

# Incorporating as an incorporated association in Victoria

Legal information for Victorian community organisations

## This fact sheet covers:

- nominating a secretary for your organisation
- deciding on a name for your organisation
- drafting or adopting a set of 'rules' for your organisation
- deciding on the purposes of your organisation
- holding a pre-incorporation meeting
- registering an incorporated association using Consumer Affairs Victoria's (CAV) online myCAV system, and
- awaiting notice of incorporation from CAV for your organisation.

## In Victoria, the process of setting up an incorporated association is set out in the *Associations Incorporation Reform Act 2012 (Vic)*.

Consumer Affairs Victoria (**CAV**), which is part of the Victorian Department of Justice, regulates incorporated associations in Victoria. To become an incorporated association you must apply to the 'Registrar of Incorporated Associations' at CAV.

While setting up an incorporated association is a relatively simple process, there are a few important decisions that your organisation will need to make and may need to get advice about.

Set out below is a brief explanation of the main requirements and considerations for setting up an incorporated association, and links to CAV and other relevant websites.

### RELATED RESOURCES

This fact sheet only summarises the process for setting up as an incorporated association in Victoria. If you are a large organisation that operates across several states and territories, you may wish to consider other organisation structures, such as incorporating as a company limited by guarantee under the *Corporations Act 2001* (Cth). For more information on choosing a legal structure go to the 'Choosing a legal structure' page on the Not-for-profit Law Information Hub at [www.nfplaw.org.au/legalstructure](http://www.nfplaw.org.au/legalstructure).



## Nominating a secretary

The *Associations Incorporation Reform Act 2012 (Vic)* (**the Act**) requires an organisation incorporating in Victoria as an association to nominate a 'secretary' for the organisation. It must have a secretary at

all times (note: the secretary position must be filled within 14 days of it becoming vacant). This role used to be known as the 'public officer'.

The Act sets out a number of the duties and requirements for the role of secretary. The person nominated as 'secretary':

- is the 'contact person' for the organisation. He or she must agree to give his or her details (such as name and address) to CAV for this purpose. The secretary has an ongoing administrative role in the organisation, particularly in relation to providing information to CAV
- must be over 18 years of age, live in Australia and consent to be the organisation's secretary, and
- may also hold other office bearer positions in your association.

The person who lodges the application to incorporate through myCAV is deemed the secretary of the association, unless the applications states otherwise.

### RELATED RESOURCES

Detailed guidance on the secretary's role in an incorporated association is available in Not-for-profit Law's Secretary's Satchel – Guide for Secretaries at [www.nfplaw.org.au/secretaryguide](http://www.nfplaw.org.au/secretaryguide).



Your association will also need to establish a committee, which will govern the association in accordance with the association's rules. The secretary can be, but does not have to be, a member of the committee.

## Decide on a name for your organisation

The Act requires an organisation to choose a name and CAV must approve that name.

Choosing a name is normally a simple task, but your organisation should make sure that the name chosen is not being used by (or too similar to) any other organisation, as CAV will not approve the name if this is the case. Your name may not be accepted by the online registration process if it is held by another group or individual. You may not be able to submit an online application if your proposed name is already being used.

### TIP

Before settling on a name for your organisation to lodge for incorporation, we recommend you first check the Victorian and national business name registers to see if another organisation has already registered that name (see the Resources section at the end of this resource).



When you decide on a name, your organisation may also wish to look into the laws that are available to protect the intellectual property rights in that name. The Act places restrictions on incorporated association's registering a different business or trading name.

Once your organisation is incorporated, you will need to use the word 'Incorporated' or 'Inc.' after your name. This indicates to people and other organisations that your organisation is incorporated and has limited liability. The Act requires that you use the full organisation name on all business documents (for example, business letters, invoices, notices), and it is advisable to also include your incorporation

number. Your organisation can choose to have a common seal (stamp), which must also include the full name of the organisation. Organisations are no longer legally required to have a common seal.

