The Secretary’s Legal Duties and Powers

3.01 What Duties?

The secretary is the person whom the Associations Incorporation Act focuses on to maintain the records of the association with the Office of Fair Trading. If the obligations are not carried out there is often the possibility of committing an offence.

The sources of a secretary’s duties are:

- The Associations Incorporation Act;
- The rules of an association;
- Common law duties;
- Statutory obligations;
- Liabilities of being a secretary; and
- Customary duties.

Each of these sources is dealt with below.

3.02 The Act – Associations Incorporation Act 1981

Section 69A of the act lists the functions of a secretary as follows:

“The Secretary’s functions include:

a) Calling meetings of the incorporated association, including preparing notices of a meeting and of the business to be conducted at the meeting in consultation with the president of the association;

b) Keeping minutes of each meeting; and

c) Keeping copies of all correspondence of other documents relating to the association; and

d) Maintaining the association’s register of matters."

The calling of meetings is further discussed in Chapter 4. Note that this is required to be done in consultation with the President. This means that a secretary should not act unilaterally in such matters, but the act only requires “consultation” with the President, not “approval”. The keeping of minutes and maintaining a register of matters are core responsibilities of the secretary. These functions are dealt with in chapters 6 and 9 respectively.

While keeping correspondence and other documents relating to the association is straightforward in small associations, in larger organizations the paid staff and treasurer will probably have in their possession considerable amounts of the association’s documents. The secretary might discharge their functions by maintaining a system of controls to ensure all the association’s correspondence and documents are copied and available to the secretary in a reasonable time. Note: Provisions such as sections 57B and 59C require minutes and financial documents to be disclosed by the secretary to members on request.

Before moving on, it should be noted that section 69A is expressly stated not to limit other delegations imposed on the secretary by the Act or its rules. The model rules mirror section 69A in clause 17.
The following is a list of duties and obligations placed by the Act on the secretary:

- **Section 24** The secretary is responsible for ensuring the change of records, for example; at the titles registry, for any land owned by the association on its incorporation or afterwards;

- **Section 48** Application to amend the rules must be accompanied by a statutory declaration by the secretary;

- **Section 52** Department may ask secretary for a copy of the associations’ rules.

- **Section 53** The secretary is required to provide members with a copy of the association’s rules on request and payment of reasonable charges;

- **Section 54** The secretary is required to ensure that the rules are in a printed legible state;

- **Section 57B** The secretary to make general meeting minutes available to members on request and payment of reasonable charges;

- **Section 59(4)** Along with the president and treasurer, the secretary is liable if financial statements are not lodged or complied with for associations of all three levels;

- **Section 59A(4) and 59B(4)** The secretary to make yearly financial documents available to members on request and payment of reasonable charges.

- **Section 68(3)** The secretary to notify any change to office bearers;

- **Section 68(4)** The secretary to notify any change of the secretary’s address;

- **Section 83** In amalgamations the secretary is required to send certain notices;

- **Section 87** In amalgamation the secretary required to send notices to land registry;

- **Section 93** If the chief executive terminates incorporation it may give the relevant officer (which most likely would be the secretary) 1 month to satisfy the chief executive why incorporation should not be cancelled.

- **Section 123** The secretary is deemed a servant of the association for the purposes of the criminal law.

- **Section 105G** If an incorporated association becomes a co-operative, the secretary must send and update certain notices and records.

### 3.03 The Association’s Rules

The following are the duties and obligations placed on the secretary by the model rules, as given by Schedule 4 of the Regulations (NB: check your Association’s Rules as they may be different):
- **Clause 9(5)** On acceptance or rejection of membership, the secretary must give written notice of the management’s committee’s decision to applicant, as soon as practicable.

- **Clause 10(1)** Members may resign by giving notice in writing to the secretary.

- **Clause 11(1),(3)** Rejected or terminated members can give written notice of appeal to the secretary who then must convene a general meeting to determine the appeal within 1 month of receiving notice.

- **Clause 12(5)** If there is an unsuccessful appeal or no appeal to a rejected or terminated membership, the secretary must refund the membership fee as soon as practicable.

- **Clause 13(4)** The secretary usually keeps possession of the register of members and must allow members to inspect it.

- **Clause 25** Special meeting of the management committee to be convened by the secretary on a written requisition. But a president may do so if the secretary does not convene the special meeting.

- **Clause 26(1)** This provision places responsibility for full and accurate minutes of the association for management committee meetings with the secretary.

- **Clause 35** This clause details how a general meeting can be called and convened by the secretary, including the notice that needs to be given.

