



Australian Seabird & Turtle Rescue Inc.

Policies and Procedures

Governance and Duties of Office Holders and Committee

www.seabirdrescue.org.au

This policy applies to staff of Australian Seabird & Turtle Rescue and volunteers.

Summary:

This document explains the legislative responsibilities, job description and duties of the Committee of Management.

AUSTRALIAN SEABIRD & TURTLE RESCUE INC.

Governance and Duties of Office Holders and the Committee

Title: Governance and Duties of Office Holders and the Committee

Replacing existing policy plan or procedure No

Type of document: Policy

Related Legislation or other Documents:

<https://www.nfplaw.org.au/governance>

- Associations Incorporation Act 2009 (NSW)
- Fair Work Act 2009 (Cth)
- Superannuation Act 1976 (Cth)
- ACNC Governance for Good. <https://www.acnc.gov.au/tools/guides/governance-good-acncs-guide-charity-board-members>

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1 Title: Governance and Duties of the Office Holders and Committee

2 Background.

The governance of not-for-profits is undertaken by the committee. The governance of an organisation is different to the everyday work of the organisation. Committees make strategic decisions and management and staff/volunteers then action the governance decisions. (

Decisions made by committees can include setting strategic directions, hiring staff, whether or not to take disciplinary action against a member, which contractors or service providers to engage, and what activities to undertake.

Good governance means complying with the law and legal duties and carrying out the governance role in the best interests of the not-for-profit. There are considerations beyond strict legal duties when thinking about good governance, such as how meetings are held, who is on your board and what skills they have, how new committee members are inducted, how frequently the board meets, how board papers are prepared and distributed and more.

3 Purpose.

The purpose of this document is to be a resource for committee members to clarify their duties and responsibilities while serving on the committee of Australian Seabird & Turtle Rescue Inc.

4 Procedure

4.1 The role of a committee member

A committee member has a defined role and responsibilities that they must perform. Generally, a committee member is responsible for contributing to the collective decision making of the committee. A committee member can't make decisions for the organisation independently of other committee members.

A committee member's role is a strategic position in an organisation and a committee member is responsible for governing their organisation. This should not be confused with the management and operational aspects of an organisation (that is, the everyday running of the organisation).

A committee member is responsible for:

- understanding the business of the organisation and being aware of key developments
- attending and participating in committee meetings
- being active in the organisation, such as by attending functions or events as a representative of an organisation
- attending the Annual General Meeting
- providing advice, opinions and independent judgment to inform committee decisions
- declaring and monitoring actual or perceived conflicts of interest, and
- governing and overseeing an organisation's operations and performance

4.2 Committee member obligations

A committee member has a number of legal obligations or 'duties' that must be complied with and understood. These legal obligations come from a number of sources, including:

- legislation
- common law
- the organisation's constitution or rules, and
- the organisation's policies

4.2.1 Summary of obligations

There are legal duties that all committee members must understand and comply with. Committee members who breach these duties may be held personally liable (legally responsible) for their breach. It is therefore essential that the duties and obligations as a committee member are properly understood.

4.2.1.1 Duty to act in good faith and for proper purposes

The duty to act in good faith requires committee members to act honestly, fairly and loyally in furthering the best interests of their organisation. This means the interests of the organisation must be put above those of the committee members when making board decisions.

Board members must also act only for proper purposes. This means when decisions are made, they must be made for the purpose of benefitting the organisation.

4.2.1.2 Duty to act with reasonable care, skill and diligence

Committee members are required to monitor and make decisions about the strategic direction of their organisation and keep on top of financial affairs.

The role must be taken seriously and given sufficient time, thought and energy to the tasks that must be performed, and decisions that are required to be made as a committee member. For example, committee members must spend time properly preparing for committee meetings and commit to attending those meetings regularly.

The duty to be diligent requires committee members to be thorough in their decision making. Diligence also requires that committee members keep up to date with developments in the organisation's business, to ask for more information if it is needed to make a decision and to seek out skills or professional advice where necessary. However independent decisions using the advice of those experts are to be made.

4.2.1.3 Financial responsibility

Committee members must make sure the financial affairs of the organisation are managed responsibly. Charitable organisations are held to a high standard and are required to have robust financial controls in place to ensure their resources are

used effectively and appropriately in pursuit of their purposes. To meet this standard, it's recommended that committee members:

- read and understand financial statements and make enquiries if they don't understand them or if something doesn't look right
- make sure the organisation has the resources required to carry out its work by regularly reviewing its financial position, and
- implement strong financial controls, having regard to the complexity and size of the organisation's resources (for example, requiring multiple signatures on payments, keeping a budget and tracking the organisation's performance against it, and, in larger organisations, establishing clear financial delegations, which might mean requiring the GM to seek approval for any expenditure over a certain amount)

4.2.1.4 Committee members must not allow the organisation to operate while it's insolvent.

4.2.1.5 Duty not to dishonestly use position or information

Committee members hold a position of power and trust in an organisation. A committee member will have access to confidential and important information about the organisation. Committee members must not use their position, or information gained from their position, to benefit themselves or harm the organisation.

4.2.1.6 Duty to avoid conflicts of interest

Committee members have a duty to avoid conflicts of interest. (See ASTR Conflict of Interest policy).

4.2.1.7 Duty to understand the organisation

Committee members should understand:

- The stated purposes of the organisation, as this will shape its short and long-term goals and the strategy for achieving them. As a committee member must govern the organisation in line with its purpose and always keep in mind the reason for which it exists.
- The organisation's legal structure.
- Sources of funding

Common sources of funding include:

- donations from the public
- bequests from a deceased estate
- fundraising from public activities
- membership fees
- corporate sponsorship
- government grants, and
- fees for services

It's common that grants, bequests and sponsorships are made for a specific purpose. The committee members should be familiar with all obligations or conditions which attach to these funding arrangements.

