

## Committee Member Duties Series:

### Duty not to misuse position or information\*

If you are a current or past Committee Member you cannot use your position or any information access while being in that position to gain advantage or to cause harm to your Association.

In Tasmania the legislation governing Incorporated Associations is silent on duties which means knowledge about your duties comes from the common law (sometimes called 'judge made law')

#### The law in Tasmania

There is no written law in Tasmania on this duty. The common law says that committee members must not take **property, information or business opportunities** from the organisation.

This duty is linked to the duty not to place personal interests above the duty to act in the best interests of the Association.

To help understand how these duties work, we can look at the commonwealth law (The *Corporations Act 2001*) which creates duties for company directors.

#### Commonwealth law

There are two specific duties:

1. The duty not to misuse your position
2. The duty not to misuse information

Note: These statutory duties also apply to employees.

The duty states directors, officers and employees must not improperly use their position or information gained through their role to gain an advantage for themselves or someone else or cause detriment to the company or corporation.

#### Gaining advantage or causing detriment

'Gaining advantage' might apply to the person directly, or a friend, family member or other organisation they are a part of. It might look like:

- Awarding a contract for service to a family member's business
- Using your position to give someone a job or to exclude a member from activities
- Using your organisation's money to buy or pay for things for yourself or another person which is not for the benefit of the company
- Sharing the organisation's confidential strategic plans with another organisation
- Misusing information like member lists
- Accepting a bribe

'Causing detriment' might look like:

- Causing a financial loss
- Doing something that damages the reputation of the organisation
- Taking a business opportunity from the company

## How to prevent breaches

If you are a Committee Member of an Incorporated Association in Tasmania, there are some straightforward steps to help you act properly and avoid misusing your position or any information accessed.

- Have a clear confidentiality policy that explains what information must remain confidential (that is between Committee Members). The policy can cover the consequences of a breach
- If in doubt, clarify what information is confidential at Committee meetings and record this decision in the Minutes
- Have basic safeguards such as two signatures on bank accounts
- Have a decision-making system to maintain oversight of decisions
- Keep your conflicts of interest register up to date to identify where potential risks may arise

*Practical Tip: If your not-for-profit is a company limited by guarantee, director duties will be found in the Corporations Act. They are very similar to the common law duties.*

*If you are not sure of your organisation's status, read the factsheet: What is a Company (and how is it different to an Incorporated Association)?*