



SECRETARY'S LEGAL ROLE, POWERS AND DUTIES

Part 4 – Guide for Public Officers and Secretaries

SECRETARY'S LEGAL ROLE, POWERS AND DUTIES

This Part of the [Guide for Public Officers and Secretaries](#) covers the legal role, powers, duties and liabilities of a secretary of an incorporated association in Victoria.

Key Points

1. What are the main legal tasks of a secretary?

In Victoria, laws regulating incorporated associations shape the secretary's tasks and responsibilities. The specific tasks of the secretary are set out in an organisation's rules. The secretary usually has responsibility for organising meetings, dealing with memberships and keeping records of the organisation. There are tools in this Part to help you understand these tasks.

2. What are the legal duties of a secretary?

The law developed by the courts sets out how a secretary must act when they are performing their role. If the secretary is also a member of the organisation's management committee, they also have specific (statutory) duties under the *Associations Incorporation Act 1981* (Vic).

3. What happens if a secretary breaches any of their legal duties?

There are consequences for breach of duty under judge-made law and the *Associations Incorporation Act 1981* (Vic). These are discussed in this Part.

4. Does a secretary have power to act on behalf of the organisation?

The law does not directly give a secretary power to act on behalf of the incorporated association. However, the management committee may authorise the secretary to act on behalf of the organisation.

5. When is a secretary personally liable for the debts and liabilities of the organisation?

There are some circumstances in which a secretary may be held personally liable (legally responsible) for the debts and liabilities of the organisation.

Note:

This Part of the Guide deals with the position of *secretary* only. The secretary of your organisation 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.

If the secretary is also the public officer, see [Reporting to Consumer Affairs Victoria](#) in this Guide for information about their legal role and duties as public officer.

1. What are the main legal tasks of a secretary?

The main legal tasks of the secretary are contained in:

- the Associations Incorporation Act 1981 (Vic) (the **AI Act**) and the Associations Incorporation Regulations 2009 (Vic) (the **Regulations**)
- the organisation's rules (sometimes called the "constitution"), and
- other legislation (for example, to do with occupational health and safety)

The law in Australia varies between each State and Territory. If your organisation is incorporated outside Victoria, you will need to check the legislation that is relevant to you. For more information (including links to government agencies in other States and Territories), see PilchConnect's website: www.pilch.org.au > [Legal information for community organisations > More help?](#)

Remember!

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 and whether the copy you have is up-to-date, the best thing to do is to request a copy of the rules and purposes from CAV. As at 1 December 2010, this can be done in person or by post.

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

While a secretary's specific tasks vary from organisation to organisation, in general the secretary is responsible for:

- organising meetings (for example, sending notices of meetings, drafting the agenda, writing and distributing minutes of meetings)
- dealing with applications to join the association and membership records (for example, keeping the organisation's register of members up to date), and
- maintaining particular documents and records of the association (for example, keeping copies of funding agreements or leases).

Tip:

Print the tables at the end of this Part and keep them as an on-going checklist or reminder:

-
- Tool 1: Main tasks of a secretary – meetings
- Tool 2: Main tasks of a secretary - membership, and
- Tool 3: Main tasks of a secretary – record keeping.

The secretary may delegate some or all of the particular tasks involved in carrying out their role (for example, to volunteers or paid staff). However, because the secretary remains legally responsible, they should supervise to ensure the tasks are carried out properly.

If the secretary of your organisation is also the public officer, see [Reporting to Consumer Affairs Victoria](#) in this Guide for information about the legal tasks of a public officer.

Duties under other legislation

Other laws also apply to the secretary as an officer of the organisation. For example, there are laws relating to occupational health and safety (**OHS**), fundraising, liquor licensing, gaming, industrial relations, copyright, defamation, crime, privacy, environment as well as local council by-laws. These laws can apply to the secretary, the management committee, or any member of the incorporated association.

Where such laws apply, the secretary - and the organisation generally - must comply with them. For example, criminal laws relating to theft and obtaining property by deception would apply to a secretary (or any other person) who was stealing from an organisation.

