

# Legal Responsibilities for Community Organisations.

In recent times there has been a significant increase in the number of not for profits being involved in legal proceedings. There are several reasons for this. One significant factor may be the increased commercialisation of community organisations. Other contributing factors are the changes in statute and common law and the increasing litigious nature of New Zealand society.

-Margo Nicolson 2006

The legal responsibilities of any community organisation are held by the organisations governance body. In legally constituted not for profit organisations these are the trustees of a incorporated charitable trust or the governance committee for an incorporated society.

Delegated authority is commonly given to the coordinator, manager or the CEO of the organisation to undertake the legal responsibilities, but it is the trustees who hold the ultimate responsibility for ensuring that the legal responsibilities are carried out. In the case of an unconstituted organisation (one that has no legal entity) this responsibility is also held by the governing body but there is not the same legal protection for individual trustees or governance members.

The word incorporated often creates confusion within organisations. Simply speaking incorporating a group gives that group legal status of its own independent of the people who make up the governance group. This means that the organisation, whether it is a charitable trust or a society can enter into contracts, take out loans, take legal action against others etc. It also means that the organisation will continue in perpetuity regardless of the resignation, death or imprisonment of the trustees.

Governance and management decision makers must act in accordance with their organisations rules. These are set out in your constitution if you are an incorporated society or your trust deed if you are a charitable trust.

The legal obligations of trustees are called their fiduciary duties. It is extremely important that people who get involved with the governance of a community organisation understand what these duties are and what responsibilities they are agreeing to take on when they join the governance team. They include:

#### **Fiduciary Duties. Decision makers must:**

- Exercise their rights and duties in good faith for the benefit of the organisation ( their fiduciary duties.) this means;
- Act in accordance with the rules
- Act in good faith in the interest of the organisation
- Exercise powers for proper use
- Exercise reasonable care and skill
- Avoid any conflict of interest
- Not cause, allow or agree to the affairs of the organisation being carried out in such a way that creates substantial risk or loss to the organisation's creditors.

- Not agree to the board incurring an obligation unless there are grounds to believe that the Board will be able to perform the obligation
- Not to make unauthorised personal gain from the position of officer of the Board or make any unauthorised use of confidential information.

#### **A trustee is liable to make good to the trust losses arising from:**

- Any trust money that is used for their own purposes and not in accordance with the trust
- Destruction of trust property
- Improperly alienating trust property
- Negligently allowing others to misappropriate trust property.

The courts may respond leniently where the trustees have acted honestly but mistakenly but are likely to be severe where trustees willfully misapply trust funds or fail to exercise proper diligence in their duties.

#### **A decision maker may be personally liable when:**

- The organisation is not incorporated
- The organisation is incorporated but the individual has acted outside of the objects or purposes of the rules of the organisation
- The individual has signed something on their own behalf
- When there has been a breach of a specific piece of legislation which provides financial penalties and/ or terms of imprisonment e.g.: acts of fraud, breaches of income tax legislation
- Where there has been reckless trading or debts incurred where decision makers know there has been insufficient funds to pay them
- Where there has been a breach of fiduciary duty.

#### **So, if you are a member of a governance team, you can manage your legal responsibilities by:**

- Having a good working knowledge of what activities the organisation is engaging in
- Be thoroughly conversant with the founding document of your organisation and ensure that it is a living document
- Set up systems which protect the organisation and trustees from a breach of trust
- Management must know the limits of their authority and how to execute contracts on behalf of the organisation
- Be conversant with the relevant legislation and common law
- Have good financial management practice
- Where risk is unavoidable insure against that risk.

For further information on the legal responsibilities of community organisations visit [www.keepingitlegal.net.nz](http://www.keepingitlegal.net.nz)

# IT policy and budget

Policy and budget are the tough bits about IT but no organisation can effectively manage their IT resources without them. Unfortunately, this column would not accommodate all the information that we could share but here are a few basic principles and guidelines to get you thinking.

## IT Policy

In its simplest form an IT Policy will at least define certain user practices that are expected i.e how staff use the Internet, how e-mail should be communicated, how data should be stored and accessed, how data should be backed up and use of consumables such as paper and ink. Others could include non-disclosure of certain information, references to the privacy act, safe use of equipment, support processes and replacement policy.

## IT Budget

Most of the recorded IT expenditure by smaller organisations appears to be incidental rather than planned. Some people may hold the view that expenditure on IT systems cannot be planned because you don't know when it will fail and while everything works no spending should be required. Unfortunately, that is not true and to some extent you can compare it with owning a car. The facts are that IT systems are only as effective if they are maintained and they do have a limited life expectancy. The reality is that most of us spend the best part of our working day using IT systems and 90% of organisations cannot run effectively without their IT equipment.

Planning an IT budget will go some way in managing your IT expenditure and ensure that the organisation can maintain and grow its operating capacity.

A typical IT expenditure budget will consist of a capital expenditure (CAPEX) budget and an operational expenditure (OPEX) budget. The CAPEX budget should provide for one off expenses. These expenses are usually planned i.e. the organisation grows or part of the system is due for replacement.

IT systems typically have a useful life expectancy of 3-5 years. The quality of your investment and level of pro-active maintenance will dramatically affect the life cycle of the equipment.

The OPEX budget should provide for system maintenance, support, service provider costs i.e. Internet connection and web hosting, consumables and training. Usually training would be under the general training budget but it may be more appropriate for staff requiring vendor specific training to include it under the OPEX budget.



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