- **Clause 36(8)** The secretary must give notice to members if a general meeting is adjourned for at least 30 days.

- **Clause 39** Special general meeting to be convened by the secretary on written requisition, duties include the notice that must be given.

- **Clause 41** The secretary must ensure that full and accurate minutes of general meetings are made and if asked by a member, make the minutes available within 28 days after the request was made and make copies for a reasonable price.

- **Clause 44(3)(a)** The secretary may countersign the affixing of the association’s seal.

- **Clause 45(5)(b)** The secretary is authorized to sign cheques with others.

### 3.04 Common Law Duties

A secretary owes duties to the association which are based in common law as well as the *Associations Incorporation Act*. Common law is the law which has been developed over the years by courts making decisions. A secretary would be regarded in common law as having fiduciary duties to the association. “Fiduciary duties” is a term used by the law to describe the duties where one person is bound to exercise rights and powers in good faith for the benefit of another. For example, persons such as doctors, lawyers and agents owe duties to their clients to act in their best interests by being honest, not profiting at their client’s
expense, and avoiding conflicts of interest.

In practical terms an incorporated association secretary is required:

- to act in good faith without deception or fraud in the interests of the association;
  - for example, a secretary should act honestly and for the benefit of the association in achieving its objectives, not to achieve some outside objective;
  - a secretary should not personally receive bribes or “kickbacks” from suppliers to the club;

- to exercise power given to them by the association for their proper purposes;
  - for example, if the secretary is given the power to organise the roster for use of the association’s facilities by members, then the secretary cannot use this power to discriminate against those members who he or she may not personally like;

- to avoid conflicts of interest;
  - for example, the secretary should not be party to affixing the common seal of the association on a contract in which they have an interest;
  - the secretary should not authorise their own petty cash reimbursements;

- to exercise care, diligence and skill;
  - for example, the secretary will be required to reach the standard of an average secretary in an association similar to their association given their abilities and capacities.

3.05 Other Statutory Obligations

Secretaries should not forget that other statute based laws may apply to their position and actions. The criminal law will apply to an association secretary who steals from the association. The law with respect to charitable collections, liquor acts, art unions and gaming, copyright, defamation, environmental laws and local government regulations may also apply.

The new Work Health and Safety Act 2011 (Qld) operates in two ways; firstly it protects volunteers who are working for a business or undertaking and secondly, in relation to volunteer organisations, it only requires obligations from those associations who are conducting business or an undertaking, even if it is for a nonprofit purpose. The act does not apply to those associations who exist for a community purpose, only have volunteers who do all the work and none of the volunteers employ someone else to do work.

If you are a secretary of such a volunteer organisation that runs a business or conducts an undertaking and has employees, according to section 27 of the Work Health and Safety Act 2011 you and all other officers must take reasonable steps to:

- acquire and keep up-to-date knowledge of work health and safety matters; and
- gain an understanding of the hazards and risks associated with the operations of the business; and
- ensure appropriate resources and processes to eliminate or minimise risk has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information; and
- ensure the association has, and implements, processes for complying with any duty or obligation of the person conducting the business or undertaking under the Work

For example, you must ensure the association follows some of these processes:

- reporting notifiable incidents;
- consulting with workers;
- ensuring compliance with notices issued under this Act;
- ensuring the provision of training and instruction to workers about work; health and safety; and
- ensuring that health and safety representatives receive their entitlements to training.

- Further you must verify the provision and use of the resources and processes mentioned above.


3.06 What Are The Liabilities Of Being A Secretary?

Secretaries are liable for breaches of their duties that are discussed above. These liabilities may arise through a breach of the Associations Incorporation Act and regulations, the association’s rules, common law duties or other statutory obligations. These are personal liabilities and should be distinguished from the association's liabilities.

A secretary will generally not be liable for the liabilities of the association itself. Section 27 AIA states:

"Section 27 Liability of Members
A secretary, member of a management committee or member of an incorporated association as such, is not personally liable, except as provided in the rules of the incorporated association, to contribute towards the payment of the debts and liabilities of the incorporated association or the costs, charges and expenses of a winding-up of the incorporated association, beyond the property of the incorporated association in the person's hands."

For example, if the secretary fails to notify the Department about a change of address of the association’s registered office, then this is a breach by the secretary, not the association.

If the association cannot pay its debts, then the secretary is not usually liable to pay any amount to reduce the debt.

But, if the secretary guaranteed a loan by a bank to the association, then this is a personal liability of the secretary.

If a secretary is concerned about their liabilities, then the sensible approach to such concerns is through a risk management process. Risk management is a rational process of managing and minimising risks such as never attempting high risk transactions, managing and containing risks and transferring risks (such as through insurance).

