



Government of **Western Australia**
Department of Mines, Industry Regulation and Safety
Consumer Protection

ASSOCIATIONS
INC GUIDE

INC:

A GUIDE FOR INCORPORATED ASSOCIATIONS IN WESTERN AUSTRALIA

November 2020

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INTRODUCTION TO THE INC GUIDE

People form not-for-profit groups to pursue a range of interests. These are commonly sporting, recreational, political, economic, cultural, charitable, spiritual or professional by nature. In Western Australia there are nearly 20,000 groups that have registered as incorporated associations.

By incorporating an association, a legal entity is created through which to conduct the group's activities. This offers the following advantages:

- the individual members of the association limit their personal liability;
- bank accounts can be opened in the name of the association;
- the association can enter into contracts and hold property; and
- the association can apply for government grants.

INC: A Guide for Incorporated Associations in Western Australia has been developed to assist associations to manage their affairs. Information is provided on the key legal requirements under the *Associations Incorporation Act 2015* (the Act). It also includes useful material and sources of information on other aspects related to running an association.

ASSOCIATIONS INCORPORATION ACT 2015

On 1 July 2016 the *Associations Incorporation Act 2015* came into force. The Department of Mines, Industry Regulation and Safety - Consumer Protection Division (Consumer Protection) is responsible for administering the Act.

The **Associations and Charities Branch of Consumer Protection** can be contacted by:

☎: 1300 304 074
 ✉: associations@dmirs.wa.gov.au
 🌐: www.dmirs.wa.gov.au/associations
 ✉: Locked Bag 100
 East Perth WA 6892

A copy of the Act is available from www.legislation.wa.gov.au.

ASSOCIATIONSONLINE

[AssociationsOnline](#) is a secure online portal provided by Consumer Protection for incorporated associations, industry stakeholders and members of the public to check the status of an incorporated association, purchase copies of documents, submit a range of applications and update association contact information.

You can find a help guide for using AssociationsOnline and step by step videos on [Consumer Protection's website](#).

A NOTE ON COPYRIGHT

Throughout this guide, various websites have been referred to for additional information, forms and policies. In some cases the information will be protected by copyright and may not be reproduced without permission of the copyright owner. The website will usually state if more copies can be made and distributed. If in doubt contact the organisation concerned and seek permission to use the material.

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its reproduction. Refer to the [Copyright](#) section if you'd like to know more.

A FINAL WORD

This guide is written primarily for people without a legal background and deals with a large number of areas, involving in some cases quite complex laws and regulations. The guide therefore simplifies a number of matters. As a result, topics are explained in a general manner and do not include full details on all aspects of the relevant legislation. Therefore, it cannot replace specific expert advice on your particular circumstances, which you should seek where required.

DISCLAIMER

The information contained in this guide is not intended to be legal advice and should not be relied upon as giving substantial legal advice, but as a legal awareness guide.

The guide does not provide a definitive statement of the effect or application of the various legislative schemes to which reference is made. While it provides a general overview, the law can change often and rapidly and you should always refer particular questions that relate to your association to a legal adviser.

The general overview of the law in this guide is based on material current at August 2019.

INTRODUCTION TO INCORPORATED ASSOCIATIONS

This chapter explains what it means to be incorporated under the *Associations Incorporation Act 2015* and the various powers of an incorporated association.

KEY POINTS

- Incorporation creates a new legal entity with powers similar to those of a natural person.
- As a not-for-profit organisation an association may operate a business and make a profit but no profits or property can be distributed to the members.
- If the association wants to trade under a different name, it will need to register a business name with the Australian Securities and Investments Commission (ASIC).

EFFECT OF INCORPORATION

The purpose of incorporation is to create a legal entity that is separate from the individual members. In practical terms incorporating means:

- the association becomes a body corporate with perpetual succession (it may exist forever, even as its membership changes);
- the name of the association is protected and will end with the word 'Incorporated' or 'Inc.';
- members or officers of the association are generally not liable to contribute towards the payment of debts or liabilities of the association; and
- the association may sue or be sued in its own corporate name.

POWERS OF AN INCORPORATED ASSOCIATION

The association may do all things that are necessary or convenient to pursue its objects and purposes. It may:

- acquire, hold, deal with and dispose of any real property (land) or personal property (goods, shares, etc.);
- open and operate bank accounts;
- invest its money;
- borrow money upon such terms and conditions as the association 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.

