

# REPORTING TO CONSUMER AFFAIRS VICTORIA

## Part 8: A Secretary's Satchel - Guide for Secretaries

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### **New laws for Victorian incorporated associations**

In November 2012, the laws regulating Victorian incorporated associations changed. The *Associations Incorporation Act 1981* (the old Act) was replaced with the *Associations Incorporation Reform Act 2012* (the new Act). This Secretary's Satchel reflects the new laws.

### **Important! Rules changes affecting *all* incorporated associations**

From 26 November 2012 there are new laws for incorporated associations. There are also new matters that must now be covered by an organisation's rules. Organisations that were using the model rules now have new model rules that apply (unless they chose to change their rules). This Guide refers to the new model rules.

# REPORTING TO CONSUMER AFFAIRS VICTORIA

This part of the [Guide for Secretaries](#) covers the obligations of an incorporated association in Victoria to report to Consumer Affairs Victoria (**CAV**).

## Key Points

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### 1. What are the legal requirements for reporting to Consumer Affairs Victoria?

The secretary of an incorporated association is required to report to CAV about certain matters, including the organisation's financial affairs in an "annual statement".

### 2. Accounting requirements

Each incorporated association must maintain financial records that are correct, true and fair. These records are the basis of the organisation's financial statement. Requirements differ for organisations based on which revenue category, or "tier", they fall into. The treasurer usually has a key role preparing the financial statements, but the secretary must lodge them as part of the annual statement to CAV.

### 3. Preparing and lodging the annual statement

Every year, a financial statement must be submitted to members of the organisation at the annual general meeting. This must happen before the secretary lodges the annual statement with CAV. The financial statement must contain certain information and be certified by committee members, and there are particular requirements for preparing and lodging the annual statement, depending on which "tier" the organisation falls into.

### 4. Can Consumer Affairs Victoria refuse to register documents?

In some circumstances CAV can refuse to register documents. This includes when CAV considers a lodged document is not a valid document of the organisation. This Part explains what an organisation can do if CAV refuses to register a document.

## 1. What are the legal requirements for reporting to Consumer Affairs Victoria?

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The main legal task of the secretary of an incorporated association in Victoria is to report to Consumer Affairs Victoria (**CAV**) about the affairs of the organisation.

The legal requirements for reporting to CAV arise under:

- the *Associations Incorporation Reform Act 2012* (Vic) (the **AIR Act**), and
- the *Associations Incorporation Reform Regulations 2012* (Vic) (the **Regulations**).

### AIR Act requirements

#### Lodging the annual statement

Under the AIR Act, every year the secretary must lodge an annual statement with CAV. This must be done within one month after the annual general meeting where the organisation's financial statement is considered by the members of the organisation (although the secretary can seek an extension of time by lodging an extension form and paying an extension fee).

The AIR Act and the Regulations set out what must be contained in the organisation's:

- *financial* statement (which is provided to members at the annual general meeting), and
- *annual* statement (which is lodged with CAV - see Part 7 of the AIR Act).

See also [Tool 1: Flowchart for preparing and lodging the annual statement](#).

#### **Remember!**

If the secretary fails to lodge the annual statement within the required time, the organisation may be ordered to pay a penalty (section 102(1) of the AIR Act). As at 1 December 2012, the maximum penalty for this breach under the AIR Act is around \$704.20 (5 penalty units).

#### Other CAV reporting requirements

The secretary is also required to report to CAV, and lodge relevant documents or forms, in other situations. These include:

- within 14 days after a new secretary is appointed or when the secretary's details change (see [Part 2: Appointing and Removing a Secretary](#) in this Guide)
- to get approval from CAV for changes to the organisation, after members have passed a special resolution to:

- ▶ change the association's name (section 24 of the AIR Act)
  - ▶ change the association's rules (section 50), or
  - ▶ amalgamate with another organisation (section 18) (see [Part 6: Special General Meetings](#) in this Guide), or
- when the organisation has given a notice of a proposal to remove an auditor to its members (section 106) (see [Part 6: Special General Meetings](#) in this Guide).

These requirements are discussed in detail in other parts of this Guide.

**Important:**

This Part of the Guide deals with CAV reporting requirements only. However your organisation may also have responsibilities to report to other institutions and government agencies (for example, under funding agreements or tax laws) about changes to its governing documents (rules), or changes to the people who are authorised to act on behalf of the organisation.