3.07 Customary Duties Of Secretaries

The following is a list of commonly accepted tasks that a secretary is responsible for, but
remember good secretaries usually delegate and supervise many of these tasks:

Before each meeting:

- prepare meeting notice and the agenda in consultation with the president;
- check the minutes of the last meeting for “business arising”;
- arrange correspondence in order and summarise longer letters;
- confirm arrangements for visitors and guest speakers, arrange for a committee member to welcome the guest and provide the president with a suitable introduction to speakers;
- arrange a suitable vote of thanks for the guest speakers and gifts;
- co-ordinate any reports to be presented such as from sub-committees and the treasurer;
- arrange the meeting venue;
- maintenance of the membership register;
- maintenance of other registers.

Much of a secretary’s work is driven by the meeting cycle. The rest of this part is organised around the concept of the meeting cycle. (Refer to paragraph 3.12, 3.13 and 3.14).

3.08 What Has A Secretary Power To Do On Behalf Of The Association?

The Associations Incorporation Act does not explicitly give the secretary power to contractually bind the association. Every “member of the management committee and any manager duly appointed” are deemed by section 60(2) to be “agents of the incorporated association for all purposes within its objects.” If a secretary is also an elected management committee member or a duly appointed manager, they may qualify under the section in those roles.

The main source of authority for a secretary to legally bind the association as an agent will come directly from the resolutions of the management committee. This is referred to in law as “direct authority”. For example, a management committee might pass a resolution requiring the secretary to write a letter accepting a builder’s offer to construct an extension to the club house. A secretary should only act to bind the association on the direct authority of the management committee for substantial or important matters.

Another less precise source of authority for a secretary is “implied authority”. At common law, a secretary will have authority to do all those acts which a secretary in such a position customarily has. A secretary of a multi-million dollar sporting club with poker machines will have greater customary power than the secretary of a newly incorporated tiddly-winks club with seven members and a $10 bank balance. Generally, this source of authority will give secretaries power to legally bind the association in matters incidental to their duties (eg. at the very least, buying minute books, printing the association’s rules, and buying paper for notices of meetings) or matters incidental to some direct authority (eg. if the secretary has been directly authorised to buy a valuable asset, then organising its legal transfer, payment of transfer fees, stamp duty and insurance.)

In most large associations the secretary is also the “duly appointed manager” of the association, so the power in section 60(2) AIA can be used.

3.09 Notices For Members About Insurance

In 2007 the Associations Incorporation Act was amended to require notice to be given to members, the management committee and other interest persons about whether the association had insurance and the amount. The Act in Section 70 places the responsibility of
ensuring that these notices are given on the management committee, but in many instances it will be the secretary that actually prepares and issues the notices.

Section 70(4)(a) states that:

“The management committee must ensure that—
(a) as soon as practicable after a person applies to become, but before the person becomes, a member of the association, the person is advised—
(i) whether or not the association has public liability insurance; and
(ii) if the association has public liability insurance—the amount of the insurance”.

A secretary would between the application and the formal acceptance of the membership by the management committee advise the prospective member of the insurance issues. Although the law does not specify the form of this ‘advice’, many will put the advice in writing and even seek acknowledgement that the prospective member has received the advice. A sample notice to a prospective member is reproduced at 3.15.

A similar notice is required before a person is elected or appointed to the management committee by Section 70(4)(b). A sample notice to a prospective management committee is reproduced at 3.16.

If the management committee has decided not to take out public liability insurance then the following section will have to be considered. Section 70(5) states:

“The management committee must ensure that any person or entity with whom the association may have dealings, and which could be expected to have an interest in knowing whether or not the association has public liability insurance, is advised if the association does not have public liability insurance.”

3.10 Governance Issues

Each association must work out how it manages its governance functions, particularly when the association employs management staff. There are no hard and fast general rules in reality when associations vary in size, activity and culture.

The secretary must maintain a good working relationship with the chair or president and the paid employee manager (if there is one). A break down in trust and confidence of any of these parties is likely to spell trouble. If the secretary is also the paid manager of the association, then the relationship is even more crucial.

A secretary should pay attention to:

- disclosure of any potential conflicts of interest at the earliest opportunity;
- good and regular communication with the chair/president;
- keeping strict confidences of both the chair/president and the meeting;
- the possible adverse consequences of being involved in board “politics” and
- having a very clear understanding of the governance boundaries of the meeting and employed staff.

