

Part 2

Appointing and removing a secretary

This part of the guide covers the legal requirements for appointing and removing a secretary of an incorporated association in Victoria.

Summary of key points

Who can be the secretary?	The AIR Act regulates who can be the official 'secretary' of an incorporated association. In addition, an organisation's own rules and policies may have particular requirements.
How is the secretary appointed?	<p>The first secretary of an incorporated association is the person nominated to be the secretary of the association in the application for its incorporation under the AIR Act.</p> <p>Thereafter, the secretary is usually elected at the organisation's AGM. However, if a vacancy arises in the position of secretary, the association must appoint a new secretary, in accordance with the procedures in its rules, within 14 days after the vacancy arises.</p>
What happens after the secretary is appointed?	<p>Every new secretary must notify CAV of particular matters after they have been appointed, or if their details change. The newly appointed secretary will also have to create a myCAV account for themselves (or their delegate).</p> <p>Some organisations also need to notify the Australian Taxation Office (ATO) of a change of secretary if the secretary also holds the role of public officer for the purposes of ATO purposes.</p> <p>Registered charities with the Australian Charities and Not-for-profit Commission (ACNC) have to notify the ACNC of changes to their 'responsible persons' which may include the secretary (if the secretary is part of the committee, which does not have to be the case but it will be if the organisation is using the model rules).</p>
When will the secretary's position become vacant?	<p>The AIR Act and an association's rules set out the circumstances in which the position of secretary will be automatically terminated (vacated).</p> <p>A secretary's position also becomes vacant if they resign or if the organisation removes the secretary from their position.</p>

Who can be the secretary?

The secretary is the principal contact point between CAV and your organisation. The secretary is legally responsible for a number of specific tasks required by the AIR Act — see part 8 of this guide: Reporting to Consumer Affairs Victoria, and [CAV's website](#).

The role of secretary is very important for your organisation.



Your organisation should appoint a person who has the experience, skills or qualifications to carry out the role of secretary.

Effective secretaries need to have a range of skills, including:

- enthusiasm for, and knowledge of, the organisation and its mission
- adequate time for the task
- interest in committee work
- good working relationships with other people involved in managing the organisation, and
- reliability and good organisational skills

In choosing your secretary, you should also take into account:

- any restrictions or qualifications required by law, particularly the AIR Act (see below)
- your organisation's rules, and
- any policies your organisation has about this issue

More details about these requirements are outlined below.

AIR Act requirements

The AIR Act provides that a secretary of an association incorporated in Victoria must:

- consent to being appointed to the position (section 73(3)(a) of the AIR Act)
- be at least 18 years old (section 73(3)(b))
- be resident in Australia (section 73(3)(c) and see further below)
- not be 'insolvent under administration' (section 78(2)(c)(ii) and see further below), and
- not be a 'represented person' under the *Guardianship and Administration Act 1986* (Vic) (**Guardianship and Administration Act**) (section 78(2)(c)(iii) and see further below)

Unless the rules of your organisation say otherwise:

- the secretary may also hold another position in your organisation (section 76), and
- there is no upper limit to the secretary's age



Tip

Some organisations accidentally appoint a secretary who is not allowed under law to hold the position. To avoid this, before someone is appointed as secretary, get them to sign a letter in which they:

- agree to act as the organisation's secretary
- confirm that they satisfy the AIR Act requirements for being a secretary, and
- agree to notify the organisation if any of these matters, or their contact details, change

The AIR Act requirements about being a secretary are explained below in more detail.

Who is a 'resident' of Australia?

The AIR Act does not define who is a resident of Australia. However, generally, the secretary's primary residence (that is, the place where they usually live) must be located in Australia.

Even if the secretary is not an Australian citizen or if they frequently travel outside Australia, they can usually still be the secretary if they are based in Australia. But check the rules of your organisation for any special additional requirements.

What is 'insolvent under administration'?

'Insolvent under administration', as defined in the *Interpretation of Legislation Act 1984* (Vic), is a general term used for when a person or an organisation is (or is on the verge of being) bankrupt.



Bankruptcy is a legal status that offers a person protection from further action against them by creditors (that is, people to whom the person owes money). A person is a 'declared bankrupt' when an actual declaration of bankruptcy has officially been made about them. The usual period of bankruptcy is three years and one day. For further information about bankruptcy, visit the Australian Financial Security Authority website.



More information

Bankruptcy records are publicly accessible on the National Personal Insolvency Index (NPII), so it is possible to check if a person has been declared bankrupt. See the [Bankruptcy Register Search on the AFSA website](#). (Fees apply when searching the NPII).

