



Running an Incorporated Association

This info sheet provides information on some of the responsibilities of running an incorporated association under the *Associations Incorporation Act (1987)* ("the Act"), as well as providing suggestions which may assist associations avoid some of the common problems that confront associations. There are a number of other Associations info sheets available which you might find useful, including, "Introduction to Incorporated Associations" (*info sheet 1*); "Applying for the Incorporation of an Association" (*info sheet 2*); "Voluntarily Winding Up an Incorporated Association" (*info sheet 3*); "Altering the Rules of your Incorporated Association" (*info sheet 4*); and "Complaints about Incorporated Associations" (*info sheet 5*).

All Associations *info sheets* are available from the Department of Commerce ("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 the *Associations Incorporation Regulations (1988)* ("the 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 downloaded from the State Law Publisher's website, www.slp.wa.gov.au. Go to "Online Publications" and then "Statutes - Acts and Regulations".

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Associations Info

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(for enquiries only)

Rules

Every association must have a set of rules, often known as a constitution. The way in which an association operates is largely governed by its rules.

There are some specific matters which must be provided for in the rules of any association incorporated after July 1988, and the rules of all incorporated associations should be consistent with the requirements of the Act. The department has developed a set of model rules, including a checklist of requirements under the Act, as a guide to assist associations to comply with their obligations under the Act. These are available from the department or from our website. You may choose to create your own rules or to follow our model rules.

The Act requires that a copy of the rules be held by the department as the “official” version of the association’s rules. The rules of an association as lodged with this department (including any amendments lodged) are the only effective rules of the association.

An association’s rules must be accessible to all its members and members can copy or take an extract from the rules, although members cannot remove the rules for that purpose. Many associations as a matter of policy provide their members with a personal copy of the rules and have found that this assists with the effective management of the association. Associations’ rules also are available to anyone from this department for a fee. (Refer to the Schedule of Fees available from the department or its website.)

Associations *info sheet 4* contains information about how to alter the rules, name or objects (purposes) of an incorporated association.

Committee

The Act states that those persons who have the power under the rules to manage the affairs of the association are the committee of the association for the purposes of the Act. This is an important provision because people who are defined as committee members have special responsibilities under the Act, both as individuals and as part of the group.

Individual committee member’ responsibilities

Conflict of interest

Committee members 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. Failure to comply with either of these provisions is an offence which carries a maximum penalty of a fine of \$500.

Complying with the Act

If a member of a committee of an incorporated association fails to take all reasonable steps to ensure the association complies with its obligations under the Act, the member commits an offence and is liable to a maximum fine of \$500. This personal obligation of committee members is a very important one. It means that all committee members **MUST** do what is reasonable to make sure that the obligations on the association under the Act, such as those outlined in this info sheet, are complied with, or they may face prosecution.

The duties of individual committee members described in an association’s rules may assist them in working out what are the reasonable steps for them to take.

Management structure

It is up to your association to choose how it allocates the power to manage its affairs. Remember whoever is allocated this power under the rules will be “committee members” for the purposes of the Act and have the special responsibilities referred to above.

Generally the rules provide for members of the association to elect a committee at the annual general meeting and for the management of the affairs of the association to be the responsibility of that committee. Also, the rules generally include specific office-holders such as the Chairperson, Secretary and Treasurer, although the positions may have different titles, for example, President instead of Chairperson. For an idea of the duties which generally go with these positions, refer to the department’s model rules.

