

Part 1

Overview of an incorporated association

This part of the guide contains background information to help you understand your organisation, the roles of the members, committee and secretary, and how to use this guide.



Note

This guide provides information on running 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 guide.

Summary of key points

Who is this guide for?	This guide is primarily for secretaries of incorporated associations. This part of the guide provides an overview of an association.
How to use this guide	This guide is in nine parts and includes a range of practical tools and other links.
What is an incorporated association?	An incorporated association is the most common (but not the only) legal structure used by not-for-profit organisations. Victorian incorporated associations must operate in accordance with the requirements of the Associations Incorporation Reform Act 2012 (Vic) (AIR Act) .
What are the reporting obligations of an incorporated association?	<p>Certain information must be reported to CAV under the AIR Act, including a yearly (annual) statement on the association's financial situation, and when changes occur (for example, when a new secretary is appointed, or an organisation's details change).</p> <p>Reporting obligations for Victorian incorporated associations that are registered with the Australian Charities and Not-for-profit Commission (ACNC) changed in July 2018. See part 8 of this guide for more information.</p>
What are the rules and purposes of an incorporated association?	Every incorporated association has its own 'rules' which set out in detail the procedures for running the organisation. Every association's rules must also contain a statement of purposes, which sets out the organisation's objectives. There is a tool at the end of this guide to help you work out what the rules of your organisation are – it's essential to be familiar with them.



What is the role of members of an incorporated association?	Members of an incorporated association have the power to make certain decisions about the organisation. In particular, they usually appoint the members of the committee.
What is a committee?	The committee of an incorporated association (its governing body) is responsible for overseeing how the organisation operates. There are a number of special positions on the committee. Often the secretary is a member of the committee
How does the committee differ from the 'managers' of an association?	The committee of an incorporated association sets the overall direction of (governs) the association. In larger associations, there may be senior staff (for example, the CEO, operations manager and finance manager) who are responsible for the day-to-day running of the association.
Who is the secretary and what do they do?	Every incorporated association must have a secretary. The secretary has legal responsibilities for submitting documents to CAV and is the official contact person for the organisation.
Where can I go for information and assistance?	This guide sets out information about running an incorporated association. We have further resources for incorporated associations on our website .



Tip

In November 2012, the AIR Act replaced the *Associations Incorporation Act 1981 (Vic)* (**Old Act**). The AIR Act changed the laws regulating Victorian incorporated associations.

Under the AIR Act, the term 'secretary' replaced the role of 'public officer' that existed under the Old Act. The responsibilities that fell on the public officer under the old Act are now carried out by the secretary. For more information about the role of the secretary, see part 3 of this guide: Secretary's Legal Role, Powers and Duties.

There are also new matters that must now be covered by an association's rules. Associations that were using the model rules under the Old Act are now subject to the model rules under the AIR Act. Associations should review their rules to ensure they are compliant with the requirements of the AIR Act.

Who is this guide for?

This guide is designed to help the secretary and others in your organisation, by alerting you to legal obligations and offering 'good governance' tips and tools for running an incorporated association in Victoria.

It doesn't matter whether you are a volunteer in a small support group, or a paid officer of a large social club – any person involved in running an incorporated association in Victoria can benefit from this guide.

This guide may also be useful for other members of your organisation's committee (sometimes known as the 'board'), as well as people and organisations who work with incorporated associations (such as peak bodies, advocacy groups), and lawyers assisting incorporated associations.



In summary

- The secretary is the incorporated association's official contact person and is responsible for reporting about the organisation to CAV (and also to the ACNC for Victorian incorporated associations registered with the ACNC). If we are hiring a venue or equipment, have we considered the terms and conditions?
- The secretary must have a myCAV account to be able to comply with their obligations.
- The secretary usually has additional responsibilities including organising meetings, taking minutes of meetings, dealing with documents, and keeping up-to-date records about the organisation. The secretary is often (but not always) a member of the organisation's management committee.

How to use this guide

This guide is published by Not-for-profit Law, Justice Connect's specialist service for charities and community groups.

The guide has nine parts and contains practical tools – such as sample documents, checklists, registers and flowcharts – to help you in your role. These are located at the end of the guide in part nine.

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What is an incorporated association?

An incorporated association is the most common (but not the only) legal structure used by not-for-profit groups in Victoria. There are other legal forms used by not-for-profit groups, such as corporations (or companies) and cooperatives. Different laws and rules apply to these legal structure, which are not covered in this guide.

