

Governing a community organisation

The key legal duties of NFP committee members
Regional Association of Neighbourhood and Community Houses (RANCH)
11 May 2021
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Lawyers



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Introduction



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Introduction

What we will cover

- Part 1: The role of the committee
- Part 2: Understanding the legal status of your NFP
- Part 3: Following your rules and purpose
- Part 4: Complying with the 4 key legal duties
- Part 5: Other laws to keep in mind
- Part 6: Liability and protections for committee members
- Summary and questions



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Introduction

Things to note

- Questions, activities & discussion
- Workbook and slides
- Timing and breaks
- Eligible for CPD points through Volunteering Victoria (for members)



- Focus is on Victorian law
- Legal information only and not legal advice



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Part 1: Role of the committee

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Role of the committee

What is the **key role** of people who sit on the committee of a not-for-profit organisation?



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Role of the committee



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Role of the committee

Governance versus management

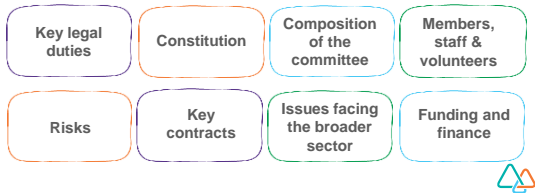
Governance	Management
Follow purposes	Implementing the strategic plan (operational function)
Ensure group operates within the law	Organising work
Ensure financial viability	Allocation of resources
Oversee the employment of staff to carry out management functions	Reporting to committee
Other?	Other?



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Role of the committee

Key issues to consider



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Part 2: Understanding your organisation

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Understand your NFP

Key information about your organisation's legal status

Your organisation:

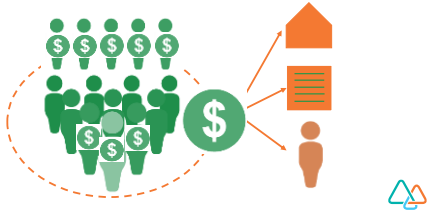
1. is a not-for-profit organisation
2. is incorporated
3. has chosen the legal structure of incorporated association
4. may have the status of a registered charity
5. may access some tax concessions, exemptions and endorsements available to not-for-profits and charities



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Understand your NFP

In a for-profit group...



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Understand your NFP

In a not-for-profit group...



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Understand your NFP

Key information about your organisation's legal status

Your organisation:

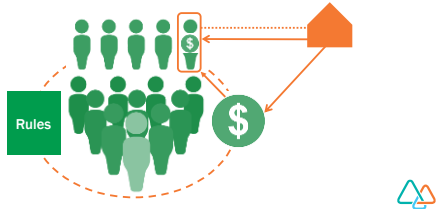
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Understand your NFP

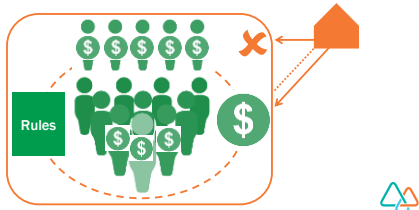
Unincorporated group



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Understand your NFP

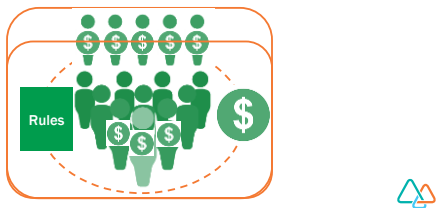
Incorporated group



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Understand your NFP

Note: limited liability has exceptions



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Understand your NFP

Key information about your organisation's legal status

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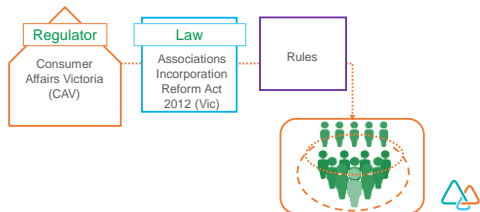
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Understand your NFP

If your NFP is a Victorian incorporated association



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Understand your NFP

Key information about your organisation's legal status

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Understand your NFP

Cth charity status



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Understand your NFP

Cth charity status

- An organisation is a 'registered charity' if it is registered with the Australian Charities and Not-for-Profits Commission (ACNC)
- The ACNC is the federal regulator for charities
- Cth registered charities are required to comply with:
 - Australian Charities and Not-for-profits Commission Act 2012 (Cth)
 - Charities Act 2013 (Cth)



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Understand your NFP

Cth charity status (Charities Act 2013)

Charity =

1. Not-for-profit
- +
2. All purposes charitable and for public benefit
- +
3. No disqualifying purposes
- +
4. Not an individual, political party, government entity

12 defined charitable purposes



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Understand your NFP

Cth charity status

Advancing health	Advancing education	Advancing social and public welfare	Advancing religion	Advancing culture	Promoting reconciliation ...
Promoting or protecting human rights	Advancing the security or safety of Australia	Preventing or relieving the suffering of animals	Advancing the natural environment	Other purposes reasonably analogous to these purposes	Promoting or opposing a change to a matter established by law, policy or practice...