Committee responsibilities

The overall role of the committee is to manage an association in accordance with the purposes or objects of the association as stated in its rules. In undertaking this role, the committee must fulfil a number of **legal responsibilities** which include making sure that:

- the association complies with its obligations under the Act and in particular under Part V, which includes:
 - sections 21 & 22 which require disclosure by committee members of any pecuniary (financial) interest in contracts being considered by the committee, and abstaining from any deliberations and vote;
 - section 23 which requires that annual general meetings be convened within 4 months of the end of an association's financial year;
 - section 24 which defines special resolutions (required to change the rules or voluntarily wind up) to include requirements of notice to members, a general meeting and a vote of at least three-quarters of those entitled to vote, who are present or represented by proxy, if proxies are allowed;
 - section 25 which defines the standards for maintaining financial records;
 - section 26 which requires that accounts showing the financial position of the association be submitted to members at the annual general meeting;
 - section 27 which requires the maintenance of a register of members and their residential or postal addresses, and access by any member to inspect and copy;
 - section 28 which requires the maintenance of up to date rules, and access by any member to inspect and copy;
 - section 29 which requires the maintenance of a list of office bearers and trustees and their residential or postal addresses, and access by any member to inspect and copy. (Some of these obligations are addressed in more detail in this and other *info sheets*.)
- the association complies with its rules and any funding agreements or other contracts;
- the association complies with its legal responsibilities to any employees, such as complying with employment awards or agreements, paying tax and superannuation and providing a safe working environment;
- the association complies with its legal responsibilities to members, volunteers and any clients or customers who may use the association's services;
- an assessment has been made of whether insurance cover is required and to what extent and
- any other relevant laws or regulations are complied with.

Specific **financial responsibilities** include making sure that:

- there is compliance with requirements under the Act in relation to financial accounting and reporting to members (see "**Annual General Meeting**" and "**Record keeping and related items**" below);
- the association can pay all its expenses (it may assist to develop a budget annually);
- the conditions of any funding agreement are followed;
- the accounts are audited *if this is required* by the association's members, rules or funding agreements; and
- good risk management procedures are in place. (For example, a requirement that two authorised signatories sign off on any association cheque and that another member or employee completes cheque account reconciliations can be a good method for minimising risk.)

Depending on the size and nature of your association other areas of responsibility may include the management of staff, the development and implementation of policies and procedures; and the provision of quality services to members and/or clients.

Meetings

Incorporated associations are intended to be run in a democratic manner. The way in which meetings are conducted can have a major effect on members' perceptions of whether their association is democratic.

The following suggestions can assist your association to comply with its obligations under the Act as well as contribute to its democratic character. These suggestions apply to meetings of the committee, sub-committees or meetings of all members (known as general meetings):

- Make sure that the members who are entitled to attend a meeting are given proper notice in accordance with the rules. In particular, note that all members are entitled to be invited to attend a general meeting.
- Make sure that meetings are conducted in accordance with the rules. For example, check that there is a quorum (the minimum number of members who must be present for a meeting to be legally effective).
- Depending on the nature of your association, it might be useful to have an agenda of the items to be discussed at the meeting prepared beforehand. Members who are participating in the meeting also should have the opportunity to have items included on the agenda.
- Correspondence to and from the association should be tabled at the meeting. Members in attendance should be given the opportunity to read the documents, or, if agreed, to obtain copies.
- Make sure that everyone at the meeting gets a say. This can mean that some people who tend to dominate should be stopped and quieter people should be encouraged to say what they think.
- At the same time, no one wants to spend hours and hours at meetings. If there are a lot of people who want to speak in relation to the matters under discussion, it might be useful to limit the amount of time each member can have to speak on a matter.
- Make sure that there are clear decisions on the matters being discussed, which everyone understands. It is especially important that the person taking the minutes has the opportunity to write down what is agreed and it can sometimes be a good idea to stop and check that everyone is happy with what has been recorded as the resolution passed. (Also see “**Minutes**” below.)

Annual General Meetings

Except for its first annual general meeting (AGM), which can be held up to 18 months after incorporation, AGMs must be held at least once in each 12 months and within four months of the end of the association’s financial year. Most associations’ financial years go from 1 July to 30 June the following year, but if they want to, associations can define their financial year differently in their rules.

If you require an extension of time to hold your AGM you must apply to the department for permission, and make sure that you include the application fee. (Refer to the Schedule of Fees available from the department or its website.)