If, after incorporation, your organisation wants to change its name, your organisation must pass a special resolution at a meeting resolving to change the name, and then the secretary must apply to CAV for approval within 28 days of the resolution. The name change is not official until you get the approval notice from CAV.

#### FURTHER READING

For more information on intellectual property, go to Not-for-profit Law's Intellectual Property page on the Information Hub at [www.nfplaw.org.au/ip](http://www.nfplaw.org.au/ip)

## Draft a set of 'rules' for the association or adopt the 'model rules'

The Act requires associations to incorporate with a set of 'rules' (sometimes called a 'constitution'). The rules govern the internal affairs of the association and must set out minimum requirements, for example about membership, meetings and powers of the association committee. Schedule 1 of the Act (found near the end of the Act) sets out the list of matters that an association's rules **must** cover. You can include additional rules if you wish. The rules must also include the purposes of the association (discussed further below).

To help organisations wishing to become incorporated associations, the Victorian Government offers a set of 'model rules' that meet all the requirements of the Act, which organisations can choose to adopt. Many organisations register with their own rules rather than using the template model rules. Not-for-profit Law has also drafted a template that organisations can consider using: the [Not-for-profit Law Simple Rules](#). The model rules are set out in Schedule 4 to the *Associations Incorporation Reform Regulations 2012* and can be [accessed from CAV](#). The fee for registration is lower if a group uses the model rules.

While the model rules are an easy option for newly forming incorporated associations to use, your organisation should be cautious and carefully consider (and possibly get legal advice) on whether the model rules are suitable for your organisation.

### CAUTION

Although called 'model' rules, the rules may not have all of the wording that many organisations need in certain circumstances, for example when they try to register for minor gaming licences or to apply for tax concessions or a grant in the future.



Many organisations will require 'not-for-profit' and 'winding up' clauses to access tax concessions available to charities, such as deductible gift recipient tax concessions (**DGR**). The model rules do contain clauses aimed at satisfying these requirements, however the Australian Tax Office (**ATO**) has not confirmed that these clauses meet the ATO's requirements as the requirements vary by category of endorsement. If your group hopes to get DGR status, you should get specific advice on whether the model rules are suitable for your organisation.

If your organisation has decided to use the CAV model rules, you can insert your name, financial year and purposes into the rules (this will not be considered a change to the model rules, and the lower fee for incorporating with model rules will still apply). Note however, if your association is a registered

charity, its financial year will need to be to June 30 in each year unless the Australian Charities and Not-for-profits Commission (**ACNC**) has approved a substituted reporting period.

Go to Not-for-profit Law's Constitution page at [www.nfplaw.org.au/constitution](http://www.nfplaw.org.au/constitution) on the Information Hub for a list of the matters that must be addressed in rules.

Your organisation should note that the rules of an incorporated association form a contract between the association and its members, and once registered, the rules can only be changed by special resolution of the members.

## Decide on the purposes of the association

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The Act requires that an incorporated association has its purposes incorporated in its rules.

The Act does not say what must be included. In general, the purpose of an organisation is the key reason for its existence – its 'why'.

While writing the purposes sounds like a simple task, your organisation should be aware that the wording of your organisation's purposes may have significant legal implications in the future. Importantly, your organisation cannot legally act beyond its purposes, and directors need to consider the purposes when making decisions.

Another important consideration when drafting purposes is whether your organisation will apply for tax concessions or seek registration as a charity. Certain eligible, not-for-profit organisations can access quite significant tax concessions (such as exemptions from income tax and deductible gift recipient status). Access to these concessions will depend on your purposes and activities, and the ATO or ACNC will look at your organisation's statement of purposes (and its rules). Purposes are also relevant when seeking to be registered with the ACNC.

### FURTHER READING

For more information about tax concessions, go to the Tax page on the Not-for-profit Law Information Hub at [www.nfplaw.org.au/tax](http://www.nfplaw.org.au/tax).