An incorporated association is a legal entity that stays the same even if its members change. It can do the following things in its own name – accepts gifts and bequests, buy and sell property, invest and borrow money, open a bank account, sue and be sued and take out public liability insurance with greater ease. The members and office bearers of the association are usually protected against personal liability and responsibility for the organisation's debts.

Every Australian state and territory has its own laws to regulate incorporated associations. This guide deals with associations incorporated in Victoria.



Tip

For more information on what incorporation means, and different types of legal structures used by not-for-profit groups, see our [resources on getting started](#)

How do you know if an organisation is an incorporated association?

Incorporated associations must have the word 'Incorporated' or the letters 'Inc' after their name.

This signifies to the public that the organisation is an incorporated association and is therefore bound by certain legislation and rules. The use of 'Incorporated' or 'Inc' can be contrasted with companies that are required (unless they have an exemption) to have the words 'Limited or Ltd' or 'Pty Ltd' at the end of their name under the *Corporations Act 2001* (Cth).



Tip

If you are not sure whether your organisation is an incorporated association in Victoria, you can search [the Register of Incorporated Associations on the CAV website](#)

In Victoria, the AIR Act is the main piece of legislation regulating incorporated associations. The AIR Act covers the establishment, operation and ending (or dissolution) of an incorporated association.

The Regulations set out further details about the legal requirements for operating an incorporated association in Victoria. The Regulations also set out the model rules for incorporated associations. Your organisation can use the model rules, or draft its own rules that address required matters (see below).



Tip

The AIR Act gives powers and responsibilities to the 'Registrar' of Incorporated Associations. In practice, the functions of the Registrar are carried out by CAV.

It's good practice to keep a copy of the current AIR Act and Regulations with your organisation's official documents.

There are other laws which apply to incorporated associations – for example, laws dealing with occupational health and safety, workplace relations, tax, advertising and fundraising.



More information

[Our website](#) has useful resources and information on a range of topics and laws to help not-for-profit organisations.

What does Consumer Affairs Victoria (CAV) do?

CAV has a number of legal functions relating to incorporated associations. These include:

- maintaining the Register of Incorporated Associations (a list of all incorporated associations in Victoria)
- approving applications for incorporation
- approving rules drafted by incorporated associations
- receiving annual statements from organisations (see part 8 of this guide: Reporting to Consumer Affairs Victoria)
- approving important changes to an organisation (such as changes to an organisation's rules, statement of purposes or name)
- cancelling an organisation's incorporation
- monitoring and investigating an organisation's compliance with the AIR Act and Regulations (and taking other action if necessary), and
- imposing fines (or taking other action if necessary) where there has been a failure to comply with the AIR Act

You can contact CAV if you need help with:

- forms to be lodged with CAV, and requests for extension of time to lodge forms
- information and assistance to ensure your organisation's rules comply with the AIR Act



- general advice about your obligations under the AIR Act

However, note that CAV is **not** able to:

- give legal advice or pre-approve proposed changes to your rules
- provide advice about how to interpret your organisation's rules, or
- resolve internal disputes within your organisation



More information

You can find more information about CAV's role on the [CAV website](#).

What are the reporting requirements of an incorporated association?

An incorporated association is required to report to CAV:

- every year by lodging an annual statement (see the caution box below and part 8 of this guide: Reporting to Consumer Affairs Victoria)
- whenever a new secretary is appointed, or if the existing secretary's details change (see part 2 of this guide: Appointing and Removing a Secretary)
- if the address or name of the association change, and
- when certain key decisions are made by the association – for example, if the association passes a special resolution to change its name or its rules (see part 5 of this guide: Annual General Meetings and also part 6: Special General Meetings)



Caution

Reporting obligations for Victorian incorporated associations that are also registered charities with the Australian Charities and Not-for-profits Commission (**ACNC**) changed on 1 July 2018.

See part 8 of this guide for more information.

The rules and purposes of an incorporated association

Every incorporated association must have its own set of 'rules' (sometimes called a 'constitution'). The rules set out the procedures for running the organisation. Your organisation must follow its own rules.

The AIR Act requires that the rules must cover certain matters (these matters are listed in Schedule 1 of the AIR Act). Your organisation's rules must also be consistent with laws, including the AIR Act. Apart from these matters, your organisation has a fair degree of flexibility in establishing its rules.



