

Organisations and Legal Structure

Guide

Establishing a formal legal structure for a volunteering group brings many advantages. There are legal obligations and costs involved; it's important to choose the right option for your needs and aims.

Why establish a formal legal structure?

Many volunteer groups in Victoria do not have a separate legal identity; they are called unincorporated associations. This means that even though an unincorporated organisation might have a name, a website, a president and even an office, in the eyes of the law the organisation does not exist as a separate legal entity from the individuals who carry out its business.

An unincorporated association cannot enter into contracts in its own right – for example, an individual member of the unincorporated association would have to lease an office in their own name. Unincorporated associations are also unable to buy insurance. The group may have difficulty attracting funding grants, as unincorporated associations are not accountable to any public governance standards. And perhaps the most crucial issue: members and organisers of groups with no separate legal identity can be held personally liable for anything that goes wrong.

And if you don't?

There are reasons why some groups choose to remain unincorporated. Establishing a legal structure involves registering with a government agency. There is a fee involved, initial paperwork and ongoing legal and compliance obligations in terms of how the organisation is run. Some groups decide that avoiding these formalities outweighs the personal risks of being unincorporated. Volunteering Victoria recommends that all groups carefully consider the balance of risk when deciding whether to establish a legal identity depending on each group's circumstances, such as number of members, your aims and objectives, how

Changes to legislation

In 2012, the *Associations Incorporation Act 1981 (Vic)* was repealed and the *Associations Incorporation Reform Act 2012 (Vic)* came into force. The *Associations Incorporation Reform Act 2012 (Vic)* now governs incorporated associations in Victoria. The *Corporations Act 2001 (Cth)* governs companies limited by guarantee Australia-wide.

Changes are made to legislation governing these separate legal entities from time to time, which may alter the governance requirements for different kinds of organisations, such as duties for office holders and financial reporting requirements. It is important to keep up to date with the latest governance requirements applicable to your organisation, whether an incorporated association or some other type of entity

Auspicing

"Auspicing" is one potential alternative to incorporation where an incorporated organisation "auspices" an unincorporated association. To "auspice" means to provide support, sponsorship or guidance. Auspicing can open fundraising doors for groups that are small, do not wish to incorporate, or form temporarily in response to an issue or event. In an auspice agreement, a larger organisation that is eligible for government funding or philanthropic grants may apply for these funds on behalf of a smaller, ineligible organisation. The larger organisation then takes legal and administrative responsibility for this money, although the auspiced organisation may carry out the work it is intended to fund. Auspicing agreements vary widely, as do the responsibilities for each party.

Choosing a legal identity

The two most common incorporated legal structures for volunteer-involved organisations in Victoria are:

- an incorporated association; and
- a company limited by guarantee.

There are also separate incorporation options for indigenous groups. All forms of incorporation require initial registration with a government agency, then compliance with the rules for running the organisation. The most appropriate legal structure for an organisation will depend on factors such as:

- how the organisation raises money and how much
- where the organisation operates
- the organisation's size and administrative capacity
- the organisation's main purpose and activities.

Volunteering Victoria recommends that organisations contact Justice Connect for a clear explanation of incorporation options and processes in Victoria.

More information

<http://www.nfplaw.org.au/legalstructure>

<https://www.acnc.gov.au/>

<https://www.acnc.gov.au/for-charities/start-charity/apply-now>