In addition, an association can do almost any lawful act so long as it is necessary or convenient for carrying out its objects or purposes.

NOT-FOR-PROFIT

To be eligible for incorporation the association must be not-for-profit. 'Not-for-profit' refers to the membership, purpose and activity of the association. This does not mean that an association cannot make a profit from its operations.

It is acceptable for an association to trade with the public so long as the profits from those transactions are used to promote the objects and purposes of the association and members do not profit from the activities.

This is different to a ‘for-profit’ company where profits can be lawfully distributed to the members (i.e. shareholders) in the form of cash dividends.

An association that operates outside of these conditions is no longer eligible to remain incorporated under the Act, and may be required to change its incorporation to a different type such as a co-operative or company.

However a not-for-profit organisation is permitted to:

- employ people (including members) and pay them wages or salary;
- allow members to derive a monetary benefit from the association in circumstances where the member would be equally entitled to the benefit if he or she was not a member (e.g. members of housing associations being housed);
- protect or regulate a trade, business or industry that members are involved in, as long as the association itself does not participate in the trade, business or industry (e.g. professional associations);
- commercially trade with the public;
- charge admission fees to events organised for the promotion of the association's objectives;
- arrange competitions between members for prizes and trophies;
- provide facilities or services for members (e.g. a bowling club running a bar); or
- remunerate a member in good faith for services provided to their association.

POTENTIAL BUSINESS REQUIREMENTS

Registering a business name

A registered business name is a trading name under which an organisation or an individual can conduct their business activities.

An association does not need to register a business name if it operates under its incorporated name. If the association wants to trade under a different name (including a shortened version of the association name) it will be necessary to register this as a business name.

An association will only have one name for the purposes of incorporation, but may conduct its businesses under more than one registered business name (provided business is being carried on under each of those names).

A business name can be registered online through the Australian Securities and Investments Commission (ASIC). Visit [ASIC's website](#) for further information.

Operating interstate

Incorporated associations can only conduct business in their state of registration. If an association wants to trade interstate or nationally it may be necessary to become a registered Australian body through ASIC. For more information contact the ASIC on telephone 1300 300 630 or [visit their website](#).

Bank signatories

An association may open a bank account in its own name which is operated by people who can sign on behalf of the association. These signatories are usually members of the management committee

and having more than one person required to approve a payment or withdrawal provides financial and security safeguards. The necessary paperwork can be set up with the bank or credit union. Decisions about the account and signatures should be made by resolution and recorded in the minutes.

COMMON SEAL

A common seal is the official stamp or 'signature' of an association. As a body corporate an association is entitled to have a common seal though it is not compulsory. Common seals are not expensive to purchase and can be obtained from most stationery shops or rubber stamp suppliers.

If an association has a common seal the rules must outline who is authorised to use it, the circumstances in which it may be affixed and who will have custody of the seal.

COPYRIGHT

Material that is produced and published by an incorporated association may be protected by copyright. Copyright is a type of legal protection under the Commonwealth *Copyright Act 1968* for people who express ideas or information in certain forms, such as through writing, music and visual images.

When a piece of work is created, the person or organisation that owns copyright on the work has exclusive rights to control the copying and distribution of the work. In Australia, copyright is automatic once an original work is written down or recorded. It is free and does not have to be applied for.

Copyright is infringed when the exclusive rights of the owner are violated, such as when a copyrighted work is reproduced

and used without the owner's permission. This includes downloading, copying and printing material from the Internet. To avoid infringement, it is necessary to obtain permission to copy and use the material from the appropriate person or organization, that is, the copyright owner.

The Australian Copyright Council provides information and training for the public.

