

Positions in an incorporated association

Legal information for Western Australian 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 Western Australia, 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 Western Australia.

What is a committee?

The day-to-day management of an incorporated association is the responsibility of the management committee (also known as a 'committee', 'board' or 'council').

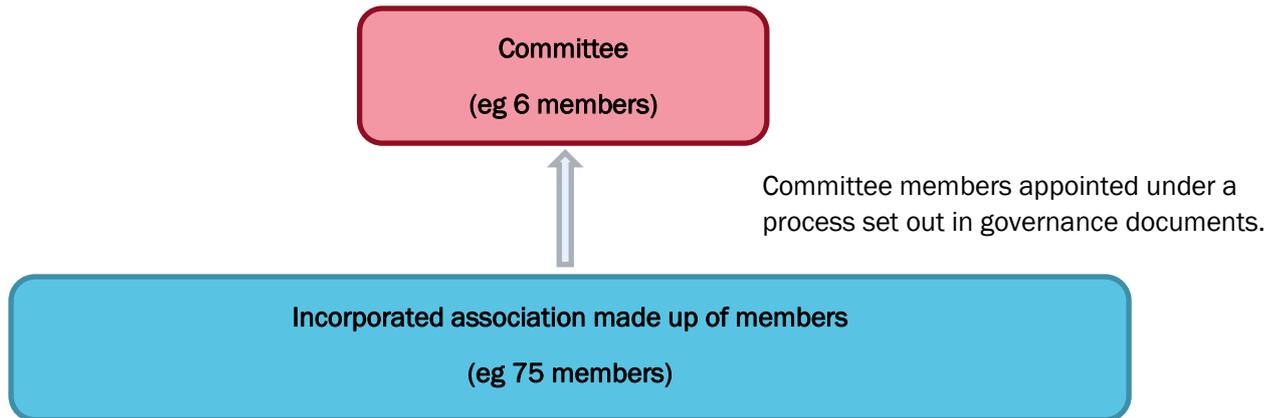
The committee is made up of those people who have the power to manage the association under the rules of the association. In WA, the law does not require a minimum number of committee members however most associations will have a minimum of three committee members. Generally (but not always), the members of an incorporated association elect a small group of people, who are themselves members of the association, to be on the committee (see Diagram 1 below). The association's rules (commonly known as a 'constitution') should contain the rules governing the committee, including the following:

- the process of election or appointment of committee members
- term of office and when the office will be vacated, and
- how casual vacancies can be filled.

An incorporated association may also wish to include additional requirements regarding its committee members in its governing documents, such as specifying certain skills or qualifications a person must have in order to be a member of the committee or specifying whether or not the person must be a member of the incorporated association.

The governing documents should also set out the size and composition of the committee.

Diagram 1: Electing a committee (example only)



In Western Australia, committee members do not have to be members of the incorporated association. The rules of the association will set out whether or not this is the case.

In some organisations, all the members of the incorporated association are also members of the committee. This often happens in small associations or when the organisation first begins.

If the committee members are also the only members of the association, care must be taken to ensure that the committee members distinguish between when they are acting as the committee and when they are acting as a member of the association. For example, this can be done by ensuring that committee meetings are held on a separate day to any general meeting of the association.

CAUTION

Confusion can arise where committee members also have roles as a volunteer or 'worker' within the association. Care should be taken to distinguish the role of committee member from volunteer or worker, as different legal duties apply.



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 govern the association), and
- the role and responsibility of the staff, "organisers" or key volunteers that are not on the committee (to manage and 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 management, 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. The committee may delegate certain roles and responsibilities to managers of the association or to third parties, for example, administrative functions.

Members of the committee of Western Australian incorporated associations have particular legal duties under the *Associations Incorporation Act 2015* (WA) (**the 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. The Consumer Protection Division of the Department of Commerce, through the Commissioner (**Consumer Protection**), is responsible for enforcing these laws.

For Western Australian incorporated associations, committee members' functions under the Act include:

- ensuring an annual general meeting is held within six 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, and
- returning all documents that belong to the association as soon as reasonable practicable upon 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, which include governance and reporting requirements.