For example, organisations should notify the Australian Tax Office of a change in their secretary or office bearers – see [Part 2: Appointing and Removing a Secretary](#) in this Guide.

## 2. Accounting requirements

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An incorporated association must maintain financial records that:

- correctly record and explain its financial transactions, and
- allow for “true and fair” financial statements to be prepared (section 89 of the AIR Act).

These financial records are the basis of your organisation's financial statement submitted to members at the annual general meeting (**AGM**), and the annual statement lodged with CAV. The treasurer of the organisation is generally responsible for overseeing and reporting on the organisation's financial affairs.

The AIR Act has a three-tiered scheme for the financial reporting of organisations, based on their “total revenue” for financial year. For example, “tier three” (the highest tier) associations are required to have an auditor (an accountant who checks and confirms the accuracy of the organisation's financial records) and comply with special accounting requirements (see below, [“Tier one”, “tier two” and “tier three associations”](#)), but “tier two” and “tier one” associations normally do not.

You should check your organisation's rules (see [Part 1: The Association in a Nutshell](#) in this Guide) and any contracts (for example, funding agreements) for any particular accounting or auditing requirements that apply in addition to CAV's requirements. Do your rules require the accounts to be audited each year? Even if you are not a tier three association, your rules (or a condition of funding from government) may require this.

**Remember!**

An organisation can be penalised under the AIR Act for failing to keep correct, true and fair financial records. As at 1 December 2012 the penalty under the AIR Act is about \$1408.

**“Tier one”, tier two” and “tier three” associations**

The AIR Act classifies organisations into one of three tiers, based on their total yearly revenue (and in some cases, CAV can declare an organisation falls into a higher or lower category). Under the AIR Act ‘revenue’ means the total income in a period from all activities of the association. This would include grants, donations, and any income from fundraising or selling goods.

The particular financial reporting requirements of the organisation are determined by what tier it falls into.

**Tier one associations**

A tier one association is an organisation with a total yearly revenue of less than \$250,000 (unless another amount is determined by CAV).

Tier one associations have an obligation to prepare financial statements that “give a true and fair view of the financial position and performance” of the organisation (section 92(2)).

There is no requirement under the AIR Act for a tier one organisation to have its financial statement independently audited or reviewed. However, members can vote at a general meeting to require the organisation to have its accounts reviewed. In some circumstances, CAV can direct a tier one organisation to have its financial statements reviewed.

**Tier two associations**

A tier two association is an organisation with a total yearly revenue of between \$250,000 and \$1 million (unless another amount is determined by CAV).

Before the financial statements of a tier two organisation are submitted to the AGM, the organisation must have its financial statements **reviewed** by an independent accountant.

An independent accountant (that is, a person qualified to review a tier two organisation’s financial statement) is:

- a person who is a member of CPA Australia, the Institute of Public Accountants or the Institute of Chartered Accountants in Australia, or
- any other person approved by CAV as a reviewer for this purpose (section 96(1) of the AIR Act).

The financial statements of a tier two organisation must be prepared in accordance with the Australian Accounting Standards (**AASs**).

**Tip:**

If your organisation uses an accountant that is registered with one of the three professional accounting bodies (CPA Australia, the Institute of Chartered Accountants, or the Institute of Public Accountants) then they are required to use the current standards.

### Tier three associations

A tier three association is an organisation with a total yearly revenue over \$1 million. It must have its financial records **audited** by a certified auditor before the financial statement is submitted at the AGM.

A certified auditor (that is, a person qualified to review a tier three organisation's financial statement) is:

- a registered company auditor, or a firm of registered company auditors
- a person who is a member of CPA Australia, the Institute of Public Accountants or the Institute of Chartered Accountants in Australia, or
- any other person approved by CAV as an auditor for this purpose (section 99(2) of the AIR Act).

The financial statements of a tier three organisation must be prepared in accordance with the AASs.

### What is the difference between a “review” and an “audit”?

The purpose of an “audit” is to confirm that an organisation (in this case, a tier three organisation) has prepared its financial statements in accordance with relevant accounting standards. As part of the audit process, the auditor must be satisfied (and declare in their report) that the organisation's financial statements are true, fair and free from any serious error.

A “review” of financial statements is less in-depth than an audit. It only enables the reviewer to highlight items that *may* prevent an auditor from confirming that the financial statements are true, fair and free from any serious error. Because a review of financial statements is less detailed and less formal than an audit, it is normally cheaper than a full audit. Also, more professionals are qualified to undertake a “review” than an “audit”.