✉: PO Box 1986
Strawberry Hills NSW 2012
☎: (02) 8815 9777
✉: info@copyright.org.au
🌐: www.copyright.org.au

TRADEMARKS

Trademarks are pictures, words or symbols that identify goods or services. Examples could include logos, labels, marketing mascots, banners or slogans. A trademark must be registered for it to be protected by the Commonwealth *Trade Marks Act 1995*. If an incorporated association has a particular sign or mark that identifies it or the public recognises it by, it is worthwhile protecting its use by registering it as a trademark. IP Australia, can assist with further information about registering and protecting trademarks:

IP Australia
☎: 1300 65 10 10
✉: assist@ipaustralia.gov.au
🌐: www.ipaustralia.gov.au

BECOMING AN INCORPORATED ASSOCIATION

Incorporating an association is suitable for many community and charitable groups because this structure is specifically designed for not-for-profit organisations. This chapter sets the requirements for incorporating an association. For information about the benefits and consequences of becoming incorporated refer to [Introduction to Incorporated Associations](#).

KEY POINTS

- Only certain groups are eligible for incorporation.
- The association must develop a set of rules that comply with the requirements of the Act and make provision for all the matters included in Schedule 1.
- The application must clearly state the name and purpose of the association and include a copy of the rules of the association.
- The Certificate of Incorporation is proof of incorporation and must be kept in a safe place.

WHICH GROUPS ARE ELIGIBLE FOR INCORPORATION?

To be eligible for incorporation a group must:

- have at least six members who will have voting rights under the rules;
- be [not-for-profit](#); and
- be formed for one or more of the purposes outlined under the Act.

The Act allows incorporation for the following purposes:

- religious, educational, charitable or benevolent purposes;
- promoting or encouraging literature, science or the arts;

- providing medical treatment or attention or promoting the interests of people who suffer from a particular physical, mental or intellectual disability or condition;
- sport, recreation or amusement;
- establishing, carrying on or improving a community or promoting the interests of a local community;
- conserving resources or preserving any part of the environmental, historical or cultural heritage of the State;
- promoting the interests of students or staff of educational institutions;
- political purposes; or
- promoting the common interests of persons engaged in or interested in a particular business, trade or industry.

If a group does not fit into any of the above categories it may apply for special approval by the Commissioner for Consumer Protection.

STEPS TO BECOMING AN INCORPORATED ASSOCIATION

The procedure for incorporating an association involves the following steps:

1. members agree to become incorporated;
2. decide on a suitable name;
3. develop a set of rules or adopt the model rules; and
4. submit the application.

1. Agree to become incorporated

An incorporated association is required to comply with specific legal obligations under the Act including maintaining records, holding annual general meetings and preparing financial reports. Before applying for incorporation the members should ensure that they understand the legal responsibilities that will follow. If the members agree to become incorporated they need to:

- authorise one or more members who will prepare and submit the application;
- decide on a name for the association;
- decide the objects and purposes of the association; and
- draft a set of rules.

2. Determine a suitable name

The name of the association should reflect its objects and purposes. The Commissioner for Consumer Protection can reject a name if it is:

- already in use;
- offensive or undesirable;
- likely to mislead the public; or
- likely to be confused with the name of an existing body corporate or registered business name.

The use of certain words such as “foundation” or “royal” is also restricted under the regulations any may only be uses in certain circumstances.

When deciding on a name, it is advisable to consider having alternative name in case your first choice is not available.

3. Develop a set of rules

The management of an incorporated association’s affairs is governed by a set of

rules, commonly referred to as the constitution. All associations are required to make provision for a number of specific matters in the rules, which are detailed in Schedule 1 of the Act and included at the [end of this chapter](#).

Consumer Protection’s publication [What’s in the rules: explaining the Schedule 1 requirements](#) is useful in understanding these requirements.

To avoid misinterpretation, the rules should be written in clear simple language. There are no requirements about the length or complexity of rules for an incorporated association and in addition to addressing the Schedule 1 requirements the association can include other rules that are relevant to its activities.

Using the model rules

If an association does not want to develop its own rules the [model rules](#) can be adopted. The model rules are a complete set of rules prescribed by the *Associations Incorporations Regulations* that meet all of the requirements of the Act and provide a suitable governance framework for an association.

If you choose to use the model rules, the only additional information that you need to provide to the Commissioner with your application is:

- name of the association;
- objects or purposes of the association;
- quorum for a general meeting of members of the association;
- quorum for a meeting of the management committee of the association; and
- period of the first financial year of the association.

Please note that if the association changes any of the provisions in the model rules (with the exception of the matters above) it is no longer considered to be using the model rules.