- What are the organisation's key risks?

Committee members need to manage the risks to the organisation. See ASTR Risk management Policy

4.2.1.8 Submission of mandatory annual statutory reports to ACNC and Register of Environmental Organisations (REO).

4.3 Personal liability of committee members

Committee members are typically not personally liable (that is, legally responsible) for the debts or consequences arising from the organisation's actions or decisions.

There are some circumstances where a committee member will be personally liable for the organisation's debts or may be subject to regulatory action. For example, a committee member may be subject to penalties as a result of their own actions, and they may also be held liable for the actions of the organisation where the organisation has breached a law.

Examples: Fair Work Act 2009 (Commonwealth)

Committee members will be personally liable for breaches where they were 'involved' in that breach. A person is involved in a breach if they have aided, abetted, induced, were knowingly concerned in, or have conspired to give effect to the breach. Committee members can also be personally liable for acts committed in breach of anti-discrimination legislation if they have caused, instructed, aided, permitted, authorised or assisted another person to contravene that legislation.

Work Health and Safety

An organisation must, as far as is practicable, must eliminate, or minimise the risk of harm to all staff and volunteers while at work. Where this duty is breached by the organisation by a committee member failing to take reasonable care, the committee member is guilty of an offence.

Any person involved in the management or control of the organisation must ensure the workplace is safe and without risks to health. (See ASTR WH&S Policy).

5. Appendixes.

- President Job Description
- Secretary Job description
- Treasurer job description
- Public officer Job description

Position Description President

Responsible for the leadership, direction and coordination of the activities of the organisation.

- Ensuring the organisation's activities are compliant and in furtherance of its mission.
- Leading, managing and developing the organisation's employees, volunteers and organisational culture.
- Supervision and guidance of the General Manager.
- Development, implementation, monitoring and assessing the organisation's programs (including their impact).
- Development, implementation, monitoring and assessing sound and compliant financial management practices (including budgeting) in conjunction with the treasurer.
- Development, implementation, monitoring and assessing sound and compliant fundraising practices.
- Developing, informing and supporting the committee to carry out their governance functions.
- Partnering with the committee to help ensure the organisation's directives, policies and resolutions are carried out.
- Working with the staff in cultivating and soliciting major grants and individual gifts.
- Developing and maintaining beneficial relationships with donors, funders, supporters, collaborators, and other stakeholders.
- Ensuring effective external communications about the organisation and its mission, priorities, importance, programs and activities.
- Leading the organisation's planning process.
- Ensuring legal compliance (including all required filings) and sound risk management practices.
- Presiding over the committee meetings ensuring they run efficiently and effectively.
- Ensuring the organisation's activities are compliant and in furtherance of its mission.
- Leading, managing and developing the organisation's employees, volunteers and organisational culture.

Position Description Secretary

The role of the secretary and the public officer is usually performed by the same person.

Ensure Responsible Administration

- To prepare agendas in consultation with the Chair (and chief officer).
- To circulate agendas and any supporting papers in good time.
- To receive agenda items from other committee members.
- To check that quorum is present.
- To minute meetings and circulate the draft minutes to all committee members.
- To ensure that the chair signs the minutes once they have been approved.
- To check that committee members and staff have carried out action(s) agreed.

Make Arrangements for Meetings

- To ensure arrangements for meetings are met (booking the room, arranging for equipment and refreshments, organising facilities for those with special needs, etc).

Other Duties

- To sit on appraisal, recruitment and disciplinary panels as required.

Position description for the Public Officer.

The public officer is the nominated contact person for the charity. This position can be held by any committee member.

The committee must fill a vacancy within 28 days of it being vacant.

Responsibility to the Department of Fair Trading

- The public Officer must notify any change of address within 28 days
- Responsible to collect all associated documents from former committee members and deliver the documents to the new member.
- Return all association documents to a committee member within 14 days, upon vacating office.
- Act as the official contact for the association, including taking delivery of documents served on the association and bringing them to the attention of the committee as soon as practicable.
- Custody of any documents as required by the constitution.

Responsibility to the Australian Charity Not-For-Profit Commission

- Ensure that the annual reporting and record keeping for the ACNC is carried out.
 - Annual financial information
 - Change in primary contact
 - Change in address
 - Change in Committee members
 - Changes in constitution.

Treasurer Job Description

The key responsibility is accountability and responsibility of the management of financial resources.

Responsible for:

Solvency

- Ensuring accounts can be paid when due.
- Ensure funds are available for scheduled expenses.
- Ensure reviews of cashflow forecasts are carried out.

Budgeting

- Ensure all expected income and expenditure is included.
- Ensure all sources and amounts of income are identified.
- Ensure the annual budget is approved, reviewed regularly and variances identified and amended when substantial changes have occurred.

Financial Statements

- Ensure that appropriate record keeping is maintained.
- Ensure that key financial accounts are regularly reconciled.
- Ensure there is regular reporting of income and expenditure, balance sheet, cashflow statement, budgets and forecasts.
- Ensure financial statements are audited annually.
- Ensure the balance sheet is reviewed to assess the financial health of the organisation.
- Ensure appropriate financial controls are in place for accurate records.
- Be fully informed about the financial position of the organisation at all times.

Preventing Fraud and Mismanagement.

- Ensure controls are in place to safeguard assets.
- Ensure money is used in line with approved budgets.
- Ensure controls are in place for banking transactions.

Relationships.

- Work with the bookkeeper to facilitate responsible day to day accounting practices.
- Prepare financial reports for the committee meetings.