Introduction

In this module, you will learn about the legal obligations of the organisation, and the responsibilities of management committees. Understanding your role and duties enables you to become a more effective committee member.

Before you begin

If you already have some knowledge of your responsibilities and obligations as a committee member, you might choose to begin with the Quick quiz on page 18 and then complete the Review tasks on page 20.

When you have answered as many of the quiz and review questions as you can, begin to work through the module to:

› confirm or revise your answers
› find the answers you did not know.

When you have completed the module, you should revise the Quiz and the Review tasks.

If you have little or no knowledge of the duties and obligations of committee members, read on.

Key learning outcomes

The learning outcomes for this module are divided into two categories—learning which involves improving your knowledge or understanding, and learning which develops skills and strategies.

After successfully completing all the exercises in this module you will:

› know the legal accountabilities of the management committee and its members
› understand the concept of the ‘legal person’ as it pertains to your committee
› be able to distinguish between essential requirements and rules for good practice
› be able to recognise instances of conflict of interest
› be able to use strategies to avoid conflict of interest.
Exercise 1.1: The responsibilities of management committee members

As a committee member you have legal and financial responsibilities and obligations. We shall begin this module by considering what these might be.

The purpose of this exercise is to encourage you to identify the responsibilities of a committee member.

The exercise also gives you a preview of the information you will find in this module — information that will help you identify and carry out your role as a committee member.

After you have worked through the module you will have a chance to review this question, to confirm or to reconsider your opinion.

What, in your opinion, are the responsibilities of a management committee member of an organisation?

In considering your answer to this question you may choose to:

- simply think about your answers
- make a list in the space provided here
- record your thoughts in your own learning notes (make sure however that you keep your learning notes handy as you work through the module).

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After you have worked through the module you will have a chance to modify or add to your list.

Tip for learning

Drawing up a list is a practical, useful way of demonstrating your understanding of committee member responsibilities. Keep your list handy for revision as you work through subsequent modules.
Management committee members and legal accountability

Individual responsibility

As individuals, members of a management committee have the same obligations and duties as the directors of a company.

As a committee member you must:

- ensure that you are kept informed about the performance of the organisation (financial, operational, compliance with contracts and laws such as Occupational Health and Safety (OH&S), environmental protection, Equal Employment Opportunity (EEO), employment legislation, local government ordinances and Model Rules)
- make decisions which are for the benefit of the WHOLE organisation. The law says that, as a committee member, you do not represent the interests of any person or group either inside or outside the organisation
- not involve yourself in any decision or action where you have a conflict of interest. This means where you stand to gain (or lose) in some material way as a result of the decision, either personally or via another person or organisation with which you have some connection.

See page 14 for more information on what constitutes a conflict of interest and what to do if a conflict of interest arises.

As a member of the management committee you may not be involved in the everyday running of the organisation but you are still responsible for its affairs. The committee's managing role involves planning, directing and controlling the organisation's resources to achieve agreed objectives.
Exercise 1.2: Carrying out your duties as a committee member

The purpose of this exercise is to encourage you to think about the things you are currently doing as a committee member.

Think about the ways in which you currently carry out your duties as a management committee member.

How do you:

♦ stay well informed?
♦ make decisions which benefit the whole organisation?
♦ avoid any conflict of interest?

Consider, and if possible discuss with other committee members.

You may choose to record your ideas in your learning notes.

Tip for learning

At this point you may like to look again at Exercise 1.1 and modify or add to your list of committee responsibilities.

Controlling the organisation's resources

In practice, the management of most financial issues is carried out by organisation staff BUT the committee must ensure that it receives regular, timely and accurate reports on financial matters. This is essential for you to ensure that:

♦ there are adequate funds
♦ the organisation works within the limits of these funds
♦ accurate financial statements are prepared.