4. Make the application

The application for incorporation can be submitted online using [AssociationsOnline](#). If the association is using its own rules a copy of these rules must be attached to the application and the applicant will also be required to complete a table identifying the Schedule 1 matters within the rules.

Once all information is entered and uploaded, payment is made by credit card through a secure payment system.

THE CERTIFICATE OF INCORPORATION

The Commissioner for Consumer Protection will approve the application if satisfied the:

- association is eligible for incorporation;
- rules of the association conform with the Act; and
- name of the association is appropriate in accordance with the Act.

The Commissioner will then incorporate the association and issue a Certificate of Incorporation. The Certificate will show the name of the incorporated association, the date of incorporation and the Incorporated Association Reference Number (IARN).

WHAT HAPPENS IF THE APPLICATION IS NOT APPROVED?

The Commissioner for Consumer Protection will not incorporate an association if it would be more appropriate

to carry out the activities as a body corporate incorporated under some other law or the incorporation is against the public interest.

If the application is not approved the association can apply to the State Administrative Tribunal (SAT) for a review of the decision of the Commissioner.

WHAT ARE THE COSTS OF INCORPORATION?

There is a [one-off fee](#) to become incorporated. Once incorporated there is no annual fee but other costs incurred over time can include the cost of meeting reporting and accounting requirements, legal advice (if required) and future applications to change the rules, name or objects.

SCHEDULE 1 - MATTERS TO 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.
3.	The qualifications (if any) for membership of the incorporated association and provision for when membership commences and when it ceases.
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 management committee or other body having the management of the incorporated association (in this clause referred to as the committee) and provision for the following:
6a.	The election or appointment of members of the committee.
6b.	The terms of office of members of the committee.
6c.	The grounds on, or reasons for which, the office of a member of the committee shall become vacant.
6d.	The filling of casual vacancies occurring on the committee.
6e.	The quorum and procedure at meetings of the committee.
6f.	The making and keeping of records of the proceedings at meetings of the committee.
6g.	The circumstances (if any) in which payment may be made to a member of the committee out of the funds of the association
7.	The quorum and procedure at general meetings of members of the incorporated association.
8.	The notification of members or classes of members of general meetings of the incorporated association and their rights to attend and vote at those meetings.
9.	The timeframe and manner in which, notices of general meetings and notices of motion are to be given, published or circulated.
10.	The number of members expressed as a percentage of membership, who may at any time require that a general meeting of the incorporated association can be convened.
11.	The manner in which the funds of the association are controlled.
12.	The day in each year on which the financial year of the incorporated association commences.
13.	The intervals between general meetings of members of the incorporated association and the manner of calling general meetings.
14.	The manner of altering and rescinding the rules and of making additional rules of the incorporated association.

15	Provisions for the custody and use of the common seal of the incorporated associations, if it has one.
16	The custody of books and securities of the incorporated association.
17	The inspection by members of the incorporated association of records and documents of the incorporated association.
18	A procedure for dealing with any dispute under or relating to the rules: <ol style="list-style-type: none"> a) between members; or b) between members and the incorporated association.
19	<p>The manner in which surplus property of the incorporated association must be distributed or dealt with if the association is wound up or its incorporation cancelled.</p> <p>Note: An association's surplus property can only be distributed to:</p> <ul style="list-style-type: none"> • an incorporated association; • a company limited by guarantee registered under the <i>Commonwealth Corporations Act 2001</i>; • an organisation that holds a current licence under the <i>Charitable Collections Act 1946</i>; • an organisation that is a member or former member of the association and whose rules prevent the distribution of property to its members; or • a non-distributing co-operative registered under the <i>Co-operatives Act 2009</i>.

THE MANAGEMENT COMMITTEE

The management committee is authorised to exercise the powers and functions of the association and to manage its affairs. This chapter describes the role, functions and structure of management committees of incorporated associations under the Act.

KEY POINTS

- The management of an incorporated association's affairs is the responsibility of the management committee.
- The committee must comply with the requirements of the Act, the rules and any other legal obligations of the association.
- Individual committee members have a duty to act in good faith and in the best interests of the association.
- The committee also have a duty of care to ensure that the activities of the association are conducted with reasonable care, skill and diligence.