If your organisation intends to apply for tax concessions or register as a charity, you should seek legal and tax advice about the most suitable wording of your organisation's purposes. Advice at an early stage will save your organisation from having to amend its purposes in the future.

## Hold a pre-incorporation meeting

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The Act requires that before applying for incorporation, the members of the group must hold a meeting. The group must have at least 5 members.

The requirements for the meeting are set out in the Act. In general, the members of the group need to be given 21 days' notice about the meeting. At that meeting the members should approve the proposed rules of the association (either the model rules, or 'own rules') and then authorise the secretary to apply for incorporation.

# Register as an incorporated association using myCAV

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In 2015 CAV introduced an online system for incorporated associations, myCAV. This allows associations to apply for incorporation, view details of the association, update details and lodge annual statements.

After a person is authorised to apply for incorporation, they can create a myCAV account and complete the [online application to incorporate an association](#). Note that to complete this process you will be required to have an electronic copy of the proposed rules of association (unless using the model rules), and means to pay the application fee set out in the *Association Incorporation Reform Regulations 2012* (Vic).

If your group does not wish to use myCAV, it must contact CAV to request a paper form (and explain why it cannot use the online system) to complete.

As at May 2017, the fee for incorporating a new association is:

- \$34.90 if your organisation is using the model rules (see above for details), or
- \$202.10 if your organisation has drafted its own rules (or has amended the model rules).

## Await notice from CAV

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If your group submits its application through myCAV, it will generally receive a response within 24 hours (with a Certificate of Incorporation and receipt of payment). If your group does not use myCAV, it may need to wait a number of weeks for a response.

On becoming an incorporated association, your organisation will need to comply with the requirements of the Act, the *Associations Incorporation Reform Regulations* and your organisation's rules. If your association becomes a charity registered with the ACNC it will also need to comply with the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the corresponding regulations (including the Governance Standards). You should become familiar with all of these requirements to make sure your organisation and its committee is complying with the law.

You should keep the Certificate of Incorporation and an up-to-date copy of your organisation's rules in a secure place. A copy of your organisation's rules can be obtained through myCAV free of charge.

### FURTHER READING

For more information about obligations for charities, Not-for-profit Law has many resources to assist groups to understand the requirements of running a not-for-profit organisation. Go to the Running the Organisation page on the Not-for-profit Law Information Hub at [www.nfplaw.org.au/runningtheorg](http://www.nfplaw.org.au/runningtheorg).



# Resources

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## Not-for-profit Law Resources

### ▶ [Running the organisation](#)

This page contains resources to assist those running not-for-profit organisations to understand and comply with legal requirements.

### ▶ [Secretary's Satchel – Guide for Secretaries](#)

This is a comprehensive guide for secretaries of incorporated associations. It goes through the responsibilities of secretaries and provides tools and resources to assist secretaries in their role.

## Consumer Affairs Victoria (CAV) resources

### ▶ [Incorporated associations](#)

CAV's website has information about setting up an incorporated association in Victoria.

### ▶ [Rules for an incorporated associations](#)

This page includes information about what must be contained in an association's rules, including links to the current model rules.

### ▶ [Application form to become an Incorporated Association](#)

On this page there is a link to the online application form to become an incorporated association. Your organisation will need to register with myCAV to complete the application.

## Legislation

### ▶ [Associations Incorporation Reform Act 2012 \(Vic\)](#)

This is the legislation that governs the setting up and running of an incorporated association in Victoria.

### ▶ [Associations Incorporation Reform Regulations 2012 \(Vic\)](#)

This is a link to the regulations which govern the setting up and running of an incorporated association in Victoria. The 'model rules' are set out in Schedule 1 of the Regulations.

A Not-for-profit Law Information Hub resource. Access more resources at [www.nfplaw.org.au](http://www.nfplaw.org.au)

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