For further information about rights and obligations under various laws, including a guide to Victoria's OHS laws, see PilchConnect website: www.pilch.org.au/OHS/.

Branch secretaries

If an organisation is large, it may have branches. See [Important Background Information](#) in this Guide for more information about branches and branch secretaries.

If your organisation has branches, it is very important that the branch secretary keeps up good communication with the secretary of the parent organisation and maintains accurate records and registers. It is also important for the parent organisation to have written policies and procedures that will help the branch secretary.

Depending on the organisation's rules and the circumstances, a branch secretary is unlikely to be a member of the (parent organisation's) management committee and may not be the "secretary" or the

“public officer” for the purposes of the AI Act. However, the branch secretary may still be regarded as an “officer” with legal duties under judge-made law because of their trusted (“fiduciary”) position.

It is good practice for branch secretaries (and any other similar officers, where relevant) to assume they have the same legal duties as the secretary of the parent organisation.

2. What are the legal duties of a secretary?

A secretary of an incorporated association has a legal duty to act in a certain way when performing their legal tasks. The legal requirements in Victoria come from two sources:

- the law developed by the courts (that is, “judge-made law”), and
- legislation (that is, the AI Act).

The judge-made laws apply to *all secretaries* (whether or not they are a member of the management committee). A secretary’s duties under judge-made law arise because of the position of trust that a person in that role holds. These duties are also called “fiduciary duties”.

The legislative requirements (under the AI Act) apply to *all members of the management committee* – so they will apply to a secretary who is also a member of the management committee. These are called “statutory duties”. To a large extent, these statutory duties overlap with fiduciary duties under judge-made law.

Having two sources of law can make it seem very complicated and a lot of work. However, in practical terms, the combined effect of the judge-made law and the AI Act requirements means that a secretary should:

- act honestly and fairly
- use their powers to further the organisation’s purposes
- avoid conflicts of interest, and
- be diligent, careful and attentive, and use their skills for the benefit of the organisation.

These are discussed in more detail below. (Note: if there is a specific statutory duty under the AI Act, the section number is included.)

(a) Act honestly and fairly

Acting honestly and fairly for the benefit of the organisation means that a secretary should:

- act in good faith (with integrity) and for the benefit of the organisation so that the organisation achieves its objectives (as contained in the organisation’s statement of purposes, and other documents such as a mission and values statements), and

- not act for their own benefit or the benefit of a particular group of members – for example, a secretary should not receive bribes or “kickbacks” from suppliers to the organisation.

(b) Use powers to further the organisation’s purposes

This duty is sometimes called a duty to act for “proper purposes” and means that a secretary should:

- not act in a way which treats a particular member of the association unfairly, or is not in the interests of members of the organisation as a whole (see section 14C) – for example, a secretary should not use their powers to discriminate against members of the organisation they do not like, and
- make sure the organisation is only doing things that are permitted by the organisation’s rules and purposes (see section 14A).

(c) Avoid conflicts of interest

A conflict of interest is when a secretary’s personal interests are at odds (in “conflict”) with the interests of the organisation. A secretary may have a “conflict of interest” if, for example, an opportunity is available to the organisation that the secretary could take up to make a profit for themselves personally.

Avoiding conflicts of interest means that a secretary should:

- tell the management committee about any actual or even potential conflict of interest – for example, being a member of a competing organisation
- not abuse their position, or the information they have access to through their position, to get a financial benefit or “material advantage” for themselves or any other person (see section 29A(1) and (2)) – for example, a secretary should not use the register of members for a mail-out about a friend’s business, authorise their own petty cash reimbursements, or execute contracts for the organisation when they have a personal interest in the contract
- tell the committee about (and include in the statement provided to members at the annual general meeting) any direct or indirect financial interest they have in a contract to which the organisation is a party (see section 29B(1)), and

Example:

The management committee of XYZ Inc is deciding on pay rates for staff. The secretary of XYZ Club Inc is on the management committee, and her partner is a paid staff member of the organisation. It is best practice for the secretary to:

- tell the meeting that her partner is a member of staff (and therefore she may have a conflict of interest)
- not take part in discussions about her partner’s pay rate (even though she is legally allowed to)
- not vote on motions about her partner’s pay rate
- make sure that the minutes record what she told the management committee, and also how the meeting dealt with the matter (for example, she left the room while her partner’s pay rate was discussed and voted on), and
- consider whether it is necessary to include details of her interest in the financial statement submitted to members at the annual general meeting.

