

Legal entity.

A church needs to be/become a legal entity in Victoria in order to become an ACC Church. It may be either an association or a company limited by guarantee.

An incorporated association is a type of incorporated legal structure made under the Victorian Associations Incorporation Act 1981 (Vic). A company limited by guarantee is another type of incorporated legal structure made under the Commonwealth Corporations Act 2001 (Cth). Both are suitable legal structures for not-for-profit groups.

A company limited by guarantee is incorporated under the Commonwealth Corporations Act and can carry out its activities anywhere in Australia.

The law relating to incorporated associations is State-based law. Each State and Territory in Australia has its own laws about the incorporation of associations. A group incorporated as an association under the Victorian Associations Incorporation Act can operate only in Victoria unless registered with ASIC as a Registered Australian Body.

Further advice should be sought on becoming a company if that option is chosen. This paper deals with becoming an Association. The greater majority of churches in ACC are associations and that model is explained here.

There are more than 38,000 incorporated associations in Victoria. They are clubs or community groups, operating not-for-profit, 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.

When a club or community group incorporates, it becomes a 'legal person' – that is, a legal entity that stays the same even if its members change. It can enter into contracts in its own name; for example, to borrow money or buy equipment. This protects the individual members of the association from legal liabilities.

Because, in an unincorporated association, the liability of members is unlimited and there is no perpetual succession of property acquired, if a church chooses to be an association, it needs to be incorporated or, if unincorporated, it needs to have a property trust in order to be an ACC church in Victoria.

Victorian incorporated associations are registered with Consumer Affairs Victoria under the Associations Incorporation Reform Act 2012.

How to set up basic legal requirements

myCAV

Before you can register as an incorporation you must first register for myCAV. All incorporated associations must now use myCAV to become incorporated associations, lodge annual statements and undertake all transactions and notifications of change.

myCAV is a new account system that lets incorporated associations manage their obligations, such as updating contact details and lodging annual statements, all in one place online.

To create your myCAV account, you will need a personal email address (not your club/association email address) to verify your identity and sign in to your account.

Please go to <https://www.consumer.vic.gov.au/mycav/sign-in> to create an account. Visit <https://www.consumer.vic.gov.au/clubs-and-not-for-profits/incorporated-associations/mycav-for-incorporated-associations> for more information.

Incorporated Association

1. Log on to <http://www.consumer.vic.gov.au> and go to “Incorporated Associations”.
2. While on this page it is advisable to read:
 - a. What is an Incorporated Association
 - b. Should your club (church) incorporate?
 - c. Become an incorporated association
 - d. Responsibilities of an incorporated association(note the links to the Act and the Regulations which are strongly recommended for reading by the members of the Committee of Management (board))
3. Go to Application for Association Incorporation under Forms and Publications and print the form. NOTE
 - a. The cost is around twice the price if you do not use their Model Rules (also under Forms and Publications). You can run an incorporated association with these rules but ACC Victoria strongly advises that you use the ACC Victoria model rules which are designed for a Church.
 - b. ACC Victoria also strongly advises that you use our Statement of Purpose which lists all the things a Church may reasonably want to do and will enable your Church to legally carry out those stated purposes.
 - c. You may write your own rules (not recommended) but the application generally takes longer and typically requires rewrites. If you write your own then the government (and ACC Vic) requires that there be acceptable dispute resolution and wind up clauses. The ACC also requires that a clause requiring the senior the minister to be eligible to hold an ACC credential be adopted.

NB. The ACC Victoria Statement of Purpose and Rules of Incorporation are available from the State Church Growth Director (ian.kruithoff@accvic.com.au).

