



IMPORTANT BACKGROUND INFORMATION

Part 1 – Guide for Public Officers and Secretaries

IMPORTANT BACKGROUND INFORMATION

This Part of the Guide for Public Officers and Secretaries (www.pilch.org.au/incguide) contains background information to help you understand your organisation, the roles of the public officer and secretary within it, and how to use this Guide.

Key points

1. Who is this Guide for?

This Part explains the roles of public officer and secretary of an incorporated association in Victoria, and helps you work out which parts of the Guide apply to your situation.

2. How to use this Guide

This Guide is in 10 parts and includes a range of practical tools and other links.

3. What is an incorporated association?

An incorporated association is the most common (but not the only) legal structure used by not-for-profit organisations. There are laws which regulate incorporated associations. Laws differ between States and Territories. This Guide deals with Victorian laws.

4. What are the reporting obligations of an incorporated association?

An incorporated association must report certain information to Consumer Affairs Victoria as set out in the *Associations Incorporation Act 1981 (Vic)*.

5. 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 also has a statement of purposes which sets out the organisation’s objectives. There is a tool in this Part to help you work out what your rules are – it is essential to be familiar with them.

6. What is the role of members of an incorporated association?

Members of an incorporated association have power to make certain decisions about the organisation. In particular, they appoint the management committee.

7. What is a management committee?

The management committee of an incorporated association (that is, its governing body) is responsible for overseeing how the organisation operates. There are usually a number of special positions on the management committee, including the secretary.

8. Who is the public officer?

The public officer has legal responsibilities for submitting documents to Consumer Affairs Victoria, and is the official contact person for the organisation.

9. Where can I go for information and assistance?

There is this Guide and other resources to help you. There are people you can talk to as well.

Note:

Generally, this Guide is written for people who are *both* the public officer and secretary of an incorporated association. This is the case in most organisations, but not all. However, because the legal duties of the public officer and secretary are different, sometimes the two roles are discussed separately in this Guide.

1. Who is this Guide for?

This [Guide for Public Officers and Secretaries](#) is designed to help you (as the public officer and/or secretary) and others within your organisation, by alerting you to your legal obligations and offering “good governance” tips 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 public officer or secretary of an incorporated association in Victoria can benefit from this Guide.

This Guide may also be useful for other members of your organisation's management committee (or governing body such as the “board”), as well as people and organisations who work with incorporated associations (such as peak bodies and advocacy groups).

If you are looking for guidance about the secretary's role *only*, or the public officer's role *only*, see [Tool 1: Which Parts of this Guide apply to my situation?](#) It sets out which parts of this Guide are relevant to each of these.

In a nutshell:

- The public officer is the organisation's official contact person and is responsible for reporting about the organisation to Consumer Affairs Victoria (**CAV**).
- The secretary has responsibilities including organising meetings, dealing with documents, and keeping up-to-date records about the organisation. The secretary is usually (but not always) a member of the organisation's management committee.

2. How to use this Guide

This Guide for Public Officers and Secretaries is produced by PilchConnect, a specialist legal service for not-for-profit community organisations.

The Guide is in 10 parts. Many of the parts of the Guide contain practical “tools” – such as sample documents, checklists, and flowcharts – to help you in your role. These are located at the end of the relevant part of the Guide.

This Guide contains links to:

- email addresses and (government or community) websites which contain official or reliable information about the topics discussed - these links look like this: “www.consumer.vic.gov.au > [Incorporated associations](#)”. If you are connected to the internet, you can click on the link in the PDF document and go directly to the relevant part of the website. Or you can go to the website www.consumer.vic.gov.au, and click on “Incorporated Associations”.
- other parts of the Guide - these look like this: “[Reporting to Consumer Affairs Victoria](#)” in this Guide”. If you are connected to the internet, you can click on the link in the PDF document and go to the page of PilchConnect’s website where you can read about (and download) that part of the Guide.
- cross-references to other sections or tools of a particular part of the Guide - these look like this: “[Tool 1: Which Parts of this Guide apply to my situation?](#)” You can click on the link and skip to that section of the PDF document.

You can download, display, print and reproduce any part of this Guide for your personal and non-commercial use, or non-commercial use within your not-for-profit organisation, as long as you retain the copyright notice at the end of each part of the Guide.

3. What is an incorporated association?

An incorporated association is the most common (but not the only) legal structure used by not-for-profit groups. An incorporated association is also called an “organisation” in this Guide.

