



Helping you help others

November 2015

Dear Reader,

In this issue we share the fifth in a series of six articles covering the duties of Board Members of registered charities. The topic for this month is the **duty to disclose and manage conflicts of interest**. The last topic in this series will be "*Not to allow a charity to operate while insolvent*" and will be published in the February 2016 edition of Not-for-Profit Law Notes.

Inside this issue we also look at 3 of the most common Trade Mark Myths for charities and share some news from the Australian Taxation Office.

As this is the last *Not-for-Profit Law Notes* for 2015, we would like to take this opportunity to wish you a safe and happy Christmas and holiday season. The next edition of *Not-for-Profit Law Notes* will be arriving in your inbox in February 2016.



Regards, David Ford

ACNC Governance Standards: Duty to disclose and manage conflicts of interest

Over the past five months we have been examining the significant duties of board members of registered charities. We have dealt with the duty of board members:

- to act with reasonable care and diligence;
- to act in the best interest of their charity and for a proper purpose;
- not to improperly use information or their position; and
- to manage financial affairs responsibly.

In each of the articles we have discussed how these duties, together with the others listed below, make up one of the Australian Charities and Not-for-profits Commission (ACNC) five governance standards for charities. The particular standard states that board members or other responsible persons owe a fiduciary duty to their charities. This is one of the highest standards of care imposed and means that board members must be loyal to their charity and act in good faith.

In the final month we will look at their duty not to allow a charity to operate while insolvent.

The topic for this month is the **duty of board members to disclose and manage conflicts of interest**.

When do conflicts of interest occur?

Conflicts of interest occur when a board member's duty to act in the best interests of their charity is or may be in conflict with the opportunity or potential to get a personal benefit (or a benefit for a person or organisation the board member has a relationship with).

A practical example

Take the example of a board member on a School Council. Should they decide to personally contract with the school to provide a service or to supply



ACNC Governance Standards: Duty to disclose and manage conflicts of interest (cont) ...

goods, they would have a conflict of interest. In that situation, the board member wants to do the best by him or herself but at the same time has a duty to also act in the best interests of the school. For this reason, the law generally prohibits payments to board members or their relatives for goods and services unless the terms are not more favourable than could be obtained from a third party.

What should board members do?

If board members have a conflict of interest, or even if they perceive that they might have a conflict, they should:

1. inform their board as soon as possible; and
2. not take part in any discussion or decision-making where they have a conflict. This second element is not only a good idea, but it is often required by the board's rules or legislation that applies to charities.

Notably, conflicts of interest are common and do not have to be a serious problem. However, it is important to manage conflicts of interest properly to avoid damaging a charity's reputation and, in serious cases, even breaking the law.

Conclusion

A good way for board members to gauge whether they need to disclose and manage a conflict of interest is for them to ask themselves,



"would an independent observer be sure that I was only acting in the best interests of my charity? Or might they think I was acting in some way for my own interest?"

It is worth repeating that the perception that a conflict of interest exists, even if there is no actual conflict, requires board members to take steps to ensure that they do not breach their duty.

Doing so will help board members to uphold their fiduciary duty, and in turn, ensure that their charity complies with this ACNC governance standard. The February 2016 edition of Not-for-Profit Law Notes will contain our final article in this series. We will be dealing with the duty of board members not to allow a charity to operate while insolvent. If you would like further information please contact David Ford (David.Ford@emilford.com.au).

Trade Mark Myths

Registering a trade mark is a powerful way of protecting an organisation's name, regardless of whether it is a commercial entity, or a not-for-profit. Although many charities do not see trade mark registration as a priority, it is inexpensive and easy to accomplish.

In this article, we address three of the most common trade mark myths for charities.

A charity doesn't need a trade mark

Do not fall for this myth! A charity's goodwill in its name is one of its most important assets, because it is a charity's name that allows it to secure funding



and support from the public. A trade mark can help to ensure that other organisations do not free-ride off an established charity's good name and image, and ensure that the public is not confused by similar sounding organisations. For charities seeking to establish themselves, a trade mark is an important step in building awareness and recognition in the public's eyes.

ASIC or ACNC registration is enough Incorporating a company with ASIC or registering with the ACNC will only stop other organisations from registering under an identical, or very similar name, but will not provide the basis for a legal cause of action. A registered trade mark enables a charity to stop the use of their name, whether as an organisation name, as part of a promotional campaign, or as a trading name.

Trade marks are cost-prohibitive

A basic trade mark registration can be quick and inexpensive, and provide protection across Australia for an initial 10 year period. Unlike other

Trade Mark Myths (Cont) ...

sources of intellectual property rights, a trade mark can last perpetually, provided that it is renewed. International Treaties also provide a simpler process for extending trade mark protection to other countries, should a charity wish to expand its operations.

Can we help? Please contact Fred Chilton (Fred.Chilton@emilford.com.au) if you have any questions about the above, or want to find out more about protecting your charity.

Refund of Franking Credits



If your organisation is an endorsed income tax exempt entity or a deductible gift recipient who applied for and received a refund of franking credits during the 2013-14 income year, you should

have received a mailout from the ATO with the necessary form to claim a refund of franking credits for the 2014-15 income year.

A number of products are available on the ATO website to assist you with your refund of franking credits. Read more at <http://tinyurl.com/qdxyfhh>.

Free ATO Webinar

Entitlements & Obligations for Not-for-Profit Employers

Date: Wednesday 2 December 2015
Time: 2pm

Visit the Australian Taxation Office website for more information (<http://tinyurl.com/qhjuhxc>).



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