4. Determine the members of the association (five members are the minimum required) and meet with them after giving them two weeks’ notice in order to:
 - a. Pass a resolution to form the incorporated association and agree on the name, statement of purpose and rules.
 - b. Offer and affirm membership in the incorporated association,
 - c. Note their names and addresses in the membership record you must create,
 - d. Nominate the following for positions on the committee of management and vote on them;
 - i. Chair
 - ii. Secretary/Public Officer
 - iii. Treasurer (or secretary/treasurer)
 - iv. Ordinary member (as many as the constitution requires)

NOTE: A public officer needs to be appointed (read the duties and responsibilities)

NB ACC Victoria recommends the following guidelines to be observed for Churches wanting endorsement as an ACC Church:

- i. If both the pastor and spouse are members of the board then a greater number of other board members must be elected (applicable for all family group representation),

- ii. A person's suitability for a board position does not automatically qualify the person's spouse for such a position,
 - iii. If there are not sufficient qualified members in the association to be board members then suitable people in other Churches (with discussion with their pastor) can be approached to join the incorporation and board for a transition period.
- e. Make decisions and create written minutes for the following:
- i. The decision to form the Incorporated Association and the name of the association (you can search for existing names on the consumer affairs web page. You will not be approved a name that is too generic or already taken or close to another name),
 - ii. The nominations for and results of the election of officers,
 - iii. Opening banking facilities, signatories and conditions under which the account operates (see bank application forms for details)..
5. Lodge the application. Usually there is a turnaround time of two weeks to receive the document of incorporation.

Gaining an ABN (Australian Business Number)

It's not mandatory to have an Australian business number (ABN), but there are a few good reasons why you should. Foremost among them will be that without one, your business will probably feel a whole lot poorer than it should.

Other businesses that deal with you are legally bound to withhold tax from any payments they make to you if your business does not quote an ABN on invoices – and they must withhold it at a rate of 46.5% (45% plus Medicare).

Although your business would be able to claim back excess tax paid in the tax return at the end of the year, it's not ideal from a cash-flow perspective.

Having an ABN also gives your business the ability to claim back goods and services tax (GST) credits, claim fuel tax credits you qualify for, register to use the pay-as-you-go withholding system, be able to offer fringe benefits to employees, and just generally make dealing with other businesses a much smoother task.

1. Go to either <https://abr.gov.au/> or <http://www.ato.gov.au> and follow the links.
2. Apply on line and receive your number on line immediately,

Charity status

During the application ask to apply for Charity status and an application will be sent to (NOTE This is not Benevolent Status/Direct Grant recipient Status). This is an Australian Tax Office provision required to be able to make Fringe Benefit Payments.

ACNC

Charities must register with the Australian Charities and Not-for-profits commission (ACNC) before they can receive charity tax concessions from the Australian Taxation Office (ATO). If you decide to also apply for tax concessions, you can do this within one form – the ACNC registration application form. Your application for tax concessions will be sent to the ATO, who will decide your organization's eligibility for tax concessions.

To be eligible to be registered as a charity with the ACNC, your organization must be able to show that it is a “charity”. In other words, it must:

- Be not-for-profit
- Have only charitable purposes that are for the public benefit
- Be complying with ACNC governance standards
- Not have any disqualifying purposes (for example, engaging in or promoting activities that are unlawful or contrary to public policy or promote or oppose a political party or candidate for political office, and
- Not be an individual, political party or government entity.

To register, it must also have an Australian Business Number (ABN) with the right “entity type”.

For registration and further information please go to:

http://www.acnc.gov.au/ACNC/Register_my_charity/Start_Reg/ACNC/Reg/Apply_to_register.aspx?hkey=dff5976f-35a7-406f-a226-efd45b4a5e9c

TFN

You should decide if you want to apply for a TFN (Tax File Number) if needed for wages to be paid.

Goods and Services Tax (GST)

You should decide whether or not you need to register for GST. The Australian Government mandates that companies that have a GST turnover amount of \$75,000 (\$150,000 for not-for-profit corporations) or greater must register for the Goods and Services Tax (GST).

You can use the same application to register for an Australian business number (ABN) if you do not already have one. You need an ABN to be part of the GST system. Your ABN will also be your GST registration number.

You can register by:

visiting www.business.gov.au and follow the prompts.

BAS (Business Activity Statement)

A business activity statement (BAS) is a statement to the ATO to report information about your business or investment income. If you fit into an activity listed below you need to register for BAS when registering for GST.

- PAYG instalments
- PAYG withholding
- GST and related tax obligations
- fuel tax credits
- FBT instalments
- some company and super fund instalments.

If you do not have any of the obligations above you do not have to complete a business activity statement (BAS). If you do have these obligations then you need to.

