

Management Matters

It's New

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Welcome to the inaugural edition of this newsletter. Our organisation aims to support the delivery of Home and Community Care (HACC) services in the New England area. Recognising that the roles of community-based Management Committees are becoming ever more complex we plan to provide relevant information and best practice examples directly to you. At this stage we anticipate sending out this newsletter twice per annum. Where necessary we will email out updates and get your coordinator to pass them on to you. We want this newsletter to be useful and would appreciate your input and feedback. If you have any issues that you would like to see included in the newsletter please forward them to our Armidale office.



As you are aware we currently send out a HACC newsletter on a quarterly basis. The HACC Newsletter deals with issues arising in the program and in the community sector. Your newsletter, Management Matters will deal exclusively with management related issues.

The Legal Responsibilities of a Management Committee

Members of the management committee need to understand their responsibilities and perform their duties to the best of their abilities.

Members are required to operate with due care and diligence, in the best interests of the organisation.

Members of the management need to ensure that:

- The aims and objectives of the organisation are pursued;
- The rules of the organisation (its constitution) are followed;
- The business of the organisation is conducted honestly and with integrity;
- The organisation complies with all laws and any contractual obligations;
- The organisation keeps proper financial records and can pay its debts (remains financially solvent);
- They declare any personal interest that might conflict with the interests of the organisation.

The advice of the Australian Securities and Investments Commission (ASIC) is that company directors, board members and management committee members should:

- Be fully up to date on what the company is doing;
 - Find out the impact on the company's business performance of any proposal (particularly one involving financial commitment);
 - Seek outside professional advice when there is insufficient information to make a properly informed decision;
 - Question management and staff about how the business is going;
 - Take an active part in the directors' meetings (i.e. not "rubber stamp")
- (ASIC, *The Watchdog's Guide*, 2002)

Unfair Dismissal

In recent years considerable media attention has focused on the cost to employers of unfair dismissal cases, usually concentrating on the more unusual cases. In reality, unfair dismissals are rare, affecting less than 0.2% of the 2.33 million employees in NSW each year.

Employees who are covered by a State Award, such as the Social and Community Services Award (SACS) who believe that they have been dismissed or threatened with dismissal can apply to the NSW Industrial Relations Commission.

A dismissal is unfair when it is "harsh, unreasonable or unjust." In dealing with a claim, the Commission may take into account:

- Whether a reason for the dismissal was given;
- Whether the applicant was given an opportunity to give an explanation or to justify his or her reinstatement or re-employment;
- Whether a warning of unsatisfactory performance was given.

The commission may also take into account any other matters that it considers relevant.

How do I Dismiss an Employee?

A valid reason must exist for you to be able to dismiss an employee. This reason or these reasons must be based on the employee's poor performance, conduct or changes to the operational requirements of your business.

If you are dismissing an employee for financial reasons, provide information showing why you must take this action. If you do not provide this information, you run the risk of the employee thinking you are making up a reason just to get rid of him or her. Your

employee will probably appreciate the business necessity, but he or she will need to be assured that this is the real reason.

If the employee is being dismissed because of poor performance, then their work history must justify your action. But please note, just because an employee has been through a system of counselling and warnings about their poor performance, the dismissal is still likely to be a shock. You must take the time to make sure the employee understands your reasons. If the employee is being dismissed for misconduct be sure of your grounds—get legal advice or contact your employer organisation. You should still try to ensure that the employee understands your reasons as it can save problems later.

You must make sure that the employee is totally convinced that the decision is final. If the employee leaves the meeting thinking that there is still a chance then you have failed. You have also created a situation where the employee's false expectations could turn into a belief that he or she has been wrongfully dismissed and thus desires to punish you legally. To avoid any misunderstanding or dispute, notice should be given to your employee in writing or perhaps in front of a witness.

More information is available from the NSW Office of Industrial Relations web-site at <http://www.industrialrelations.nsw.gov.au/>

Superannuation Reform

Legislation passed in Federal Parliament in December 2004 amended the tax laws and removed the employer's obligation to provide employees with separate quarterly written reports on their superannuation payments. This reform does not affect the actual payment of superannuation. The reforms come into affect from 1 July 2005.

The new law basically gives employees the choice of which fund their compulsory contributions are paid into. The law requires the employer to give existing employees a "standard choice form" within 28 days of the law coming into effect. New employees, after 1 July 2005, must be given the form within 28 days of commencing employment.

The "standard choice form" requires the employee to supply the employer with the name of the fund, written confirmation that that fund will accept the contribution and details on how the contributions can be made.

There is some confusion as to the status of this new law for State Awards (such as the SACS Award). The federal Assistant Treasurer has announced that he intends to amend the new law to include all State Award employees.

More information is available from the Australian Taxation Office website at <http://www.ato.gov.au>