Every Australian State and Territory has its own laws to regulate incorporated associations. This Guide deals with incorporated associations 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 them, which are not covered in this Guide.

Tip:

For more information on what incorporation means, and different types of legal structures used by not-for-profit groups, see “Getting Started” on the PilchConnect web portal: www.pilch.org.au/legal_info

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

Incorporated associations have the word “Incorporated” or the letters “Inc” at the end of their name, rather than, for example, “Ltd” or “Pty Ltd”.

Tip:

If you are not sure whether your organisation is an incorporated association, you can search the Register of Incorporated Associations on the CAV website: www.consumer.vic.gov.au > [Incorporated associations](#) > [Search for an incorporated association](#).

What laws regulate incorporated associations in Victoria?

In Victoria, the *Associations Incorporation Act 1981* (Vic) (the **AI Act**) is the main piece of legislation dealing with incorporated associations. The AI Act covers the establishment, operation and ending (or dissolution) of an incorporated association.

Tip:

The AI Act gives powers and responsibilities to the “Registrar” of Incorporated Associations. In practice, the functions of the Registrar are carried out by CAV (see below, [What does CAV do?](#))

The *Associations Incorporation Regulations 2009* (Vic) (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 (see below, [5. The rules and purposes of an incorporated association](#)).

Current copies of the AI Act and Regulations are available on the Victorian Government’s website for legislation: see www.legislation.vic.gov.au and go to “Victorian Law Today” and search “Acts” (for the AI Act) or “Statutory rules” (for the Regulations). It is good practice to keep a copy of the current AI Act and Regulations with the organisation’s official documents.

There are other laws which apply to incorporated associations – for example, laws dealing with occupational health and safety, workplace relations or tax. The PilchConnect web portal at www.pilch.org.au/legal_info contains useful resources and contains fact sheets on a range of laws to help not-for-profit organisations.

Tip:

Legislation is updated from time to time. In 2009 a number of changes were made to the AI Act (reflected in this Guide) – and there are more changes on the way. This Guide will be updated when these changes come into force (which is likely to be 1 December 2011). For more information on the key changes that will occur, see www.pilch.org.au/legalupdates/

One way to stay updated on changes in the law is to register for the PilchConnect e-bulletin. You can do this by signing up at www.pilch.org.au/subscribe/

What does CAV do?

CAV is the Victorian government agency with primary responsibility for dealing with incorporated associations. CAV is a unit of the Department of Justice.

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

- maintaining the Register of Incorporated Associations
- approving applications for incorporation
- receiving annual statements from organisations (see [Reporting to Consumer Affairs Victoria](#) in this Guide)
- 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/or investigating an organisation's compliance with the AI 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 AI Act.

You can contact CAV if you need help with:

- enquiries about 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 AI Act
- requests for documents (eg. your organisation's rules or other documents lodged with CAV), and
- general advice about your obligations under the AI Act.

However CAV is *not* able to:

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

4. What are the reporting requirements of an incorporated association?

An incorporated association is required to report to CAV:

- every year in its annual statement (see [Reporting to Consumer Affairs Victoria](#) in this Guide)
- whenever a new public officer is appointed, or if the existing public officer's details change (see [Appointing and Removing a Public Officer](#))
- if the organisation has made a decision which must be notified to/approved by CAV before it is official – for example, if the organisation passes a special resolution to change its name or its rules (see [Procedures for Meetings](#) and also [Preparing and Giving Notices of Meetings](#)).

5. The rules and purposes of an incorporated association

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

Why?

The rules are legally enforceable by members of your organisation or CAV. There are other good reasons for having to follow 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.

Certain matters must be covered by your organisation's rules (section 6 and the Schedule of the AI Act). Apart from these matters, your organisation has a fair degree of flexibility in establishing its rules.

Tip:

The rules of the organisation are a key source of information for secretaries. It is important that you read your organisation's rules (and statement of purposes) and make sure you have an up-to-date copy handy.

Every organisation must also have a “statement of purposes”. The statement of purposes sets 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 own rules or statement of purposes, you can be challenged by a member of the organisation for failing to do so. Under s14A of the AI Act, CAV can apply to the Magistrates Court to enforce the rights and obligations of members of an organisation under the rules. The organisation or a member can also apply.

How to find out what your organisation's rules are

When an association applies for incorporation, it can choose to:

- write its own rules, by drafting new rules from scratch or by modifying the “model rules” (see below), or
- adopt the “model rules”. The model rules are set out in Schedule 4 of the Regulations and are available on the CAV website: www.consumer.vic.gov.au > [Incorporated associations](#) under the heading Forms and Publications.

