

Part 8

Reporting to Consumer Affairs Victoria

This part of the guide covers the obligations of an incorporated association in Victoria to report to Consumer Affairs Victoria (CAV).



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. These organisations will no longer need to:

- lodge an annual statement with Consumer Affairs Victoria, or
- pay an annual statement lodgement fee

The exemption is not retrospective (for financial years that end before 30 June 2018, separate annual statements must be provided to CAV and the ACNC).

The exemption does not apply to charities who have been approved by the ACNC to withhold financial details or financial reports from the ACNC register.

For further information see our resources on [our reporting to government webpage](#) or refer to Consumer Affairs Victoria [website](#).

Summary of key points

What are the legal requirements for reporting to Consumer Affairs Victoria?

The secretary of an incorporated association is required to report to CAV about certain matters, including the organisation's financial affairs in an 'annual statement'.

Accounting requirements

Each incorporated association must maintain financial records that are correct, true and fair. These records are the basis of the organisation's financial statement. Requirements differ for organisations based on which revenue category, or 'tier', they fall into. The Treasurer usually has a key role preparing the financial statements, but the secretary must lodge them as part of the annual statement to CAV.

Preparing and lodging the annual statement

Every year, a financial statement must be submitted to members of the organisation at the annual general meeting. This must happen before the secretary lodges the annual statement with CAV. The financial statement must contain certain information and be certified by committee members, and there are particular requirements for preparing and lodging the annual statement, depending on which 'tier' the organisation falls into.

Can Consumer Affairs Victoria refuse to register documents?

In some circumstances CAV can refuse to register documents. This includes when CAV considers a lodged document is not a valid document of the organisation. This Part explains what an organisation can do if CAV refuses to register a document.

What are the legal requirements for reporting to Consumer Affairs Victoria?

The main legal task of the secretary of an incorporated association in Victoria is to report to CAV about the affairs of the organisation. To comply with their legal obligations, a secretary must have an online myCAV account.

The legal requirements for reporting to CAV arise under:

- the AIR Act, and
- the Regulations

AIR Act requirements

Lodging the annual statement

Under the AIR Act, every year the secretary must lodge an annual statement with CAV. This must be done within one month after the AGM where the organisation's financial statement is considered by the members of the organisation (although the secretary can seek an extension of time by lodging an extension form and paying an extension fee).

The AIR Act and the Regulations set out what must be contained in the organisation's:

- **financial statement** (which is provided to members at the AGM), and
- **annual statement** (which is lodged with CAV – see Part 7 of the AIR Act)



Tool 28

See Tool 28: Flowchart for preparing and lodging the annual statement.



Remember

If the secretary fails to lodge the annual statement within the required time, the organisation may be ordered to pay a penalty (section 102(1) of the AIR Act). At December 2021, the maximum penalty for this breach under the AIR Act is around \$908.70 (5 penalty units).

Other CAV reporting requirements

The secretary is also required to report to CAV, and lodge relevant documents or forms, in other situations. These include:

- within 14 days after a new secretary is appointed or when the secretary's details change (see part 2 of this guide: Appointing and Removing a Secretary)
- to get approval from CAV for changes to the organisation, after members have passed a special resolution to:
 - change the association's name (section 24 of the AIR Act)
 - change the association's rules (section 50), or

- amalgamate with another organisation (section 18) (see part 6 of this guide: Special General Meetings), or
- when the organisation has given a notice of a proposal to remove an auditor to its members (section 106) (see part 6 of this guide: Special General Meetings)

These requirements are discussed in detail in other parts of this guide.



Caution

This part of the guide deals with CAV reporting requirements only. However, your organisation may also have responsibilities to report to other institutions and government agencies (for example, under funding agreements or tax laws) about changes to its governing documents (rules), or changes to the people who are authorised to act on behalf of the organisation.

For example, organisations should notify the Australian Tax Office of a change in their secretary or office bearers – see part 2 of this guide: Appointing and Removing a Secretary.

