

## ARE YOU A COMMITTEE OR A BOARD?\*

You sit on a not-for-profit committee or maybe it's a board. Does it really matter what you call yourselves?

Maybe not in practice, but it will dictate which laws apply, your organisation's legal status and your personal legal obligations.

As a matter of good governance, it's best to start with a clear understanding of the legal status of your organisation.

If you are thinking of volunteering with an organisation with your local community, it is important to understand what legal obligations you are assuming before your join.

## WHAT IS THE LEGAL DIFFERENCE?

In simple terms, Companies have boards and Associations have Committees.

Companies are registered under a commonwealth Act (*Corporations Act 2001*) and their legal obligations are specified in this Act. They are governed by Boards and the people on the board are called Directors.

Directors have specific legal duties to act with care and diligence and in the best interests of the company. These duties are written in the *Corporations Act*.

Associations are incorporated under the state or territory law in which they operate. They are governed by Committees and the people on them are called Committee Members.

Sometimes the Committee is called the Committee of Management and other times a Board. Whilst the term used won't change your legal status, it is helpful to pause a check everyone is clear what your organisation actually is under law.

Committee Members in Tasmania have legal duties that come from judge made law because Tasmania is the only state in Australia that does not list the duties in its legislation (*Associations Incorporation Act 1964*).

This gap in the legislation does make it harder for Committee Members to locate and read about their duties, but it does not remove the obligation to act with care and diligence and in the best interests of the Association.

*We have separate Fact Sheets on the duties of Committee Members.*

## HOW DO YOU FIND OUT WHAT YOU ARE?

If your organisation is a Company, it will have an Australian Company Number and will have been registered with the Australian Securities and Investments Commission (ASIC). Companies have their own legal status.

If your organisation is an Association, it might be registered with Consumer Building and Occupational Services (CBOS) in Tasmania. This means it is an Incorporated Association and so has its own legal status. For more information on this, read the *What is an Association Fact Sheet*.

Directors of Company boards and Members of Association Committees act on behalf on their organisation. They do things for the organisation, acting in its name. Things like opening bank accounts, hiring staff or leasing buildings to operate from.

Your association might not be registered which means it is an unincorporated Association. This means it has no legal status and your committee members are acting in their personal capacity.

If you don't know whether your Association is registered with CBOS you can check the name. If it has the word 'Incorporated' or 'Inc.' after the name, this is a good indication it is incorporated.

*Practical tip: People on the Committee are called Committee Members but the word 'member' is also used to describe the people who might pay a fee to join a community association like a sports club, fishing club or run club. This is why sometime Committee Members call themselves Directors.*