- not vote on a decision about a contract in which they have a financial interest (section 29C(1)). However, they may participate in discussions about the contract so long as they do not breach any of their other duties under the AI Act (see section 29C(1)).

In certain situations, the statutory duties about conflicts of interest in sections 29B(1) and 29C(1) of the AI Act (see above) do *not* apply. This happens if the secretary's financial interest is only because:

- the secretary is in a class (group) of people for whose benefit the organisation is established, or
- the secretary has the financial interest in common with all, or a substantial proportion, of the members of the organisation.

In addition, a secretary does not have to tell the management committee about any financial interest in a contract that only exists because they are a paid staff member of the organisation (see section 29B(2)(a)).

Tip:

People's perceptions about whether there is a conflict of interest are important. So, even if you are legally allowed to participate in discussions or vote on matters in which you have a personal interest, it is usually good practice not to do so.

Avoiding conflicts of interest gives members and other people dealing with the organisation confidence that the organisation is well managed, and that decisions are being made fairly and for the benefit of the organisation.

(d) Be diligent, careful and attentive, and use your skills for the benefit of the organisation

This duty is sometimes called exercising care, diligence and skill. It means the secretary is required to meet the standard of an average secretary in an organisation of a similar type and size, taking into account their particular skills and capabilities. Unless your rules say otherwise, you do not have to have any particular qualifications to be a secretary. But you do need to use whatever skills and experience you have for the benefit of the organisation.

This duty includes things such as:

- knowing the organisation's financial position and making sure the management committee takes action if there is a concern about whether debts can be paid on time – every member of the management committee must do this, rather than leaving it entirely to the treasurer
- attending and participating in meetings
- following up action items between meetings, and
- keeping the association's records up to date.

If a secretary does not have the required skill or knowledge on a particular matter, this duty means they need to seek help from someone who does. For example, a secretary may need to ask the organisation's treasurer or auditor for help understanding the organisation's financial position.

3. What happens if a secretary does not comply with their legal duties?

CAV's powers to investigate and intervene

If there are allegations that the secretary (and/or others involved in running the organisation) are not complying with their legal duties, or that the organisation is in breach of its legal obligations, CAV may decide to investigate the organisation or send a letter requesting compliance. CAV has advised that, before doing so, it would usually need to be informed of the problem by a management committee member, or a member of the organisation. It will then decide whether to:

- appoint an inspector to investigate the organisation's activities, and/or
- in serious cases (for example, gross mismanagement by the management committee), apply to the Magistrates Court for a statutory manager to be appointed to take over the running of the organisation.

In some circumstances, CAV can either wind up an organisation by:

- certifying that particular matters have occurred (set out in section 35 of the AI Act), or
- applying to the Supreme Court to wind up the organisation (see section 34).

In either case there is a procedure that must be followed, including giving notice to the organisation. If your organisation receives such notice (or correspondence indicating that CAV or another person intends to take action to wind up your organisation), you should seek legal advice urgently.

Consequences of breach of duty under judge-made law (all secretaries)

If a secretary is in serious breach of their duties under judge-made law, they may be taken to court (sued) by the organisation and may have to pay compensation for any loss or damage they have caused.

Consequences of breach of duty under the AI Act (if the secretary is also on the management committee)

It is an offence under the AI Act for any member of the management committee to fail to comply with any of their statutory duties, and a court may order them to pay a penalty. The penalties vary, but they are significant, ranging up to over \$7300 (as at 1 October 2011).

In addition, if the secretary does not comply with their duties under s 29A of the AI Act (see above,

[2. What are the legal duties of a secretary?](#)), a court may also order them to pay compensation to the organisation (section 29A(3) of the AI Act).

What if the secretary is not a member of the management committee?