Why follow the rules?

The rules are a legal contract between the organisation and its members and are legally enforceable by members of your organisation or by CAV on behalf of members.

There are other good reasons for following your rules. Your organisation's rules allow the members of your organisation to know how the organisation is to be run and managed, and how decisions will be made. It also means they can contribute to (or raise concerns about) the organisation's decision-making where appropriate.



Tip

The rules of the association are a key source of information for secretaries. It's important that you read your organisation's rules, have an up-to-date copy handy and make sure they are consistent with the requirements of the AIR Act.

Every organisation incorporated after the start of the AIR Act must have its 'purposes' set out in its rules.

The purposes set out what the organisation is established to do, and may also identify for whose benefit the organisation operates.



Remember

If you don't follow your organisation's rules and purposes you can be challenged by a member of the organisation for failing to do so.

Under section 67 of the AIR Act, CAV can apply to the Magistrates' Court to enforce the rights and obligations of members of an association under the rules. The association or member can also apply to the Magistrates' Court to enforce members' rights and obligations.

How to find out what an organisation's rules are

An association has two choices for determining what rules will apply to it. It can either:

- adopt the 'model rules', or
- write its own rules, by drafting new rules from scratch or by making changes to the model rules



Note

If an organisation adopts its own rules, those rules must cover all the required items listed in Schedule 1 of the AIR Act.

An organisation must lodge its rules with CAV when it first applies to CAV to be registered as an incorporated association. When registered, an organisation can change its rules by seeking a special resolution of its members. An association's current rules must be lodged with, and approved by, CAV in order to be valid. This means that each time an organisation changes its rules, it must lodge them with CAV for approval.

The different options available to an organisation when drafting and changing its rules can make it difficult for the secretary of an organisation to work out what the organisation's most current rules are. If you are unsure, you can contact CAV to get a copy of your organisation's current rules.

What are the 'model rules'?

The model rules are an example set of rules that comply with the AIR Act – they are the standard form rules, or the 'fall back' or 'default' position. The model rules are set out in Schedule 4 of the Regulations and are also available [on the CAV website](#)

Many associations choose to adopt the model rules when they become incorporated. An association that drafted its own rules at incorporation can also convert to the model rules after it incorporates (although this is less common).



Tip

The model rules can seem like a good option if your organisation doesn't want to draft its own rules. However, the model rules are not 'model' in the sense of being the 'best fit' for every organisation – for example, if your organisation wants to access certain tax concessions it may need to consider whether the model rules meet the necessary tax law requirements.

Alternatively, your organisation may have specific requirements for membership or, if your organisation is a large organisation, it may wish to establish branches. Neither circumstance will be covered by the model rules. In these circumstances, the organisation should prepare its own rules.

Note – many organisations use the model rules as the basis of their own rules and modify them to the extent necessary to cover the specific requirements of the organisation. Where an organisation only modifies the model rules in respect of the name of the organisation, the organisation's financial year and its purposes, the organisation will be deemed to have adopted the model rules.

However, if the organisation makes any further amendments to the model rules it will be deemed to have adopted their own rules rather than the model rules, even if their own rules have only minor variations as compared to the model rules.



Note

The model rules change over time. If your organisation has adopted the whole of the model rules, any changes to the model rules made by the Victorian Parliament over time will apply to your organisation automatically.

You should check the latest version of the model rules to ensure that your organisation is following the current requirements.

Writing your own rules

If your organisation has written its own rules, you should make sure that your rules cover all the matters required by Schedule 1 of the AIR Act (as amended from time to time). For more information on making sure your rules address all the scheduled items, go to [our Rules Checklist](#).



Note

If your organisation's rules don't cover an item in Schedule 1 of the AIR Act, the relevant model rule that covers the particular item will be automatically included in your rules by operation of section 48(3) of the AIR Act.

For example, if your association's rules don't specify the number of days' notice required for a general meeting, then rule 33 of the model rules will apply so that at least:

- 14 days' notice is required, or
- 21 days' notice if a special resolution has been proposed



The process of ‘reading in’ model rules can become very confusing, so it’s better to make sure your own rules cover all the required items listed in Schedule 1 of the AIR Act.



Caution

The rules of your association can’t override the AIR Act or any other laws.