#### A reviewer or auditor must be an “independent person”

If your organisation requires a review or an audit of its financial statements (see above), your reviewer or auditor must be an “independent person”. This means that they should not be:

#### Why can't anyone be a reviewer or auditor?

As a matter of good practice (and to reassure members, funders and those dealing with your association that the reviewer or auditor is not biased), they should be as independent as possible from those connected with the association. This is the policy reason behind these requirements in the AIR Act.

- a member of the committee of your organisation
- an employer or employee of a member of the committee
- a business partner of a member of the committee, or
- an employee of your organisation.

## What to do with the auditor or reviewer's report

### For tier two organisations

The reviewer must give your organisation a written report of the review (section 96(2) AIR Act), and that report must be provided to members at the AGM. You must also attach a copy of the reviewed financial statements and the reviewer's report to your organisation's annual statement when it is lodged with CAV (section 102(3)(a) AIR Act).

### For tier three organisations

The auditor must give your organisation a written report of the audit (section 99(3) AIR Act) and that report must be provided to members at the AGM. A copy of the audited financial statements and the auditor's report must be attached to your organisation's annual statement when it is lodged with CAV (section 102(3)(b) AIR Act).

#### Reminder!

The AIR Act requires associations to keep certain documents, including annual statements for seven years. See Part 4: Registers, Records and Official Documents in this Guide.

#### Remember!

There are penalties under the AIR Act if an association fails:

- in the case of a tier one organisation, to have its financial statements reviewed where a resolution is passed at a general meeting to do so or CAV requires it
- in the case of a tier two organisation, to have its financial statements reviewed, or
- in the case of a tier three organisation, to have its financial statements audited.

As at 1 December 2012, the maximum penalty is about \$1408.

### Re-classification as tier one or tier two association

If, in a particular financial year, there are “unusual and non-recurring circumstances” that result in your organisation falling into a higher tier than usual, your organisation can apply to CAV to be exempt from the reporting requirements of the higher tier. CAV may then declare that the organisation is not in that higher tier for that year.

**Example:**

If ABC Inc, a tier one organisation, receives a one-off project grant that doubles its total yearly revenue to \$260,000 (pushing it up into “tier two” - just!), they can apply to CAV for an exemption from tier two requirements. CAV may “declare” that ABC Inc is a tier one association for that year, and therefore ABC Inc would not be required to incur the expense of having its financial statements reviewed.

## 3. Preparing and lodging the annual statement

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### Financial statement (submitted to the members at the annual general meeting)

Depending on how your organisation is run, the financial statement may be prepared by the secretary, treasurer or other member of the organisation’s committee or staff. The financial statement must be presented to members of the organisation at the AGM to provide the members of your organisation the opportunity to consider the financial statement before the annual statement is lodged with CAV. This is also important so that the members can check the financial dealings and position of the organisation.

Your organisation’s financial statement must include certain details required by the AIR Act (section 101). These are set out in [Tool 1: Flowchart for preparing and lodging the annual statement](#). Overall, the financial statements must “give a true and fair view” of the financial position of your organisation during and at the end of its last financial year.

At the AGM, the organisation must submit the following to members:

- financial statements
- a certificate signed by two committee members verifying that the financial statements are a true and fair reflection of the financial position of the organisation, and
- review or audit report (if required).

See also [Part 6: Special General Meetings](#) in this Guide. Your organisation can be fined for failing to submit the required documents at the AGM.

At the AGM or as soon as possible afterwards, a member of the committee must certify in writing that the financial statement was submitted to members at the AGM.

For more details about actions which must be taken after the annual general meeting, see [Tool 1: Flowchart for preparing and lodging the annual statement](#). Also check your organisation's rules to see if there are any extra requirements.

### **Remember!**

The AIR Act requires an organisation to keep:

- the financial statement (as submitted to members at the annual general meeting) for *at least 7 years* after the date it was submitted to members (section 105(1))
- the certificate from a committee member who attended the AGM for *at least 7 years* after the date signed (section 105(2)), and
- originals of all documents lodged with CAV (for example, audited accounts and the auditor's report) for *at least 7 years* after the date of lodging (section 201).

An organisation can be fined if it fails to keep these documents. As at 1 December 2012 an organisation can be ordered to pay as much as \$2816.80 in some circumstances.