As mentioned earlier, a secretary who is not a member of the organisation’s management committee is not required to comply with *statutory* duties under the AI Act and, therefore, not subject to the penalties mentioned above. However, they may still be liable for not complying with their duties under *judge-made law* (see above, [2. What are the legal duties of a secretary?](#) for a discussion of both types of duties).

Tip:

There is a lot of overlap between the duties of all secretaries under judge-made law and the statutory duties of secretaries who are members of the organisation’s management committee under the AI Act.

It is best practice for *all* secretaries to comply with the requirements of the AI Act as well as their duties under judge-made law.

4. Does a secretary have power to act on behalf of the organisation?

The AI Act does not expressly give the secretary power to enter contracts (legally binding agreements) on behalf of the organisation. However, the AI Act does allow an incorporated association to give “express” or “implied” authority to a person to make, vary or discharge a contract in the name of (or on behalf of) the organisation (section 19(1)). If appropriate, the management committee may decide to give this authority to the secretary.

These types of authority are set out in the table below, with examples.

Table 1: Express and implied authority

Authority	Explanation	Example / comment
“Express” authority	Express authority is when the management committee has given the secretary direct instructions. In substantial or important matters, the secretary should only enter into a contract (or legally bind the organisation) on express authority of the management committee.	An example of express authority would be where the management committee passes a resolution authorising the secretary to sign a building contract for a new kitchen area in the organisation’s club house.

Authority	Explanation	Example / comment
“Implied” authority	Implied authority to act on behalf of the organisation is a less precise source of authority. However under judge-made law, a secretary has implied authority to do all the things a secretary in such a position would customarily (ordinarily) do.	A secretary of a multi-million dollar sporting club with poker machines will have greater implied authority (customary power) than the secretary of a newly incorporated tiddly-winks club with seven members and a \$10 bank balance.
	<p>A secretary generally has implied authority to legally bind the organisation in:</p> <ul style="list-style-type: none"> • matters incidental to their duties and • matters incidental to their express authority. 	<p>Matters incidental to a secretary’s duties might include:</p> <ul style="list-style-type: none"> • buying minute books • printing the organisation’s rules, and • buying paper for notices of meetings. <p>Matters incidental to express authority might include:</p> <ul style="list-style-type: none"> • organising to pay GST, stamp duty and insurance after having been expressly authorised by the management committee to buy an expensive piece of equipment for the organisation.

5. When is a secretary personally liable for the debts and liabilities of the organisation?

As a general rule, the secretary is not personally liable for the debts and liabilities of the organisation, including any costs incurred in winding up the organisation. The same applies to members of the management committee and members of the incorporated association (section 15(1) of the AI Act).

However, if a secretary has specifically accepted personal liability (for example, if they have given a personal guarantee for a loan by the organisation), the secretary will be liable for those particular debts.

Remember that a secretary can be personally liable for a breach of duty (see above, [2. What are the legal duties of a secretary?](#)).

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](#), and download Fact sheet: “Duties of committee of management members in Victorian incorporated associations”.