Accounting requirements

An incorporated association must maintain financial records that:

- correctly record and explain its financial transactions, and
- allow for 'true and fair' financial statements to be prepared (section 89 of the AIR Act)

These financial records are the basis of your organisation's financial statement submitted to members at the AGM, and the annual statement lodged with CAV. The treasurer of the organisation is generally responsible for overseeing and reporting on the organisation's financial affairs. The financial records must be retained for seven years after the transactions covered by the records are completed (section 89(2) of the AIR Act).

The AIR Act has a three-tiered scheme for the financial reporting of organisations, based on their 'total revenue' for financial year. For example, 'tier three' (the highest tier) associations are required to have an auditor (an accountant who checks and confirms the accuracy of the organisation's financial records) and comply with special accounting requirements (see below, 'Tier one', 'tier two' and 'tier three associations'), but 'tier two' and 'tier one' associations normally do not.

You should check your organisation's rules (see part 1 of this guide: Overview of an association) and any contracts (for example, funding agreements) for any particular accounting or auditing requirements that apply in addition to CAV's requirements. Do your rules require the accounts to be audited each year? Even if you are not a tier three association, your rules (or a condition of funding from government) may require this.



Remember

An organisation can be penalised under the AIR Act for failing to keep correct, true and fair financial records. As at December 2021 the penalty under the AIR Act is about \$1,817.40.

'Tier one', tier two' and 'tier three' associations

The AIR Act classifies organisations into one of three tiers, based on their total yearly revenue (and in some cases, CAV can declare an organisation falls into a higher or lower category). Under s 90(5) of the AIR Act 'total revenue' means the total income of the association during the last financial year of the association from all the activities of the association. This would include grants, donations, and any income from fundraising or selling goods.

The particular financial reporting requirements of the organisation are determined by what tier it falls into.

Tier one associations

A tier one association is an organisation with a total yearly revenue of less than \$250,000 (unless another amount is determined by CAV).

Tier one associations have an obligation to prepare financial statements that 'give a true and fair view of the financial position and performance' of the organisation (section 92(2)).

There is no requirement under the AIR Act for a tier one organisation to have its financial statement independently audited or reviewed. However, members can vote at a general meeting to require the organisation to have its accounts reviewed. In some circumstances, CAV can direct a tier one organisation to have its financial statements reviewed.

Tier two associations

A tier two association is an organisation with a total yearly revenue of between \$250,000 and \$1 million (unless another amount is determined by CAV).

Before the financial statements of a tier two organisation are submitted to the AGM, the organisation must have its financial statements reviewed by an independent accountant.

An independent accountant (that is, a person qualified to review a tier two organisation's financial statement) is:

- a person who is a member of CPA Australia, the Institute of Public Accountants or Chartered Accountants Australia & New Zealand, or
- any other person approved by CAV as a reviewer for this purpose (section 96(1) of the AIR Act)

The financial statements of a tier two organisation must be prepared in accordance with the Australian Accounting Standards (**AASs**).



Tip

If your organisation uses an accountant that is registered with one of the three professional accounting bodies (CPA Australia, the Chartered Accountants of Australia and New Zealand, or the Institute of Public Accountants) then they are required to use the AASs.

Tier three associations

A tier three association is an organisation with a total yearly revenue over \$1 million. It must have its financial records audited by a certified auditor before the financial statement is submitted at the AGM.

A certified auditor (that is, a person qualified to review a tier three organisation's financial statement) is:

- a registered company auditor, or a firm of registered company auditors
- a person who is a member of CPA Australia, the Institute of Public Accountants or Chartered Accountants Australia & New Zealand, or
- any other person approved by CAV as an auditor for this purpose (section 99(2) of the AIR Act)

The financial statements of a tier three organisation must be prepared in accordance with the AASs.

What is the difference between a 'review' and an 'audit'?

The purpose of an 'audit' is to confirm that an organisation (in this case, a tier three organisation) has prepared its financial statements in accordance with relevant AASs. As part of the audit process, the auditor must be satisfied (and declare in their report) that the organisation's financial statements are true, fair and free from any serious error.

A 'review' of financial statements is less in-depth than an audit. It only enables the reviewer to highlight items that may prevent an auditor from confirming that the financial statements are true, fair and free from any serious error. Because a review of financial statements is less detailed and less formal than an audit, it



is normally cheaper than a full audit. Also, more professionals are qualified to undertake a 'review' than an 'audit'.