Financial accounts must be submitted to the members at each AGM. The Act does not require that accounts be audited, although this may be required by your association’s rules, its members, or funding bodies.

The financial accounts must present the financial position of the association at the end of the previous financial year and generally should consist of a statement of income and expenditure and also a balance sheet of assets and liabilities, if any.

Record keeping and related items

An association must make sure the following records are kept:

- an up to date version of the rules;
- a list of the names and address of people who are office holders under the rules of the association, including committee members, any trustees, and those authorised to use the common seal;
- accounting records which correctly record and explain the financial transactions and position of the association, in such a manner that enable true and fair accounts to be prepared and for these accounts to be conveniently audited; and
- an up to date register of all members, including their residential or postal addresses.

In relation to the last dot point, some members of an association may have concerns about their name and address being made available to other members. It is therefore a good idea to let people know about this requirement when they apply to become a member of an association (see, for example, the suggested Membership Application Form included with the model rules). If there are particular concerns about privacy, for example for junior members of a sporting association, and such “members” are prepared to forgo their rights under the Act, you may wish to create a separate category for them, for example “players” rather than members. That way their addresses would not be available to other members through the association. If you have

concerns generally about members' privacy you can contact the Federal Office of the Privacy Commissioner (refer to contact details on p.8).

Except for those association records which members have a right to access under the Act (see "**Members' rights**" below), members' access to association records is generally dealt with under an association's rules. As a result access should be based on what the majority of members have approved, although specific arrangements may need to be made for confidential materials such as any staff or client files.

It is important to remember that an incorporated association should not be run as if its committee is a "secret society". If the availability of information to ordinary members, such as access to committee minutes or financial accounts, is restricted without good reason, this tends to create mistrust and tension.

Minutes

Although not a specific requirement under the Act, it is very useful to keep minutes of all association meetings, whether general, committee or sub-committee meetings. These minutes can provide protection for individuals who act on the decisions of the association by providing evidence that they acted on the association's directions. In particular this could assist individual volunteers gain protection under the *Volunteers and Food and Other Donors (Protection from Liability) Act (2002)*, which transfers liability for a volunteer's actions to the association in certain circumstances.

(The Volunteering Secretariat has more information: see p.8.)

A good process for making sure that the minutes are accurate is to:

- *Make sure that someone is nominated to take the minutes.* Generally this will be the association's Secretary and that responsibility will be allocated in the association's rules;
- *Keep a record of proceedings during the meeting.* It is important that the minutes record any resolutions or decisions made at a meeting. It is up to the association whether it also wants minutes kept of any discussion.
- *Make sure that attendances and any apologies are noted.* This is usually done at the beginning of a meeting, although if people leave early or arrive late it is a good idea to also keep a note of this in the minutes.
- *Present previous minutes for approval.* Often draft minutes for the previous meeting will be circulated in advance of the next meeting, giving people time to consider whether the minutes accurately reflect their recollection of the meeting. The minutes should be presented for approval at the next meeting of a similar kind; for example, minutes of a special general meeting should not be approved by the committee but at the next general meeting. Annual general meeting minutes are usually tabled at the next annual general meeting for approval. Members should be given the opportunity to propose corrections to the minutes or to seek to have additional details of what occurred recorded, and these can be allowed or disallowed on the vote of people who attended the previous meeting. Minutes should be approved on the basis that these are a correct record of the meeting.
- *Identifying the approved minutes.* After any approved changes to the minutes have been noted, it is a good idea to have an office-bearer for the association sign that the minutes are the approved minutes of the meeting. If the rules of the association don't allocate this responsibility, generally it is the Chairperson at the meeting where the minutes are approved who would sign and date the minutes. The Chairperson also should initial any amendments and state that the minutes have been approved as a correct record of the meeting.
- *Keeping the approved minutes.* It is useful to keep the approved minutes in one place so that these can be easily accessed. This may be dealt with in the association's rules, and associations sometimes have a "minutes book" or file. It might be useful for your records if originals or copies of any correspondence or other documents tabled at the meeting also are kept as attachments to the official minutes.

