



## Introduction to Incorporated Associations

Associations and clubs have long been, and remain, an important part of our society. There would be few Australians who are not involved with an association or club in one form or another – be it social, political, recreational or voluntary service. Clubs and associations do not have to be incorporated, but there are some benefits.

### What does “incorporation” mean?

Incorporation of an association means that it becomes a legal entity in its own right, separate from the individual members. Put another way, the association is considered at law to have a distinct identity that continues regardless of changes to the membership.

### Why incorporate?

The major features of becoming incorporated are:

- the association acquires the powers of a body corporate with perpetual succession and a common seal;
- the association may enter into contracts and acquire, hold and dispose of property;
- members or officers of the association are generally not liable to contribute towards the payment of debts or liabilities of the association;
- the association may sue or be sued;
- if members or office bearers of the association incurred liabilities or obligations on behalf of the association prior to incorporation, those liabilities and obligations can be exercised against the incorporated association; and
- the name of the association concludes with the word “Incorporated” or the abbreviation “Inc.” as part of its name;

### *Associations Incorporation Act (1987)*

The *Associations Incorporation Act (1987)* and *Associations Incorporation Regulations (1988)* are intended to provide for the incorporation of associations in Western Australia and the regulation of their affairs. The Department of Commerce, and in particular the Commissioner for Consumer Protection, has the responsibility to administer the Act and Regulations on behalf of the government.

The department has developed several information sheets which provide information on how it administers the legislation as well as outlining some of the major provisions of the Act and Regulations. These information sheets are available from the department and its website but should not be relied on as legal advice and nor do they provide a comprehensive statement of the legislation. To obtain a better understanding of the relevant laws, it is advisable to refer to the Act and Regulations both of which can be purchased from the:

**State Law Publisher**  
Ground Floor  
10 William Street  
Perth, Western Australia  
Telephone: 9321 7688

The Act and Regulations also can be viewed on the State Law Publisher’s website, [www.slp.wa.gov.au](http://www.slp.wa.gov.au). Go to “Online Publications” and then “Western Australian Statutes”.

Associations Info

#### 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)

## Public access to documents

Please note that the Act provides that the rules of an association (including any amendments) as well as *every other* document which is required by the Act to be lodged with the Commissioner, are to be available to members of the public upon request and upon payment of a prescribed fee.

## Powers of an incorporated association

Subject to the provisions of the Act and its rules, an incorporated association may:

- acquire, hold, deal with and dispose of any real or personal property;
- open and operate bank accounts;
- invest its money in any security in which trust funds may be invested, or in any other manner authorised by the rules of the association;
- borrow money on such terms and conditions as the association thinks fit; give such security for the discharge of liabilities incurred by the association as it thinks fit;
- appoint agents to transact any business of the association on its behalf; and
- enter into any other contract it considers necessary or desirable.

## Eligibility for incorporation

Section 4(1) of the Act provides that an association is eligible for incorporation if it has more than five members and is formed for any of the following purposes:

- (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.

However, an association formed with the purpose of trading or securing pecuniary profit to the members from the transactions of the association is **not eligible** for incorporation. The Act intends that incorporated associations will be **non-profit** or **not for profit** organisations. This does not mean that an association can't make a profit from its operations; but it does mean that any profits are to be used to further the objects of the association and not to provide personal gain for the members. (Compare this to a company where profits are lawfully distributed to shareholders [members] in the form of dividends.)

## Approval of "other" purpose

If the purpose of an association which is seeking incorporation is not one which is specified in section 4(1)(a) to (e) (above), the association can only be incorporated if the purpose is approved by the Commissioner for Consumer Protection under section 4(1)(f), and an additional fee applies. Written application can be made to the Commissioner seeking approval of a purpose under section 4(1)(f) before taking the other steps involved in incorporating an association. That way, if the purpose is not approved, time and money will not have been wasted in advertising and completing the other steps required to incorporate.

## Other restrictions on incorporation

Sections 8 and 9 of the Act provide that the Commissioner is not permitted to incorporate an association if, in his or her opinion:

- the name of the association is
  - offensive or undesirable;
  - likely to mislead the public as to the object or purpose of the association;
  - identical or misleadingly similar to the name of another incorporated association;
  - identical or likely to be confused with the name of any other corporation or registered business name; or
- it would be more appropriate for the activities of the association to be carried on by a body corporate incorporated under some other law; or
- that the incorporation would be against the public interest.

## Registration of an incorporated association

Detailed information on how to apply for the incorporation of an association is provided in *Associations info sheet 2, "Applying for the Incorporation of an Association"*.