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Understand your NFP

Cth charity status: www.acnc.gov.au



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Understand your NFP

Common tax concessions and endorsements

Commonwealth tax concessions / endorsements

Income tax exemption	GST concessions	Fringe benefits tax rebate	Fringe benefits tax exemption	Deductible Gift Recipient status
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State tax concessions

Payroll tax exemptions	Land tax exemptions	Stamp duty exemptions
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Understand your NFP

Tax status

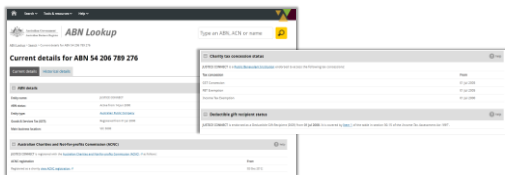
- A NFP's tax status is based on the purpose clause in its constitution (and its charity status)
- Must do what NFP is set up to do – if not, or if it changes, the ATO can review and remove tax concessions
- Charities should take care when starting new projects or auspicing – potential tax consequences
- A committee member's role is to ensure tax status is reviewed and protected



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Understand your NFP

Cth tax status: www.abr.business.gov.au



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Understand your NFP



Understand your role as a committee member

Understand the legal status of your NFP

Think about wearing a 'governance hat'



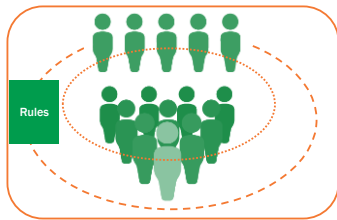
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Part 3:
Follow rules and purpose



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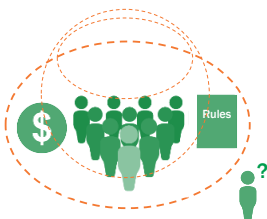
Follow rules and purpose



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Follow rules and purpose

Key topics constitution will cover



1. Group purpose and powers
2. Membership
3. Committee
4. Meetings
5. Finances
6. Records and access
7. When things change
8. If things go wrong



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Follow rules and purpose

Purpose

- The 'purpose' or 'objects' clause in your rules is an important guide to decision-making for committee members
- The purpose clause sets out what the organisation is legally set up to do
- Committee members are required to ensure all decisions are within legal 'purposes'
- If an organisation is a charity or has tax concessions, then making decisions that comply with the purpose is particularly important



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Follow rules and purpose

Activity: RANCH's purpose

2 Purposes

The purpose of the association is to strengthen and support Neighbourhood Houses and Community Centres in the Loddon Campaspe region using community development principles.



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Follow rules and purpose



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Follow rules and purpose



Make sure all committee members have rules

Read your purpose clause regularly

Change your rules and purpose with care



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Part 4: Comply with 4 key duties



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Four key legal duties



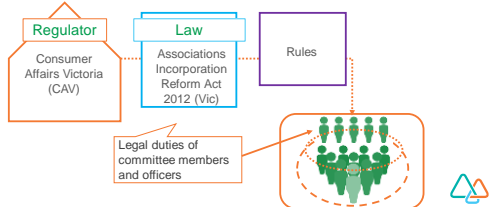
"...this conduct amounted to a significant breach of the fiduciary and statutory duties imposed upon Boris. It shows, at best, a complete lack of understanding of the significant duties imposed upon Boris as an office holder, a preferring of his own interests to those of the Association, and a wilful blindness to the damage his conduct caused to the Association at the very least in terms of dishonour fees and loss of reputation." (Registrar Tran)
Tvmswai (in liq) & Ors v Boris Trajkov & Ors [2017] VCC 1433 (9 October 2017)



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Four key legal duties

Source of legal duties



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Four key legal duties

Cth charity status – governance standards

- Under ACNC legislation, a charity and its committee members must also comply with 'governance standards'
- The governance standards are principle-based, minimum requirements that charities are continually required to meet to maintain their registered charity status
- One of the governance standards applies particularly to 'responsible persons' (committee members) and their suitability for office



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Four key legal duties

Cth charity status – governance standards

Governance standard 1	Charitable purposes and not-for-profit
Governance standard 2	Accountability
Governance standard 3	Compliance with Australian laws
Governance standard 4	Suitability of responsible persons
Governance standard 5	Duties of responsible persons
Governance standard 6	Public trust and confidence



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Four key legal duties



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Four key legal duties

Scenario 1
Jacob



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Four key legal duties

Duty to act in good faith, for proper purpose

Duty has two limbs:

- i. duty to act in good faith in the best interests of the organisation as a whole
- ii. duty to act for a proper purpose and within the powers given to the committee



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Four key legal duties



Duty to act in good faith, for proper purpose

Again, read and get to know your rules

Ask yourself... "Am I deciding this based on the best interest of the organisation"

Apply a 'how will it look later' test



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Four key legal duties



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Four key legal duties

Scenario 2 Sylvia



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Four key legal duties

Duty to act with care, skill and diligence

This duty requires committee members to pay attention to, and make considered decisions about:

- i. the important affairs and strategic activities of the organisation
- ii. the financial position of the organisation
(this one is very important – almost a sub-duty!)