If there’s an inconsistency between the AIR Act and a rule of your organisation, the rule has no effect (section 48(4) AIR Act). If the AIR Act says something must be covered in your rules, but your rules don’t cover it, then the relevant part of the model rules will fill the ‘gap’ automatically (section 48(3)).

Your organisation may have drafted its own rules, but used some of the model rules as they were at the time when your organisation applied for incorporation. In this case, the latest version of the model rules in the Regulations will not be the same as the model rules your organisation adopted.

When reviewing your rules, you should make sure that you are reviewing the correct version. You can request a copy of your rules from CAV to make sure you have the most up-to-date version.



Caution

If your organisation has written its own rules, or made changes to the model rules, you must submit a copy of your rules to CAV for approval. Your organisation’s own rules are not official (legally binding) until they are approved by CAV.



Tool 1

To find out what your organisation’s rules are, follow the steps in [Tool 1: Flowchart for working out your association’s current rules](#) in part 9 of this guide.

What is the role of members in an incorporated association?

The members of an incorporated association have certain rights and responsibilities under the AIR Act, the organisation’s rules, and the common law.

Importantly, members of the organisation can attend general meetings and vote on matters such as:

- electing the committee
- changing the organisation’s name, rules or purposes
- amalgamating the organisation with one or more other associations
- removing an auditor, and
- winding up (ending) the organisation voluntarily

An association’s rules must set out the procedures for conducting the ‘annual general meeting’ and ‘special general meetings’ (formal meetings where the members can make official decisions). Both annual and special general meetings are described as ‘general meetings’ in the model rules.



Note

To avoid confusion in terminology, the term ‘general meeting’ is used in this guide to mean a meeting of the members of the incorporated association which has been convened using the procedures for formal meetings of members in the association’s rules. These procedures include giving notice of the meeting to members.

An association’s rules must also set out the rights, obligations and liabilities of members.

These may include:

- a member’s right to participate in general meetings, elect the committee and have access to certain records of the association, including the members’ register
- any fees, subscriptions, or other amounts to be paid by members
- a member’s obligation to comply with the rules and support the purposes of the association, and
- an acknowledgement that a member is not liable to contribute to the debts and liabilities of the association by reason only of their membership

The members of an incorporated association are not responsible for making decisions about the overall running of the organisation – that is the job of the committee (see below – [What is a committee?](#)).

However, if your organisation has drafted its own rules, they may require the committee to get member approval of certain decisions (for example, investment plans, or entering into contracts over a certain dollar value).

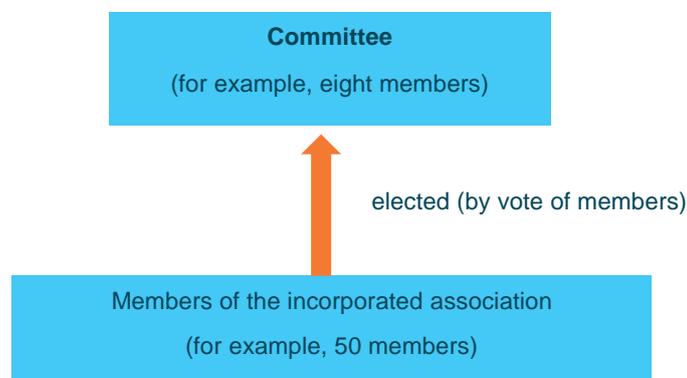
The members may be (and often are) involved in carrying out the organisation’s activities (for example, helping teams with coaching), but this is different to having the **legal** responsibility for management of the organisation. Sometimes the line between these two can seem unclear or artificial. If the rules do not specifically state that a decision must be made by the members, then it’s likely to come under the overall responsibility of the committee. The committee may then choose to delegate ‘the doing’ to others (for example, involve members, volunteers or paid staff to actually do what is needed).

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 ‘committee of management’.

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.

Electing a committee (example)



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 seem strange to separate the management of the organisation from the actual doing of the work. However, it's important to understand the separate (legal) role of the committee.

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 an incorporated association.

Incorporated 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 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 incorporated 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 AIR Act, such as the duty of care and diligence, and the duty to act in good faith. CAV is responsible for enforcing these laws.

In larger organisations, different people may be ‘managers’ (such as a CEO, finance manager or operations manager), and in smaller organisations ‘key volunteers’, and these people are responsible for making decisions about the day-to-day running of the association, based on decisions made by the committee (such as a strategy). Normally these people do not need to comply with the same legal duties 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 is deeply involved in making key decisions that affect the operations of an association or who is influential in the affairs (financial or otherwise) of the association.