A reviewer or auditor must be an 'independent person'

If your organisation requires a review or an audit of its financial statements (see above), your reviewer or auditor must be an 'independent person'. This means that they should not be:

- a member of the committee of your organisation
- an employer or employee of a member of the committee
- a business partner of a member of the committee, or
- an employee of your organisation



Note

As a matter of good practice (and to reassure members, funders and those dealing with your association that the reviewer or auditor is not biased), they should be as independent as possible from those connected with the association. This is the policy reason behind these requirements in the AIR Act.

What to do with the auditor or reviewer's report

For tier two organisations

The reviewer must give your organisation a written report of the review (section 96(2) AIR Act), and that report must be provided to members at the AGM. You must also attach a copy of the reviewed financial statements and the reviewer's report to your organisation's annual statement when it is lodged with CAV (section 102(3)(a) AIR Act) or the ACNC.

For tier three organisations

The auditor must give your organisation a written report of the audit (section 99(3) AIR Act) and that report must be provided to members at the AGM. A copy of the audited financial statements and the auditor's report must be attached to your organisation's annual statement when it is lodged with CAV (section 102(3)(b) AIR Act) or the ACNC.



Note

The AIR Act requires associations to keep certain documents, including annual statements for at least seven years. See part 4 of this guide: Registers, Records and Official Documents.



Caution

There are penalties under the AIR Act if an association fails:

- in the case of a tier one organisation, to have its financial statements reviewed where a resolution is passed at a general meeting to do so or CAV requires it
- in the case of a tier two organisation, to have its financial statements reviewed, or
- in the case of a tier three organisation, to have its financial statements audited

At December 2021, the maximum penalty for each failure is about \$1,817.40.



Re-classification as tier one or tier two association

If, in a particular financial year, there are 'unusual and non-recurring circumstances' that result in your organisation falling into a higher tier than usual, your organisation can apply to CAV to be exempt from the reporting requirements of the higher tier. CAV may then declare that the organisation is not in that higher tier for that year.



Example

If ABC Inc, a tier one organisation, receives a one-off project grant that doubles its total yearly revenue to \$260,000 (pushing it up into 'tier two' - just!), they can apply to CAV for an exemption from tier two requirements. CAV may 'declare' under section 91 of the AIR Act that ABC Inc is a tier one association for that year, and therefore ABC Inc would not be required to incur the expense of having its financial statements reviewed.

Preparing and lodging the annual statement

Financial statement (submitted to the members at the annual general meeting)

Depending on how your organisation is run, the financial statement may be prepared by the secretary, treasurer or other member of the organisation's committee or staff. The financial statement must be presented to members of the organisation at the AGM to provide the members of your organisation the opportunity to consider the financial statement before the annual statement is lodged with CAV, or if your organisation is eligible to only report to the ACNC (see the caution box at the beginning of this part of the guide). This is also important so that the members can check the financial dealings and position of the organisation.

Your organisation's financial statement must include certain details required by the AIR Act (section 101).



Tool 28

The details required by the AIR Act are set out in Tool 28: Flowchart for preparing and lodging the annual statement.

Overall, the financial statements must 'give a true and fair view' of the financial position of your organisation during and at the end of its last financial year.

At the AGM, the organisation must submit the following to members:

- financial statements
- a certificate signed by two committee members verifying that the financial statements are a true and fair reflection of the financial position of the organisation, and
- review or audit report (if required)

See also part 6 of this guide: Special General Meetings. Your organisation can be fined for failing to submit the required documents at the AGM.

At the AGM or as soon as possible afterwards, a member of the committee must certify in writing that the financial statement was submitted to members at the AGM.



Tool 28

For more details about actions which must be taken after the annual general meeting, see Tool 28: Flowchart for preparing and lodging the annual statement.

Also check your organisation's rules to see if there are any extra requirements.



