

Positions in an incorporated association

Legal information for New South Wales incorporated associations

This fact sheet covers:

- what is a committee?
- what is governance?
- positions in a committee, and
- duties.

If you are starting an incorporated association, or are new to working with an incorporated association, it's a good idea to understand who runs the association and the legal duties that apply.

If you don't fully understand how your incorporated association works or what role different people play in its operation, it can be useful to step back and look at the association as a whole.

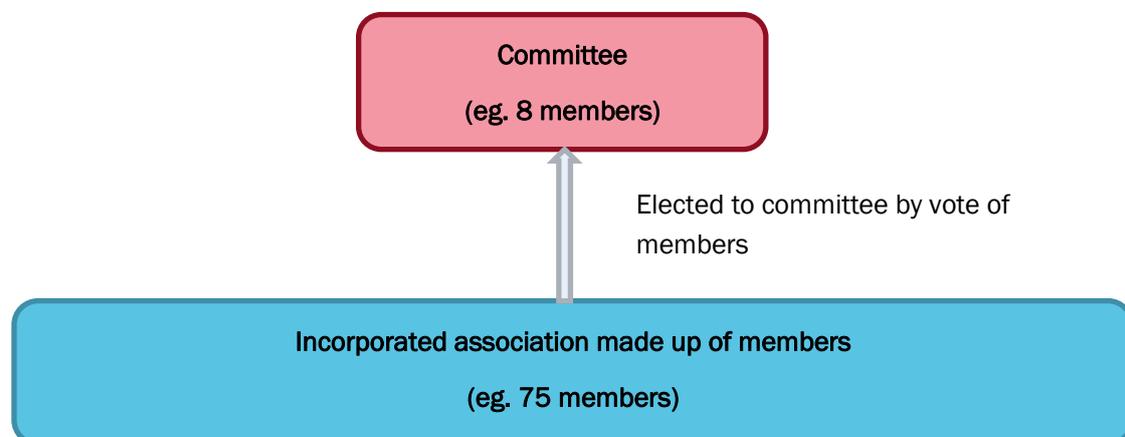
This fact sheet provides an introduction to the key parts of and people in an association.

What is a committee?

Managing an incorporated association is the responsibility of a committee (usually elected by members). Sometimes other names are used for this governing body, such as the "board", "council", or "committee of management".

In many cases, the members of the organisation elect a small group of people, who are themselves members of the association, to be on the committee (see Diagram 1 below).

Diagram 1: Electing a committee (example only)



In some organisations, all the members of the incorporated association are also members of the committee. This is not against the law – it often happens in small associations or when the organisation first begins.

When all the members of an association are also on the committee, it can seem strange to separate the governance of the organisation from other functions like doing the day-to-day work. However, it is important to understand the separate (legal) role of the committee, from the role of members, staff or volunteers.

Governance - how the committee differ from 'managers' of an association

Good governance practices are crucial to an association's ability to function, to achieve its objects, and to comply with all of the legal, ethical and operational requirements of a community association. Community associations, especially small associations, often struggle to distinguish between:

- the role and responsibility of an association's committee (to govern the association), and
- the role and responsibility of the staff, “organisers” or key volunteers that are not on the committee (to manage the association day-to-day).

While these two functions may be performed by the same group of people, distinguishing between issues of strategic governance and day-to-day management is important, as particular legal duties apply to the governance, but not management, of associations.

The 'governance' of an association is the responsibility of the committee, and generally refers to the direction and control of an association. This includes overseeing the affairs of the incorporated association and making sure its legal obligations are met. The *Associations Incorporation Act 2009* (NSW) ('**AI Act**') requires an association to establish a committee of at least 3 members who are over 18 and ordinarily resident in New South Wales. Members of the committee have particular legal duties under the AI Act and judge-made law, such as the duty of due care, skill and diligence, and the duty to act in good faith and in the best interests of the association. NSW Fair Trading is responsible for enforcing these laws. If an association is registered as a charity, governance standards also apply. These are enforced by the Australian Charities and Not-for-profits Commission (**ACNC**).

In larger organisations, employees may be 'managers' (such as a CEO, finance manager or operations manager), and in smaller organisations, volunteers may hold management positions. Managers are responsible for making decisions about the day-to-day running of the association, based on the strategy decided by the committee. Normally these people do not need to comply with the legal duties that the committee must comply with. Occasionally, 'managers' or 'key volunteers' also need to comply with legal duties, if they are deeply involved in making key decisions that affect the operations of an association or who are especially influential in the affairs (financial or otherwise) of the association (see discussion of Duties below).