A person is also considered insolvent under administration if they have entered a personal insolvency agreement (which is an agreement to repay creditors that a person who is in debt can sometimes make to avoid being declared bankrupt).

It's not possible to check if someone has entered a personal insolvency agreement, so it is a good idea to require your secretary to sign a declaration that they are not 'insolvent under administration'.

Who is a 'represented person'?

The term 'represented person' is defined in the Guardianship and Administration Act as a person who currently has either a guardian or administration order (or both) in effect.

A 'guardian' or 'administrator' is appointed by VCAT under an order which determines the scope of the guardian or administrator's decision-making for the represented person.



Caution

A secretary who goes to live outside Australia, or who becomes insolvent under administration or is a represented person, is no longer eligible to be the secretary.

Under the AIR Act, the position of secretary becomes automatically vacant when any of these things occur. In this situation your organisation will need to appoint a new secretary and will need to do so within 14 days of the vacancy arising.

Your organisation's rules and policies

Your organisation's rules must provide for the appointment and removal of your organisation's secretary (this is a requirement under the AIR Act).

Check the rules and any relevant policies of your organisation for additional requirements about who can be appointed as the secretary and the term (or length) of their appointment. For example, your rules may require certain qualifications or experience for the role. However, note that the rules and any policies of your organisation cannot override the AIR Act requirements – for example, your rules can't permit your secretary to reside outside of Australia or to be under the age of 18.

If your organisation is large, your rules may state that the secretary can be a paid manager. In some large organisations the rules may allow for certain work of the secretary to be carried out by a specialist firm for a fee. However, even if the secretary delegates their functions to another person or firm, the secretary remains legally responsible for those duties being properly carried out.



More information

For more information on the secretary's duties, see part 8 of this guide: Reporting to Consumer Affairs Victoria and part 3 of this guide: Secretary's Legal Role, Powers and Duties



Note

Make sure you have the most up-to-date version of your rules, including any changes that the organisation's members and CAV have approved.

If you are confused about which rules apply to you and whether the copy you have is up-to-date, access a copy of your organisation's latest rules through your myCAV account.

Your rules may not reflect all the requirements of new laws for incorporated associations. See our [Rules Checklist](#) for more information.

Does the secretary have to be on the committee?

No, there is no requirement in the AIR Act for the secretary to be on the committee. However, the rules of many organisations state that the secretary is a member of the committee. This is optional – it is not required by the AIR Act or by the Regulations. However, under the model rules, the secretary is a member of the committee.

If your rules were drafted to meet the requirements of the Old Act, they may provide for the appointment of a 'public officer' as well as a 'secretary'. The 'public officer' role will now be taken to be the 'secretary' for the purposes of the AIR Act. Your rules will now be confusing, as your organisation will have two 'secretaries' – a statutory secretary, and a secretary provided for in your organisation's rules.



Tip

We recommend amending your rules sooner rather than later to avoid confusion (for information on changing your rules, go to [our webpage on rules and constitutions](#)).

If your organisation's rules don't require the secretary to be a member of the committee, the secretary can't vote at committee meetings unless the rules expressly state otherwise.

Where to find a new secretary

In many cases, a new secretary is found from within the organisation – for example, there may be an existing member of the committee or member of the association who has suitable skills and interests.

If your organisation needs someone with particular expertise to fulfil the position (for example, because of the size and complexity of your association), ask around. New secretaries are often found by the existing committee members (or others within the organisation) who can use their networks to find people who may be suitable for the role.

It may also be helpful for your organisation to look for someone by contacting the various volunteer brokers and support organisations. You can also advertise online or in your local paper.



More information

Organisations who can help include:

- [Volunteering Australia](#) and [GoVolunteer](#)
- State-based volunteering peak bodies, such as [Volunteering Victoria](#)
- [Leadership Victoria](#) which now includes the Greatconnections program and regional groups, such as [Leadership Ballarat](#) and [Western Region](#)
- [goodcompany](#)
- [Creative Partnerships Australia](#)
- [OurCommunity](#), and
- [Pro Bono Australia](#)

For further ideas, speak to any peak body to which your organisation may belong — they may be able to put a note in their next newsletter or e-bulletin. For example, the Victorian Council of Social Service ([VCOSS](#)) can point groups working in social services in the right direction for assistance in finding a secretary.

How is the secretary appointed?

The way in which your organisation appoints the secretary must be set out in your organisation's rules (this is a requirement under the AIR Act).

For example, your organisation's rules may require that your secretary be elected by members (normally at the AGM), or may allow the committee to appoint a secretary.