Caution

The AIR Act requires an organisation to keep:

- the financial statement (as submitted to members at the annual general meeting) for at least seven years after the date it was submitted to members (section 105(1))
- the certificate from a committee member who attended the AGM for at least seven years after the date signed (section 105(2)), and
- originals of all documents lodged with CAV (for example, audited accounts and the auditor's report) for at least seven years after the date of lodging (section 201)

An organisation can be fined if it fails to keep these documents. At December 2021 an organisation can be ordered to pay as much as \$3,634.8 in some circumstances.

Annual statement (lodged with CAV)

Every year before your AGM, CAV will send the secretary of your organisation, by email, a notice that the annual statement is required to be lodged. This is unless the organisation only needs to report to the ACNC (see the caution box at the beginning of this part of the guide). The notice will include a link to the myCAV page. Within one month after the AGM the secretary must, via the online system myCAV, lodge the requisite documents.

The documents that must be lodged by the secretary with CAV are:

- the annual statement form
- the financial statement (certified by two committee members)
- the committee member's certificate confirming that the statement was presented at the organisation's AGM
- copies of any resolutions passed about the financial statement, and
- the review or audit report (if applicable)

If an extension of time for holding the AGM has been granted by CAV under section 104(1)(a) of the AIR Act, the documents are required to be submitted within a month after the last day of the period in which an AGM is required to be held (section 102(2)(b) of the AIR Act).

An organisation can apply to CAV for an extension of time to lodge the annual statement (regardless of whether the time for holding the annual general meeting has been extended). See below, 'Applying for an extension of time'.

Remember that the documents you will be required to submit to CAV (or the ACNC) on behalf of your organisation will depend on which category of tier your organisation falls into.

When lodging the annual statement form with CAV, the secretary must attach certain documents and pay the prescribed lodging fee. These are all discussed in Tool 28: Flowchart for preparing and lodging the annual statement.



Note

If your organisation passed a resolution about the financial statements at the AGM (for example, approving the financial statement with some modifications), this resolution must be attached to the annual statement lodged with CAV.

The secretary must lodge the annual statement via the online system myCAV. However, if there are any difficulties accessing this information the secretary can contact the CAV Helpline.



Note

Documents submitted to members of an organisation at a general meeting or lodged with CAV should give a true and accurate picture of your organisation. It is an offence under section 208 of the AIR Act to:

- knowingly make a statement that is false or misleading in a relevant detail, or
- knowingly leave out any matter or thing from the document, which makes the document misleading in a relevant detail

It's also an offence for anyone to authorise someone to do any of these things, or to do any of the above without having taken reasonable steps to ensure that the statement or omission was not false or misleading.

This is a serious matter under the law. At December 2021, the penalty for each of these offences is up to \$10,904.40.

In exceptional circumstances (in addition to those extended to organisations registered with the ACNC), CAV may permit an organisation not to submit an annual statement (this is known as 'exempting' the organisation). An exemption can apply either generally or for a specific year (section 103 of the AIR Act). Unfortunately, there is no guidance on when CAV may grant such an exemption.



Caution

If your organisation does not lodge its annual statement in each of two successive years, your organisation may be wound up (that is, closed down) by CAV (section 127(2)(e) of the AIR Act).

Applying for extensions of time

The secretary may apply to CAV for an extension of time to hold an AGM or to lodge the annual statement (section 104 of the AIR Act). To apply, the secretary can download the ['Application for Extension of Time' form from CAV's website](#). Complete the form, and then deliver or post it to CAV.

Can Consumer Affairs Victoria refuse to register documents?

CAV can refuse to register or receive documents lodged by an organisation for a number of reasons (sections 204 and 205 AIR Act), including:

- if the document does not comply with the requirements of the AIR Act
- if the document is missing details or contains an error, or



- if CAV considers that the document is not a valid document of the organisation – for example, when an organisation splits into rival groups and each group seeks to lodge documents with CAV, claiming that they are the official version

If CAV refuses to register a document because it is considered invalid, your organisation can request that CAV reconsider the decision. If CAV reconsiders, and still decides not to register the document, you can request that CAV to refer the question to the Magistrates' Court. CAV must ask the Court to decide whether the document is valid or not. If the Court decides the document is valid, CAV must register it.

It's important to ensure that CAV considers the documents valid, as your organisation will breach the AIR Act requirements if CAV refuses to register a document.