

Positions in an incorporated association

Legal information for New South Wales 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, 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.

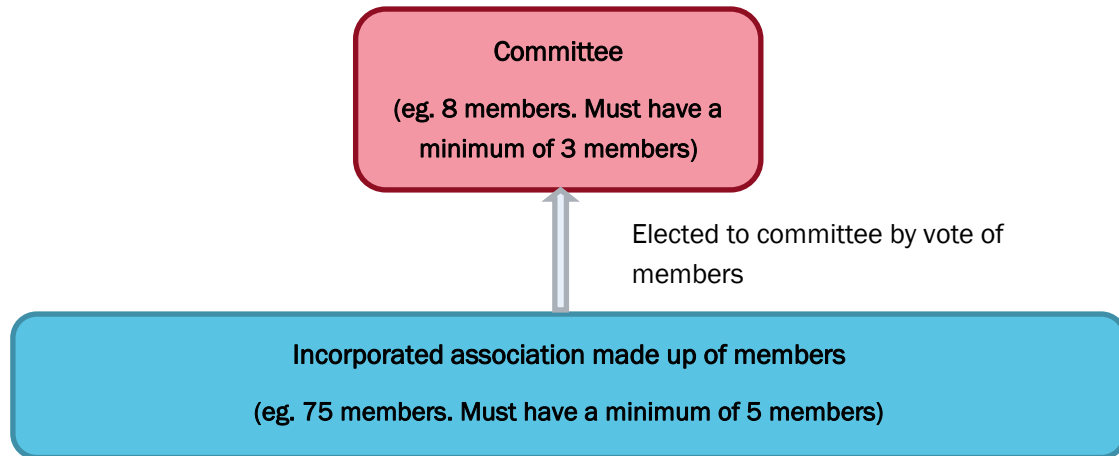
This fact sheet provides an introduction to the key parts of, and people involved in, an association.

What is a committee?

Managing an incorporated association is the responsibility of an appointed committee. The associations' constitution (sometimes called rules) will set out how the committee is appointed. Sometimes other names are used for this governing body, such as the "board", "council", or "committee of management".

The committee is made up of those people who have the power to manage the association under the constitution of the association. In New South Wales (NSW), the *Associations Incorporation Act 2009* (NSW) (AI Act) requires an association to establish a committee of at least 3 members who ordinarily live in Australia. Committee members must be at least 18 years old. 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 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 and 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 from the role of members, staff or volunteers.

 **TIP**

Your association should make sure new committee members understand their roles. We explain this in some detail in our fact sheet "Introduction to the board member role for new board members" at www.nfplaw.org.au/governance

Governance - how the committee differs 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 make rules and set strategies, that is, to govern the association), and
- the staff, "organisers" or key volunteers (to "run things", that is to carry out the day-to-day activities).

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 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 have particular legal duties under the AI Act and judge-made law. These duties include the duty of due care, skill and diligence, the duty to act in good faith and in the best interests of the association, and the duty to ensure that the association does not trade while insolvent, which means not allowing the association to incur debts it cannot repay or is likely to be unable to repay. Committee members may also have duties imposed on them under the constitution of the association. Note that the association may draft its own constitution or use the "Model Constitution" (Schedule 1 to the *Associations Incorporation Regulations 2009* (NSW) (the "AI regulations").

For New South Wales incorporated associations, committee members' functions and responsibilities under the AI Act include:

- holding an annual general meeting (AGM) no more than six months after the end of the association's financial year
- submitting the association's financial statements for the previous financial year to the AGM
- holding committee meetings as required by the association's constitution
- overseeing the association's financial affairs. This includes making sure the association does not continue to operate if it is insolvent, and keeping proper financial records
- returning all documents that belong to the association to the public officer within 14 days of ceasing to be a committee member
- appointing a public officer within 28 days after the position becomes vacant
- recording all disclosures of direct or indirect interests of committee members in matters which are considered during a committee member

NSW Fair Trading is responsible administering the AI Act and 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 which include comply with Governance Standards. Some of the responsibilities outlined above will also be important in meeting the Governance Standards, including holding meetings, disclosing conflicts and record keeping. See below for Further Resources on the ACNC Governance Standards



In larger organisations an association may also have '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 occurs 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 of "Committee members" and their duties below). An example of this is a

manager who decides to change the core programs of the association from helping the homeless to helping people access food supplies.