The first secretary of your association is generally the person who applied for incorporation (unless the application specified another person) and must have consented to being the first secretary (section 72 of the AIR Act). All documentation must be completed through the secretary's myCAV account, which must be set up by the secretary.

If the position of secretary becomes vacant, the association must fill the vacancy within 14 days of the vacancy arising. This must be done in accordance with the procedure set out in the organisation's rules, and CAV must be notified of that appointment within 14 days (section 74(1) of the AIR Act). Any new secretary, upon being elected, must set up their own individual myCAV account.

Most associations have a rule that allows the committee to appoint someone to the role of secretary if there is a short term or 'casual' vacancy. If your organisation's rules have a different procedure for the appointment or election of a new secretary, and 14 days is not long enough to carry out the procedure, then the committee must appoint a temporary secretary within 14 days. This temporary secretary only holds the position until a permanent secretary is appointed or elected under the association's Rules (section 73(2) of the AIR Act). The circumstances in which the position may become vacant are discussed below.



Note

The secretary is often a member of the committee – but doesn't have to be.



Tip

The minutes of a decision of a committee to appoint a new secretary may say something like the following:

The management committee appointed Ms Katherine Smith to be the secretary of XYZ Inc, effective from 1 January 2022 until the end of the next annual general meeting of XYZ Inc (or earlier resignation or termination in accordance with the rules).

To help make sure the secretary is eligible to hold the position, the organisation may also wish to state in the minutes something like this:

The management committee has received (and will keep for its records) a written statement by Ms Katherine Smith confirming that she:

- *consents to act as the secretary of XYZ Inc*
- *satisfies the AIR Act requirements for being a secretary, and*
- *agrees to notify the management committee of XYZ Inc if any of these matters or her contact details change.*

Electing a secretary at the annual general meeting

Many organisations' rules say that the secretary must be elected by members of the association at the AGM. The model rules follow this procedure. Check your own organisation's rules, as well as your organisation's policies and procedures, for:

- how and when candidates for secretary are nominated
- how and when information about the candidates is distributed to all members before the AGM, and
- what happens if only one candidate is nominated or if no one is nominated

What if no one is elected secretary at the annual general meeting?

If a secretary is not elected at the AGM for some reason (for example, no one was nominated or eligible), the rules will generally provide that the committee can appoint a secretary.

In large organisations, where the secretary may be a paid manager of the organisation, it is often the case that rules provide that the committee can appoint a secretary, however, you need to check your own organisation's rules carefully.

What if the position becomes vacant between annual general meetings?

If the position of secretary becomes vacant between AGMs (for example, the secretary resigns), check your rules to find out how to appoint a new secretary.

If your organisation uses model rule 57 (or a similar rule) the committee must appoint another member of the committee to be the secretary within 14 days of the position becoming vacant, and that person will remain appointed until the next AGM. If your organisation's rules do not provide for filling vacancies of the secretary position, model rule 57 will be automatically included in your rules.



Note

Under the AIR Act, a new secretary must be appointed within 14 days of a vacancy in the position of secretary arising. CAV must be notified of the change within 14 days of the new appointment.

What happens after the secretary is appointed?

Report to CAV

Within 14 days after a new secretary is appointed, the secretary must notify CAV of certain details (section 74 of the AIR Act and regulation 11 of the Regulations). To do so, the new secretary must set up a myCAV account and then link it to the incorporated association. The myCAV account is the portal through which the secretary can lodge documents with CAV and notify of other changes.



Caution

If the secretary does not notify CAV within 14 days of their appointment, your association may be fined.

If the existing secretary's details change (for example, their address) this information should also be provided to CAV by way of the myCAV account.

The secretary can advise CAV of these changes through the myCAV account.



Note

If you have just been appointed as the secretary (or you are the existing secretary and your details change), you need to notify CAV by way of your myCAV account – even if your organisation or the previous people in this role have not done this in the past.



Tip

To notify CAV secretaries must create their own individual myCAV account and link it to the incorporated association. Further details on how to create a myCAV account can be found at [CAV's website](#).

Ongoing reporting responsibilities

The secretary has responsibilities for reporting to CAV about (among other things):

- the organisation's financial information in its annual statement, and
- decisions made by the organisation's members which must be approved by CAV before they can become official (such as changes to the rules)



More information

See part 8 of this guide: Reporting to Consumer Affairs Victoria for more information about the reporting responsibilities of the secretary of an incorporated association.



Who else should be notified of the appointment of a new secretary?

You may need to notify the ATO of a change in secretary as an ATO tax officer will only discuss your organisation's account with your authorised contact person (who may be your secretary).