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

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 admin@pilch.org.au

Tool 1: Main tasks of a secretary – meetings

What does the secretary do?	Relevant section / role	Tips or comments
Set a date for a meeting of the organisation's members or management committee, and gather relevant materials	<p>see items 6 & 9 of the Schedule of <i>Associations Incorporation Act 1981</i> (Vic) (AI Act).</p> <p>Organisation's rules may set out details of the frequency of meetings: see, for example, model rules 10 & 25 (in Schedule 4 of <i>Associations Incorporation Regulations 2009</i> (Vic)).</p>	<p>The secretary will usually call meetings in consultation with management committee members. It is common practice for the secretary to do the following before each meeting:</p> <ul style="list-style-type: none"> • prepare the “notice of meeting” and the agenda in consultation with the chairperson • check the minutes of the last meeting for any items of “business arising” • arrange correspondence and summarise longer letters • coordinate any reports to be presented (for example, reports from sub-committees and treasurer) • confirm arrangements for any visitors or guest speakers, and • arrange the meeting venue.
Send out a notice of the meeting	see item 6 of the Schedule of AI Act; and see, for example, model rule 12.	The secretary must check the organisation's rules for when meetings are to occur. See also Preparing and Giving Notice of Meetings in this Guide for more information about notices for meetings.
Organise the annual general meeting (AGM), including working with the treasurer to ensure financial report is ready to be presented to the organisation's members	section 30 of AI Act; and see, for example, model rule 9.	<p>The AI Act specifies the timing of AGMs. See Preparing and Giving Notice of Meetings in this Guide.</p> <p>The AI Act also sets out exactly what financial matters must be reported on at the AGM. See also Reporting to Consumer Affairs Victoria in this Guide.</p>
If proxies are allowed at meetings of members, receive proxies	see item 5 of the Schedule of AI Act; and see, for example, model rule 19.	<p>The secretary must check the rules to see if proxies are allowed, and who can act as proxy (commonly, only another member of the organisation can act as proxy).</p> <p>See Procedures for Meetings in the Guide.</p>
Take the minutes (or arrange for someone else to take them) and keep them in a safe place	see, for example, model rule 31.	Keeping accurate minutes is one of the key responsibilities of the secretary — see Minutes of Meetings in this Guide.

Tool 2: Main tasks of a secretary - membership

What does the secretary do?	Relevant section / role	Tips or comments
Receive applications for membership of the organisation (and notices of member resignations)	see, for example, model rules 4 and 6 (in Schedule 4 of <i>Associations Incorporation Regulations 2009</i> (Vic)).	<p>The secretary usually advises the management committee of applications, notifies successful applicants in writing and enters relevant details in the members register.</p> <p>The secretary also receives notices of resignation and records details in the members register.</p>
Keep and maintain the member register	Item 2 of the Schedule of <i>Associations Incorporation Act 1981</i> (Vic) (AI Act), and see, for example, model rules 5 and 6.	<p>Keeping the members register up to date is a core part of the secretary's role. The register sets out information about members of the organisation. For more information, see Keeping Records, Registers and Documents in this Guide.</p> <p>The secretary should review the members register (especially before the annual general meeting) to check whether members are up to date with their membership fees and have voting rights.</p>
Keep and maintain documents of the organisation (such as financial statements) and make them available for inspection by any member on (reasonable) request	Item 14 of the Schedule of AI Act, and see, for example, model rules 5 and 36.	<p>The secretary usually handles any requests by members to inspect the organisation's "relevant documents". For more information, see Keeping Records, Registers and Documents in this Guide.</p>
Keep an up-to-date copy of the rules and make it available for inspection by any member on (reasonable) request	section 22A of AI Act.	<p>At the request of a member, an incorporated association must make a copy of its rules available for inspection at any reasonable time by a member. The secretary usually handles such requests.</p> <p>If you are unsure what your organisation's rules are, see Important Background Information in this Guide.</p>

Tool 3: Main tasks of a secretary – record keeping

What does the secretary do?	Relevant section / role	Tips or comments
Keep, for at least seven years, originals of any documents the organisation has lodged with CAV	section 45A(4) & 49A of <i>Associations Incorporation Act 1981</i> (Vic) (AI Act).	Keeping correspondence and other documents relating to the organisation is relatively straightforward in small organisations. However, in larger organisations the paid staff and treasurer will probably keep custody of considerable amounts of the organisation's documents. In such cases, the secretary would fulfil their functions by maintaining a system of control to ensure all of the organisation's correspondence is available to them on request.
Keep, for at least seven years, financial statements submitted to members at the annual general meeting and certificates of a member of the management committee	section 30(4A) of AI Act.	
Keep custody of all books, documents and securities of the organisation	see, for example, model rule 36 (in Schedule 4 of <i>Associations Incorporation Regulations 2009</i> (Vic)).	See also Keeping Records, Registers and Documents in this Guide.
Keep custody of the organisation's common seal (if any)	see, for example, model rule 33.	
Return documents when no longer the secretary (especially any original documents)	section 29D of AI Act.	A secretary has access to documents of the organisation because of the secretarial tasks they perform. When they are no longer the secretary, they must return the documents to the organisation's management committee within 28 days.



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