

# Meeting Legal Obligations

Standard 7.2 of the CMA Standards Council's Principles and Standards reads as follows:

“The organisation must take reasonable steps to ensure that it meets its legal obligations and in particular must not act in a way which could be dealt with as an indictable offence or could be punishable by a civil or criminal penalty of over \$10,000.”

The purpose of this resource paper is to discuss what “reasonable steps” could look like for an organisation wishing to meet this standard.

This standard comes under Principle 7 of the CMA Standards Council's Principles and Standards, which states that an organisation must take steps to identify and monitor risks to which it is exposed. One of the clearest risks any Christian (or indeed secular) organisation can have is that it does not comply with its legal obligations.

Some obligations will apply to almost all Christian organisations, for example, meeting the annual requirement to lodge an ACNC Annual Information Statement (AIS), or to lodge a Business Activity Statement (BAS), or to make superannuation payments on behalf of employees. Others will be specific to a particular type of ministry, for example, Christian camping sites will have to comply with planning and local government regulations, a church will have to comply with child safe requirements, a soup kitchen will have to comply with food handling laws.

Generally speaking, legal obligations can be categorised into two types: prohibitory and mandatory. Prohibitory obligations prohibit you doing something, for example, you must not exceed a speed limit. Mandatory obligations require you to do something, for example, you must pay your annual car registration fee.

For an organisation to take reasonable steps to meet its legal obligations, we recommend three complementary steps:

## **1. Governing body knowledge**

It is not necessary for a governing body to be aware of every single regulation which impacts upon the ongoing ministry of the organisation. However, it is certainly incumbent on the governing body to be aware of the general nature of the major laws and regulations which would apply to the organisation. Every member of the governing body of a not-for-profit should be aware that the organisation must lodge an AIS each year and (unless it is a Basic Religious Charity) the governing body members must comply with the ACNC governance standards. Beyond that every member of the governing body should be aware of the general spread of regulations which apply to it, although it is probably only necessary for one or two members to have a more detailed knowledge of them. More important however is for the governing body to ensure that the staff of the organisation have a sound knowledge of all applicable laws.

*Our recommendations:*

- Every governing body member (whether a basic religious charity or not) should do a basic governance course, such as the CMA Ministry Governance Conference, or the AICD course called Governance Foundations for Not-For-Profit Directors, within 12 months of joining if they have not done one before;
- Governing body members should update their skills by way of a Board Development Plan (see our separate resource paper on this topic);
- Governing bodies should be mindful in their recruitment policies to seek members which have legal and/or accounting qualifications, and to seek members who have previous experience working in the organisation’s ministry area; and
- Governing bodies should appoint a CEO who has experience in running this type of ministry, or if not, then ensure that a CEO new to the ministry area is supported by an experienced team which can guide him or her in learning about the regulations affecting the ministry.

## **2. Staff training**

Except in a very small organisation, it is not necessary for the CEO to know every regulation which may affect the ministry, provided there are experienced staff who are aware of the detail. However, the general awareness and knowledge of the CEO should certainly be an order of magnitude greater than that of the governing body members. An important task of the CEO is to ensure that staff training is done, particularly for new staff, or if new requirements become applicable, for all affected staff. Where particular obligations are mandatory, it can be very helpful to have policies and procedures which incorporate those mandatory obligations into checklists or calendars.

*Our recommendations:*

- Have a job description and standard induction process for all recruits which includes telling and teaching them about any particular regulatory requirements which will be part of their jobs.
- Pair up all recruits with a more experienced mentor/buddy for a period (eg 3 months for an experienced recruit, up to a year for a brand-new recruit) who can teach them about their job and any regulations which apply to it;
- Prepare a spreadsheet with calendar memory joggers which sets out when the mandatory obligations must be met, for example the dates a quarterly BAS is due, when PAYG group certificates are due, when the AIS is due. It can be very valuable to also include in such a spreadsheet any other regular non-statutory requirements, eg when the auditor should be approached, preparation of monthly or quarterly management accounts, date for the AGM, renewal of State fundraising licences, when the budget process should start etc (see for example the attached sample spreadsheet used by Compassion Australia); and
- Where new regulations come into force, nominate a “champion” who is responsible for organising training of all affected staff (and volunteers) within a defined period of time, and keep records of the training.

### 3. Awareness

It is often said, “you don’t know what you don’t know”, or as Donald Rumsfeld, former US Secretary of Defence said, it’s the “unknown unknowns” which catch you out. The tendency of an organisation to focus on its own ministry to become the best it can be is laudable in many circumstances, but can also be a trap. It is important for the senior staff in particular (eg the CEO and CFO), the Chair and, to a lesser extent, the other members of the governing body, to stay abreast of any regulatory trends which are happening in the relevant ministry sector and the broader world which may in the future impact on your organisation. The best way to do this is to be widely read in the general press or internet, and to develop informal and formal networks of advisors and colleagues who can keep the leadership abreast of new developments.

*Our recommendations:*

- senior staff should develop good relationships with the organisation’s auditor and lawyers, including being on relevant mailing lists from them;
- relevant staff and members of the governing body should join industry associations and attend conferences (eg the CMA Annual Conference and the annual CMA Ministry Governance days) to learn of forthcoming new developments and emerging new and best practices; and
- specific staff members or governing body members could join a relevant peer focus group (eg a CMA [Integrated Leadership Group](#)) for peer learning, growth, support and discussion.

There is no single way of ensuring that your organisation meets its legal obligations, as every organisation is different, and will have a different set of legal obligations which apply to it. Our standard 7.2 requires however that your governing body is aware of the organisation’s risks in this respect, and has a system in place to manage and minimise those risks.