



# NSW Payroll Tax Exemptions

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## Exempt wages in NSW

Exempt wages are predominantly those paid by non-profit organisations that are religious institutions, charitable organisations or organisations set up for the public benefit.

Some wages are exempt based on the circumstances in which they are paid. This includes wages paid to employees on maternity, paternity or adoption leave or on military leave.

Wages paid to contractors have a number of exemptions and labour content provisions whereas employment agency agreements have only one exemption. Those provisions are not covered in this factsheet and can be found in the factsheet 'NSW Payroll Tax Contractors and Employment Agents' or at [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au)

## Employer based exemptions

### Non-profit organisations

Wages paid or payable by non-profit organisations are exempt subject to section 48(2) of the *Payroll Tax Act 2007* if paid or payable by:

- a religious institution
- a public benevolent institution
- a non-profit organisation whose objectives are solely or dominantly for charitable, benevolent, philanthropic or patriotic purposes.

The following organisations are not exempt under this provision:

- a school
- an educational institution
- an educational company
- an instrumentality of the State.

Education institution means a tertiary education provider and an educational company is a company in which an educational institution has a controlling interest.

Subsection 48(2) requires that the wages must be paid or payable to a person engaged exclusively for work of a kind ordinarily performed in connection with the religious, charitable, benevolent, philanthropic or patriotic purpose of the organisation. Persons engaged directly in the primary work or in administrative or management work which is predominantly associated with the organisations charitable or similar work are accepted as being exclusively engaged in that work.

Wages paid to persons working in a non profit organisation that has wholly charitable purposes will be exempt even if those persons are engaged in commercial work of the organisation.

However if a non-profit organisation has a charitable purpose but it is not wholly charitable, only the wages paid to the persons engaged exclusively in the organisation's charitable purpose, including commercial activities connected with the charitable purpose, are exempt from payroll tax.

Wages paid to persons who are partly or exclusively engaged in commercial activities which are not connected with the charitable purposes of the organisation are not exempt.

## Other exempt employers

Wages are exempt wages if paid or payable by:

- non-profit private schools and educational institutions that provide education at the secondary level and below
- the Governor of a State
- the Commonwealth War Graves Commission
- the Australian-American Fulbright Commission.
- health care service providers to a person engaged exclusively in the kind of work ordinarily performed in connection with the conduct of a health care service provider. Health care service providers are:
  - ▶ a public hospital
  - ▶ a non-profit hospital that is carried on by a society or association
  - ▶ area health services
  - ▶ Home Care Service
  - ▶ Ambulance Service.

## Local and county councils

Wages paid by a council, county council or local government business entity are exempt except when paid or payable for or in connection with:

- the construction of any buildings or works, or the installation of plant, machinery or equipment for use in the supply of electricity or gas, water supply, sewerage, liquefied petroleum or hydraulic power and the operation of:
  - ▶ abattoirs
  - ▶ public markets (which includes food markets)
  - ▶ parking stations
  - ▶ cemeteries or crematoria
  - ▶ hostels
  - ▶ coal mines
  - ▶ transport service
  - ▶ supply of building materials
  - ▶ a prescribed activity.

## Other exemptions

Wages are exempt wages if paid or payable to an Aboriginal person who is employed under a Community Development Employment Project being a project funded by the Department of Employment and Workplace Relations of the Commonwealth or the Torres Strait Regional Authority.

## More information on the legislation

Copies of the *Payroll Tax Act 2007*, and the *Taxation Administration Act 1996* and their amendments can be viewed at the website of the NSW Parliamentary Council's Office: [www.pco.nsw.gov.au](http://www.pco.nsw.gov.au)

## Maternity, paternity or adoption leave

Wages are exempt wages if they are paid or payable to an employee in respect of:

- maternity leave, being leave given to a female employee in connection with her pregnancy or the birth of her child in respect of a maximum of 14 weeks full time pay, or
- paternity leave, being leave given to a male employee in connection with the pregnancy of a woman with his unborn child or the birth of his child in respect of a maximum of 14 weeks full time pay, or
- adoption leave, being leave given to an employee in connection with the adoption of a child by him or her in respect of a maximum of 14 weeks full time pay.

This exemption does not apply to wages paid or payable as annual leave, long service leave, sick leave or any part of wages paid or payable in respect of maternity, paternity or adoption leave that comprises fringe benefits. Medical records or a statutory declaration will be required for this exemption.

## Emergency service volunteers

Wages are exempt wages if they are paid or payable to an:

- employee in respect of any period when he or she was taking part in bushfire fighting activities as a volunteer member of a rural fire brigade under the *Rural Fires Act 1997*.
- employee in respect of any period when he or she was engaging in emergency operations as a volunteer member of an emergency services organisation under the *State Emergency and Rescue Management Act 1989*.

This exemption does not apply to wages paid or payable as annual leave, long service leave or sick leave.

## Non-profit group apprenticeship and traineeship schemes

Wages, including superannuation, allowances and fringe benefits, are exempt wages if they are paid to an employee who is employed in accordance with a non-profit group apprenticeship or traineeship scheme approved by the Director-General of the Department of Education and Training.

## Defence personnel

Wages are exempt wages if they are paid or payable to an employee who is on leave from employment due to being a member of the Defence Force of the Commonwealth or the armed forces of any part of the Commonwealth of Nations.

## Charities

To be recognised as a charity, an organisation must be non-profit, for the public benefit, and be for the:

- relief of poverty or sickness or the needs of the aged, or
- advancement of education, or
- advancement of social and community welfare, or
- advancement of health, or
- advancement of culture, or
- advancement of religion, or
- advancement of the natural environment, or
- other purposes beneficial to the community.

## MORE INFORMATION



[www.osr.nsw.gov.au](http://www.osr.nsw.gov.au)



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Help in community languages is available.

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## Public benevolent institutions

The organisation must be non-profit and set up, usually in perpetuity, for the:

- relief of sickness, suffering, distress, misfortune, destitution or helplessness, or
- benefit of members of a community or of a particular locality, who are suffering from a particular disadvantage.

The institution must provide services without discrimination to every member of that section of the public for which the institution was created according to its constituent documents.

## How to apply for an exemption

To apply for an exemption from payroll tax, you must provide:

- your organisation's Constitution and/or Memorandum and Articles of Association or proof of incorporation under the Associations Incorporations Act, including the organisation's rules. This must show the organisation's objectives and non-profit status. All documentation must be signed and dated and should support the date you are requesting the exemption to start from.
- a copy of the organisation's last audited annual report
- details of the day to day activities and services provided by the organisation
- details of other jurisdictions where wages are paid
- any other relevant information in support of your application.

Download a copy of the Application for Exemption – Payroll Tax (OPT 007) form from [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au) or contact OSR during business hours.

## What if your organisation's circumstances change?

If you are an organisation approved as paying exempt wages, you must tell OSR anytime there is a change to the organisation's governing rules (specifically the organisation's objects and/or non-profit status) to confirm your exemption remains valid. These include the organisation's:

- constitution
- rules
- memorandum/articles of association
- organisation name.

## Period of exemption

If you are an organisation approved as paying exempt wages, the exemption status will be reviewed every three years to ensure your exemption remains valid.

## Penalties

Under the *Taxation Administration Act 1996*, it is an offence to give false or misleading information. You may also be liable to interest and/or penalty tax. OSR conducts random checks to ensure compliance.