Charities registered with the ACNC have to notify the ACNC of changes to 'responsible persons', which refers to the committee or board members on a charity. This may include the secretary (if the secretary is part of the committee, which does not have to be the case but it will be if the organisation is using the model rules). You can update these details through the [ACNC Charity Portal](#).

You may need to consider whether there are other people, organisations or agencies that should be notified of a change of secretary. Check your organisation's policies and important documents such as funding agreements and leases.

When will the position of secretary become vacant?

Under the AIR Act (section 78(2) and (3)), the position of secretary becomes vacant if the secretary:

- dies
- resigns in writing
- is removed from office by special resolution (see below)
- is disqualified from managing corporations, Aboriginal and Torres Strait Island corporations or cooperatives under the relevant legislation, or
- becomes insolvent under administration, a represented person, or no longer lives in Australia (see the discussion of these criteria above)



Note

If the position of secretary becomes vacant, the organisation must fill the vacancy within 14 days in accordance with its rules, and CAV must be notified via myCAV within 14 days of the vacancy being filled.

If any of these circumstances apply, the organisation doesn't have to pass a resolution removing the person as secretary. Their position is automatically terminated (vacated) under the AIR Act. Note that where automatic vacancy occurs, an association must appoint a new secretary within 14 days of the vacancy.

The position of secretary also becomes vacant if a statutory manager is appointed to run the association (section 78(2)(e) of the AIR Act).

Secretaries can also retire or be removed from office. Members of an association can remove a secretary by special resolution (section 78(2)(b)). The rules of an association can provide other ways to remove a secretary (for example by resolution of the committee). The processes for retirement and removal of a secretary must be contained in an association's rules (section 78(1) of the AIR Act).

What does it mean when the secretary reaches the end of their 'term'?

If the secretary is a member of the committee, they must be appointed for a particular length of time (see item 9(b) of Schedule 1 of the AIR Act). This length of time is called their 'term' of office.

In many organisations, including those using the model rules, a secretary's term of office is one year, and the position of secretary becomes vacant (and up for election) at the organisation's next annual general meeting. In some organisations, the rules allow the person who was secretary in the previous year to be re-elected for the next year.

You need to check your organisation's rules carefully to find out how your organisation nominates and elects a new secretary when the current secretary's term of office ends.

Return of documents of the organisation

The secretary will have access to documents and information about the organisation because of their role. After they have left their position, these documents must be returned to the committee within 28 days



(section 88 of the AIR Act). If the documents are not returned after further request, the organisation can apply to the Magistrates' Court for an order directing the person to return them.

It's good practice for the outgoing secretary to sign a statement confirming they have returned all relevant documents after they have finished in the position.



Tip

To assist the transfer of information from one secretary to the next, it's a good practice to:

- arrange a handover from the outgoing to the incoming secretary
- arrange for the new secretary to seek information from the outgoing secretary (for example, logins or passwords, financial records, minutes, copies of documents lodged with CAV) as soon as they are appointed or elected
- ensure that secretaries store all information securely in a central place (such as the organisation's office or computer), including back-ups of electronic data, and
- provide a copy or explain the organisation's policies and procedures to the next secretary

Removing a secretary

Sometimes an organisation may have to remove a secretary from office (for example, because the person is not carrying out their duties properly).

The AIR Act says that an incorporated association must have procedures for the removal of a secretary in its rules (item 10 of Schedule 1 of the AIR Act). In all organisations (and provided for in model rule 55) the secretary may be removed by special resolution at a general meeting of members (section 78(2)(b) AIR Act). For more information about passing resolutions at general meetings, see part 6 of this guide: Special General Meetings in this guide. Under model rule 55, a secretary who is proposed to be removed can write a letter to the president and request their letter to be sent to members, or ask that the letter be read aloud at the general meeting. Often an organisation procedures, as set out in the rules, will also provide for the committee to remove the secretary.

What if the secretary is a member of the committee?

If the secretary is removed by special resolution and that secretary was also a member of the committee, the person will be automatically removed as a committee member.

What if the secretary is an employee of your organisation?

If the secretary is also an employee of your organisation, their employment arrangements should be carefully considered. If the person's main role is as the secretary, the organisation may no longer want to employ them.

If your organisation wants to remove a secretary who is also an employee, and this would mean that the person no longer has a paid position in the organisation, you should seek legal advice before taking any action to remove the secretary. The organisation needs to ensure that it complies with relevant contractual and statutory requirements about terminating (ending) a person's employment. Under the national *Fair Work Act 2009* (Cth), it's illegal to dismiss an employee on a range of grounds.



More information

Find more information on fair and lawful termination on [the Fair Work Ombudsman's website](#).