To check what your organisation's rules are, follow the steps in [Tool 2: Flowchart for working out what are your association's current rules](#).

Remember!

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 rules are not official (legally binding) until they are approved by CAV.

The options available to an organisation (to draft its own rules or adopt or modify the model rules) can make it difficult for the secretary of an organisation to work out what the organisation's official rules are. Some specific guidance is provided below.

Adopting the model rules

An organisation can choose to adopt the model rules when they become incorporated.

Tip:

The model rules are basically an example of rules that comply with the AI Act. The model rules are the standard form, or “fall back” or “default” position. But they are not “model” in the sense of being the “best” for every organisation – for example, if your organisation wants to access certain tax concessions it will have to modify the model rules to meet the necessary tax law requirements.

The model rules have been changed several times over the years. If your organisation has adopted the whole of the model rules, any changes to the model rules apply to your organisation automatically. Depending on the form of your organisation's application for incorporation, your organisation may have adopted some of the model rules *as they were at the time when your organisation applied for incorporation*. If so, the latest version of the model rules in the Regulations may not be the same as the model rules your organisation adopted (because the model rules in the Regulations have been changed over time). When checking your rules, you should make sure that you are using the correct version.

Remember!

The model rules will be changed (likely in early-mid 2012) as part of a raft of reforms to the AI Act. The changes to the AI Act are expected to come into force on 1 July 2012. The new rules will include provisions about preparing and retaining accurate minutes of meetings, members' access to minutes of general meetings, and whether or not members can access the minutes of management committee meetings. This Guide will be updated when these changes occur.

Establishing your own rules

If your organisation has written its own rules, you should make sure that your rules cover all the matters listed in the Schedule of the AI Act.

You should also be aware that, if a matter is not covered in your association's rules, but is covered in the model rules, that provision of the model rules will apply to your organisation's rules automatically (section 21(3) of the AI Act). For example, if your association's rules do not specify the number of days notice required for a general meeting, then clause 12 of the model rules would apply to your rules to specify that at least 14 days notice is necessary.

Remember!

The rules of your association cannot override the AI Act or any other laws. If there is an inconsistency between the AI Act and a rule of your organisation, the rule has no effect (section 21(4) AI Act). If the AI 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.

6. What is the role of members of an incorporated association?

The members of an incorporated association have certain rights and responsibilities under the AI Act, the organisation's rules, and the law developed by the courts (that is, "judge-made law" or common law). Importantly, members of the organisation can attend general meetings and vote on particular matters such as:

- electing the management committee
- changing the organisation's name, rules or statement of purposes
- amalgamating the organisation with one or more other organisations
- removing an auditor, or
- winding up (ending) the organisation voluntarily.

An association's rules must set out the procedures for an annual general meeting and other formal meetings where the members can make official decisions – the model rules describe these other formal meetings as "special general meetings", to distinguish them from the annual general meeting. Both *annual* and *special* general meetings are described as "general meetings" in the model rules.

Important:

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 will include giving notice of the meeting to members.

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 management committee (see below, [7. What is a management committee?](#)).

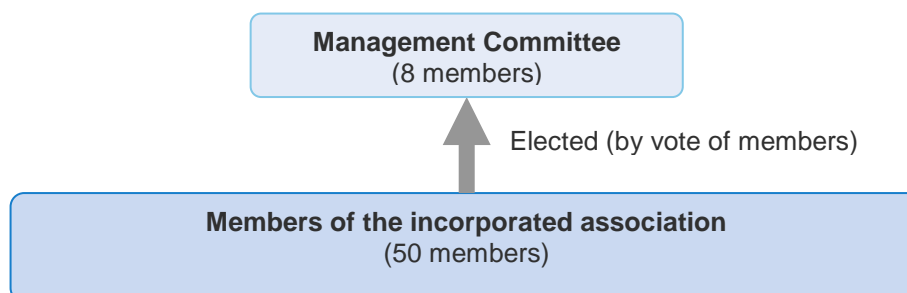
The members may be (and often are) involved in carrying out the organisation's activities (for example, helping teams with coaching), but this is different to having the *legal* responsibility for management of the organisation. Sometimes the line between these two can seem unclear or artificial. Check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

7. What is a management committee?

Managing an incorporated association is the responsibility of an elected committee, which is often called the management committee. Sometimes other names are used for this governing body, such as the "board", "council", "committee of management" or simply the "committee".