ACPNS has developed a set of freely available governance tools for use by nonprofit organizations such as management committees of incorporated associations. It allows a management committee and its chair to evaluate their effectiveness by an online survey. You can access materials on governance at https://wiki.qut.edu.au/display/CPNS/Board+evaluation and request the survey by emailing dyb@qut.edu.au.
3.11 Branch Secretaries

The *Associations Incorporation Act* Part 9 permits the incorporation of branches. Being a secretary of a branch brings some added complications, most of which are not legal but administrative. It is very important that the branch secretary keep up good communications with the parent body’s secretary. In some cases, the parent body will have an internal administrative manual and even field officers to assist you.

Section 78 AIA requires that the branch association should have the word “branch” as part of its name and other words identifying it as a branch, for example “XYZ (Mt Isa Branch) Inc.”

Section 77 AIA states that the parent association’s rules control the membership of the branch and a member of a branch is also a member of the parent association. This will require a branch secretary to be familiar with the rules of the parent organisation.
3.12 The Management Committee Cycle

Meeting initiated by requisition of management committee

- Drafting the notice for the next meeting.
- Setting the agenda with the chair/president.

Sending the notice and draft minutes to committee members

Date set by previous meeting (minimum of once every four months)

In the Management Committee Meeting
- Attendance register
- Record apologies
- Record resolutions, votes and proceedings

Attend to action mobilising resolutions delegated to the secretary, for example:
- Writing letters.
- Entering new members into the membership register.
- New assets into the assets register.

Send action list as soon as possible to those concerned

Draft Minutes as soon as possible after the meeting

Sending the notice and draft minutes to committee members

Date set by previous meeting (minimum of once every four months)

In the Management Committee Meeting
- Attendance register
- Record apologies
- Record resolutions, votes and proceedings

Attend to action mobilising resolutions delegated to the secretary, for example:
- Writing letters.
- Entering new members into the membership register.
- New assets into the assets register.

Send action list as soon as possible to those concerned

Draft Minutes as soon as possible after the meeting
3.13 The General Meeting Cycle

Meeting initiated by
1. Management Committee
2. Rejected membership applicant request
3. Requisition by terminated member
4. Requisition by members

Drafting the notice for the next meeting and setting the agenda with the chair/president.

Sending out notices and draft minutes.

Date set by a previous meeting.

Receiving and registering proxies.

Attend to action mobilising resolutions delegated to the secretary, for example:
- Writing letters
- Keeping registers current
- Filing forms with Office of Fair Trading

In the General Meeting
- Attendance register.
- Record apologies.
- Record resolutions, votes and proceedings.

Draft Minutes as soon as possible after the meeting

Sending out action lists as soon as possible

Notes:
- Date set by a previous meeting.
- In the General Meeting:
  - Attendance register.
  - Record apologies.
  - Record resolutions, votes and proceedings.
- Sending out notices and draft minutes.
- Draft Minutes as soon as possible after the meeting.
- Attend to action mobilising resolutions delegated to the secretary, for example:
  - Writing letters
  - Keeping registers current
  - Filing forms with Office of Fair Trading
3.14 The AGM Cycle

Drafting the notice for the AGM and setting the agenda with the Chair.

Sending out notices to all members.

Receiving and registering proxies and nominations for office.

In the AGM
- Attendance register.
- Record apologies.
- Record resolutions, votes and proceedings.

Attend to action mobilising resolutions delegated to the secretary, for example:
- File annual return with Office of Fair Trading
- File change of office bearers

Draft minutes as soon as possible after the meeting.

Sending out action lists as soon as possible.
3.15  Advice to a prospective member

Advice pursuant to Section 70 Associations Incorporation Act 1981

To:   [Insert name of prospective member]

From:  The management committee of [Insert full name of incorporated association]

Date:  [Insert date]

Thank you for your application to become a member of the association. As required by the Associations Incorporation Act 1981:

1. The associations does/does not have public liability insurance
2. The amount of the insurance is $ [insert value of cover].

I acknowledge receipt of this advice

Signature Prospective member ______________________ Date:____________

Print Name: ______________________

3.16  Advice to a prospective Committee member

Advice pursuant to Section 70 Associations Incorporation Act 1981

To:  [Insert name of prospective management committee member]

From:  The management committee of [Insert full name of incorporated association]

Date:  [Insert date]

Thank you for your nomination or consent to be appointed a member of the management committee. As required by the Associations Incorporation Act 1981:

3. The associations does/does not have public liability insurance
4. The amount of the insurance is $ [insert value of cover].

I acknowledge receipt of this advice

Signature Prospective management committee member:____________________

Print Name: ______________________

Date:____________