Individual committee members must:

- understand how financial reports are prepared
- understand the information provided in different financial reports
- take action to correct any problems that financial reports identify.
Annual reports

Committee members must make sure that:

- annual financial statements or reports are prepared
- reports are accurate and represent a true and fair picture of the financial state of the organisation
- an Annual General Meeting (AGM) is held and members invited. It is also considered highly desirable that the general public is made aware of the time and location of the AGM.
- an annual report is prepared and submitted to the Department of Fair Trading.

See Modules 3, 4 and 5 for more information on the different types of financial reports and how to understand and analyse them.

Debts

The committee must establish systems and monitoring processes to make sure that the organisation does not incur a debt which could not be paid when it falls due and payable. This includes normal commercial trading and staff entitlements such as long service and annual leave.

If an organisation continues to operate while knowingly failing to pay its outstanding debts this is called trading whilst insolvent. In these circumstances committee members can be found to be personally liable for the organisation’s debts.

A Local Community Partnership as a ‘legal person’

When an association is incorporated under the Associations Incorporation Act 1984, it has the same legal status as a ‘natural’ person under corporate and common law. As an incorporated association, your LCP is a legal entity or ‘person’ which means it can:

- make agreements and enter into legally binding arrangements
- acquire its own assets
- incur liabilities (including those in the pre-incorporation period)
- carry out trade
- take legal action (sue) and have legal action taken against it (be sued).

Because your management committee is a recognised ‘legal person’, you and the other committee members share responsibility for ensuring that the organisation meets its legal obligations — under all relevant laws.
Roles and obligations of the ‘legal person’

The roles of the organisation as a legal person are covered by corporate, contract and common law. The key obligations are to:

- act honestly — do not mislead or make false representations
- honour any implied or expressed undertakings given on the organisation’s behalf (including contractual terms)
- act in the interests of those that the organisation is established to serve
- adhere to all laws and regulations made by commonwealth, state and local authorities.

Because it is a recognised legal entity with legal responsibility for the overall management of an LCP, the management committee also has a collective responsibility.

Incorporation

The Associations Incorporation Act gives community-based, not-for-profit groups a means of establishing a legal entity without having to form a company. In NSW, the Associations Incorporations Act is administered by the Department of Fair Trading. To be an Incorporated Association under the Act a group must have:

- at least five members
- a set of objects and rules (a constitution)
- public liability insurance
- a nominated public officer who keeps the Department of Fair Trading informed annually
- a register of committee members
- an AGM every 12 months and within 6 months of the end of each financial year. At the AGM financial statements must be presented by the committee to members setting out a ‘true and fair view’ of the Association’s financial position including:
  - income and expenditure
  - assets and liabilities
  - mortgages, charges and securities
- lodged an annual statement with the Department of Fair Trading (including financial statements) and any resolutions about finances from the AGM.
Personal liability

Incorporation provides a certain amount of protection or limitation to the personal liability of committee members. However, the committee will be liable if members:

- allow the organisation to incur debts it cannot pay (knowing these debts could not be paid, or most likely could not be paid)
- engage in fraud or wilful negligence
- obtain personal benefit for themselves or conduct substantial trading with the organisation.

Insurance

In addition to public liability insurance, it is recommended that organisations also take out the following insurance:

- professional indemnity
- directors’ insurance
- workers compensation.
- fire and burglary

The Constitution

A constitution is a set of rules governing how the organisation will be run. The constitution is designed to make sure the organisation is run legally and ethically. The Associations Incorporation Act NSW 1984 requires community-based organisations to have a constitution.

It is essential that LCP have a constitution and at all times operate within, and according to, the rules of that constitution.

If an organisation is found to have operated in breach of its constitution it may be held liable, fined or sued. The directors (or management committee members) may be held personally liable for breaches of the constitution.

If the rules of an individual Incorporated Association do not make provision for any essential rule, the Model Rules of the Associations Incorporation Act will apply in relation to that matter.