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 management committee (see Diagram 1 below).

Diagram 1: Electing a management committee (example only)



In some organisations, all the members of the incorporated association are also members of the management 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 management committee, it can seem a bit strange to separate the *management* of the organisation from the actual *doing* of the work! However it is important to understand the separate (legal) role of the management committee.

Under the law, the management committee is responsible for overseeing the affairs of the incorporated association and ensuring its legal obligations are met. Members of the management committee have particular legal duties under the AI Act and judge-made law to make sure the organisation is running properly.

Are there special positions on the management committee?

Commonly, there are a number of special positions on a management committee – one of which is the secretary. The people who take on these positions are sometimes called “officers” or “office bearers” of the association. 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. The treasurer is not the same person as the auditor.
- The *secretary* organises meetings, deals with documents and maintains records of the association. For further information about the role of the secretary, see [Secretary's Legal Role, Powers and Duties](#) in this Guide.

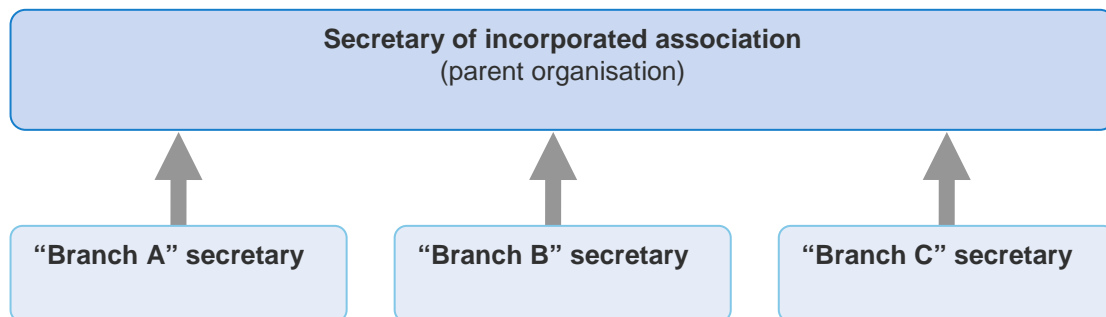
The management committee may have other members who are not office bearers. These are sometimes called “ordinary committee members”.

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 management committee), reporting to the parent organisation (see diagram 2 below).

Branches are not separately incorporated under the AI Act. The rules of the parent organisation control the branch, and a member of the branch is a member of the parent organisation.

Diagram 2: Example of branch secretaries reporting to secretary of parent organisation



If an organisation chooses to establish branches, it is good practice for the governance arrangements for the branches to be explained in the rules of the organisation.

8. Who is the public officer?

“Public officer” is a term created by the AI Act. The public officer of an incorporated association has responsibilities under the AI Act for submitting forms and documents to CAV, and is the primary contact person for the organisation.

As mentioned above, in many organisations the public officer is also the secretary of the association. In some organisations, the rules provide that the secretary is automatically also the public officer (in other words, once elected as secretary they become the public officer whether they like it or not)! However, this is not the case in all organisations. A public officer may, for example, be an employee of an organisation (for instance, the manager) who is neither a member of the management committee nor a member of the association.

Important:

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

See [Appointing and Removing a Public Officer](#) in this Guide for more information about who can be a public officer, how they are appointed, and what happens next.

Important:

The overlap between the roles of public officer and secretary can be confusing. In 2011 the AI Act is being changed to address this confusion. The changes will *merge the roles of public officer and secretary*. In other words, generally, the two positions will become one.

This new law has not yet commenced. When the laws take effect (expected to be 1 July 2012), the model rules will be amended, existing incorporated associations will be notified by CAV, and this Guide will be updated to reflect the changes.

9. Where can I go for information and assistance?

PilchConnect

PilchConnect is a specialist legal service for community organisations. PilchConnect is a service of the Public Interest Law Clearing House (Vic) Inc (**PILCH**), which is a not-for-profit community legal centre. PilchConnect's web portal contains information, fact sheets and advice to help not-for-profit organisations (including incorporated associations) with a range of legal and governance issues. PilchConnect can also help you access free legal advice. See the PilchConnect website: www.pilch.org.au/community_org > [How PilchConnect can help](#).

