

Positions in an incorporated association

Legal information for ACT incorporated associations

This fact sheet covers:

- what is a committee?
 - governance
 - positions in a committee, and
 - duties of committee members.
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If you are starting an incorporated association in the Australian Capital Territory (ACT), 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 often be useful to step back and look at the association as a whole.

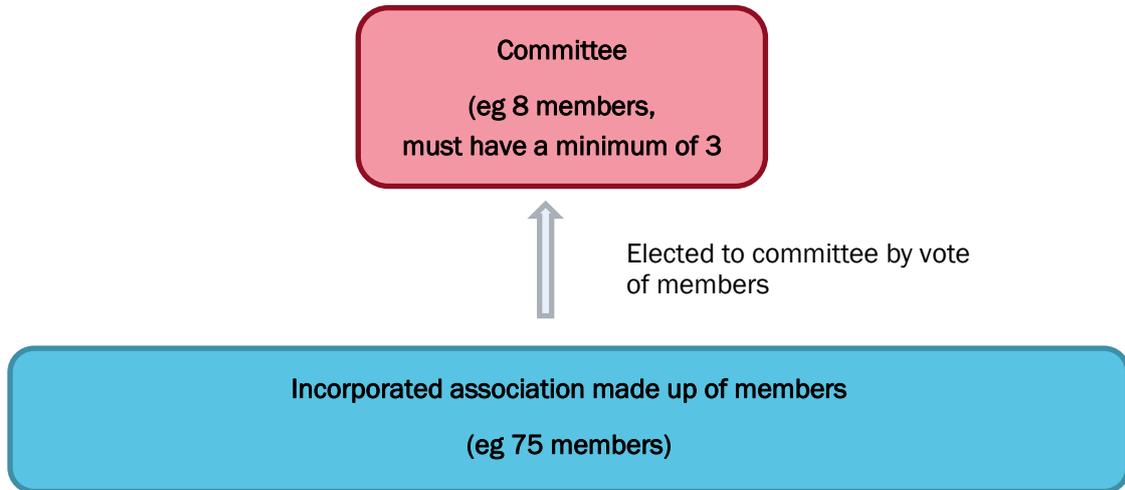
This fact sheet provides an introduction to the key parts of, and people involved in, an association incorporated in the ACT.

What is a committee?

Managing an incorporated association is the responsibility of an elected committee. Sometimes other names are used for this governing body, such as the “board”, “council”, or “management committee”.

The committee is made up of those people who have the power to manage the association under the rules of the association. In the ACT, an association must have a minimum number of three committee members. In many cases, the members of the association elect a small group of people, who are themselves members of the association, to be on the committee (see Diagram 1 below). Note, a person is not required to be a member of the association to be elected to the committee by law, but it is reasonably common for an association's rules (also commonly known as a ‘constitution’) to make membership of the association part of the eligibility criteria for becoming a member of the committee.

Diagram 1: Electing a committee (example only)



CAUTION

In the ACT, certain people are not allowed to be on the committee or act as public officer of the association unless they get permission from the Supreme Court of the ACT.

This includes a person who:

- is bankrupt or personally insolvent, or
- within the past five years has been convicted or imprisoned for committing one of the following offences:
 - any indictable offence in relation to the promotion, formation or management of a body corporate, or
 - an offence involving fraud or dishonesty punishable by imprisonment for a period of 3 months or more.

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 sometimes seem strange to separate the role of a member of the association from the role of a member of the committee. Further confusion can arise if the same people are also involved in actually operating the association (either employed or on a volunteer basis). However, it is important to understand the separate (legal) role of the committee.

Governance - how the committee differs from the “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 its legal, ethical and operational requirements. Community associations, especially small associations, often struggle to distinguish between:

- the role and responsibility of an association's committee (to make rules and set strategies, that is to govern the association), and
- the role and responsibility of the staff, “organisers” or key volunteers that are not on the committee (to “run things”, that is to operate the association).

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 the daily operation, 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.

Members of the committee of ACT incorporated associations have particular legal duties imposed on them under general (judge made) law (such as the duty of due care, skill and diligence and the duty to act in good faith in the best interests of the association) and may also have obligations imposed on them under the rules of the association. Note that unless an association decides to adopt its own rules, the model rules set out in the *Associations Incorporation Regulation 1991* (ACT) will apply as the association's rules.

