

Be good while you do good

A quick guide to NFP directors' duties



There are lots of differences between a not-for-profit and a for profit company (eg profit cash money), but here we're focusing on directors' duties.

A company that's registered with the Australian Charities and Not-for-profits Commission (ACNC) under the *Charities Act* is not required to comply with certain provisions of the *Corporations Act* - sections 180-183 in particular.

Registered charities do have equivalent obligations set out in the ACNC Governance Standards, which are a set of core principles, not rules, that allow each charity the flexibility to determine how it will comply with them. Standard 5 sets out duties applicable to people in a position to guide and manage the charity (responsible persons) and are not just limited to directors.

Here's a snapshot of the duties under Standard 5, which in the end are pretty similar to those in the *Corporations Act* anyway.

NFP Standard 5

- Act with reasonable care and diligence.
- Act honestly and fairly in the best interests of the charity and for its charitable purposes.
- Do not misuse the position of responsible person.
- Do not misuse information obtained in performing duties.
- Ensure that the charity's financial affairs are managed responsibly.
- Disclose any actual or perceived conflict of interest.
- Do not trade while insolvent and s 588G of the *Corps Act* also applies.

The Governance Standards are not just *lite* directors' duties, and charity directors are not only motivated to comply because - KARMA. Under the *Corporations Act* (s184) NFP directors can still commit criminal offences for reckless or dishonest breaches of duties of good faith or acting for a proper purpose and for misusing their position/info. Plus, directors owe fiduciary duties to their companies under the general law, whether or not the *Corporations Act* applies..

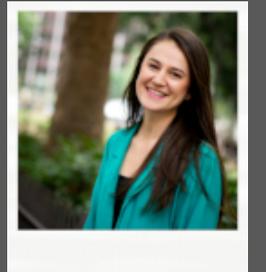
Go on and do some good, just do it in accordance with the (pretty intuitive) Governance Standards.

Questions? Give us a call.



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