

# Incorporating as an incorporated association in Victoria

Legal information for Victorian community organisations

## This fact sheet covers:

- ▶ the process of setting up an incorporated association in Victoria
- ▶ key decisions such as nominating a secretary and 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, and
- ▶ registering an incorporated association using Consumer Affairs Victoria's (CAV) online myCAV system

**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 and Community Safety, 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.

This fact sheet contains:

- an overview of the process for setting up an incorporated association
- further detail on the main requirements and considerations involved, and
- links to CAV and other relevant websites



## Related Not-for-profit Law resource

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 Not-for-profit Law's ['Choosing a legal structure' webpage](#).



## Overview

Once you've decided you would like to incorporate an association in Victoria, you will need to follow the steps set out below (some points are explained in more detail later in this fact sheet).

<b>Step 1— decide to incorporate</b>	<p>Before you can complete an application form to incorporate, you will need to formally decide to incorporate an association. A majority of the members of your group must vote at a meeting to authorise a person to apply for incorporation, and to approve the rules of the proposed incorporated association.</p> <p>An incorporated association in Victoria must have at least five members.</p> <p>You can't incorporate as an incorporated association if you are planning to operate for the profit of your members (although you can provide services or benefits to the members).</p>
<b>Step 2 — make an application</b>	<p>Applications for registration of an association are made to Consumer Affairs Victoria via the online <a href="#">myCAV</a> portal. The application must:</p> <ul style="list-style-type: none"> <li>• specify the proposed name of your association</li> <li>• provide the details of the person nominated to be the first secretary</li> <li>• include a copy of your association's proposed rules, or a statement that your association adopts the model rules without modification, and</li> <li>• be accompanied by the required fee</li> </ul>
<b>Step 3 — wait to hear from CAV</b>	<p>Once CAV has received your organisation's application for incorporation, it will review the paperwork. If the application is approved you will be sent a certificate of incorporation. CAV may also contact you for more information or to discuss your constitution.</p>

Some of the main decisions and actions outlined above are explained in more detail below.

## 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. They must agree to give their details (such as name and address) to the Registrar of Incorporation (**the Registrar**) 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, be a resident in Australia and consent to be the organisation's secretary, and
- may also hold other office bearer positions in your association

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

The secretary will be the person who lodges the form to incorporate as an association, unless another person is specified on the form as the secretary.



### Related Not-for-profit Law resource

Detailed guidance on the secretary's role in a Victorian incorporated association is available in Not-for-profit Law's [Secretary's Satchel – Guide for Secretaries](#).

## Deciding on a name for your organisation

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

When choosing a name, your organisation should investigate whether the name (or a confusingly similar name) is already registered or being used by another person or organisation.

The Registrar will not approve a name that is the same or too similar to a name registered on the Victorian or ASIC [business names register](#). You can search these registers to check whether the name you'd like is registered.

Your organisation should also consider whether the name you'd like to use (or a confusingly similar name) is protected under intellectual property laws.



### Related Not-for-profit Law resources

For more information on intellectual property rights, go to Not-for-profit Law's [intellectual property webpage](#)

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 and registration number in legible characters 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), although this is not obligatory. If your organisation does have a common seal this must include the full name of the organisation in legible characters.

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 the Registrar for approval within 28 days of the date of the meeting at which the special resolution is passed. The application must include, among other things, a statement confirming that the change of name was approved by special resolution and specifying the date on which the resolution was passed, and be accompanied by any applicable fees. The name change is not official until you get the approval notice from the Registrar.

## Drafting a set of 'rules' for the association or adopting 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 sets out the list of matters that an association's rules **must** cover. Go to Not-for-profit Law's [constitution webpage](#) for a list of the matters that must be addressed in the rules. You can include additional rules in relation to any other prescribed matters if you wish. The rules must also include the purposes of the association (discussed further below).

To help organisations that want to be 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. 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 (discussed below).

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.



### Note

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 these vary by category of endorsement. If your group is intending to obtain DGR status, you should get specific legal or tax advice on whether the model rules are suitable for your organisation.

If your organisation has decided to use the CAV model rules, you will need to 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 – see further below). Note however, if your association is a registered charity, its financial year will need to be to 30 June each year unless the Australian Charities and Not-for-profits Commission (**ACNC**) has approved a substituted reporting period.

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 and must be approved by the Registrar of Incorporation. The application for approval must be made within 28 days of the resolution being passed.



### Related Not-for-profit Law resource

Not-for-profit Law has a 'Rules Tool' that you can use to create a set of customised rules that comply with Victorian law and are set out in plain language. You can access the Rules Tool from our [constitution webpage](#).

## Deciding on the purposes of the association

The Act requires that an incorporated association set out its purposes 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, the wording of your organisation's purposes may have significant legal implications in the future. Importantly – your organisation can't legally act beyond its purposes, and directors need to consider the purposes when making decisions. Furthermore, if an organisation engages in activities outside the scope of its statement of objects or purposes, a court may order that the organisation be wound up.

As noted above, 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. Purposes are also relevant when seeking to be registered with the ACNC.



### Tip

If your organisation intends to apply for tax concessions, you should seek legal advice on suitable wording for your organisation's purposes.

Legal advice at this early stage will save your organisation from having to amend its purposes in the future.



### Related Not-for-profit Law resource

For more information about tax concessions, go to Not-for-profit Law's [tax webpage](#).

## Holding a pre-incorporation meeting

The Act requires the members of the group to hold a meeting before applying for incorporation. The association must have at least five members.

The requirements for the meeting are set out in the Act. In general, the members of the group need to be given at least 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 a person who is at least 18 years of age and is resident in Australia to apply for incorporation.

## Registering as an incorporated association using myCAV

An application to register as an incorporated association must be submitted through CAV's online system for incorporated associations, myCAV. You will need to set up a myCAV account, which will also allow you to view and update your organisation's 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](#). To complete this process you will need 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).

As at January 2021, the fee for incorporating a new association is:

- \$37.00 if your organisation is using the model rules, or
- \$214.70 if your organisation has drafted its own rules (or has amended the model rules)

## Awaiting notice from CAV

Once your group has submitted its application through myCAV, if the application is accepted, a certificate of incorporation (showing the name of the incorporated association, registration number and date of incorporation) and a receipt of payment will be emailed to the secretary and the person who lodged the application.

Alternatively, CAV might ask you for further clarification or about areas of deficiency in the draft rules. If so, you may wish to seek advice on how to respond

## Ongoing compliance

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 complies 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.



### **Related Not-for-profit Law resources**

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 Not-for-profit Law's [running the organisation webpage](#).

# 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 in Victoria. It goes through the responsibilities of secretaries and provides tools and resources to assist secretaries in their role. (Expand the 'Victoria' section at the bottom of the webpage.)

## 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.