

TAKING YOUR COMMITTEE TO THE NEXT LEVEL

Types of Community Organisations

- Unincorporated groups
- Incorporated associations
- Co-operatives
- Companies limited by guarantee
- Indigenous corporations

Should you Incorporate?

Advantages:

- Simplifies and clarifies the management and ownership of money and other assets of the body
- Provides some legal and financial protection for the management committee
- Clarifies and formalises the objectives of the association
- Sets out regulations about how the association shall operate
- Allows organisations to apply for a much wider range of public and private funding
- Allows some incorporated bodies to enjoy tax advantages

Disadvantages:

- Cost (time and money) in following government regulations.
- Usually required to have public liability insurance.
- Proper membership records and minutes must be kept.
- Public scrutiny of the association's activities and financial matters

Governance

- Committee members have legal duties even though they are volunteers.

- The relationship between a Committee member and the organisation is one of trust – a “fiduciary relationship.”
- Duties arise under common law and legislation.
- Does not matter how small or informal your organisation is, or how many members it has, or how many days or years of experience you have as a Committee member.
- If you do not comply with your duties you could be legally responsible and penalties can apply.

Four Main Duties

Duty to Act in good faith and for a proper purpose

Good faith: You should act honestly, fairly and loyally when making decisions for your organisation

Proper purpose: You should have regard to the purpose of the organisation and its membership as a whole, as well as its finances and operations

Tips:

- ✓ **Know and understand your organisations objectives**
- ✓ **Remember that your duty to act in the best interests of the organisation overrides any duties you may have to other organisations or people**

Duty to act with reasonable care and skill

- Take your role as a Committee member seriously.
- Make use of any skills and experience you have for the benefit of the organisation.
- Give sufficient time, thought and energy to any tasks you have undertaken and to decisions you are required to make.

- Monitor the affairs, activities, and strategic direction of the organisation.
- Understand your organisation's current financial position at all times.
- Prevent your organisation from continuing to incur debts if you know or suspect that your organisation cannot meet its current debts when they fall due (duty to avoid insolvent trading).

Duty not to misuse information or position

As a current or former Committee member, you must not make improper use of:

- your position as a Committee member, or
- information you obtain through your position as a Committee member

to either:

- gain advantage for yourself or any other person or organisation, or
- cause detriment to the organisation

Tip:

- ✓ **Make sure all Committee members understand your expectations about use of information and position.**

Duty to disclose and manage conflicts of interest

A conflict of interest arises when a Committee member is presented with the opportunity to use their position for their own personal benefit, or for the benefit of relatives, friends, or another organisation.

You **MUST** disclose any conflict of interest.

Best practice after disclosure:

- Committee member should not be present during discussion of matter.
- Committee member must not be present for or vote on the matter.
- Ensure that the minutes record the fact that a conflict was declared and the fact that Committee member was not involved in the decision.

Consequences of Breaching Duties

Below is a list of the penalties for breaching your duties under the Associations Incorporation Act 2009:

- *Section 31*, Non-disclosure of conflict of interest, Maximum penalty 60 penalty units (\$6,600).
- *Section 32*, Dishonest use of information, Maximum penalty 240 penalty units (\$26,400) or imprisonment for 2 years, or both.
- *Section 33*, Dishonest use of positions, Maximum penalty 240 penalty units (\$26,400) or imprisonment for 2 years, or both.
- *Section 40*, Providing pecuniary gain for members, Maximum penalty 60 penalty units (\$6,600).
- *Section 68*, Insolvent trading, Maximum penalty 50 penalty units (\$5,500) or imprisonment for 1 year or both.
- *Section 69*, Fraudulent conduct, Maximum penalty 100 penalty units (\$11,000) or imprisonment for 2 years, or both.

Offences by Committee Members

If an association contravenes, whether by act or omission, any provision of the Associations Incorporation Act 2009 or the regulations, each committee member of the association is taken to have contravened the same provision if he or she knowingly authorised or permitted the contravention.

QUESTIONS TO KEEP IN MIND WHEN THINKING ABOUT YOUR COMMITTEE DUTIES

- ❖ Is this decision in the best interests of the organisation?
- ❖ Do I have all the information needed to make an informed decision?
- ❖ Is this decision in line with the organisation's Mission?
- ❖ Do I have a conflict of interest?
- ❖ Can the organisation actually afford this?