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”, “office bearers” or “the executive” of the association. The titles of positions within a committee can vary between associations, however some common positions and their traditional roles are explained briefly below:

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

The committee may have other members who are not in special positions. They are sometimes called “ordinary committee members”. These members must also meet the legal duties that apply to members of the committee.

The Model Constitution provides that a committee member may hold up to 2 offices (i.e. positions on the committee) but cannot be both president and vice-president. Associations who do not use the Model Constitution can check their constitution for any similar restrictions, or specific requirements for holding positions on the committee.

Who is the public officer?

The AI Act requires an association to appoint a ‘public officer’. This person is the ‘contact person’ for the association. The person must agree to give their details (such as name, date of birth and address) to NSW Fair Trading upon their appointment. An incorporated association must have a public officer at all times and the position must be filled within 28 days of it becoming vacant. The public officer must be over 18 years of age, live in NSW and consent to being the organisation’s public officer. The public officer is an authorised signatory for the association. The position of public officer may, but need not be, held by a committee member. 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 generally responsible for lodging an annual statement each year with NSW Fair Trading. The public officer is responsible for advising NSW Fair Trading if the association changes its official address and for custody of any documents or records of the association as required by its constitution.

A former public officer must return all documents which belong to the association to a committee member within 14 days of vacating the public officer position.

FURTHER READING

For further information about the role of public officer, there is detailed guidance on [NSW Fair Trading website](#).

The role of the public officer is also set out in Not-for-profit Law's Guide "Guide to running a NSW incorporated association", in particular in Part 3. You can access the Guide [here](#).



"Committee members" and their 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. This would generally include:

- the president
- the vice president
- the treasurer
- the secretary
- committee members

Each committee member is required under the AI Act to carry out their duties, as far as possible, for the benefit of the association and with due care and diligence.

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 for themselves or any other person or causing detriment to the organisation
- refrain from dishonestly using their position with the intention of gaining an advantage for themselves or any other person or causing detriment to the organisation, and
- ensure the association does not trade while insolvent. This means that the committee should not allow the association to incur debts that it cannot repay or is likely to be unable to repay.

A committee member who breaches their duties may be guilty of an offence (which may lead to imprisonment), required to pay a penalty or both. In addition, if an association contravenes, whether by committing an act or failing to act, 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 this provision of the AI Act (section 91), an association's public officer (not otherwise being a committee member) is taken to be a committee member.



TIP

Your association should consider an induction process for new committee members. See our fact sheet "Board inductions: bringing on a new board member" at www.nfplaw.org.au/governance

RELATED RESOURCES

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 www.nfplaw.org.au/governance.



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

RELATED RESOURCES

For further information about the ACNC Governance Standards see the ACNC's publication *Governance for Good*, a guide for charity board members available here: www.acnc.gov.au/ACNC/Edu/Tools/GFG/GFG_Intro.aspx .



Resources

Related Not-for-profit Law Resources

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

- ✔ Governance and legal duties – www.nfplaw.org.au/governance
- ✔ Guide to running a NSW incorporated association - www.nfplaw.org.au/secretaryguide
- ✔ Employees – www.nfplaw.org.au/employees
- ✔ Risk and insurance – www.nfplaw.org.au/riskinsurance
- ✔ Holding Meetings – www.nfplaw.org.au/meetings
- ✔ Getting started – www.nfplaw.org.au/gettingstarted

Model Constitution

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

See Schedule 1, of the *Associations Incorporation Regulation 2016* (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 officers in incorporated associations.

Financial information for Treasurers and Committee members

- ✔ [Institute of Community Directors Australia – financial help sheets and resources](#)

This is a link to the resources the Institute of Community Directors Australia has developed to help community organisations manage its finances. It also has links to a number of sample policies, including on the topics of finance and HR.

- ✔ [Davidson Institute \(Westpac\) – Guide for Community Treasurers](#)

The Davidson Institute has developed a guide for treasurers of community organisations to help them navigate their responsibilities. It includes a checklist for new treasurers to complete, tips on financial strategy and sample tax invoices and income and expenditure ledgers plus more.

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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