Common seal

Associations are required to have a common seal and these are available from rubber stamp manufacturers and most footwear repair places. This is a stamp which shows the association's name, and logo if it has one, and is equivalent to a formal "signature" by the association used on formal documents such as funding contracts and land title transfers.

It is important to keep the common seal in a secure place and it is generally a good idea to limit the use of the common seal in the association's rules by requiring that the stamp only be used if the committee formally resolves to "affix" it to a document, and by nominating only specific office-holders who are allowed to use it. For associations incorporated after July 1988, Schedule 1 of the Act requires that the rules specifically provide for the custody and use of the common seal.

Certificate of Incorporation

This is the Certificate which is issued when the association is first incorporated or if an association changes its name. It is important that the Certificate is kept in a safe place because it is evidence of the association's corporate status and can be required, for example, when applying for funding grants.

If you can't locate the Certificate, an association can apply to have a duplicate issued by this department by writing to us on letterhead paper or with the common seal affixed to the letter, and with the applicable fee. (Refer to the Schedule of Fees available from the department or its website.)

Record keeping and the department

Unlike other states, there is no requirement under the Western Australian Act that associations submit annual returns to this department. It is important however, that associations maintain adequate records of their operations, particularly financial records, as in certain circumstances the department can direct that association records be provided to the department or that the association undergo a financial audit. Failure to comply with the department's directions may be a criminal offence.

Members' rights

The rules of an incorporated association as agreed by members set out the purposes of the association, referred to as "objects" in the Act, and the basis on which the association is to be run. In some circumstances members (and others) may be able to take civil action against committee members or the association if it fails to comply with its rules.

The Act sets out some other important rights for members. Members cannot give up these rights simply by agreeing to association rules which are inconsistent with them. These rights include:

- The right to inspect and copy the association's register of members;
- The right to inspect and copy the association's list of office bearers;
- The right to inspect and copy the association's rules;
- The right to attend the annual general meeting;
- The right to have financial accounts showing the financial position of the association submitted to them at the annual general meeting;
- The right to have proper notice of, and to attend, any general meeting at which it is proposed to alter the association's rules;
- The right to have proper notice of, and to attend, any general meeting at which it is proposed to wind up the association;
- The right not to have anyone:
 - a. lodge a document with the department under the Act; or
 - b. submit a document at a meeting of members, when that person knows the document to be false or misleading on a significant matter.

Members' Responsibilities

The specific responsibilities that apply to committee members are outlined under the section on "**Committee**", above. All members, including committee members, also have significant additional responsibilities.

Generally, on applying for membership, members agree to be bound by the rules of the association and therefore have a responsibility to do so, unless those rules are inconsistent with the Act or some other legal obligation.

All members also are responsible to ensure that only accurate documents are lodged with this department under the Act or presented to meetings of members. Failure to comply with this responsibility can result in criminal prosecution and is subject to a maximum fine of \$500. This provision emphasises the importance which was placed by Parliament when enacting the Act on members having accurate information to enable them to make decisions about their association.

Another very important responsibility that rests on all members arises from the nature of incorporated associations. Because associations traditionally have been regarded as essentially community-based organisations these are largely independent of government intervention.

Therefore members in particular have a crucial role in ensuring that their association conducts itself in a way that is acceptable to them.

This department can only intervene in the limited circumstances allowed under the Act, and in many circumstances it is **only the members** who have power to correct an association if it fails to comply with its rules or to conduct itself in a proper manner. If members fail to be active in ensuring that their association is run in a fair, democratic and financially accountable manner, they may end up with an association which they no longer wish to be associated with, or may themselves be subjected to undemocratic or unfair treatment. Refer to *info sheet 5 “Complaints about Incorporated Associations”* for more information on this topic.

