



## Applying for the Incorporation of an Association

### What you need to know

The process to incorporate an association is relatively simple. The major steps are:

- check the availability of your intended name
- advertise your intention to incorporate
- develop a set of rules for the good management of your association
- apply for incorporation on the prescribed form
- once your application is approved, we will forward you a Certificate of Incorporation.

Each of these steps is described in more detail below.

### What to do

#### Advertise

- ✓ **Before** you advertise, we suggest that you contact the Department of Commerce ("the department") and request confirmation that the intended name of the association would be available for registration under section 8(1) of the *Associations Incorporation Act (1987)*. You may simply write to us, or submit an enquiry on a form (Form 8 – "**Enquiry as to Availability of an Association Name**") which can be downloaded from our website (see below) or which we can mail to you. Any name enquiry may be faxed to us on 9282 4337.
- ✓ You should also satisfy yourself that the objects or purpose of the association are consistent with the Act (refer to NOTE 1 which sets out the "eligibility for incorporation" criteria). If the purpose of your association is not one which is specified in the Act, you will need to apply for special approval from the Commissioner for Consumer Protection.
- ✓ A person applying for incorporation of an association must place an "**Advertisement of Intended Application for Incorporation**" (Form 2) in a newspaper circulating in the area where the association is situated or conducts its affairs. The advertisement must be published *not less than one month and not more than three months* before the application is lodged with the department. A copy of the advertisement from the newspaper is to be attached to the application.

#### Develop a set of rules

- ✓ The Act requires an incorporated association to have its own set of rules which govern the day-to-day management of the association. A copy of these rules (often referred to as a constitution) must be lodged with the department. These rules are held as the "official" version of the rules, together with any amendments which the association later lodges with the department. The association's rules are available to the public.
- ✓ You may develop your own rules or seek professional assistance. Either way, please take note that Schedule 1 of the Act specifies 14 matters which *must* be provided for in the rules of an incorporated association. These matters are listed in NOTE 2. The rules also should not be inconsistent with any other requirements of the Act. Some of the most important requirements are listed in NOTE 3.

### DEPARTMENT OF COMMERCE

Unit 4  
321 Selby Street Nth  
Osborne Park  
WA 6017

Postal address:  
Locked Bag 14  
Cloisters Square  
Perth WA 6850

Website:  
[www.commerce.wa.gov.au/associations](http://www.commerce.wa.gov.au/associations)  
Associations Governance Guide:  
[www.commerce.wa.gov.au/associationsguide](http://www.commerce.wa.gov.au/associationsguide)

Associations information:  
8.30am to 5pm  
Monday to Friday  
(excluding public holidays)

Phone: 9282 0764  
1300 30 40 74  
(country callers - local call cost)

Fax: 9282 4337  
(for enquiries only)

ASSOCIATIONS INFO

- ✓ Alternatively, you may use and/or modify the set of model rules developed by the department. These rules include the matters specified in Schedule 1, are consistent with the other requirements of the Act and have been developed with legal advice. These model rules also reflect many years of experience in associations management.
- ✓ If you decide to use our rules ensure that you read them carefully and complete them where required to suit the needs of your particular association.
- ✓ These model rules are available in hard copy from the department or they may be downloaded from our website. Downloading is most convenient because the rules can be easily modified into your own word processed document.
- ✓ Once completed, the agreed version of your rules must be submitted with your application. Please ensure the following statement is written on the rules before submitting to the department; "This is the annexure of [insert number of pages] referred to in Form 1 signed by me and dated [insert date and signature]. In addition please **ensure that you keep a copy** of these rules for the association's records.

### **Make application**

- ✓ Complete all details on both sides of Form 1 ("**Application for Incorporation of an Association**"). Make sure that the name of the association concludes with the word "Incorporated" or the abbreviation "Inc." and that the name is shown in *exactly* the same way in the association's set of rules.
- ✓ If you have ticked the "other purposes" provision on the form, you are reminded that an additional fee is payable (see also NOTE 1).
- ✓ Lodge the completed form with the department; ensure that you attach/include
  - a copy of the newspaper advertisement
  - an endorsed copy of the association's rules
  - the application fee plus any other fees payable.
- ✓ Please note that an application may be refused pursuant to sections 4(2), 7, or 8 of the Act.

### **Your certificate**

- ✓ Once your association is incorporated a Certificate of Incorporation will be issued. This is evidence of the association's corporate status and should be kept securely. It will be needed in order to open bank accounts or to access grants from certain funding agencies.
- ✓ You may request to have your certificate laminated. Please tick  the appropriate section on the application form and ensure that you include the extra payment.