Are there special positions on the committee?

Commonly, there are a number of special positions on a committee. The people who take on positions on the committee are sometimes called “officers” or “office bearers” or “the executive” of the association. The titles of positions within a committee will vary between associations, however some common positions and their traditional roles are explained briefly below:

- the president runs meetings and usually represents the organisation at public events
- the vice-president takes on the role of the chairperson when that person is not available
- the treasurer (or financial officer) deals with the financial affairs of the organisation, and
- the secretary organises meetings, deals with documents and maintains records of the association.

The committee may have other members who are not office bearers. These are sometimes called “ordinary committee members”. These members must also meet the duties that apply to members of the committee.

The model constitution for incorporated associations provides that a committee member may hold up to 2 offices but cannot be both president and vice-president.

Who is the public officer?

The AI Act requires an organisation to nominate a ‘public officer’. This person is the ‘contact person’ for the organisation. The person must agree to give their details (such as name and address) to NSW Fair Trading.

The public officer must be over 18 years of age, live in New South Wales and consent to be the organisation’s public officer. The position of public officer may, but need not be, held by a committee member. The public officer will be one of the authorised signatories for the organisation. For example, the public officer could be an employee of an organisation (for instance, the general manager), who is neither a member of the committee nor a member of the association.

The public officer is responsible for lodging an annual statement each year with NSW Fair Trading and advising NSW Fair Trading if the association changes its official address. The public officer is also responsible for custody of any documents or records of the association as required by the constitution.

An incorporated association must have a public officer at all times and the position must be filled within 14 days of it becoming vacant. Detailed guidance of the public officer’s role can be found on [NSW Fair Trading website](#).

Duties

The AI Act uses the language of “committee member” to describe the people in an association who have certain legal duties to the organisation that must be met. Under section 91 of the AI Act, if an association contravenes, whether by act or omission, any provision of the AI Act or regulations, each committee member is taken to have contravened the same provision if they knowingly authorised or

permitted the contravention. For the purposes of section 91 of the AI Act an association's public officer (not otherwise being a committee member) is taken to be a committee member. The AI Act also requires committee members to:

- disclose any conflict of interest at a committee meeting
- refrain from dishonestly using information with the intention of gaining an advantage to themselves or any other person or causing detriment to the organisation, and
- refrain from dishonestly using their position with the intention of gaining an advantage to themselves or any other person or causing detriment to the organisation.

A committee member will personally be guilty of an offence if in breach of these duties which will lead to either imprisonment or a financial penalty.

Remember, where a person is not a committee member, but has significant decision-making responsibilities or is very influential in the organisation, these legal duties apply to them as well.

RELATED RESOURCES

For more detailed information about legal duties of office holders, committee members and persons of influence, see Not-for-profit Law's Guide to the Legal Duties of Not-for-Profit Committee Members on the Duties page of the Information Hub at www.nfplaw.org.au/governance.



Resources

Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub (www.nfplaw.org.au) has further resources on the following topics:

- ✔ [Governance](#)
- ✔ [Employees](#)
- ✔ [Risk and insurance](#)
- ✔ [Meetings](#)
- ✔ [Getting started](#)

Model Constitution

- ✔ [NSW Fair Trading Model Constitution](#)

See Schedule 1, of the Associations Incorporation *Regulation 2009 (NSW)*. Your association can voluntarily adopt the model constitution. If you are using your own constitution it must comply with the matters set out in Schedule 1 of the AI Act.

Public Officer

- ✔ [NSW Fair Trading – Public Officer](#)

This section of the NSW Fair Trading website offers information on the role of Public Office in incorporated associations.

Treasurer

- ✔ [Institute of Chartered Accountants \(ICAA\) - Voluntary Treasurer's Handbook](#)

This is a link to an ICAA publication which is intended to help small non-profit organisations. It covers, in broad terms, matters that honorary or voluntary treasurers need to know about financial matters and includes checklists at the back. The booklet was published in 2000 and some figures and references in it may need updating.

- ✔ [Our Community - Guide for Community Treasurers \(Westpac\)](#)

This is a link to the Our Community site which has developed a Guide for Community Treasurers in collaboration with Westpac bank.

Other Related Resources

- ✔ [NSW Fair Trading](#)

This is a link to NSW Fair Trading with information about incorporated associations.

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

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