For ACT incorporated associations, there must be a minimum of three committee members. Committee members' functions under the *Associations Incorporation Act 1991* (ACT) (**AI Act**) include:

- ensuring an annual general meeting is held within five months of the end of the association's financial year
- keeping accounting records that explain the transactions and financial position of the association
- ensuring annual financial statements are prepared and audited
- submitting audited financial statements and other relevant information to members at the annual general meeting
- lodging with the Registrar-General periodic returns containing accounts and other information relevant to the association
- overseeing the association's financial affairs
- notifying the Registrar-General of a change in membership of the committee, or a change of address of a member of the committee, within one month (where required), and
- appointing a new public officer (a position discussed below) within 14 days of the previous one vacating office.

Access Canberra, the ACT entity overseeing incorporated associations, may get involved in any complaints that relate to a breach of the AI Act.

NOTE

If the association is also registered as a charity with the Australian Charities and Not-for-profits Commission (**ACNC**) it will also need to comply with the requirements associated with being a charity. Proposed reforms to the AI Act are currently in progress which will streamline some requirements for registered charities. Note that if these reforms become law, requirements for registered charities will change from July 2017. Further information on these reforms can be accessed [here](#)



In larger organisations, different people may be ‘managers’ (such as a CEO, finance manager or operations manager), and in smaller organisations, key volunteers may be 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, but occasionally, ‘managers’ or ‘key volunteers’ also need to comply with legal duties. This may occur where they are someone who takes part in making key decisions that affect the operations of an association or who is influential in the affairs (financial or otherwise) of the association (see discussion on “Committee Members” and their 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 specific 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 (or chairperson) runs meetings and usually represents the organisation at public events
- the vice president (or deputy chairperson) 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, though note the financial affairs of the association is the responsibility of all committee members, and
- the secretary organises meetings, deals with documents and maintains records of the association and is normally responsible for all general correspondence.

The committee may have other members who do not hold a special position. These are sometimes called “ordinary committee members”. These ordinary committee members must also meet the duties that apply to officers of the committee.

Who is the public officer?

The AI Act requires every incorporated association to have a ‘public officer’. The public officer of an incorporated association in the ACT has responsibilities under the AI Act for ensuring that forms and

documents are submitted to the Registrar-General, and is the primary contact person for the organisation. The public officer must be at least 18 years of age and reside in the ACT. Unless the rules of the association provide otherwise, the public officer may hold any office of the association in addition to the office of public officer.

The public officer may, but does not need to, be part of the committee. 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.

When your association first incorporates, the person who is authorised to apply for incorporation of the association will be the public officer of the association (unless the rules of the association provide otherwise).

Committee members and their duties

All committee members of an association will typically be subject to duties under the general (judge made) law that have been in existence for many years, for example:

- the duty of care and diligence, and
- the duty to act in good faith in the best interests of the association.

In addition, the AI Act requires a committee member to disclose any interest that the committee member has in a contract or proposed contract to which the association is or may be a party and precludes that committee member from voting on the contract or proposed contract.

FURTHER READING

For more information about legal duties of office holders, 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 <https://www.nfplaw.org.au/governance>



The duties of committee members of incorporated associations would also include complying with the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the corresponding regulations (including the Governance Standards) if the association is registered as a charity with the ACNC.

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 – www.nfplaw.org.au/governance
- ✔ Employees – www.nfplaw.org.au/employees
- ✔ Risk and insurance – www.nfplaw.org.au/riskinsurance
- ✔ Meetings – www.nfplaw.org.au/meetings
- ✔ Getting started – www.nfplaw.org.au/gettingstarted

Other important resources

- ✔ [Access Canberra's website page on incorporated associations](#)

This is a link to Access Canberra's website that includes helpful commentary and further information regarding the incorporation and management of incorporated associations in the ACT.

Model Rules

ACT's 'Model Rules' for an incorporated association [can be found in Schedule 1 of Associations Incorporation Regulation 1991 \(ACT\)](#).

For Treasurers

- ✔ [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.

Relevant Legislation

- ✔ [Associations Incorporation Act 1991 \(ACT\)](#)

This is the Act that governs incorporated associations in the ACT.

- ✔ [Associations Incorporation Regulation 1991 \(ACT\)](#)

These Regulations set out additional details of some laws that relate to incorporated associations in the ACT (including the model rules).

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

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