General Duties of Directors

The role of a company director is to govern a company on behalf of its shareholders or members.

What are the four basic directors' duties?

The Corporations Act 2001 specifies four main duties for directors of any form of company (Not-For-Profit, Association Ltd, Public or other):

1. **Care and diligence**
   This duty requires a director to act with the degree of care and diligence that a reasonable person might be expected to show in the role.

   A very similar duty is also imposed on directors at common law. Recent court cases have emphasised this duty in relation to the approval of financial statements and board approval of statements issued by a company. So a sound understanding of how to read a financial statement is essential and if you don't have that skill necessary for you to learn.

   There can also be a breach of this duty by causing a company to enter into risky transactions without any prospect of producing a benefit or where a managing director fails to inform the board of matters which clearly should have been brought to the board's attention.
2. **Good faith**
   This duty requires a director to act in good faith in the best interests of the company and for a proper purpose, including to avoid conflicts of interest, and to reveal and manage conflicts if they arise. This is a duty of fidelity and trust, known as a 'fiduciary duty' imposed by common law and a duty required in the Corporations Act 2001.
3. **Not to improperly use position**
   This duty requires directors to not improperly use their position to gain an advantage for themselves or someone else, or to the detriment to the company.
4. **Not to improperly use information**
   This duty requires directors to not improperly use the information they gain in the course of their director duties to gain an advantage for themselves or someone else, or to the detriment to the company. To this end all AACMA directors are required to sign a Confidentiality Agreement.

General guide to fulfilling these duties

In times of difficulty and conflict, the yardstick by which a director may safely judge their own actions is:

Taking account of all the circumstances, is what I propose to do "in my honest belief" in the best interests of all members (present and future) of the Association of which I am a director?

If the answer to the question is 'yes', then the director need not fear an action for breach of duty under either the statute or common law.

To this end, all AACMA directors are required to follow the Association's Code of Conduct, policies and procedures, and understand their duty under the Corporations Act 2001. Never be afraid to ask for help or training if needed to fulfil this role properly and effectively.

Are there additional directors' duties under the Corporations Act 2001?

In addition to the four basic duties discussed above, other significant duties and responsibilities under the Corporations Act 2001 include:

1. **Insolvent trading**
   Directors have a duty to ensure that a company does not trade whilst insolvent or where they suspect it might be insolvent.
2. **Financial information**
   Directors should take reasonable steps to ensure that a company complies with its obligations in the Corporations Act 2001 related to the keeping of financial records and financial reporting.
3. **Disclosing directors' interests**
   Directors should disclose matters relating to the affairs of the company in which he/she has a material personal interest.
4. **Lodging information with ASIC**

Are there directors' responsibilities under other laws?

Every company will be involved in activities which are regulated by other laws (for example, employment and termination of employees, renting an office, marketing). There are a significant number of laws (federal, state and territory) under which a director can be found to be personally liable for breach.

Examples of these laws include occupational health and safety, environmental law and taxation.

What are the consequences of breaching directors' duties laws?

1. **Criminal sanctions**
   There can be very severe penalties for failure to comply with duties under the Corporations Act 2001 or other laws governing a company's activities. Under the Corporations Act 2001, contraventions of the duty of good faith or improper use of information or position, if they involve dishonesty or recklessness, can be punished by imprisonment for five years.
2. **Civil sanctions**
   A contravention of the duties under the Corporations Act 2001 can make a director liable to a substantial fine. For example, creditors may also take action against directors who have failed to comply with their duties.
3. **Disqualification**
   Both the Australian Securities and Investments Commission (ASIC) and the courts have the power to disqualify directors for long periods of time for failure to comply with their duties under the Corporations Act 2001.
4. **Commercial consequences**
   The most serious consequences of breaching directors' duties are often not the legal ones but the commercial ones. A company's most valuable asset is its reputation.

Is there a duty to consider broader 'stakeholder' interests?

In Australia, a director owes a fiduciary duty to the company, that is he or she must "act honestly, in good faith and to the best of his or her ability in the interests of the company." The Act requires that directors act 'in good faith in the best interests of the corporation'.

In practice, this means in the interests of the members of the company as a whole.

Does this apply to a Director of a Not for Profit Association limited by guarantee?

There is some debate amongst directors as to whether directors of not-for-profits should be subject to less onerous duties and responsibilities. Case law has determined that there is no difference in duties and responsibilities and all directors are subject to the same duties and responsibilities.

What time commitment should a director expect?

To effectively perform the duties and responsibilities of a director, sufficient time must be devoted to the role. Chairs will often need to dedicate extra time as they are the pivot point between the board and CEO. The actual time commitment will vary from time to time.

Factors influencing the necessary time commitment include the growth or expansion of the Association, the complexity of structure and operations, and whether it is undergoing significant change.

You can expect as a director to spend at least 10 hours per week reading documents, preparing for Board meetings and if on any Committee or in an executive position such as Secretary or Treasurer even more time before each Board meeting or if the need arises.

Board meetings often last two hours via Zoom. Depending on the State you are in and the differing times you will need to be prepared to put aside that time each month.

Financial Literacy for directors

A key role for a director is to ensure the financial viability of the NFP organisation so that it can achieve its outcomes. Many NFPs may have a treasurer but this does not change the responsibility all directors have to make sure that the organisation makes effective use of its (often limited) resources and also make sure that it continues to remain solvent.

Accordingly, directors are required to read and interpret financial information in order to:

- monitor the financial health or position of the organisation;
- monitor operational performance;
- determine the right asset mix to maintain;
- determine the best way to finance the organisation;
- assess whether the organisation is solvent.

Directors should be familiar with the following three main financial statements:

a) **Income Statement**
   Often referred to as the profit and loss statement, the income statement is designed to show how much an entity has earned during the period.

b) Balance Sheet

This statement presents a 'snapshot' of an organisation's assets, liabilities and equity at a particular point in time, and is designed to show what an entity is worth.

c) Cash Flow Statement

This statement is designed to show if an entity is paying its way. It shows the cash flows in and out of the organisation reported under categories of operating, investing and financing activities to give net change in cash for the period.

Directors do need to remember that they are not expected to be experts in financial reporting requirements just be sure to understand them or ask questions!

Other things boards and directors are required to do!

Strategic Planning

A strategic plan will clearly articulate how the organisation will achieve its purpose. A good strategic plan will also set out a series of measurable objectives to ensure that the plan can be effectively and appropriately monitored.

Directors need to consider what is the Association's purpose and what aspirational goals are to be achieved, how and when they may be achieved, and how can the achievements be measured. This becomes a guide which aligns with the purpose of the organisation and provides the plan for action.

Board committees

The AACMA Board uses committees to increase overall efficiency. Work can be delegated to committees to more effectively deal with complex or specialised issues, and to manage workloads by making better use of directors' time and expertise.

However, it is critically important to recognise that committees only make recommendations for action to the full board, which retains collective responsibility for decision making.

Committees also provide opportunities to develop knowledge within an organisation. Members can focus their skills in areas that will most benefit the organisation, and conversely committees help develop talent and support a leadership pipeline. Directors will be expected to take on committee roles from time to time, preferably in their field of expertise or interest.