Amending the constitution

The constitution should be up-to-date and truly reflect the operational environment of the organisation. This means that the constitution may need to be amended from time to time. Any resolution to amend the constitution must be put to the membership in writing, with three weeks notice, and can only be decided at a General Meeting, usually the AGM.
The Model Rules of the Associations Incorporation Act sets out the various matters that must be included in the rules of an Incorporated Association. You can obtain a copy of the Model Rules from the Department of Fair Trading by calling 13 32 20 or you can download a copy from their website: www.fairtrading.nsw.gov.au

**Exercise 1.3: Your constitution**

Consider the constitution of your organisation.

Does it include:
- rules for good practice
- an objects rule
- a membership rule
- rules for the AGM
- insurance rules
- a funds management rule?

Consider and discuss this with others on your committee. How do you rate your constitution? How could it be improved?

You may choose to record your ideas in your learning notes.

**Goods and Services Tax and legal accountability**

On 1 July 2000 the Goods and Services Tax (GST) came into operation in Australia, replacing the existing Wholesale Sales Tax System. GST legislation applies to all not-for-profit organisations that have an annual turnover of more than $100,000.

Under the GST system, exemptions are available to Registered Training Organisations (RTOs) but only for courses likely to add to the employment-related skills of those undertaking the courses. Guidance as to what this means was published by the Commissioner of Taxation on 28 June 2000 in Goods and Services Tax Ruling GSTR 2000/27.

**GST-free courses**

An RTO course will be GST-free if it satisfies three requirements. The course must be:
- likely to add to the employment-related skills of people undertaking the course
  (For a course to be considered as employment-related it must be directed at people who want to add to their employment-related skills.)
- determined by the Education Minister to be an adult and community education course
provided by a body that is either a higher education institution (or a body that is recognised or funded by a State or Territory Authority) to conduct adult and community education courses.

In a GST-free course:
- the objectives of the course specify the employment-related skills that participants will acquire in undertaking the course
- the means of imparting the skills to the participants are clearly identified prior to the commencement of the course
- there is a reasonable expectation that the skills being developed will be used in the course of being an employee, or working in a business, occupation, profession or trade, rather than for recreational, hobby, artistic or cultural endeavours.

Courses which provide and develop basic skills such as literacy and numeracy are considered to add to employment-related skills and they are GST-free. Courses in recreational or hobby pursuits are not GST free. For these courses, RTOs need to charge and collect GST, and remit it to the Australian Taxation Office.

Contracts

General contract law obligations

Because your organisation is regarded as a ‘legal person’ it may enter into contracts. Contracts can be either in writing or verbal. A legally binding contract exists when:
- there is an offer by one party
- acceptance by the other party (which constitutes agreement)
- an intention to be bound by the agreement
- consideration (benefit) to each party.

In the case of a written contract an authorised person must sign the contract.

Many contracts require execution under seal (ie signing and attaching the stamp of the Common Seal).

Contract law is based on the concept of ‘a bargain freely struck between equal parties’. It requires that the parties must each benefit in some way from the contract. If your organisation signs a contract and receives some form of benefit (called consideration) then it is bound to comply with the contract. It is assumed that the organisation knew what it was doing in signing the contract and agrees to be bound by the terms and conditions.

It is the committee (not the staff) that is the ‘legal person’. For this reason it is important that, before signing a contract, the committee members know
what they are agreeing to, e.g. How long will they be bound by the contract? What must the organisation do; and under what conditions? What benefit will the organisation gain from the contract?

**Best practice for LCP**

LCP should:

- have policies strictly detailing who can sign contracts and under what conditions
- ensure that, before a contract is signed, a summary of what it means, what conditions apply and what obligations it lays down, is prepared and presented to the committee meeting or to the president
- keep the summary presented to the committee with the copy of the contract as a record.

**Tip for committee action**

After a contract has been endorsed (by the management committee or the executive) the committee may choose to delegate signing authority to the Public Officer.

**Exercise 1.4: Contracts**

The purpose of this exercise is to encourage you to think about the contracts to which your organisation is a party.

Remember, you may choose simply to think about your answers, write them in the spaces provided here, or record them in your own notes.

