

Our Club

Licensee responsibilities



Our responsibilities

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Our responsibilities

Overview

Introduction

This section contains information to assist you in understanding your legal obligations as a club committee member or office holder.

It contains information about:

- the legal responsibility of office holders in club committees
 - the difference between incorporated associations and unincorporated associations
 - consequences for breaching the *Liquor Control Reform Act 1998* (the Act) and
 - how to become an incorporated association.
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Your legal obligations as a committee member

Introduction

Australia has a rich culture of volunteering. Volunteering is a great way to become more involved in your community and meet new people. Many people choose to volunteer and give back to their community by taking on a role in a committee of management for their club.

A person who takes office in a club that holds a liquor licence takes on a number of responsibilities. These responsibilities can involve legal obligations.

Understanding your obligations

All people involved in the management of the club have an obligation to ensure that the club meets their responsibilities as specified under the Act. This includes any person who may assist with the management and decision-making process within the club.

Liability

A club committee member does not have to be formally appointed as a director of a club to be liable under the Act for offences committed by a licensee.

A club committee member can be held liable for:

- their own breaches of the Act
- breaches of the Act committed by the licensee.

If breaches occur, a club committee member may:

- face charges under the Act
 - be convicted of an offence
 - face whatever sanction the offence carries.
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Consequences of breaching your liquor licence

Should a club breach the conditions of its liquor licence, members can find themselves involved by the virtue of their position in the club.

As a committee member, you may be disqualified from:

- holding a liquor licence
- being a director in any body-corporate that holds a licence or BYO permit
- being a partner in any partnership that holds a licence or BYO permit
- having a beneficial interest (whether directly or indirectly) in the shares of any body-corporate that holds a licence or BYO permit
- whether directly or indirectly, taking part in, or being concerned in, the management of any licensed premises or any body-corporate that holds a licence or BYO permit or any licensed club
or
- being employed by any licensed club or any person that holds a licence or BYO permit.

About incorporated associations

Is my club incorporated or unincorporated?

A club can be an:

- incorporated association
or
- unincorporated association.

Any club that is formed is automatically considered an **unincorporated** association.

An **incorporated** association is a club or community group whose members have decided to give their organisation a formal legal structure. You can recognise an incorporated association by the word 'Incorporated' or the abbreviation 'Inc.' after its name. There are more than 35,000 incorporated associations in Victoria.

You can check if your club is an incorporated association on the Consumer Affairs Victoria website at www.consumer.vic.gov.au.

What is an incorporated association?

When you incorporate a club, it becomes a 'legal person' (that is, a legal entity that stays the same even if its members change). It can do the following things in its own name:

- accept gifts or bequests
 - buy and sell property
 - invest and borrow money
 - open a bank account
 - sue and be sued
 - take out public liability insurance
 - be charged and taken to the Magistrates' Court for breaches of the Act.
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Benefits of becoming an incorporated association

The benefits of being an incorporated association are as follows:

- The club will become a legal entity in its own right and can enter into contracts and agreements.
- Club members are protected against personal liability for the club's debts and other legal obligations.
- The club may be eligible to apply for grants.
- Insurance premiums are generally lower for incorporated associations.

See: 'Becoming an incorporated association' (page 4) in this section for more information about how your club can become an incorporated association.

About incorporated associations

Committee responsibilities

An incorporated entity needs to be run as a business. If you are joining an incorporated association as an office holder, you have many responsibilities that must be taken seriously. As the 'eyes and ears' and decision makers of the club, you must be clear on your obligations and the consequences for any breaches. You must ensure committee members are educated about their responsibilities and that they receive any training required.

Being a member of an incorporated club means you are more protected under the law as an individual in terms of your personal liability. However, you are not necessarily protected from criminal liability. If the offence is very serious, a club as well as its office holders/members can be held criminally liable in the Magistrates' Court.

Risks in being unincorporated

A person who takes a position in an unincorporated association faces being personally liable and may be sued if problems arise. This includes anyone on the committee.

Becoming an incorporated association

Criteria

To become an incorporated association, your club must:

- operate not for profit
 - have at least five members.
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Vote to incorporate the association

Under the *Associations Incorporation Reform Act 2012*, any club that wishes to become an incorporated association must hold a meeting to vote on whether to do so.

See: The Consumer Affairs Victoria website at www.consumer.vic.gov.au for more information about the procedure for becoming an incorporated association.

Model association rules

Consumer Affairs Victoria provides a set of model rules that may save your club the time and expense of drafting rules from scratch.

Your association can:

- adopt the model rules
- modify the model rules to suit its requirements
or
- draft its own rules.

Note: The fees for becoming an incorporated association differ for clubs that adopt the model rules to those that create their own sets of rules.

Associations Incorporation Reform Act 2012 Schedule

If a club becomes an incorporated association, the *Associations Incorporation Reform Act 2012* Schedule sets out matters that must be provided for in the rules of an incorporated association.

See: The Consumer Affairs Victoria website at www.consumer.vic.gov.au for more information about the *Associations Incorporation Reform Act 2012* Schedule.

Responsibilities of an incorporated association

Clubs that become incorporated associations have additional responsibilities over and above their responsibilities associated with holding a liquor licence.

See: The Consumer Affairs Victoria website at www.consumer.vic.gov.au for more information about the *Associations Incorporation Reform Act 2012*.

Check your understanding – associations

Checkpoint

It's time to check your understanding of what has been covered so far. Please complete the questions below and check your answers against the answers provided at the end of this section of the resource kit.

Questions

1. List two benefits of becoming an incorporated association.

2. A club committee member can be liable for their own breaches of the Act and breaches of the Act committed by the licensee.

True False

Summary

Summary

As we have seen in this section, being a member of a club committee can carry some serious legal obligations.

Whether you are an office holder or a committee member, you are responsible for ensuring the club and its members do not breach their licence conditions and do not cause any serious or criminal offence.

Additional resources

Further information about incorporated associations and clubs can be obtained from the following websites:

- **Department of Justice & Regulation**
justice.vic.gov.au
- **Consumer Affairs Victoria**
consumer.vic.gov.au
- **Department of Transport, Planning and Local Infrastructure**
dpcd.vic.gov.au/sport
- **Australian Drug Foundation – Good Sports**
goodsports.com.au
- **Australian Securities and Investments Commission**
asic.gov.au

Check your understanding answers

Associations

1. List two benefits of becoming an incorporated association.

Your answer may include any two of the following:

- The club will become a legal entity in its own right and can enter into contracts and agreements.
- Club members are protected against personal liability for the club's debts and other legal obligations.
- Your club may be eligible to apply for grants.

2. A club committee member can be liable for their own breaches of the Act and breaches of the Act committed by the licensee.

True. A club committee member may be liable if they breach the Act and if the licensee breaches the Act.

Checklist – our responsibilities

Checkpoint

Use the following checklist to assist you in considering your legal obligations.

- Make sure you know if your club is an unincorporated association.
 - If your club is not an incorporated association, organise a discussion at a committee meeting to decide whether your club wishes to become incorporated.
- Check that all committee members understand their legal obligations.