

Role of the Bushwalking Victoria Board of Management

As with all corporate entities, BWV is required by law to establish a body such as the present Board to govern the organisation on behalf of the members and to be accountable to the members annually. Bushwalking Victoria is an incorporated association and as such must comply with the *Associations Incorporation Reform Act 2012 (Vic)* and any subsequent amendments and the consequential Regulations. Attachment 1 (below) is a copy of the relevant section of the legislation dealing with Duties of Office Holders.

The Board is not a member or stakeholder representative body. That is not its role as defined in the constitution. The constitution quite properly defines it as the body responsible for governing and managing the operations of BWV.

Each member of the Board has a fiduciary duty and certain legal and ethical responsibilities that cannot be delegated to others. These responsibilities include:

- Owing their first duty to the Board and BWV
- Making decisions that are in the best interests of BWV, not their own club or themselves.

They also have a responsibility to be diligent in:

- Understanding all the issues that come before them
- Reading and understanding financial report
- Satisfying themselves that financial transactions are legitimate and that the organisation does not operate if it becomes insolvent

Each Board member has a responsibility to satisfy themselves to the best of their ability that BWV:

- Meets its contractual obligations
- Carries out its common law duty of care obligations
- Complies with all relevant statute law e.g. work place relations, OHS, Income Tax Act and Associations Incorporation Reform Act 2012.

They also have a duty to:

- Apply their best efforts towards the achievement of the objectives of the organisation as stated in the constitution.
- Monitor the operating environment, to understand and assess opportunities and risks, then develop and approve strategies and actions that will benefit the organisation.

- Accept responsibility for Board decisions including those that originate from sub-committee recommendations. Current governance practice, on which the BWV structure is based, sets out a clear distinction between stakeholder / member consultation and governance.

The Board is responsible for governance. In carrying out that role it should take into account all factors including advice from members and other stakeholders and then make decisions it considers are in the best interests of the organisation and all its members.

Such consultation can be achieved through a separate process, e.g. member participation on committees or consultation with club presidents or other office bearers.

Attachment 1

Associations Incorporation Reform Act 2012 (Vic)

Division 3—Duties of office holders

82 Definition In this Division—

office holder, of an incorporated association, means any of the following—

- (a) a member of the committee;
- (b) the secretary;
- (c) a person, including an employee of the association, who makes, or participates in making, decisions that affect the whole, or a substantial part, of the operations of the association;
- (d) a person who has the capacity to significantly affect the association's financial standing;
- (e) a person in accordance with whose instructions or wishes the committee of the association are accustomed to act (but excluding a person who gives advice to the association in the proper performance of functions attaching to the person's professional capacity or to the person's business relationship with members of the committee or with the association).

83 Improper use of information or position

- (1) An office holder or former office holder of an incorporated association must not make improper use of information acquired by virtue of holding that office—
 - (a) to gain an advantage for himself or herself or any other person; or
 - (b) to cause detriment to the association.

Note Under section 146, subsection (1) is declared to be an applied Corporations legislation matter in relation to the provisions of Part 9.4B (Civil consequences of contravening civil penalty provisions) of the Corporations Act. The effect of that application is that subsection (1) is a civil penalty provision and a person who contravenes this provision may be ordered to pay a pecuniary penalty of up to \$20 000.

- (2) An office holder of an incorporated association must not make improper use of that office—
 - (a) to gain an advantage for himself or herself or any other person; or
 - (b) to cause detriment to the association.

Note Under section 146, subsection (2) is declared to be an applied Corporations legislation matter in relation to the provisions of Part 9.4B (Civil consequences of contravening civil penalty provisions) of the Corporations Act. The effect of that application is that subsection (2) is a civil penalty provision and a person who contravenes this provision may be ordered to pay a pecuniary penalty of up to \$20 000

- (3) An office holder or former office holder of an incorporated association must not knowingly or recklessly make improper use of information in the manner described in subsection (1). Penalty: 60 penalty units.

