



BOARD COMPOSITION

Directors Are Not Delegates: The Fiduciary Duty Explained Properly

Why the seat can be won on a regional basis while the duty attached to it cannot

The previous article in this series discussed structuring board seats around geographic or branch representation to guard against factional capture. That structure creates a legal tension worth naming directly: a director elected to represent a state, branch or membership class does not, in law, become that group's delegate once they take the seat. Their duty runs to the organisation as a whole, and the Corporations Act 2001 (Cth) does not distinguish between how a director came to be on the board and what they owe it once they are there.

If your association is a company limited by guarantee, these duties come from the Corporations Act 2001 (Cth), and the sections discussed below apply. If it is incorporated under a state or territory associations Act, committee members' duties come from that Act, your rules and the general law, and the detail differs between jurisdictions. In every structure the core principle is the same: a person elected by a branch or region owes their duty to the association as a whole.

Which rules apply to your association?

The law depends on how your association is set up. A **company limited by guarantee** follows the Corporations Act 2001 (Cth) and its constitution. An **incorporated association** follows its state or territory associations Act and its rules. A **registered charity** also follows the ACNC Act and the ACNC Governance Standards, and some Corporations Act rules are replaced for charities that are companies. Check your own governing documents, and get advice before decisions with legal consequences.

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The Statutory Duty, Precisely

For a company, section 181 of the Corporations Act requires a director to exercise their powers and discharge their duties in good faith in the best interests of the corporation, and for a proper purpose. This sits alongside the duty of care and diligence under section 180, and the prohibitions on improperly using position or information for personal advantage under sections 182 and 183. Under section 184, a sufficiently reckless or intentionally dishonest breach of the good faith duty can carry criminal liability, not merely civil consequences.

The good faith test starts with what the director honestly believed, but honesty alone is not always enough. Courts may find a breach where no reasonable director in the same position could have concluded the decision was in the organisation's interests. A director who sincerely believes they are protecting their branch's interests, but has no reasonable basis for treating that as the organisation's best interests as a whole, is exposed despite their sincerity.

The Delegate Trap

This creates a common problem for association boards built around geographic or branch representation. A director elected specifically to represent a state or chapter can start to see their role as representing that constituency's instructions at the board table, voting as their branch directs rather than exercising independent judgement about what serves the whole organisation. The law is unambiguous on this point, drawn from the well-established principle that a director's duty runs to the company, not to whoever nominated or elected them. This holds even for a director appointed by a majority shareholder in a commercial context, and it holds equally for a director elected by a specific branch or membership class in an association. The seat may have been won on a geographic or sectional basis. The duty attached to it, once occupied, is owed to the organisation as a whole.

A director who votes as their branch instructs them to, rather than as their independent judgement of the organisation's best interests requires, is not being a good representative. They are exposing themselves to a breach of a legal duty that carries real consequences.

Why This Matters More, Not Less, In A Representative Structure

Boards that adopt the hybrid geographic and skills-based structure discussed in the previous article need to be especially deliberate about this distinction, precisely because the election process for some seats does involve regional constituencies choosing their representative. That process legitimately shapes who sits in the seat. It does not, and legally cannot, shape what that person owes the organisation once they are there. Conflating the two is where boards with representative structures most often run into difficulty, both legally and practically, when a difficult decision requires a director from an affected region to vote against what their branch wants because the organisation as a whole requires it.

The most useful thing a board can do about this is name it explicitly, ideally in the induction process for every new director regardless of how their seat was filled, and reinforce it in the board charter, a document this series will return to later in this quarter. Directors who understand from day one that they were elected by a constituency but serve the whole organisation make better decisions and face materially less personal legal exposure than directors who quietly assume, or are quietly encouraged to assume, otherwise.

A Note For Registered Charities Specifically

Not every association is a charity, and this section applies only to those registered with the ACNC. ACNC Governance Standard 5 applies to registered charities whatever their legal structure, with limited exceptions such as basic religious charities. It requires the charity to take reasonable steps to ensure its responsible people act with reasonable care and diligence, act honestly and fairly in the charity's best interests and for its charitable purposes, do not misuse their position or information, disclose conflicts of interest, ensure the charity's finances are managed responsibly and do not allow it to operate while insolvent. For a company limited by guarantee that is a registered charity, section 111L of the Corporations Act switches off several directors' duty provisions, including the core duties in sections 180 to 183, and Governance Standard 5 applies instead; the criminal offences in section 184 and the insolvent trading duty in section 588G still apply. For an incorporated association that is a registered charity, Governance Standard 5 applies alongside the state or territory Act rather than replacing it. The obligation is framed differently, as something the charity must ensure of its responsible people rather than a direct personal

statutory duty enforceable by ASIC, and civil penalties do not apply in the same way, though directors remain exposed to criminal liability for dishonest conduct. The delegate trap discussed above is exactly as real under Governance Standard 5 as under any other framework. The enforcement mechanism differs. The substance of what a director owes the organisation, rather than whoever elected them, does not.

A Practical Test For Every Director To Apply

- Before a vote on any contested matter, ask whether the position being taken serves the organisation as a whole, not just whether it serves the interests of whoever elected or appointed you.
- If a tension exists between a branch's stated wishes and the organisation's broader interests, that tension should be disclosed, recorded and, where it amounts to a conflict of interest, managed under your constitution and conflicts policy, not silently resolved in favour of the constituency. If your branch issues voting instructions, declare them, seek the chair's guidance and record the basis of your own decision.
- Remember that sincerity alone may not be enough. Have a reasonable basis for believing a position serves the organisation's best interests, not just an honest belief that it does.
- Treat the duty as running to the organisation regardless of how your seat was filled, geographic election, skills-based appointment, or any other route discussed elsewhere in this quarter.

Directors are not delegates. They are fiduciaries, bound by a duty the law does not soften for representative structures, however legitimate and well-designed those structures are. Getting this distinction right at induction saves a board from learning it the harder way, in the middle of exactly the contested decision where it matters most.

This is one of the practical governance topics built into our Board Director course, alongside the papers, tools and frameworks that turn the principle into your board's actual practice. [Explore the course](#)

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BOARDROOM ACTION WORKSHEET

Directors Are Not Delegates: The Fiduciary Duty Explained Properly

Turn the resource into evidence, a decision and an accountable next step. Keep the completed record in your association's approved board records system.

1 What is the issue or decision?

State the governance question in one clear sentence.

2 What evidence do we already have?

Record the facts, source documents and stakeholder evidence available now.

3 What evidence is still needed?

Identify the legal, regulatory, financial, member or operational information still required.

4 What is the agreed next action?

Capture the owner, timeframe and how the matter will return to the board.

Action owner	Review date	Board decision or resolution

General education, not legal, financial, tax, clinical or governance advice. Confirm specifics at the relevant primary source or with your own qualified adviser. Nexus Leadership is operated by Lipstick Consulting Pty Ltd · ABN 15 619 120 482.

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