



APPOINTING AND REMOVING A SECRETARY

Part 3 – Guide for Public Officers and Secretaries

APPOINTING AND REMOVING A SECRETARY

This Part of the [Guide for Public Officers and Secretaries](#) covers appointing and removing a secretary of an incorporated association in Victoria.

Key Points

1. Who can be the secretary?

An organisation's rules and policies may set out requirements about who can be the secretary. In most organisations, the secretary is a member of the incorporated association and is also on the management committee.

2. How is the secretary appointed?

The procedures for appointing a secretary are set out in the organisation's rules. Once appointed, the organisation should consider who needs to be notified about the change of secretary.

3. When will the position of secretary become vacant?

The organisation's rules will set out the circumstances in which the position of secretary will be automatically terminated (vacated), and the procedures for appointing a new person to the position.

4. Removing a secretary

The procedures for removing a secretary are also set out in the organisation's rules.

Note:

This Part of the Guide deals with the position of *secretary* only. The secretary may (or may not) also be the public officer. Check [Important Background Information](#) in this Guide for more information and to find out which parts of this Guide apply to your situation.

For information on appointing and removing a public officer, see [Appointing and Removing a Public Officer](#) in this Guide.

1. Who can be the secretary?

The secretary is a key role in any incorporated association. The secretary is legally responsible for a number of specific tasks – see [Secretary's Legal Role, Powers and Duties](#) in this [Guide for Public Officers and Secretaries](#).

It is important that your organisation appoints a person who has the experience, skills and/or qualifications to carry out the role of secretary. Effective secretaries 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.

Important:

Generally, the information in this Part of the Guide is written for secretaries who are on the management committee of their organisation.

You should check your rules to find out whether this is the case for your organisation. See also [Important Background Information](#) in this Guide.

The Associations Incorporation Act 1981 (Vic)

There are no specific requirements in the *Associations Incorporation Act 1981 (Vic)* (the **AI Act**) or the *Associations Incorporation Regulations 2009 (Vic)* (the **Regulations**) about who can be a secretary of an incorporated association.

The AI Act does, however, set out requirements for who can be a public officer (for example, they must live in Victoria). If the secretary is also the public officer in your organisation, see also [Appointing and Removing a Public Officer](#) in this Guide for more information about these requirements.

Important:

The AI Act is being changed to merge the roles of public officer and secretary. The new laws are expected to start 1 July 2012, and when they do the public officer will automatically be called the secretary under the AI Act. This Guide will be updated when these new laws start.

To make the transition to these new laws easier, if your organisation is changing its secretary and/or public officer, consider appointing the same person to both roles (that is, appoint one person as the public officer and secretary).

Your organisation's rules

In most organisations, the rules (or "constitution") require the secretary to be a member of the incorporated association and on the management committee.

Your organisation's rules may have additional requirements about who can be the secretary, for example they may be required to have particular qualifications or experience.

Your organisation's policies

Your organisation may also have policies about who can be the secretary. You need to check what they are before your organisation appoints a new secretary. It may even be a good time to review long standing policies.

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 management committee or member of the association who has suitable skills and interests.

If your organisation needs someone with particular expertise to fulfill 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) using 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. These include:

- Volunteering Australia www.govolunteer.com.au and www.volunteeringaustralia.org
- State-based volunteering peak bodies, such as Volunteering Victoria <http://www.volunteeringvictoria.org.au/>
- Leadership Victoria www.leadershipvictoria.org and regional groups, such as Leadership Ballarat and Western Region www.lbwr.com.au
- goodcompany www.goodcompany.com.au
- Oxfam Australia SkillShare www.shareyourskills.org
- Australia Business Arts Foundation (for arts organisations) www.abaf.org.au
- OurCommunity www.ourcommunity.com.au, and
- Pro Bono Australia www.volunteermatch.com.au.

For further ideas, speak to any peak body to which your organisation may belong — maybe they can put a note in their next newsletter or e-bulletin. For example, the Victorian Council for Social Service (VCOSS) operates a clearinghouse (www.vcoss.org.au > [What we do > Training and development](#)) that can point groups in the right direction for assistance on this and other issues.

2. How is the secretary appointed?

If the secretary is a member of the management committee, the procedures for appointing them, and the length of time for which they are appointed, must be set out in your organisation's rules (item 4(a) and (b) of the Schedule of the AI Act). The rules of most incorporated associations (as well as the model rules set out in Schedule 4 of the Regulations) state that management committee members, including the secretary, must be elected by the organisation's members at the annual general meeting.

Remember!

Check your rules for your organisation's requirements about appointing a secretary. Does your organisation use its own rules or does it use the model rules?

Make sure you have the most up-to-date version of the rules, including any changes that the organisation's members and Consumer Affairs Victoria (**CAV**) have approved.

If you are confused about which rules apply to your organisation, or whether the copy you have is up to date, the best thing to do is to contact CAV and request a copy of your organisation's rules and purposes.

To download the current version of the model rules, go to CAV's website: www.consumer.vic.gov.au > [Incorporated Associations](#)

Electing a secretary at the annual general meeting

If your organisation's rules provide that the secretary is elected at the annual general meeting, then check the rules, as well as your organisation's policies and procedures, for:

- how and when candidates are nominated
- how and when information about the candidates is distributed to all members before the annual general meeting, 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 annual general meeting for some reason (for example, no one was nominated), the rules may provide that the management committee can appoint a secretary. In large organisations, where the secretary may be the paid manager of the organisation, this is often the case. But 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 annual general meetings (for example, the secretary resigns), check your rules to find out how to appoint a new secretary.