- (4) An office holder of an incorporated association must not knowingly or recklessly make improper use of that office in the manner described in subsection (2). Penalty: 60 penalty units.
- (5) If a person is found guilty of an offence against subsection (3) or (4), the court, in addition to imposing any penalty, may order the person to pay a sum specified by the court to the incorporated association as compensation.
- (6) This section—
 - (a) has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to an incorporated association; and
 - (b) does not prevent the commencement of civil proceedings for a contravention of a duty or in respect of a liability referred to in paragraph (a).

Note Under section 1317M of the Corporations Act which is applied by section 146, civil proceedings under Part 9.4B (Civil consequences of contravening civil penalty provisions) of the Corporations Act may not be instituted against a person in respect of conduct for which the person has been convicted of an offence

84 **Duty of care and diligence**

- (1) An office holder of an incorporated association must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would if that person—
 - (a) were an office holder of the association in the circumstances applying at the time of the exercise of the power or the discharge of the duty; and
 - (b) occupied the office held by, and had the same responsibilities within the association as, the office holder.

Note Under section 146, subsection (1) is declared to be an applied Corporations legislation matter in relation to the provisions of Part 9.4B (Civil consequences of contravening civil penalty provisions) of the Corporations Act. The effect of that application is that subsection (1) is a civil penalty provision and a person who contravenes this provision may be ordered to pay a pecuniary penalty of up to \$20 000.

- (2) An office holder of an incorporated association who makes a business judgment is taken to meet the requirements of subsection (1), and his or her equivalent duties at common law and in equity, in respect of the business judgment if the office holder—
 - (a) makes the judgment in good faith for a proper purpose; and
 - (b) does not have a material personal interest in the subject matter of the judgment; and
 - (c) informs himself or herself about the subject matter of the judgment to the extent that he or she reasonably believes to be appropriate; and
 - (d) rationally believes that the judgment is in the best interests of the association
- (3) For the purposes of subsection (2)—

- (a) a business judgment means any decision to take or not take action in respect of a matter relevant to the operations of the incorporated association;
 - (b) an office holder's belief that a business judgment is in the best interests of the incorporated association is a rational belief unless the belief is one that no reasonable person in the position of the office holder would hold.
- (4) This section—
- (a) has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to an incorporated association; and
 - (b) does not prevent the commencement of civil proceedings for a contravention of a duty or in respect of a liability referred to in paragraph (a). (5) Subsection (4) does not apply to subsections (2) and (3) to the extent to which they operate on the duties at common law and in equity that are equivalent to the requirements under subsection (1).

85 Duty of good faith and proper purpose

- (1) An office holder of an incorporated association must exercise his or her powers and discharge his or her duties—
- (a) in good faith in the best interests of the association;
 - (b) for a proper purpose.

Note Under section 146, subsection (1) is declared to be an applied Corporations legislation matter in relation to the provisions of Part 9.4B (Civil consequences of contravening civil penalty provisions) of the Corporations Act. The effect of that application is that subsection (1) is a civil penalty provision and a person who contravenes this provision may be ordered to pay a pecuniary penalty of up to \$20 000. (2)

This section—

- (a) has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to an incorporated association; and
- (b) does not prevent the commencement of civil proceedings for a contravention of a duty or in respect of a liability referred to in paragraph (a).

86 Reliance on information or advice

- (1) This section applies if the reasonableness of an office holder's reliance on information or advice given to the office holder arises in a proceeding brought to determine whether the office holder has performed a duty under this Act or an equivalent common law duty.
- (2) Unless the contrary is proved, the office holder's reliance on the information or advice is taken to be reasonable if—
- (a) the information or advice was given or prepared by—

- (i) an employee of the incorporated association whom the office holder reasonably believed to be reliable and competent in relation to the matters concerned; or
 - (ii) a professional advisor or expert in relation to the matters that the office holder reasonably believed to be within that person's professional or expert competence; or
 - (iii) another office holder in relation to matters within the other office holder's authority; or
 - (iv) a sub-committee of the incorporated association of which the office holder was not a member in relation to matters within the sub-committee's authority; and
- (b) the reliance was made—
- (i) in good faith; and
 - (ii) after making an independent assessment of the information and advice, having regard to the office holder's knowledge of the incorporated association and the complexity and structure of the incorporated association.

87 Indemnity of office holders

An incorporated association must indemnify each of its office holders against any liability incurred in good faith by the office holder in the course of performing his or her duties as an office holder.