The PilchConnect web portal is: www.pilch.org.au/legal_info/:

- See [Getting Started > Before you start](#), for issues to consider before you start an organisation, and download Fact sheet: "What does 'not-for-profit' mean?"
- See [Getting Started > The incorporation decision](#), and download Fact sheet: "What is 'incorporation' and does our group need to incorporate?"
- See [Getting Started > Choosing the right incorporated legal structure](#), and download Fact sheets: "Overview of incorporated legal structures for Victorian not-for-profit organisations", "Incorporated association or company limited by guarantee?", and "Which incorporated legal structure should we choose?"
- See [Getting Started > Setting up your organisation > setting up an incorporated association](#), for information and links to reliable free resources to help you register your organisation as an incorporated association
- See [The people involved > Holding a position in a community organisation > positions in an incorporated association](#), and download Fact sheet: "Duties of Committee of Management members in Victorian incorporated associations"
- See [Running the organisation > Occupational health and safety](#), and download "Guide: Community organisations and Victoria's OHS laws", and
- See [When things change > Changing your organisation's constitution or rules](#), for information on legal issues which arise when your organisation changes its rules.

Legislation

The [Associations Incorporation Act 1981](#) (Vic) is the legislation that regulates incorporated associations in Victoria.

The [Associations Incorporation Regulations 2009](#) (Vic) contain additional requirements for incorporated associations in Victoria.

Government

Consumer Affairs Victoria

CAV's website contains helpful information about the operation of incorporated associations in Victoria.

See www.consumer.vic.gov.au > [Incorporated associations](#).

Additional contact details for Consumer Affairs Victoria are as follows:

Address: 113 Exhibition Street, Melbourne

Postal Address: Consumer Affairs Victoria, GPO Box 4567, Melbourne 3001

Telephone No.: 1300 36 16 73 (between 8:30am and 5:00pm Monday to Friday)

Office of the Community Sector

The Office of the Community Sector (**OCS**) works across the Victorian Government to strengthen and provide support to community groups. OCS is part of the Department of Planning and Community

Development. OCS's website is www.dpcd.vic.gov.au/communitysector

Australian Taxation Office

The Australian Taxation Office (**ATO**) publishes a wide range of information packs and fact sheets on tax issues for not-for-profit (called "non-profit") organisations. The ATO website provides access to these and other resources, and also online services. See www.ato.gov.au > [Non-profit](#).

Other links

"Skilled Volunteers: A Guide for Community Organisations" is a booklet published by Victorian Council for Social Service (**VCOSS**) available on its website: www.vcooss.org.au. It lists a range of pro bono (free) skilled volunteer service providers.

Infoxchange Australia empowers individuals, networks organisations and connects communities by providing access to information technology. See www.infoxchange.org.au.

OurCommunity is a (for-profit) social enterprise that provides advice and tools for community groups and schools, and practical linkages between the community sector and the public, business and government.

See www.ourcommunity.com.au.

"The Law Handbook" is published by the Fitzroy Legal Service and provides information on a range of legal topics (based on Victorian law). It has a chapter on legal structures for community organisations and on "Taking Action" which are particularly relevant to community groups. It also covers contracts, employment, discrimination, disability law and has a useful glossary. The Handbook is available free online. See www.lawhandbook.org.au.

© 2011 Public Interest Law Clearing House (Vic) Inc (PILCH). You may download, display, print and reproduce this material (retaining this notice) for your personal use or non-commercial use within your not-for-profit organisation. Apart from any use as permitted under the *Copyright Act 1968* (Cth), all other rights are reserved.

To request further permission from PILCH to use this material, contact PILCH at PO Box 16013, Collins Street West, Melbourne 8007, or email connect@pilch.org.au

Tool 1: Which Parts of this Guide apply to my situation?

This Guide for Public Officers and Secretaries is generally written for people who hold positions as both the public officer and secretary of a Victorian incorporated association.

If you are looking for specific information about the position of *either* the public officer or secretary, please refer to the table below.