## **Annual statement (lodged with CAV)**

Every year before your AGM, CAV will send your organisation an "annual statement form". This is the form for the annual statement, which the secretary must complete and lodge with CAV after the AGM (note that you cannot download the form from the CAV website). If you do not receive the form, contact CAV.

The documents that must be lodged by the secretary with CAV are:

- the annual statement form
- the financial statement (certified by two committee members)
- the committee member's certificate confirming that the statement was presented at the organisation's AGM
- copies of any resolutions passed about the financial statement, and
- the review or audit report (if applicable).

The secretary must lodge all these documents with CAV:

- within one month after your organisation's AGM, or
- if an extension of time for holding the AGM has been granted by CAV, within a month after the end of that period (sections 102 and 104(1)(a) of the AIR Act).

An organisation can apply to CAV for an extension of time to lodge the annual statement (regardless of whether the time for holding the annual general meeting has been extended). See below, [Applying for an extension of time](#).

When lodging the annual statement form with CAV, the secretary must attach certain documents and pay the prescribed lodging fee. These are all discussed in [Tool 1: Flowchart for preparing and lodging the annual statement](#).

**Remember!**

If your organisation passed a resolution about the financial statements at the AGM (for example, approving the financial statement with some modifications), this resolution must be attached to the annual statement lodged with CAV.

The secretary may lodge the annual statement in person, or by post or fax. CAV also accepts completed and signed forms scanned (PDF format) and sent by email. However, the annual statement cannot be lodged via CAV's online system.

See [Tool 2: Sample annual statement form](#) for an example of a completed annual statement form to be lodged with CAV.

**Remember!**

Documents submitted to members of an organisation at a general meeting and/or lodged with CAV should give a true and accurate picture of your organisation. It is an offence under the AI Act to:

- knowingly make a statement that is false or misleading in a relevant detail, or
- knowingly leave out any matter or thing from the document, which makes the document misleading in a relevant detail.

It is also an offence for anyone to authorise someone to do any of these things, or to do any of the above without having taken reasonable steps to ensure that the statement or omission was not false or misleading (section 208).

This is a serious matter under the law. As at 1 December 2012, the penalty for these offences is up to \$8451.

In exceptional circumstances, CAV may permit an organisation not to submit an annual statement (this is known as “exempting” the organisation). An exemption can apply either generally or for a specific year (section 103 AIR Act). Unfortunately, there is no guidance on when CAV may grant such an exemption.

**Remember!**

If your organisation does not lodge its annual statement in each of two successive years, your organisation may be wound up (that is, closed down) by CAV (section 127(2)(e) of the AI Act).

## Applying for extensions of time

The secretary may apply to CAV for an extension of time to hold an AGM or to lodge the annual statement (section 104 of the AIR Act). To apply, the secretary can either:

- download the "Application for Extension of Time" form from CAV's website: [www.consumer.vic.gov.au/Clubs-and-not-for-profits/Incorporated-Associations/Fees-and-forms](http://www.consumer.vic.gov.au/Clubs-and-not-for-profits/Incorporated-Associations/Fees-and-forms) and follow the links. Complete the form, and then deliver, post or fax it to CAV
- apply online at [online.justice.vic.gov.au](http://online.justice.vic.gov.au) and click on "Business Registration", or
- complete and sign the forms and email the scanned (PDF format) forms to CAV.

Your organisation must pay the prescribed fee when applying for an extension of time. As at 1 December 2012 the prescribed fee is around \$33.00.

## 4. Can Consumer Affairs Victoria refuse to register documents?

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CAV can refuse to register or receive documents lodged by an organisation for a number of reasons (sections 204 and 205 AIR Act), including:

- if the document does not comply with the requirements of the AIR Act
- if the document is missing details or contains an error, or
- if CAV considers that the document is not a valid document of the organisation – for example, when an organisation splits into rival groups and each group seeks to lodge documents with CAV, claiming that they are the official version.

If CAV refuses to register a document because it is considered invalid, your organisation can request that CAV reconsider the decision. If CAV reconsiders, and still decides not to register the document, you can request that CAV to refer the question to the Magistrates' Court. CAV must ask the Court to decide whether the document is valid or not. If the Court decides the document is valid, CAV must register it.

It is important to ensure that CAV considers the documents valid, as your organisation will breach the AIR Act requirements if CAV does not accept its documents.

