

Positions in an incorporated association

Legal information for Victorian 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 Victoria, 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.

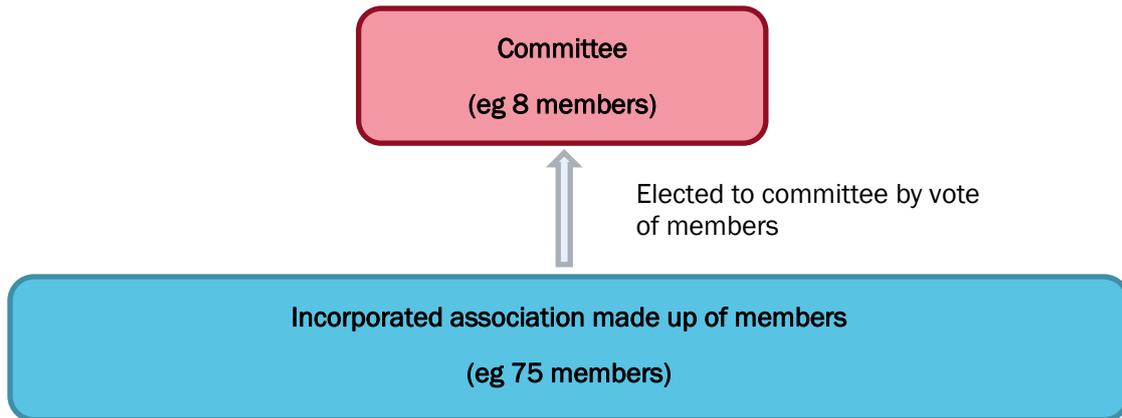
This fact sheet provides an introduction to the key parts of, and people involved in, an association incorporated in Victoria.

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 Victoria, the law does not require a minimum number of committee members, however most associations will have a minimum of three committee members. 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). 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 (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)



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 versus 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 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 Victorian incorporated associations have particular legal duties under the *Victorian Associations Incorporation Reform Act 2012* (Vic) (**AIR Act**) and judge-made law, such as the duty of due care, skill and diligence, the duty to act in good faith and the duty to ensure that the

association does not trade while insolvent. These are discussed further below. Consumer Affairs Victoria (**CAV**) is responsible for enforcing these laws.

For Victorian incorporated associations, committee members' functions under the AIR Act include:

- ensuring an annual general meeting is held within five months of the end of the association's financial year
- submitting a financial statement that covers the full financial year, which gives a 'true and fair' view of the association's financial affairs, to members at the annual general meeting
- overseeing the association's financial affairs. This includes making sure the association does not continue to operate if it is insolvent
- appointing a new secretary within 14 days, if the position becomes vacant, and
- returning all documents that belong to the association within 28 days of ceasing to be a committee member.

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. For further information on record keeping requirements for charities go to the Not-for-profit Law Information Hub page on Record Keeping at www.nfplaw.org.au/recordkeeping.



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 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 Office Holders below).

Are there special positions on the committee?

Commonly, there are a number of special positions on a committee – often one of which is the secretary. 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 (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 reports to CAV, organises meetings, deals with documents and maintains records of the association.

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

FURTHER READING

For further information about the role of the secretary, see Part 3: Secretary’s Role, Powers and Duties in the Secretary’s Guide at www.nfplaw.org.au/secretaryguide.

Who is the secretary?

The secretary of an incorporated association in Victoria has responsibilities under the AIR Act for ensuring that forms and documents are submitted to CAV, and is the primary contact person for the organisation. Under the old Act, the “public officer” had these responsibilities. The term “public officer” has been replaced in the new AIR Act with the term “secretary”.

The secretary is also responsible for ensuring that the administrative functions of organising meetings and minutes, handling membership and maintaining important documents and registers of the organisation are fulfilled.

The secretary may, but does not need to, be part of the committee. For example, the secretary 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. Under the new model rules, the secretary is a member of the committee.

When your association first incorporates, the person who lodges the application for incorporation as an association will be deemed by CAV to be the secretary unless the application states another person as the secretary.

“Committee members” and their duties

The AIR Act uses the language of “office holder” to describe the people in an association who have certain legal duties to the organisation that must be met. “Office holder” is defined in the AIR Act to encompass, among others, committee members, the secretary, the chief executive or chief financial officer and any person involved in the association’s management who can significantly affect the associations financial standing,

Special legal duties apply to office holders. Many duties that apply to office holders are now listed in the AIR Act, including:

- the duty not to make improper use of information acquired by virtue of their position or to make improper use of their position to gain personal advantage or cause harm to the association
- the duty of care and diligence
- the duty to exercise his or her powers in good faith and in the best interests of the association and for a proper purpose, and

- the duty to avoid ‘insolvent trading’. This means that the committee should not continue to operate and enter into contracts or incur debts it cannot repay.

If an office holder makes a business decision relating to the operation of the association, they must, among other things:

- make that decision in the best interests of the association, and
- not have a personal interest in the decision.

There are also duties under the general (judge made) law that have been in existence for many years. The substance of these common law duties has not changed.

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 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.

RELATED RESOURCES

If your association is a registered charity, committee members must comply with the ACNC Governance Standards. 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 and Part E of 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 – 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

Model Rules

- ✔ [Victoria's 'Model Rules' for an incorporated association](#)

See Schedule 4, of the *Associations Incorporation Reform Regulations 2012* (Vic).

Treasurer

- ✔ [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.

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

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