If your organisation uses model rule 21(4) (or a similar rule) the management committee may appoint another member of the management committee to be the secretary until the next annual general meeting.

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

There is no requirement to notify CAV of the appointment of a new secretary. However, if your secretary is also the public officer, there is – see [Appointing and Removing a Public Officer](#) in this Guide.

If your organisation is registered for tax purposes (for example, if it has an ABN), your organisation should inform the Australian Taxation Office (**ATO**) when it appoints new office bearers (including a secretary) who are authorised to make enquiries about the organisation's tax affairs. The ATO recommends that this be done as soon as possible after their appointment. As at 1 October 2011, the ATO can be notified of a change of office bearers by:

- telephone – phone 1300 130 248 between 8am and 6pm Monday to Friday
- sending the form “Change of Registration Details” (NAT 2943) which can be requested by phone or via the ATO website, or
- online, if your organisation is registered for ATO online services.

For more information, the ATO has published a fact sheet called ‘How do I ensure the Tax Office can speak to my organisation’s representative?’ accessible on the ATO website: www.ato.gov.au > [Non-Profit](#) > [Your situation](#) > [Record keeping and managing your tax affairs](#) > [Changes to your organisation, including key staff](#).

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

3. When will the position of secretary become vacant?

If the secretary is a member of the management committee, the organisation’s rules must set out the circumstances in which the position of secretary will become vacant (see item 4(c) of the Schedule of the AI Act).

In any case, the circumstances will include:

- when the person reaches the end of their term of office (see below)

- when the person resigns or dies
- when the person is removed from office, or
- if the secretary is a member of the management committee, and a statutory manager is appointed by the Magistrates Court to take over the running of the organisation (section 31E(1) of the AI Act).

Check your own rules for any other circumstances or special procedures.

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

If the secretary is a member of the management committee, they must be appointed for a particular length of time (see item 4(b) of the Schedule of the AI Act). This length of time is called their “term” of office.

In many organisations 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.

Remember!

Is the secretary of your organisation also the public officer? If so, see [Appointing and Removing a Public Officer](#) in this Guide for information about legal requirements for filling a vacancy in the position of public officer.

Returning 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 management committee within 28 days (section 29D). If the documents are not returned the organisation can, after a further request to do so, apply to the Magistrates Court for an order directing the person to return them.

Tip:

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

- arrange for the new secretary to seek information from the outgoing one (for example, official documents, minutes of previous meetings, members register, financial records, correspondence, copies of documents lodged with CAV) as soon as they are appointed
- store all information securely in a central place (such as the organisation’s office and/or computer), including back-ups of electronic data, and
- provide a copy and/or explain the organisation’s policies and procedures to the next secretary.

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

4. Removing a secretary

Sometimes an organisation may want to remove a secretary from office (for example, because the person is not carrying out their duties properly). If your organisation wants to remove the secretary, carefully check your organisation's rules for the procedure to follow.

If the secretary is also a member of the management committee, the organisation's rules must specify the grounds on which, or reasons for which, their office will become vacant (item 4(c) of the Schedule of the AI Act). Their removal (as a management committee member) must be in accordance with the rules.

In many organisations, and in the model rules, the secretary (or any other management committee member) may be removed by resolution at a general meeting of members. For more information about passing resolutions at general meetings, see [Procedures for Meetings](#) in this Guide. Under the model rules, a secretary (or any other management committee member) who is proposed to be removed can write a letter to the chairperson and request their letter to be sent to members, or ask that the letter be read aloud at the general meeting.

After they have left their position, the secretary must return documents belonging to the organisation (see above).

What if the secretary is an employee of your organisation?

If the secretary is also an employee of the organisation, their employment arrangements must be carefully considered before they are removed. This is very important if the person's main role is as the secretary and the organisation no longer want to employ them.

If your organisation wants to remove a public officer who is also an employee, *and* this would mean the person no longer had a paid position within the organisation, seek legal advice before taking any action. The organisation needs to ensure that the organisation complies with relevant contractual and statutory requirements about terminating (ending) a person's employment. Under the national *Fair Work Act* it is illegal to dismiss an employee on a range of grounds (except where related to an inherent requirement of the position concerned). More information on fair and lawful termination can be found on the website of the [Fair Work Ombudsman](#). See www.fairwork.gov.au > Termination > Unlawful Termination

Important:

Under the *Fair Work Act*, small businesses (employing fewer than 15 full-time employees) are no longer exempt from unfair dismissal laws. If your organisation is a small business, it should familiarise itself with the Small Business Fair Dismissal Code. The Code contains a checklist to help small business employers assess and record their reasons for dismissing an employee.

For more information on termination of employment or to view the Small Business Fair Dismissal Code, visit the website of the [Fair Work Ombudsman](#). See www.fairwork.gov.au > Termination > [Small Business Dismissal Code](#).

Further information

PilchConnect resources

The PilchConnect web portal contains a variety of resources and fact sheets for community organisations – go to www.pilch.org.au/legal_info/:

- See [The people involved > Holding a position in a community organisation > positions in an incorporated association](#), for information about being a secretary and member of the management committee of an incorporated association in Victoria.

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

The Consumer Affairs Victoria website contains a variety of online resources, including online access for incorporated associations. See: www.consumer.vic.gov.au > Incorporated associations.

The Fair Work Ombudsman website contains information about employers' obligations and the Small Business Fair Dismissal Code. See www.fairwork.gov.au

Other links

See [Important Background Information](#) in this Guide for links to other organisations and online resources to assist you and your organisation.

© 2009-2011 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



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