You don't need to register for your BAS separately – when you register for an Australian Business Number (ABN) and GST the ATO will send you a BAS in time for the appropriate lodgement date. It will contain only the information relevant to your business, making it easier for you to complete. Certain sections will already be filled in – such as your business details, ABN, PAYG obligations (if any) and more.

In general BAS statements are returned every quarter but may be annually as the ATO determines.

Start a Bank Account

ACC Victoria does not approve of transactions for a Church being operated through a personal bank account. A personal credit card may be used for purchases but must be reimbursed through the incorporation's account.

Any bank will open an operating account for you. You must decide on what kind of an account to open. Discuss the options with the bank. There are no and low fee options for associations/societies.

Obtain Insurance Cover

You can obtain insurance in many places but be aware that ACC Victoria has arranged a new church insurance package with Australian Christian Services available for the first two years of a new Church joining us.

This package includes; Public Liability Cover (which you will need to hire a facility), volunteer workers' cover, professional indemnity cover, directors' insurance. Further insurance cover will need to be negotiated privately. The cost in 2013 is \$99.00 per year.

Contact via <http://www.acsfinancial.com.au/Services/InsuranceServices.aspx>

ACC Victoria Church Stages

Approved Plant

A new work may be started by an existing ACC Church or ACC ordained minister without any approval by the state. However until it has established itself as a church (see under 'endorsed' for definition) it will not receive provisional Church endorsement and will be considered by the state to be an 'approved' plant.

Where someone, other than an existing ACC Church or ACC ordained minister* wants to start a church, an approval process will be followed.

The process is:

1. Contact the state church planting director for an appointment (as a couple where married),
2. Satisfy the diversity and accessibility requirement for a new work in an area where other ACC churches exist,
3. Demonstrate, with references, sufficient ministry experience, acumen and results to reasonably present a case for a call as a Church Planter/pastor,
4. Develop an acceptable strategy for the new plant in matters such as developing location, vision, team, critical mass numbers, and resources
5. Work through the ACC Church Planters Guide document,
6. Fill in the 'Approval to Plant' form in which a case for sufficient critical components needed for a successful plant is developed,
7. Receive approval from the state church planting director.

*existing churches and ordained ministers are asked, in the spirit of cooperative fellowship, to work with steps 1 and 5.

In step five the new work must demonstrate that it:

Operates as or under a legal entity in matters of fiduciary and financial matters (eg bank accounts, required reporting, ATO matters and the like)

(Where a work has received approval to plant they may use ACC Vic Statement of Purpose and Articles of Incorporation in order to form a legal entity.)

Is covered under an appropriate insurance policy which has public liability, professional indemnity, voluntary workers cover and officers cover as a minimum.

See section A for helpful advice in these matters.

The leader/pastor of the new work must contact in person the senior ministers of other ACC churches in the immediate vicinity to notify them of the plan to commence a new work. These names and numbers can be found on <http://www.acc.org.au/Contact/FindaChurch.aspx> by inserting the suburb name where the new work is to start.

Endorsement

Once the plant has been operating six to twelve months AND has met the basic requirements of an existing Church, an application for endorsement as an ACC Church may be processed. (after Endorsement the work will be enrolled on the National list of churches as a provisional Church).

A Provisional Church has not received registered assembly status and does not have a membership vote at national conference, but does have a vote per 250 members at state conference.

NB A satellite or campus may be started by an existing registered assembly but to be endorsed, must also follow the same procedure for endorsement.

The basic requirements for a local work to be considered as a provisional church are:

1. A critical mass of people exist in keeping with the community constituency in which the Church is to be planted. This is typically 30-50 people for whom the plant is their church. (depending on the size of the community in which the church exists).
2. A legal entity oversight exists. This is typically an incorporation with the legal, fiduciary and financial management capabilities to oversee it.
3. A pastor exists who holds an ACC credential to oversight the work. A person accepted must have a proven history of ministry and references to that effect. A person leading a church with a probationary credential must have the oversight of an OMC over their ministry probationary period (not their church).
4. A support/ministry group exists which can help in key ministries required for the Church's vision to function.
5. A public weekly meeting with a booked venue exists,
6. The pastor/leader of the new church has been in regular fellowship with the Movement by connecting at state and regional events.

A form for an application for Endorsement as. provisional Church may be obtained from the state Church Planting Director.

Registration

A Church may become a registered assembly