### **Fees**

If you do not have a current Schedule of Fees, it is available from the department or it may be downloaded from our website.

### **Notes**

#### **Note 1**

Section 4(1) of the Act reads in part:

"An association is eligible for incorporation if it has more than 5 members and is formed

- a. for a religious, educational, charitable or benevolent purpose;
- b. for the purpose of promoting or encouraging literature, science or the arts;
- c. for the purpose of sport, recreation or amusement;
- d. for the purpose of establishing, carrying on, or improving a community, social or cultural centre, or promoting the interests of a local community;
- e. for political purposes; or
- f. for any other purpose approved by the Commissioner."

If the purpose of your association is not one which is specified at (a) to (e) above, you can make a written request to the Commissioner for Consumer Protection to approve the purpose under section 4(1)(f) of the Act. A copy of the rules of the association must accompany your request along with the required fee.

## Note 2

SCHEDULE 1 of the *Associations Incorporation Act (1987)* requires that the following matters be provided for in the rules of an incorporated association:

1. The name of the incorporated association.
2. The objects or purposes of the incorporated association, including a provision in, or substantially in, the following terms:  
  

***The property and income of the association shall be applied solely towards the promotion of the objects or purposes of the association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to members of the association, except in good faith in the promotion of those objects or purposes.***
3. The qualifications (if any) for membership of the incorporated association.
4. The register of members of the incorporated association.
5. The entrance fees, subscriptions and other amounts (if any) to be paid by members of the incorporated association.
6. The name, constitution, membership and powers of the committee or other body having the management of the incorporated association (in this clause referred to as "the committee") and provision for:
  - a. the election or appointment of members of the committee;
  - b. the terms of office of members of the committee;
  - c. the grounds on which, or reasons for which, the office of a member of the committee shall become vacant;
  - d. the filling of casual vacancies occurring on the committee;
  - e. the quorum and procedure at meetings of the committee.
7. The quorum and procedure at general meetings of members of the incorporated association.
8. The time within which, and manner in which, notices of general meetings and notices of motion are to be given, published or circulated.
9. The manner in which the funds of the association are to be controlled.
10. The intervals between general meetings of members of the incorporated association and the manner of calling general meetings.
11. The manner of altering and rescinding the rules and of making additional rules of the incorporated association.
12. Provisions for the custody and use of the common seal of the incorporated association.
13. The custody of records, books, documents and securities of the incorporated association.
14. The inspection by members of the incorporated association of records and documents of the incorporated association.

### Note 3

The rules of the association must not be inconsistent with the requirements of the *Associations Incorporation Act (1987)*. Some key requirements of the Act are:

- Associations cannot be incorporated for the purpose of trading or securing pecuniary profit to members (section 4(2)).
- Addition and alteration of rules must be by special resolution only and must be lodged with this department to be valid (section 17).
- A special resolution is required under the Act to be passed by a majority of no less than three-fourths of the members voting at a general meeting which was convened in accordance with the association's rules (section 24).
- Members of the committee who have any direct or indirect pecuniary interest in a matter being considered by the committee must declare that interest and not take part in any deliberations or voting on that matter (sections 21 and 22).
- Annual general meetings are to be held each year within four months of the end of the association's financial year (section 23).  
[NB The first annual general meeting must be held within 18 months of incorporation.]
- Accounting records must be kept which correctly record and explain the financial transactions and position of the association; enable true and fair accounts to be prepared and allow accounts to be conveniently and properly audited (section 25). Note that the Act does not *require* these accounts to be audited.
- Accounts showing the financial position of the association at the end of the previous financial year must be submitted to members at the annual general meeting (section 26).
- An up to date register of members and their postal or residential addresses must be maintained by the association and be available to members to inspect or copy, but not to remove, on request (section 27).
- The up to date rules of the association must be maintained by the association and are to be available to members to copy, but not to remove, on request (section 28).
- A record of the names and postal or residential addresses of office bearers and trustees (if any) must be maintained and be available to members to inspect or copy, but not to remove, on request (section 29).
- On winding up an association, surplus property cannot be distributed to members or former members (section 33(2)(a)). It may be distributed only to other associations incorporated under the *WA Associations Incorporation Act* or for charitable purposes (section 33(2)(b)). (**Associations info sheet 3** provides information on how to wind up an incorporated association.)

**This info sheet must not be relied on as legal advice. For more information refer to the complete *Associations Incorporation Act and Regulations*, available from the State Law Publisher (9321 7688) or on their website at [www.slp.wa.gov.au](http://www.slp.wa.gov.au) (Online publications).**