## Further information

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### Justice Connect Not-for-profit Law resources

The Not-for-profit Law Information Hub contains a variety of resources and fact sheets for community organisations – see <http://www.nfplaw.org.au>

See [Running the Organisation > Financial reporting](#), for summary information on the reporting obligations of incorporated associations.

### Legislation

The [Associations Incorporation Reform Act 2012 \(Vic\)](#) is the legislation that regulates incorporated associations in Victoria. The [Associations Incorporation Reform Regulations 2012 \(Vic\)](#) contain additional requirements for incorporated associations in Victoria.

### Government

The Consumer Affairs Victoria website contains a variety of online resources, including online access for incorporated associations. See [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au) > [Clubs and not-for-profits](#).

### Other links

The Australian Accounting Standards Board (AASB) website contains information about current accounting standards and other relevant information. See [www.aasb.com.au](http://www.aasb.com.au)

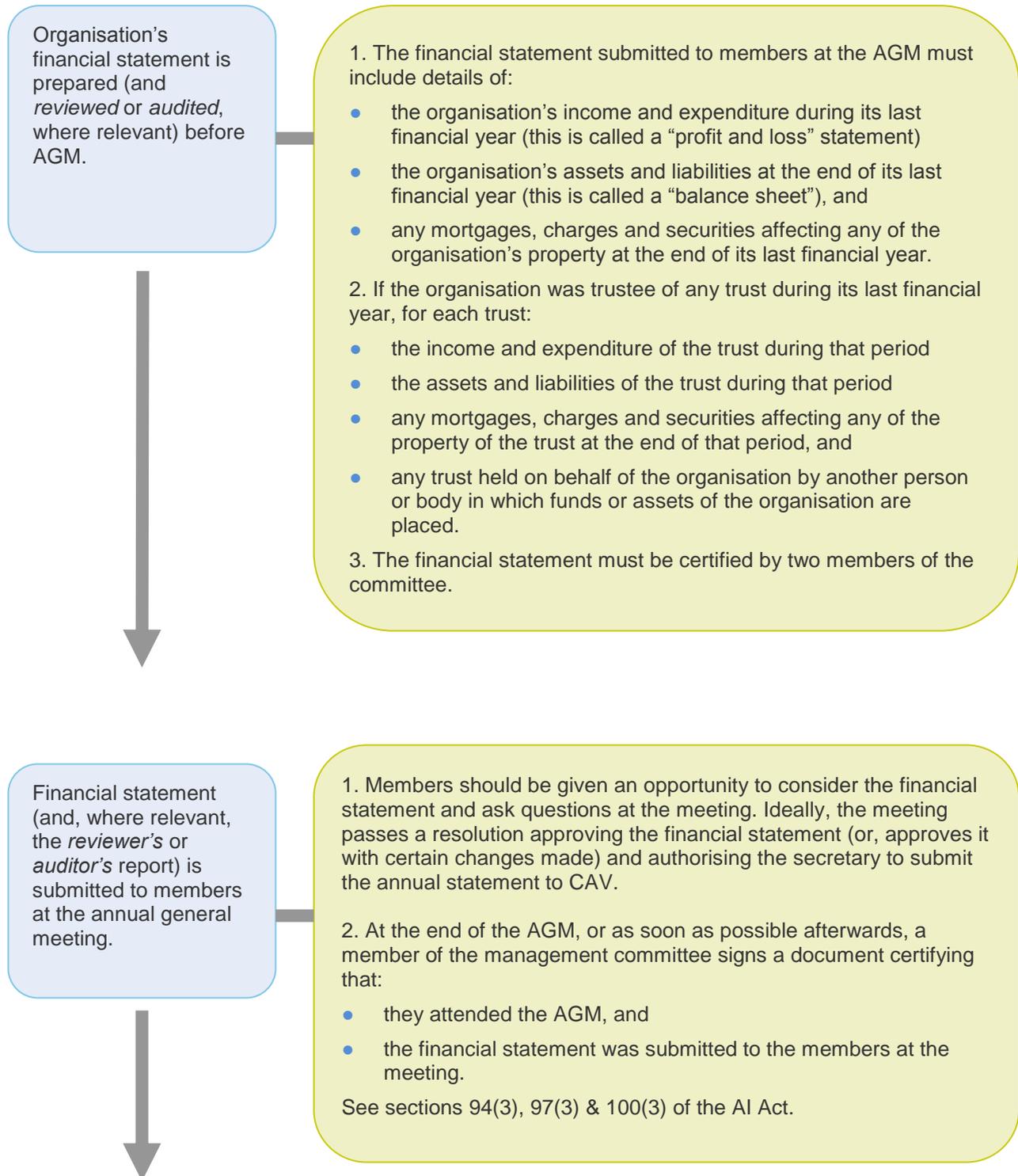
CPA Australia website contains information about accountants who are members of CPA Australia as well as practice standards and a range of accountancy publications. See [www.cpaaustralia.com.au](http://www.cpaaustralia.com.au)