When did your committee last ask for a summary of all contracts in operation?

________________________________________________________________________

How can you find out if your organisation is carrying out all its contractual obligations?

________________________________________________________________________

How can you find out if the other party (parties) are carrying out their contractual obligations?

________________________________________________________________________

If possible, discuss these questions with other committee members.
Conflict of interest

A conflict of interest exists when a committee or staff member is involved in a decision or action where he or she stands to gain (or lose) from the outcome of that decision or action. For example, you are a member of a management committee that has called for quotes to supply the organisation with new computers and one of the quotes received is from your brother-in-law.

Exercise 1.5: Conflict of interest

This exercise is an opportunity for you to express opinions and then check them with the information that follows. You will find the answers immediately after the exercise.

What would/should you do if, in your role as a committee member, you were faced with a conflict of interest?

Answers 1.5

In a situation where there is a conflict of interest the Corporations Law states that a committee member or officer must:

- declare to the committee that a conflict of interests exists (and what the nature of the conflict is)
- excuse him/herself from any meeting or activity in which the conflict applies, for the entire period that it is being discussed
- make sure that the minutes of the committee meeting record:
  - the announcement of the conflict of interest
  - the timing of the departure, from the meeting, of the committee member concerned
  - any subsequent return by the committee member after the matter has been
Roles and Obligations: The organisation and its committee members

discussed not influence or attempt to influence the committee or the organisation in making its decision or taking action.
A code of conduct

Codes of conduct are designed to establish appropriate standards of behaviour for committee members and staff. By having and implementing a code of conduct, an organisation can ensure that it is above reproach in displaying accountability, ethical behaviour and honesty.

LCP are encouraged to develop and implement a code of conduct. Committee members and staff should all be acquainted with the code of conduct and regularly discuss how it will be applied in practice.

Principles

The following are examples of key principles of a code of conduct:

- accepting personal responsibility for maintaining high professional standards
- commitment to serve the best interests of the people of the region
- working practices that are efficient, effective and show integrity and objectivity
- commitment to improving competence and work quality
- courtesy, respect, fairness, honesty and cooperation
- avoiding real or apparent conflicts of interest
- maintaining confidentiality
- acting in ways that enhance the stature of the VET sector.

Practical guidelines

A code of conduct sets guidelines under eight key areas:

- personal and professional behaviour
- use and security of official information
- use of official facilities and equipment
- public comment
- conflicts of interest
- external employment and private practice activities of full-time permanent staff
- acceptance of gifts and benefits
- corrupt and unethical conduct.

Tip for committee action

Find out if your organisation has a code of conduct. In the committee, and/or with management, discuss what areas are covered by your code of conduct.
Exercise 1.6: Code of conduct

Does your organisation have a code of conduct? If so check whether it covers the eight key areas:

- personal and professional behaviour: Yes ☐ No ☐
- use and security of official information: Yes ☐ No ☐
- use of official facilities and equipment: Yes ☐ No ☐
- public comment: Yes ☐ No ☐
- conflicts of interest: Yes ☐ No ☐
- external employment and private practice activities of full-time permanent staff: Yes ☐ No ☐
- acceptance of gifts and benefits: Yes ☐ No ☐
- corrupt and unethical conduct: Yes ☐ No ☐

Summary of the responsibilities of LCP management committees

The role of the LCP management committee is to oversee the operations and activities of the organisation to make sure it fulfils its aims. This includes the smooth operation of the committee itself.