Under section 9 of the Act, if the Commissioner is satisfied after reviewing an application for incorporation and a copy of the association's rules (sometimes referred to as the constitution), that:

- the association is eligible to be incorporated under the Act;
- the rules of the association which have been lodged with the Commissioner conform to the requirements of the Act;
- the name of the association is appropriate having regard to section 8; and
- the time has expired during which any request to the Commissioner to decline to incorporate the association might be made, and that any such request has been refused,

the Commissioner will incorporate the association and a Certificate of Incorporation (Form 3) will be sent to the applicant. The Commissioner retains the application form and a copy of the association's rules as public documents.

## Refusal to approve a purpose or name, or to allow incorporation

If the Commissioner refuses to:

- approve a purpose of an association under section 4(1)(f); or
- permit incorporation under the specific name requested (section 8); or
- incorporate the association for any of the other reasons outlined above;

the Commissioner will provide written reasons for the decision. An applicant may apply to the State Administrative Tribunal to have the decision of the Commissioner reviewed.

Information on how to make an application to the State Administrative Tribunal can be obtained at [www.sat.justice.wa.gov.au](http://www.sat.justice.wa.gov.au) or contact the State Administrative Tribunal on 1300 306 017.

The decision of the State Administrative Tribunal is final and the applicant will be advised on the Tribunal's decision in writing.

## Important provisions of the Act that apply after incorporation

Provisions of the *Associations Incorporation Act* also apply to associations after they have become incorporated. The following information is dealt with in more detail in other departmental publications and in the Act and Regulations. It is provided here in summary form to assist groups with making the decision of whether or not to seek incorporation.

### Committee

- The Act defines the committee of the association as those persons who, under the rules of an association, have the power to manage the affairs of an association. The committee is responsible for keeping proper books of accounts and records in accordance with the Act.
- If a member of a committee of an incorporated association fails to take all reasonable steps to ensure compliance by the association with its obligations under the Act, the member commits an offence and is liable to a fine of \$500.
- The members of the committee are required to disclose any direct or indirect financial interest they may have in any contract, or proposed contract, entered into or being considered by the committee. Committee members who have either a direct or indirect financial interest in any contract also must not take part in any deliberations on the contract or vote. The maximum penalty for each offence is a fine of \$500.

### Accounting records and Annual General Meetings

- Every incorporated association must keep accounting records which correctly show the financial transactions and position of the association. The accounting records must be kept so that true and fair accounts can be prepared at any time and so that they can be conveniently and properly audited (although the Act does not *require* that an association's accounts be audited).
- Accounts which show the financial position of the association must be submitted to members at each Annual General Meeting (AGM). Generally these accounts would consist of a statement of income and expenses and, if the association owns any assets, a balance sheet for the immediately preceding financial year.

- An AGM must be held in every calendar year and within 4 months after the end of the association's financial year (or such longer period as the Commissioner may allow in a particular case). However, an incorporated association may hold its first AGM at any time within 18 months after incorporation.

### Association records and documents

The Act specifically requires that an incorporated association must keep and maintain in an up-to-date condition:

- a register of all members and their postal or residential addresses;
- the rules of the association;
- a record of the names and addresses (postal or residential) of the following:
  - persons who hold the offices of the association under the rules, including all offices held by the persons who constitute the committee;
  - persons who are authorised to use the common seal of the association; and
  - any persons who are appointed or act as trustees on behalf of the association.

These records **must** be made available to any member on request and members may copy or take an extract from the records, but shall have no right to remove the records for that purpose.

In addition to the records described above, associations that applied for incorporation after July 1988 must include in their rules a clause about the inspection by members of association records and documents.

### Liability of officers, trustees and members

An officer, trustee or a member of an incorporated association is not by reason only of being such an officer, trustee or member liable in respect of the liabilities of the association. However, officers, trustees or members of incorporated associations are not protected from liability for their own negligence or other illegal acts committed by them.

### Rules and internal disputes

The committee and members of an incorporated association must comply with the rules of the association, unless these are inconsistent with the law.

An incorporated association can amend its rules, provided the amendments are made according to the processes set out in the Act, and the rules as amended are not inconsistent with the Act. Amendments must have been lodged with this department to become effective.

It is not the function of the department to interpret the rules of an association, to intervene in the internal disputes of an association, or to provide legal advice. These are matters for the committee and members to decide upon. The department can only intervene if there is a breach of the Act or Regulations.

### Dissolving an incorporated association

There are a number of ways in which an incorporated association can be brought to an end.

- If the members of the association want to voluntarily end the association they can resolve to wind it up, provided that they comply with the requirements under the Act and so long as the association is solvent (that is, the association must be able to pay its outstanding debts or liabilities.)
- The Commissioner may cancel the incorporation in a number of circumstances.
- The Commissioner, members and a number of other interested parties also can apply to the Supreme Court to have the association wound up in certain circumstances.

**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).**