

WPS LAW

Related party benefits



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This document is intended as a guide only. This does not constitute legal advice. There may be additional and important considerations that should be taken into account in your specific circumstances. If you or your organisation has a legal issue, you should obtain professional advice from a legal practitioner.

What is a related party benefit?

- A related party benefit is when the PBC gives a financial benefit to someone with a close relationship to the corporation. This may be a person or another organisation.
- There are rules to make sure that related party benefits are fair and in the best interests of the PBC.

What is the bottom line?

- Members must approve all related party benefits. This can be done at a general meeting or if all the members sign a resolution approving the benefit (circulating resolution).
- There are some situations where the corporation does not need members' approval for a related party benefit. For example, where the financial benefit is given to meet a native title obligation.
- Attached to this factsheet is a checklist for PBCs to follow when approving financial benefits.

Who is a related party?

A 'related party' means a person or entity closely involved with the PBC and its family members. Related parties include directors of the corporation, their immediate family members, and corporations/entities they control. The CATSI Act sets out a definition of 'related party' in section 293-1 and includes directors, their spouses, parents, and children. Before approving a financial benefit, the PBC directors should check to see if the person or entity receiving the benefit is a 'related party'.

What is a benefit

Anything that gives someone some reward, profit or advantage can be a benefit. Benefits can be money, food, gifts, or property. Other things can be benefits too, like loaning money, buying or selling things, giving a job to a family member, or giving a discount. The definition of what constitutes a 'benefit' is given a broad meaning. ¹

What is the rule?

To make sure that any benefit given to a related party is fair, the benefit must be approved by the members of the PBC.²

- The first step for the PBC is to give notice of the proposed related party benefit to the Registrar (ORIC). The notice must include the details of the proposed benefit and all the material that the PBC intends to give its members.³
- The decision to approve a related party benefit can be made at a general meeting. Members must be given an 'explanatory statement', setting out who the benefit is proposed to be given to, what the benefit is, any recommendation about the benefit made by a director, any interest the director has in the benefit, and any other information to help members decide whether it is in the PBC's interest to approve the benefit.⁴
- Members should be given copies of any other relevant documents.⁵
- If the related party benefit is approved at a general meeting, the approval is valid for 15 months.⁶

Are there any exceptions to the rule?

Members don't need to approve every benefit to a related party. The following benefits don't need member approval:⁷

- reasonable wages paid to employees or officers of the PBC
- paying employees or officers of the PBC for reasonable expenses incurred in performing the duties of the PBC, such as reasonable travel costs and fuel
- if all members are eligible for the same benefit
- benefits to meet a native title obligation such as consulting with the common law native title holders
- benefits to comply with a Court order

All other related party benefits must be approved by the members.

1. CATSI Act, s 293-5.

2. CATSI Act, s 284-1(1).

3. CATSI Act, s 290-5.

4. CATSI Act, ss 290-10 and 290-20.

5. CATSI Act, s 290-5(1)(c) and s 290-20(1)(c).

6. CATSI Act, s 284-1(1)(a)(ii).

7. CATSI Act, Div 287.

What happens if the PBC breaks the rule?

If the PBC gives a benefit without member approval, the PBC could face a fine of up to \$200,000.⁸ If a person is involved in a breach of these rules dishonestly, they could face a much larger fine or jail for up to 5 years.⁹

8. CATSI Act, ss 284-5, 386-10, 386-1(1)(b).

9. CATSI Act, s 284-5(3). The fine amount is 2,000 penalty units and so is dependent on the current value of a unit (\$210 per unit, plus indexation amount added each financial year: Crimes Act 1914 (Cth), s 4AA).

Checklist for financial benefits

Is the transaction a related party benefit?	Type of native title decisions to which the process applies	Yes or No
Is there a financial benefit?	<p>A financial benefit is an “advantage, profit, reward, or gain that has a monetary value. It could include getting money, goods, services, discounts, business contracts, jobs or loan.”¹⁰ Remember, this is a broad definition.</p> <p>Some examples include:</p> <ul style="list-style-type: none"> ◇ giving a director goods, such as money, a car, fuel or food ◇ giving a director a director’s family a corporation house without asking for rent ◇ buying a building from, or selling a building to, an organisation that controls the corporation ◇ loaning money to a director without asking for interest payments or if loans are not available to other members ◇ loaning money to a director’s daughter without asking for interest payments ◇ giving a contract to provide professional advice, such as financial management, or services, such as repairing houses, to an organisation that is controlled by one of the directors ◇ giving a job to the wife or husband of a director ◇ not requiring payment of a debt owed to the corporation by an organisation that one of the director’s controls. 	
Is the financial benefit being directed to a related party?	<p>People:</p> <ol style="list-style-type: none"> a. directors b. directors of an entity that controls the PBC c. each of the persons making up the controlling entity d. spouses including de facto spouses of the people above (a, b and c) e. parents and children of all the people above (a, b, c, and d). 	

10. See ORIC factsheet on related party benefits

Is the transaction a related party benefit?	Type of native title decisions to which the process applies	Yes or No
Is the financial benefit being directed to a related party?	<p>Entities:</p> <ul style="list-style-type: none"> ◇ an entity that controls the PBC ◇ an entity controlled by people who are related parties (as above) any entity which was a related party within the previous 6 months ◇ an entity which believes or has reasonable grounds to believe that it will become a related party of the corporation in the future ◇ an entity which works together with a related party of the corporation on the understanding that if the corporation gives the entity a financial benefit the related party will get one too. 	
Is member approval required?		Yes or No
Does the transaction fall within a specific exemption?	<p>The following transactions do not require member approval:</p> <ul style="list-style-type: none"> ◇ reasonable remuneration for the PBC's officers or employees ◇ paying the reasonable expenses of an officer or employee of the corporation ◇ financial benefit to a member of the corporation when all members are eligible for the same benefit ◇ financial benefit to meet a native title obligation ◇ financial benefit given under a court order. <p>The PBC may also be able to apply to the Registrar to have the proposed related party transaction proceed without member approval.</p>	
What is the process for obtaining member approval?		Yes or No
Prepare the required material for members' meeting	<p>Prepare material for a general meeting or the AGM:</p> <ul style="list-style-type: none"> ◇ Notice of meeting (including place, date and time for the meeting) ◇ Proposed resolution to approve the related party benefit ◇ Explanatory Statement to accompany the proposed resolution (see section 290-10 of the CATSI Act for details) ◇ Any other documents that may help the members decide whether to approve the benefit. 	
Notify ORIC at least 14 days before you notify members	<p>All the above documents must be lodged with the Registrar 14 days prior to notifying members. Registrar has 14 days to comment. Any comments must be included with notice to the members.</p>	
Notify members at least 21 days before the meeting	<p>Notice and documents provided to members 21 days' prior to meeting. Documents must be identical to those provided to the Registrar. Any comments from the Registrar must be included with the notice.</p>	
Members' vote on resolution to approve benefits	<p>By ordinary resolution. Related parties or conflicted members should abstain from voting.</p>	
Record of meeting	<p>Record in the minutes the number of votes in favour and against the resolution and note down who was ineligible to vote because they are a related party or associate of a related party.</p>	