The responsibilities of LCP management committees are summarised in the table on the following page.
### Responsibilities of LCP committees

<table>
<thead>
<tr>
<th>Legal</th>
<th>Financial</th>
<th>Personnel</th>
<th>Premises and equipment</th>
<th>Planning and policy</th>
<th>Promotion and marketing</th>
<th>Reporting and accountability</th>
</tr>
</thead>
</table>
| Meet the requirements of a range of federal, state and local government laws and regulations, including funding contracts. | Ensure that:                                        | Develop job descriptions                                                | Ensure that the premises, facilities and physical resources are provided and maintained so that services can be delivered properly and safely. | Set strategic goals and objectives for the organisation (see below for further information) | Raise awareness, and publicise the aims, activities and achievements of the organisation | Inform students, members and the wider community and involve them in the activities of the organisation.
| Examples are:                                                        | • incorporation                                     | • Staff recruitment and professional development                         | • Staff supervision and support                                        | • Establish operational guidelines for each person and aspect of the organisation so that effort is focussed on the achievement of stated goals. | • Grow the business of the organisation through expanding its services. | • Keep funding bodies and relevant law administrators informed about the affairs of the organisation. |
|                                                                      | • insurance                                          | • Occupational health and safety issues                                 | • Occupational health and safety issues                                 | • Develop non-discriminatory employment policies.                           | • Keep funding bodies and relevant law administrators informed about the affairs of the organisation. | |
|                                                                      | • permits                                            |                                                                         | • Develop non-discriminatory employment policies.                           |                      |                          | |
|                                                                      | • licences                                           |                                                                         |                        |                      |                          | |
|                                                                      | • copyright                                          |                                                                         |                        |                      |                          | |
|                                                                      | • defamation                                         |                                                                         |                        |                      |                          | |
|                                                                      | • occupational health and safety                      |                                                                         |                        |                      |                          | |
|                                                                      | • Awards                                              |                                                                         |                        |                      |                          | |
|                                                                      | • taxation                                            |                                                                         |                        |                      |                          | |
|                                                                      |                                                     |                                                                         |                        |                      |                          | |
Quick quiz

Use the questions below to check your understanding of the material covered in this module. If you are unable to complete the quiz, review the appropriate sections of this module.

In the following quiz write short answers in the spaces provided, eg Questions 2. In other questions, eg Question 1, you are given more than one possible answer. In these cases tick the box or boxes that you think are correct. In Question 5 & 8 you are required to complete the sentence.

<table>
<thead>
<tr>
<th></th>
<th>Management committee members have legal responsibilities ...</th>
<th></th>
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<tbody>
<tr>
<td>1</td>
<td>as individuals</td>
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<td></td>
<td>as a group</td>
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<td>only if they act dishonestly</td>
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<td>equal to those of company directors</td>
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<td>2</td>
<td>Name two types of legal contract.</td>
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<td>3</td>
<td>LCP must ...</td>
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<td></td>
<td>have a constitution</td>
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<td>have a code of conduct</td>
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<td>adopt certain rules contained within the Model Rules</td>
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<td>adopt verbatim the Model Rules</td>
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<td>4</td>
<td>A management committee member must:</td>
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<td>act in the best interests of the organisation as a whole</td>
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<td>act in the best interests of the committee</td>
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<td>ensure that the organisation does not incur any debts</td>
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<td>ensure that the organisation does not incur debts if it cannot pay the debts when they fall due</td>
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<td>5</td>
<td>The Funding Agreement requires that a contract be signed by ...</td>
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<td>6</td>
<td>Your organisation is a ‘legal person’. This means that it has legal responsibility under three laws. What are they?</td>
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<td>1 corporate law</td>
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<tr>
<td>7</td>
<td>Committee members can be legally liable if they ...</td>
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<td>The key obligations of the legal person are …</td>
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<td>to act honestly</td>
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</table>

**Tip for learning**

Look again at Exercise 1.1 and record any additional responsibilities you have become aware of from your learning in Module 1.
Roles and Obligations: The organisation and its committee

Review tasks

Task 1 — Role of a committee member

Write a checklist for yourself of the responsibilities of committee members and the things that you could do to prepare and equip yourself better for this role.

Committee member checklist

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Task 2 — Code of Conduct

What are some key areas that should be covered by an organisation’s Code of Conduct?

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Task 3 — Conflict of interest

Describe a situation where there would be a conflict of interest for you as a committee member.

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What should you do in such a situation?

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