The parts of this Guide that deal with public officers are:

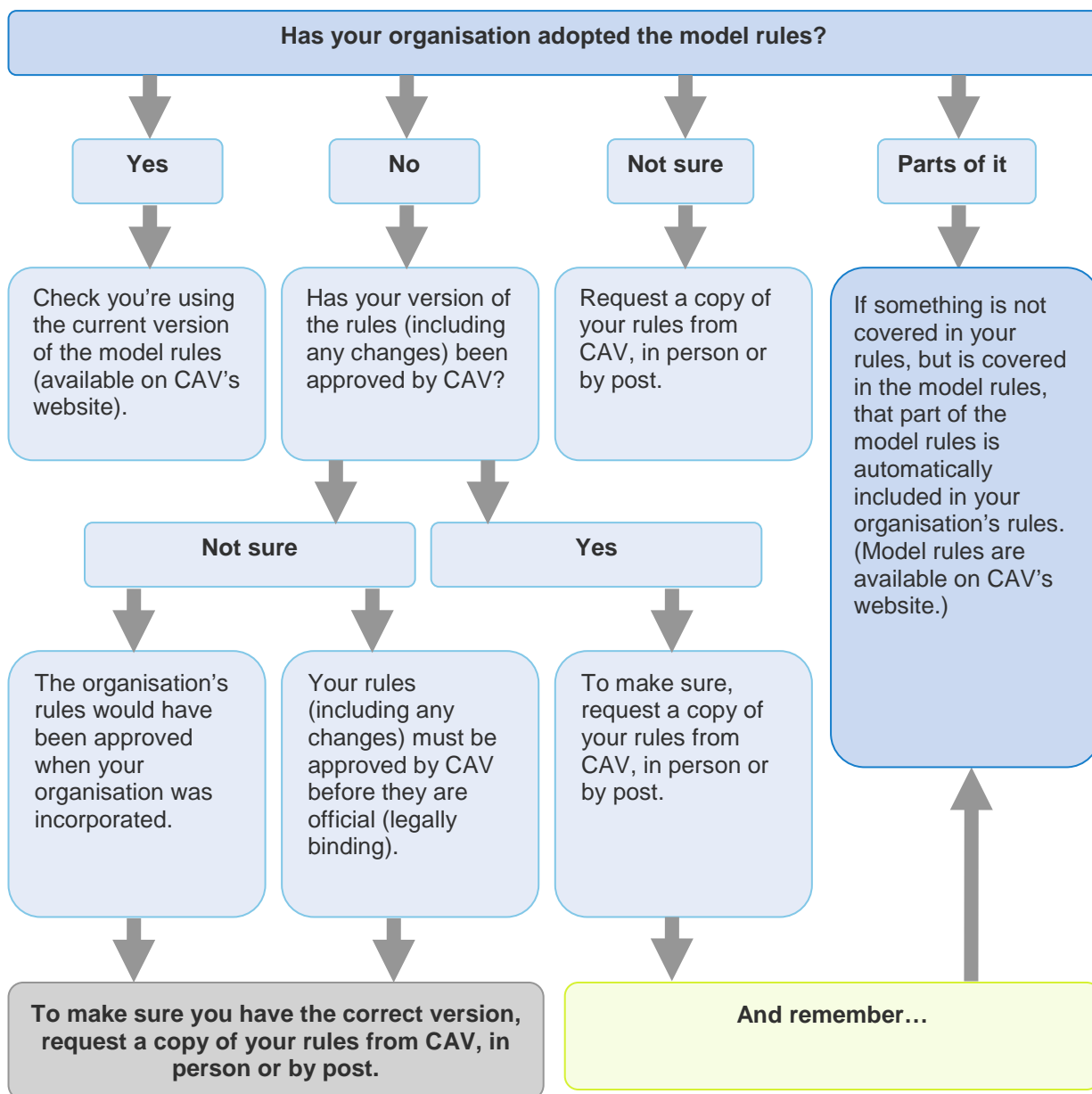
- [Important Background Information](#)
- [Appointing and Removing a Public Officer](#)
- [Reporting to Consumer Affairs Victoria](#)
- [Keeping Registers, Records and Documents](#)

The parts of this Guide that deal with secretaries are:

- [Important Background Information](#)
 - [Appointing and Removing a Secretary](#)
 - [Secretary's Legal Role, Powers and Duties](#)
 - [Preparing and Giving Notice of Meetings](#)
 - [Procedures for Meetings](#)
 - [Minutes of Meetings](#)
 - [Preparing Official and Public Documents](#)
 - [Keeping Registers, Records and Documents](#)
-

Tool 2: Flowchart for working out what are your association's current rules

Note: CAV means Consumer Affairs Victoria.





Address: PO Box 16013, Collins Street West, Melbourne 8007

Phone: 03 8636 4400

Fax: 03 8636 4455

Email: connect@pilch.org.au

Web: www.pilchconnect.org.au

Facebook: www.facebook.com/pilchconnect

Twitter: www.twitter.com/pilchconnect

Produced with financial support from
the Office for the Community Sector



Department of Planning
and Community Development