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, employees may manage operational affairs of the association (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. Both employees and volunteers should follow strategies set by the board, and the board is responsible for overall stewardship of the association. Normally, employees and volunteers 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?

Many incorporated associations choose to appoint specific positions on the committee.

Common positions within a committee include:

- the chairperson (or president) – runs meetings and usually represents the organisation at public events
- the deputy chairperson (or vice-president) – 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 Consumer Protection, organises meetings, deals with documents and maintains records of the association.

Whether or not an association appoints specific positions within the committee is a matter for it to determine and there is no requirement under the Act to appoint such positions. Most associations will appoint specific positions within the management committee (for example, the model rules for WA do so). Some associations will also specify in their rules the particular responsibilities attached to these positions. Most commonly, the secretary is charged with responsibility for ensuring that all documents and notifications are lodged with regulators. However, it is important to remember that the committee of an association, and not just one individual, is responsible for updating and reporting to Consumer Protection (and the ACNC if required).

Duties of committee members

The Act uses the language of “officers” to describe the people in an association who have certain legal duties to the organisation that must be met. An “Officer” is defined in the Act to encompass, among others, committee members, a person, including an employee, who makes or participates in making decisions that affect the whole or a substantial part of the operations of the association, a person who has the capacity to significantly affect the association’s financial standing and a person in accordance with whose instructions or wishes the management committee is accustomed to act.

Special legal duties apply to officers. The duties of officers are outlined in the Act and also derive from judge-made law, and include:

- 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, skill and diligence
- the duty to act 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 officer 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.

Where a committee member has a material personal interest in a matter to be addressed by the committee, the committee member must disclose that interest at the next general meeting and must leave the committee meeting while the matter is discussed and voted on.

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.

NOTE

Committee members should ensure that they understand their duties and at all times act in a way to ensure they discharge their duties. Committee members who do not discharge their duties may face penalties, including fines, under the Act and non-compliance may affect their reputation as a committee member for any future appointments.

In circumstances where the committee is not functioning effectively, the Commissioner has the power to appoint an independent person, called a 'Statutory Manager', to step in and act for the committee in administering the affairs of the association. For more information about this and other external grievance procedures, go to [Consumer Protection's website](#).



If the association is registered as a charity with the ACNC, 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).

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

Not-for-profit Law Resources

- ✔ Getting started – www.nfplaw.org.au/gettingstarted

Not-for-profit Law's Getting Started page on the Information Hub covers the legal issues groups have to think about when starting a new not-for-profit organisation.

- ✔ Governance – www.nfplaw.org.au/governance

Not-for-profit Law's Governance page on the Information Hub features information on the legal duties of boards, committees and office holders.

- ✔ Employees – www.nfplaw.org.au/employees

Not-for Profit Law's Information Hub page on Employees has information on employment law and the issues to look out for.

- ✔ Risk and Insurance – www.nfplaw.org.au/riskinsurance

Not-for-profit Law's Information Hub page on Risk and Insurance provides information on the risks that can arise from operating and interacting with clients, employees, the public or members.

- ✔ Meetings – www.nfplaw.org.au/meetings

Not-for-profit Law's Information Hub page on Holding Meetings features information on how organisations can conduct meetings in accordance with legal requirements.

Legislation

- ✔ [Associations Incorporation Act 2015 \(WA\)](#)

- ✔ [Australian Charities and Not-for-profits Commission Act 2012 \(Cth\)](#)

Consumer Protection WA

- ✔ [INC: A guide for incorporated associations in Western Australia](#)

This WA Department of Commerce Consumer Protection guide has been updated to include information about the *Associations Incorporation Act 2015*.

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

The WA Department of Commerce Consumer Protection has provided guidance to help Associations develop their rules.

Other Related Resources

- ✔ [Our Community Financial Centre](#)

The Our Community website page on finance features resources for community treasurers, cyber safety and fraud protection, and mergers.

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

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