Are there special positions on the committee?

There are usually a number of special positions on a committee – one of these positions is the secretary.

The people who take on positions on the committee are called ‘officers’ or ‘office bearers’ or ‘the executive’ of the association.

The titles of positions on a committee will vary between associations and will be usually set out in the rules, however, some common positions and their traditional roles are explained briefly below:

- **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, and
- **the secretary** reports to CAV, organises meetings, takes the minutes of meetings, deals with documents and maintains records of the association



More information

For more information about the role of the secretary, see part 3 of this guide: Secretary's Role, Powers and Duties.

The committee may have other members who are not office bearers. These are sometimes called ‘ordinary committee members’. These members must also meet the duties that apply to members of the committee.



What is an office holder?

The AIR Act uses the language of ‘officer holder’ to describe the people in an organisation who have certain **legal** duties to the organisation that must be met. This use of the term ‘office holder’ is different to the use of the term to describe people on a committee who hold an ‘office’ like secretary or treasurer.

Is there a difference between ‘committee’ and ‘office holder’?

The term ‘officer holders’ is defined under the AIR Act. It includes committee members (both ordinary members and members holding an office, like a Treasurer) – plus some other people who are not the committee including:

- the secretary (even if the secretary is not a member of the committee), and
- a person, including an employee of the association, who is involved in key decisions that affect the operations of an association or who is influential in the affairs (financial or otherwise) of the association

Special legal duties apply to office holders and these are set out in the AIR Act.



More information

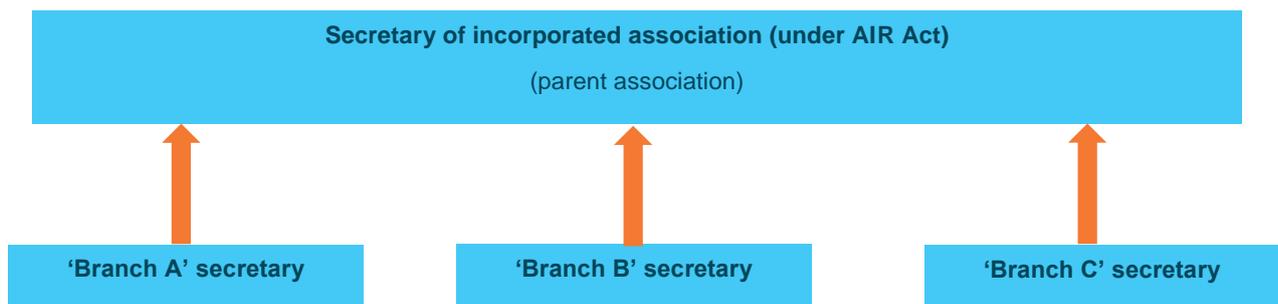
For more information about legal duties of office holders, see [our Duties Guide](#).

Branches and branch secretaries

If an organisation is large, it may have branches. Each branch will usually have its own branch secretary (and possibly its own committee), reporting to the parent organisation (see the diagram below).

In most cases, branches are not separately incorporated under the AIR Act, the rules of the parent organisation control the branch, and a member of the branch is a member of the parent organisation. As a result, a branch secretary is not the ‘secretary’ for the purposes of the AIR Act. Only the secretary of the parent organisation performs this statutory role.

Example of branch secretaries reporting to secretary of parent association



If an organisation chooses to establish branches, it’s good practice for the governance arrangements for the branches to be explained in the organisation’s rules. An organisation with branches should draft their own rules rather than adopt the model rules.

Who is the secretary?

The secretary of an incorporated association has responsibilities under the AIR Act for submitting forms and documents to CAV, and is the primary contact person for the organisation. The secretary also performs the administrative functions of organising meetings and minutes, handling membership and maintaining important documents and registers of the organisation.

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 model rules, however, the secretary is a member of the committee. Further, the secretary is an officeholder under the AIR Act.

**Note**

If you have just been appointed as the secretary (or you are the existing secretary or public officer and your details have changed), you must notify CAV – even if your organisation or the previous people in your role have not done this in the past!

**More information**

See part 2 of this guide: [Appointing and Removing a Secretary](#) for more information about who can be a secretary, how they are appointed, and what happens next.