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Four key legal duties

What actions do you think would show that a committee member has acted with reasonable **care, skill** and **diligence**?



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Four key legal duties




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Four key legal duties

Duty to act with care, skill and diligence

In relation to finances, this duty requires committee members to:

- i. understand your organisation's current financial position at all times
- ii. prevent your organisation from 'trading while insolvent'

 You allow an organisation to trade while insolvent if you allow it to continue to incur debts when you know, or should know, or suspect, the organisation cannot meet its current debts when they fall due.



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Four key legal duties

If your organisation is in financial trouble,
your legal duty is to **'put the brakes on'**
spending and **seek help**



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Four key legal duties

This duty is relative to the size and importance of the decision being made

Balance: there needs to be reasonable care, skill and diligence...but the committee still needs to make decisions

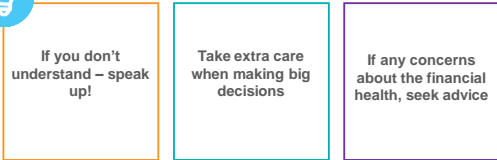


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Four key legal duties



Duty to act with reasonable care, skill and diligence



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Four key legal duties



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Four key legal duties

Duty to not misuse position or information

You must not make improper use of:

- i. your position as a committee member
- ii. information obtained through your position

to either:

- gain an advantage for yourself (or someone else or another organisation), or
- cause a detriment to the organisation



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Four key legal duties

Scenario 3
Misuse of information
or position



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Four key legal duties



Duty not to misuse position or information

Induct new
committee members

Avoid gossip

Use information
only in the way it
was intended



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Four key legal duties



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Four key legal duties

Scenario 4 Amir



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Four key legal duties

Duty to manage conflicts of interest



A conflict of interest is a situation which arises when a person's position in an organisation provides them with the opportunity to:

- personally benefit (over and above the usual benefits arising from the position), or
- provide a benefit to a relative, close friend or to another organisation with which they are involved

- A conflict of interest situation is not, of itself, a problem
- Conflicts of interest situations are common and OK

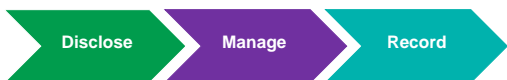


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Four key legal duties

Duty to manage conflicts of interest

3 step process for dealing with conflicts of interest:



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Four key legal duties



Duty to manage conflicts of interest

Stay alert and disclose early

Consider perceptions

Develop, read and refer to a conflict of interest policy



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Part 5: Other laws



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Other laws



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Other laws



Have standing agenda items – eg. OHS, employment, finances...

Discussions are not enough – decisions and actions are needed

Remember that you don't need to know all of the law



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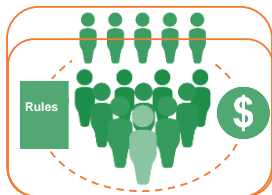
Part 6: Liability and protections



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Liability and protections

Remember: **limited liability has exceptions**



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Liability and protections

Exceptions to limited liability rule

Behaviour	Example
Criminal action by a committee member	Theft
Serious breach of key legal duties	Continuing to trade while insolvent *
Failure to comply with specific laws (that can override limited liability)	Taxation laws or employment laws *



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Liability and protections

Consequences

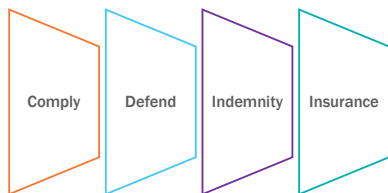
- Legal responsibility of committee members:
 - Fines, compensation, order to pay, order to repay
 - Injunctions, banned from managing a corporation
- Reputational:
 - front of *Herald Sun*
 - decline in membership or support
 - withdrawal of funding



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Liability and protections

Protections



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Liability and protections



Understand and comply with duties

Check and understand indemnity and directors & officers liability insurance

Again, remember that legal issues are rare



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Summary and questions



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Recap of today's session

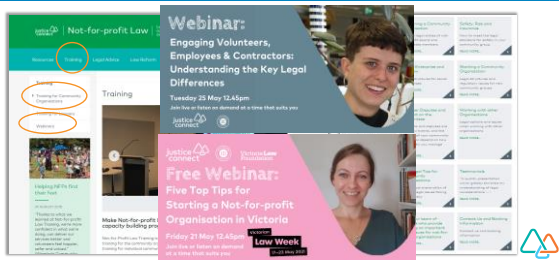
What we have covered

- Part 1: Role of the committee
- Part 2: Understanding the legal status of your NFP
- Part 3: The importance of the rules and purpose
- Part 4: Complying with the 4 key legal duties
- Part 5: Other laws to keep in mind
- Part 6: Liability and protections for committee members



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Summary and questions


Evaluation and thanks!

- Thank you to RANCH for engaging us to deliver today's training
- We would be grateful if you could please complete the evaluation form
- Thank you for your participation!



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