Positions in an incorporated association

This fact sheet covers:

- what is an incorporated association?
- what is a committee?
- governance
- committee positions
- committee members’ duties, and
- committee members’ liability

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 be useful to step back and look at the association as a whole.

Note

This fact sheet provides information on positions in an incorporated association in Victoria. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before making a decision about what to do.

Please refer to the full disclaimer that applies to this fact sheet.

What is an incorporated association?

An incorporated association is a type of legal structure that takes the form of a legal entity with its own legal identity that is distinct from its members.

An incorporated association can:

- open a bank account in its own name, hold property, employ staff, enter into contracts, sue and be sued, and
- continue to operate, even if its members change

Because of this legal structure, an incorporated association provides some protection to its members.

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Members of an incorporated association have limited liability – they are only liable for the amount they owe to the association and are not at risk of being personally liable for any claim that arises due to their involvement in the association.

Generally – people who sit on the committee can also have limited liability. We discuss committee member's liability below.

**What is a committee?**

Managing an incorporated association is the responsibility of an elected committee. Other names sometimes used for this governing body are ‘board’, ‘council’, or ‘management committee’.

The committee is made up of the people who have the power to manage the association under the association's rules. In Victoria, the law doesn’t 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 the diagram below).

**Note**

A person is not required to be a member of the association to be elected to the committee by law, but it’s reasonably common for an association’s rules (or ‘constitution’) to make membership of the association part of the eligibility criteria for becoming a member of the committee.

**ELECTING A COMMITTEE (EXAMPLE ONLY)**

Incorporated association made up of members (eg. 75 members) → elected to committee by vote of members → Committee (eg. eight members)

In some associations, 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’s 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 our fact sheet ‘Introduction to the board member role for new board members’.
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 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 of Victorian incorporated associations have particular legal duties under the 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 doesn’t 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 (AGM) 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 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. This includes compliance with the 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, different people may be ‘managers’ (such as a CEO, finance manager or operations manager). 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 don’t 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 information on office holders below).
Are there special positions on the committee?

There are usually a number of special positions on a committee. 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 on a committee will vary between associations, however some common positions and their traditional roles are:

- **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 don’t hold special positions. These are sometimes called ‘ordinary committee members’. These members must also meet the duties that apply to members of the committee.

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.

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 is the secretary.

Related Not-for-profit Law resource

For further information about the role of the secretary, see Part 3: Secretary’s Role, Powers and Duties in our secretary’s guide.

Committee members’ duties

The AIR Act uses ‘office holder’ to describe the people in an association who have certain legal duties to the organisation. ‘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 association’s 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 their 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 the association can’t 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.

**Related Not-for-profit Law resource**
For more information about legal duties of office holders, see our guide to the legal duties of not-for-profit committee members on our duties webpage.

If the association is registered as a charity with the ACNC, the committee members’ duties 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, and
- Part E of Not-for-profit Law’s guide to the legal duties of not-for-profit committee members on the duties webpage

**Committee members’ liability**
As discussed above, incorporating your association can protect members from having legal action brought against them, limiting their liability. Generally, committee members also have limited liability.

However, in Victoria, if a committee member or officer of an association:

• improperly uses information or their position, or
• fails to exercise their duty of good faith and duty of care and due diligence, they may be personally subject to civil proceedings and the payment of penalties of up to $20,000.

In addition, the court may order the person to pay an amount specified by the court to the incorporated association as compensation. Accordingly, committee members can best protect themselves from being personally liable by ensuring that at all times they both exercise their duties, responsibilities and powers in good faith, and comply with the AIR Act.

In some circumstances, committee members may attract a penalty if they are in breach of their statutory or judge-made duties, or where they otherwise contravene certain parts of the AIR Act.
Resources

Not-for-profit Law resources

Not-for-profit Law has further resources on the following topics:

► Getting started
  Not-for-profit Law's Getting Started webpage covers the legal issues groups have to think about when starting a new not-for-profit organisation.

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

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

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

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

Model Rules

► Victoria's 'Model Rules' for an incorporated association
  See Schedule 4 of the Associations Incorporation Reform Regulations 2012 (Vic).

Legislation

► Associations Incorporation Reform Act 2012 (Vic)
► Associations Incorporation Reform Regulations 2012 (Vic)