

Fiduciary Duties Overview

Ensuring your organisation abides by its Fiduciary Responsibilities

Fiduciary responsibilities rest with the directors of an organisation. It is the responsibility of directors to act honestly and in good faith and to the best of their ability in the best interests of the organisation or company.

It is also a director's duty to ensure the organisation acts in accordance with the Corporations Law and all other laws governing an organisation operating in your State or Territory and acts honestly and credibly in all dealings with the organisation and its stakeholders including members.

Given the recent debate about corporate governance and fiduciary duties in the wake of numerous corporate disasters, there is a greater focus on the need for directors of all organisations to carry out their fiduciary duties.

What are some examples of fiduciary responsibilities?

Directors hold a position of trust. They make decisions that affect the future of an organisation. Large amounts of money can be involved with various appointments, grants and contracts, making it vital for directors to act and make decisions that do not suit their own agendas, but are made in good faith and with the primary duty being to the organisation. The community should be confident that a director will act in good faith and always in accordance with the law.

They should also:

- not take advantage of their position to further their own needs;
- be honest and industrious;
- never use information gained through their privileged position to advantage a friend/associate outside the organisation;
- provide adequate information to authorised persons or members when requested and not mislead them in any way;
- disclose any potential conflict of interest;
- act with care and diligence;
- maintain confidentiality of information that is only made available to the decision makers;
- never knowingly place the organisation in a potentially litigious position; and
- ensure all decisions made are to the advantage of the organisation or group, not the individual or any particular interest group.
- ensure they act according to the constitution of the organisation.

As a board or committee member am I liable for losses?

Please note: When it comes to being sued, or being held personally liable for some action or lack of action, legal counsel should always be sought. The information below is provided simply as a guide and should not be relied upon as legal advice.

Just like any company, incorporated community groups are subject to the law. These take various forms but there are responsibilities for directors at both commonwealth and state level. If there are breaches of these laws, financial and other penalties can be levelled against the organisation and directors may also be held personally liable.

If community groups or associations register to be incorporated, then there are certain legal advantages providing the group accepts certain legal responsibilities. Incorporation is a system of state or territory government registration. It is voluntary and enables registered groups to be

recognised as a separate entity to its members. It therefore offers some protection for those in decision-making roles from any debts or liabilities sustained by the group. Although to be protected as an incorporated association, the organisation must not make a profit for its members - a surplus is allowable but that surplus should not be able to be disbursed to any individual instead this would be held as retained earnings and/or invested back into the organisation.

Incorporation covers the organisation; if an individual member acts illegally or negligently they can still be personally sued for losses and damages.

All organisations need to abide by the relevant legislation of the commonwealth and the state, which include:

- occupational health and safety
- trade practices
- equal opportunity
- fair trading
- environment protection

What can I do to ensure that we meet our fiduciary responsibilities?

For community groups to ensure they are run legally, responsibly and ethically, they need a clear and defined organisational structure and a clear and defined mission and all Board members need to be clear about their responsibilities.

Board members should be open and accountable and put the needs of the organisation before their own.

To ensure fiduciary responsibilities are met:

- implement guidelines detailing appropriate behaviour for board members and outline penalties for any breaches;
- ensure board members are aware of all relevant commonwealth and state laws that govern the organisation;
- review the board's performance to ensure the group adheres to its mission;
- make sure there is accurate and clear financial reporting - and that your finances are audited each year in accordance with legislative requirements;
- ensure the board has complete information on which to base financial and other decisions;
- set values and ethical guidelines;
- determine long-term goals, and make the board account for changes in strategic direction;
- provide board handovers and training for new board members; and
- try to ensure that there is a broad range of skills at board level.

Being a director does not simply mean abiding by state and commonwealth laws. These days, people are also measured by their ethical standards. Some actions may fall within the law, but that does not necessarily mean they will be accepted as "good" decisions by an organisation or by society in general.

This is why it is important to clearly state the organisation's mission and decide very early on what actions the community group will take to achieve its goals. Is money from any source OK? Can any group/person hire your facility and promote their cause on site? There are numerous ethical issues that while not illegal are a major part of deciding if a director is working in the best interests of the organisation.

You can't prepare for every possible ethical dilemma that your organisation might face, but by implementing strict organisational guidelines and being clear about what is - and isn't acceptable - you can broadly define what your community group will and won't accept on the ethical front.