Policies_2015.pdf) are the Wages Policy and the Enterprise Bargaining Framework – for example, public sector employers must seek government approval to begin enterprise bargaining and abide by its cap on annual wage increases. The policies include model clauses for drafting enterprise agreements.

For further information contact Public Sector Industrial Relations on Irv.info@dpc.vic.gov.au.

# 13.11 Superannuation

An employer must contribute a sum equivalent to a set percentage of an employee’s wages into a superannuation fund. The [Australian Taxation Office](https://www.ato.gov.au/) provides information on [superannuation](https://www.ato.gov.au/Business/Super-for-employers/) and employer obligations.

# 13.12 Workplace requirements

Your committee must ensure that the work environment and treatment of its employees meets all legal requirements. For example:

## Occupational health and safety

Under sections 21 to 23 of the *Occupational Health and Safety Act 2004*, the committee must, as far as reasonably practicable, provide a safe and healthy workplace, whether or not in a building or structure, for:

* all staff employed by the committee
* other persons who enter the workplace, including contractors and volunteers.

The committee must also ensure that no one is exposed to a health and safety risk due to the actions of an employee of the committee.

WorkSafe Victoria has information on how the committee can meet its legal obligations, for example:

* [Guide to occupational health and safety compliance and enforcement framework 2018](https://www.worksafe.vic.gov.au/resources/guide-occupational-health-and-safety-compliance-and-enforcement-framework)
* [Guide to occupational health and safety regulations 2017](https://www.worksafe.vic.gov.au/resources/guide-occupational-health-and-safety-regulations-2017)
* [Occupational health and safety in boards](https://www.worksafe.vic.gov.au/resources/occupational-health-and-safety-boards), which has information on the OHS duties of boards and committees
* [Create a safe workplace](https://www.worksafe.vic.gov.au/safety).

**Further information**

See the [WorkSafe Victoria](https://www.worksafe.vic.gov.au/) website or phone 9641 1444 or 1800 136 089 (toll free).

## Fair and respectful treatment in the workplace

The committee has a legal duty to make sure that everyone who works for it is treated fairly and with respect. For example, it is unlawful to:

* discriminate against a person based on personal characteristics such as age, gender, sexual orientation, or marital status. See the [full list](https://www.humanrightscommission.vic.gov.au/discrimination/discrimination/types-of-discrimination) here.
* sexually harass or victimise a person or vilify someone because of their race or religion.

### Further information

The [Victorian Equal Opportunity and Human Rights Commission](https://www.humanrightscommission.vic.gov.au/) (1300 292 153) provides information about:

* [employers’ responsibility](https://www.humanrightscommission.vic.gov.au/the-workplace) in the workplace under Victorian and federal laws
* [unlawful discrimination](https://www.humanrightscommission.vic.gov.au/discrimination) and Victoria’s *Equal Opportunity Act 2010*
* Victoria’s [Charter of Human Rights and Responsibilities](https://www.humanrightscommission.vic.gov.au/human-rights).

# 13.13 Record keeping

A key obligation of an employer is to maintain the employment records required by law.

Example

* Your committee must keep all the information it needs to prove that it is meeting the provisions of the award, enterprise agreement, or employment contract under which the employee is employed.
* As part of your committee’s obligations, keep records of each employee’s leave entitlements, leave accrued, and leave taken throughout the course of their employment.
* Time and wages records must be kept for seven years from the date of the first documented record.

# 13.14 Taxes and on-costs

Employment conditions change often. This information is provided as a guide only. A good source of up-to-date information is the [Australian Government Department of Employment](http://employment.gov.au/).

## Income tax

Once your committee employs staff, it must register with the [Australian Taxation Office](http://www.ato.gov.au/).

The Australian Taxation Office has introduced a [Single Touch Payroll](https://www.ato.gov.au/Business/Single-Touch-Payroll/) system. This is a compulsory new way of reporting tax and superannuation. Your committee must use this system if it employs four or more staff. If it employs less than four staff, reporting options for [micro employers](https://www.ato.gov.au/Business/Single-Touch-Payroll/In-detail/Single-Touch-Payroll-employer-reporting-guidelines/?anchor=Microemployers1to4employees#Microemployers1to4employees) can be used instead.

## Payroll tax

Payroll tax is paid by employers to the Victorian Government. As at the 2018-19 financial year, your committee is liable for payroll tax if it has a monthly wages bill of more than $54,166 or an annual bill of $650,000. These rates increase regularly. For further information see the [State Revenue Office](https://www.sro.vic.gov.au/payroll-tax) website.

## WorkCover insurance

WorkCover is a no-fault, compulsory insurance scheme that provides coverage to employers in the event of work-related injury or death to their employees. Your committee must have a WorkCover policy if it employs staff.

For further information see [Getting started with WorkCover insurance](https://www.worksafe.vic.gov.au/insurance).

# 13.15 Employees of reserve users

If a person or organisation using the reserve hires staff, that person or organisation is the employer.

Example

If the committee has issued a lease to a tenant to operate a café on the reserve, the tenant is the employer of any staff that they employ to prepare meals or wait on tables.

# 13.16 Electronic copy

An electronic copy of this document is available from the DELWP website ([www.delwp.vic.gov.au/committees](http://www.delwp.vic.gov.au/committees)).