

Legal Structures

The choice of a structure for your organisation will depend on its goals, its members, its funding sources and the activities that you plan to undertake. The following provides some overview of different legal structures available to community groups.

Incorporated association

Whether an organisation utilises the structure of a not-for-profit Incorporated Association or not depends on the purpose of the organisation and whether it can achieve its purpose and aims without this legal structure.

Advantages in becoming an Incorporated Association means an organisation has independence in operations, can operate a bank account and is able to receive donations and grants. In preparation for your group to become an Incorporated Association it will need to:

- Form a group to take on the responsibility to work toward Incorporation
- This group works on a draft Statement of Purpose and Rules for the development of a constitution.
- A membership base is identified, approached and recruited
- A public meeting is held to approve and adopt the draft constitution which must be minuted.
- An application for Association Incorporation is submitted to Consumer Affairs Victoria

Auspice

Your organisation can approach another legal entity, such as an Incorporated Association or local government, and ask to be auspiced by them. Finding an auspicing body is an option for non-incorporated organisations wanting to receive and expend a grant, or hold public events that may require insurance.

Larger organisations will have policies that cover their auspice procedure and it is usual for an administration fee to be charged. Both organisations should enter into an agreement in the form of a Memorandum of Understanding (MOU) and/or contract to set out roles, expectations and procedures determining how the relationship will proceed. Auspiced relationships may be short term for the length of a grant or funded project.

When a group auspices your funding application, they are legally accountable for the proper expenditure and acquittal of the funds and will expect progress reports from the project reference group or steering committee.

Section 86 committees

Under Section 86 of the Local Government Act (1989), councils may establish a special committee to manage council owned facilities, (eg: public halls, reserves, swimming pools); organise community activities (tourism or seasonal events) or provide strategic advice and direction on specific topics (arts, heritage or environmental). Section 86 committees are governed by an Instrument of Delegation, the legal document which outlines the objectives, composition and administrative management arrangements of each committee.

Section 86 committees are not legal entities unto themselves but are a committee of their local council who essentially act as the parent or auspice body. Section 86 committees cannot delegate responsibility nor enter into contracts. This can have bearing on the committee's ability to apply for funding and to undertake projects which may require council's approval. It is therefore imperative that Section 86 committee members fully understand their Instrument of Delegation, ensure that it meets their objectives and that committee members understand their responsibility as council delegates.

Informal organisation

In this category are groups of people who are gathering to exchange information and ideas that does not necessitate any money or the holding of public activities. Groups might include special interest groups, or specific issue groups. If there is no desire to have a financial membership base or enter into a legal structure this arrangement can satisfy the purpose of a group.

Company Limited By Guarantee

A company limited by guarantee (CLG) is another type of incorporated legal structure made under the Commonwealth Corporations Act 2001 (Cth). Incorporated associations are limited to operating within Victoria, while a CLG can carry out its activities anywhere in Australia.

Generally speaking, the regime for incorporated associations under the Victorian Associations Incorporation Reform Act is more straightforward than the regime for CLGs under the Commonwealth Corporations Act.

In limited circumstances, there are laws that require organisations that are undertaking specific activities to adopt a particular legal structure. For example, there are Victorian laws that require organisations that provide housing services to the public and want to become a 'registered housing association' to be a CLG. There are also requirements for organisations wishing to provide aged care services to adopt a particular structure. Your organisation should seek advice about any laws that might apply to the field you are working in.

Accountability and requirements of incorporated associations

The Associations Incorporation Reform Act 2012 (Vic) are the new laws for Victorian incorporated associations which came into effect on 26 November 2012. Under the Act, the Committee of Management has the responsibility to do the following things:

Hold an Annual General Meeting (AGM)

The Annual General Meeting is the formal occasion at which the Committee of Management is required to present its annual report on management and operational activities. It provides the membership with an accurate and up-to-date account of the financial status and the activities of the organisation for the immediate past financial year.

Present an Annual Report to the AGM

The annual report, which is a feature of an AGM, is a document of accountability from the Committee of Management to its members. It includes the previous AGM minutes, the Chairperson's report and an Annual Financial Report from the Treasurer.

Report to Consumer Affairs Victoria

There are particular legal requirements leading up to, during and following the AGM that must be complied

with. The Secretary (previously known as the Public Officer) of an Incorporated Association is the officer responsible for ensuring that requirements as listed in the constitution are carried out. These requirements include the lodgement with Consumer Affairs Victoria of signed copies of financial statements and reports, for the financial year just completed, within a month of the AGM.

Notify Consumer Affairs Victoria of:

- Any changes to the Committee of Management
- Any changes to the Constitution
- A vacancy in the position of the Secretary
- The appointment of a new Secretary
- Any change to the Incorporated Association's registered address

Appoint a Secretary

It is the responsibility of the Secretary to keep Consumer Affairs Victoria informed of the changes in an Incorporated Association as well as its financial situation.

S/he must be over 18 years old, a resident of Australia, consent to be nominated and not be insolvent under administration.

The Secretary is required to view and sign all documentation that is submitted to Consumer Affairs Victoria.

RESOURCES

One of the best resources available to community groups is an initiative of the Public Interest Law Clearing House (PILCH), who offer PILCHConnect, a specialist legal service for the community sector.

There are many online resources and detailed information sheets which cover legal matters impacting community groups.

www.pilch.org.au