The Institute of Chartered Accountants in Australia website contains information about accountants who are members of the Institute as well as practice standards and a range of accountancy publications. See [www.charteredaccountants.com.au](http://www.charteredaccountants.com.au)

The Institute of Public Accountants website contains information about accountants who are members, as well as practice standards and a range of accountancy publications. See [www.publicaccountants.org.au](http://www.publicaccountants.org.au)

See [Part 1: The Association in Nutshell](#) in this Guide for links to other organisations and online resources to assist you and your organisation.

## Tool 1: Flowchart for preparing and lodging the annual statement



Continued next page

Secretary completes CAV annual statement form and collects documents to attach to the form.

1. Every year, the secretary must file an annual statement with CAV. This is done by lodging the "annual statement form" (which CAV will send the organisation before its AGM). The form sets out information required by the AIR Act and *Associations Incorporations Reform Regulations 2012* (Vic) (the **Regulations**). The secretary must sign a statement confirming that certain requirements have been met.

2. When the secretary lodges the annual statement with CAV they must attach the following documents:

- the terms of any resolution passed at the AGM about the annual statement
- the prescribed fee (which, as at 1 December 2012, is about \$50)
- a copy of the financial statements of the association prepared for that year, and
- the document certifying that the financial statement was submitted to the AGM.

3. If your organisation is a *tier two* or *tier three association* (ie. had gross annual revenue over \$250,000 (tier two) or over \$1 million (tier three) in its previous financial year), or is a *tier one* organisation that has had its accounts reviewed the annual statement must also attach:

- a copy of your organisation's reviewed (tier one or tier two) or audited (tier three) accounts, and
- a copy of the reviewer's (tier one or tier two) or auditor's (tier three) report.

See section 102(3) of the AIR Act.

Secretary lodges annual statement form with CAV within required time period.

1. Secretary lodges statement with CAV within 1 month after AGM.

2. Annual statements can be lodged with CAV in person, by post, or by fax. CAV also accepts completed and signed forms scanned (PDF format) and sent by email.

3. The secretary can apply for an extension of time by either:

- downloading the "Application for Extension of Time" form from CAV's website, completing it, and delivering, posting, faxing or emailing it (PDF format) to CAV, or
- applying for an extension of time at: [online.justice.vic.gov.au](http://online.justice.vic.gov.au)

When applying for an extension of time, your organisation must pay the prescribed fee. As at 1 December 2012, the fee is about \$31.

See section 104(1) of the AIR Act.

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Organisation keeps documents for at least 7 years.

The organisation must keep the original financial statement, the management committee member's certification, and the originals of any documents submitted to CAV (for example, audited accounts) for at least 7 years. See sections 105 and 201 of the AIR Act.

## Tool 2: Sample annual statement form

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This is an example of a completed annual statement form to be lodged with Consumer Affairs Victoria.

**FORM 1**  
**Associations Incorporation Reform Act 2012**  
Sections 94(2)(b), 97(2)(b) and 100(2)(b)  
**ANNUAL STATEMENTS GIVE TRUE AND FAIR VIEW OF**  
**FINANCIAL POSITION OF INCORPORATED ASSOCIATION**

We, Joe Blogg and Savi Irani being members of the Committee of the Planters Association of East Gippsland Incorporated, certify that—

The statements attached to this certificate give a true and fair view of the financial position of the Planters Association of East Gippsland Incorporated during and at the end of the financial year of the association ending on 30 June 2012.

Signed:

Joe Blogg

Dated:

19 August 2012

Signed:

Savi Irani

Dated:

19 August 2012

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Not-for-profit Law Home: [www.justiceconnect.org.au/nfplaw](http://www.justiceconnect.org.au/nfplaw)

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