To assist members in fulfilling this responsibility to their association, the Act provides that members are entitled to access the register of members so they can contact each other. This results in another important member responsibility: to provide their name and residential or postal address to the association so that the information can be made available to other members. (See also the reference to the register of members under *Record keeping and related items.*)

Trading or securing a pecuniary profit for members

As a general rule, associations are not eligible to be incorporated under the Act if the purpose is to trade or secure financial benefits for their members, and if an association does so, it may be wound up or required to change its incorporation to a different jurisdiction, such as a company subject to regulation by the Australian Security and Investments Commission.

Under the Act, however, there is some clarification about what this prohibition against trading or securing a financial profit for members means, and details are set out in full in the Act.

Some of the circumstances in which an association is not regarded as trading or securing a financial profit for members for the purposes of the Act include:

- the association is allowed to, or does, make a financial profit so long as the profit is not received by the members or some of them;
- the association is established for the protection or regulation of some trade, business or industry in which its members are interested, provided the association does not engage in such trade, business or industry;
- any member of the association receives financial profit from the association as an employee or officer of the association;
- any member receives financial profit from the association to which he or she would equally be entitled if not a member of the association;
- the association provides facilities or services for its members;
- the association trades with its members or the public provided that:
 - the trading is secondary to the principal purpose of the association; and
 - any trading with the public is not substantial in relation to other activities of the association.

Note that members cannot avoid these requirements by arranging to have the financial profits payable to them as a member, received by someone else who is not a member.

As indicated, an application can be made to the Supreme Court to have an incorporated association wound up if an association is thought to be in breach of these requirements. There is also another provision in the Act which allows the Commissioner for Consumer Protection to transfer the operations of an incorporated association to a body incorporated under different legislation, for example, a co-operative or company, if the Commissioner is of the opinion that the association has ceased to be eligible for incorporation under the Act or would be more appropriately regulated under different legislation. It is up to the Commissioner to determine which action is the appropriate one in all the circumstances.

Operating interstate

Because incorporated associations are created under State laws, this can cause problems if your association wants to operate interstate or nationally. A formal application for registration as a Registered Australian Body can be made to the Australian Securities and Investments Commission which, if granted, will give an association recognition outside of Western Australia.

Some useful contacts

(Please obtain up to date contact details from the telephone directory)

Australian Securities and Investment Commission

www.asic.gov.au

For information on the registration of companies, Registrable Australian Bodies, as well as ACNs, ABNs and related matters.

Australian Taxation Office

www.ato.gov.au/nonprofit

For information on tax liabilities and obtaining tax exemptions as a not for profit or charitable entity. Publications include tax basics and income tax guide for non-profit organisations.

Department of Commerce - Charitable Collections

www.commerce.wa.gov.au/charities

If your association is considering collecting from, or selling goods to, the public for charitable purposes you will need to be licensed.

Department of Commerce – Labour Relations - Work Safe

www.commerce.wa.gov.au

For information on employment conditions and labour relations. Also try Wageline on 1300 65 52 66 or Worksafe Information Line on 1300 30 78 77.

Department of Sport and Recreation

www.dsr.wa.gov.au

This department also has many excellent publications available from the department or their webpage to assist sporting associations, as well as telephone assistance. Although the publications have been developed specifically for sporting groups, other associations may want to download them from the website as many include information useful for any association.

Office of the Federal Privacy Commissioner

www.privacy.gov.au

This Office administers the Commonwealth's privacy legislation. Information Sheets, guides and legislation can be downloaded from the website and there is also a telephone information line. *Information Sheet 12 – 2001 Coverage of and Exemptions from the Private Sector Provisions* is generally of interest to associations.

Office of the Registrar of Indigenous Corporations

www.orac.gov.au

For information on Aboriginal corporations incorporated under the Commonwealth Corporations (*Aboriginal and Torres Strait Islander Act (2006)*). Associations with Aboriginal members may want information from this Office to work out whether the Commonwealth or WA legislation better suits their needs.

Volunteering Secretariat

www.volunteering.communitydevelopment.wa.gov.au

A division of the Department of Community Development, the Secretariat provides information for volunteers.

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 (Online publications).