Most associations refer to their managing body as 'the committee', but it may also be called the board, council, governing body or some other name specified in its rules. The rules need to be clear about the powers of the committee and the functions it is permitted to be carried out. The rules must also include provisions about:

- the election or appointment of committee members;
- terms of office of committee members;
- how the office of a committee member will become vacant;
- filling casual vacancies on the committee;
- the quorum and procedure at meetings of the committee ; and

- the making and keeping of records of meetings.

If the rules do not include provisions for these matters then the relevant clauses of the [prescribed model rules](#) are deemed to apply to the association until action is taken to correct the rules (Refer to [Consumer Protection's website](#) for more information).

MEMBERSHIP OF THE COMMITTEE

Committees are ideally made up of people with a range of skills, qualifications, knowledge and experience that can add to its overall strength. Committees may also include people who represent particular interests such as social services, consumers, Aboriginals, disabled etc.

The rules of the association will determine what qualifications a committee member must have, and whether a member of the committee must be a member of the association.

Excluded persons

Under the Act a person is excluded from being on the committee without special approval from the Commissioner for Consumer Protection if they:

- are bankrupt or their affairs are managed under insolvency laws;

- have been convicted of:
 - an indictable offence in relation to the formation or management of a body corporate in the last five years;
 - an offence involving fraud or dishonesty punishable by at least three months imprisonment in the last five years;
 - an offence under section 127 of the Act, where a person has allowed an association to operate while insolvent in the last five years; or
 - an offence under Division 3 of the Act which sets out the duties of officers and committee members.

An excluded person wanting to be on a committee must first [apply for approval](#) from the Commissioner for Consumer Protection.

It is the individual's responsibility to ensure they are eligible before nominating for a position and the association should take steps to ensure prospective committee members are aware of the exclusions. For example, add a tick box to nomination forms requiring candidates to confirm that they are not an undischarged bankrupt and do not have one of the specified convictions. Some associations require incoming committee members to provide police clearance certificates.

ELECTING THE COMMITTEE

In most cases, committee members are appointed at an annual general meeting. The procedure for electing the committee and office bearers should be set out in the rules.

THE ROLE AND DUTIES OF THE MANAGEMENT COMMITTEE

The responsibilities of committee members fall into two categories:

- those of the committee acting as a group and
- those held by its members as individuals.

Group responsibilities

The committee has the responsibility to ensure the association complies with obligations under the Act, its rules and other legal responsibilities:

- to members, volunteers and clients using the association's services;
- to employees including complying with relevant [employment](#) awards or agreements, [taxation](#), superannuation and [occupational health and safety](#);
- in order to comply with any other relevant laws or regulation; and
- under funding agreements or contracts.

The committee is also responsible for the association's financial management ensuring:

- compliance with the [financial record keeping](#) and reporting requirements.
- the association can pay all its expenses as they fall due.
- appropriate [insurance](#) cover is in place where required.
- the accounts are reviewed or audited where required under the Act, by the rules or members or for funding agreements.
- good [risk management](#) procedures are in place such as a requirement for payments to be authorised by two unrelated committee members.

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

Duties of officers

Committee members and officers have duties to make decisions and act in the best interests of their association. These duties are set out in the Act and apply to committee members and other persons, known as officers, who influence the management committee but who do not hold a formal committee position e.g. senior employees or past committee members who are still actively involved in the association and influencing the decisions of the committee.

When committee members exercise their powers and responsibilities to act on behalf of the association, they must:

- exercise their powers with due care and diligence;
- ensure that any business decisions are made in good faith and in the best interests of the association;
- not make improper use of information or their position for personal gain or to cause detriment to the association;
- disclose and manage conflicts of interest;
- exercise powers in accordance with the rules of the association; and
- not allow the association to incur a debt when the association is insolvent or there are reasonable grounds to believe the association will become insolvent.

These duties set the basic standards of acceptable conduct. A breach of a duty is usually accompanied by deliberate wrong

doing, misconduct, gross negligence or willful abuse of the officer's position. If a committee member or officer makes a business judgement in good faith for a proper purpose they will not be liable for an offence even if the outcome for the association is not ideal.

Committee members are required to be fully informed about the association by keeping up to date with matters, attending meetings, reading agendas and minutes and asking questions. In the event of a problem, dispute or legal challenge committee members cannot claim they 'did not know' about the rules and activities of the association.

Duties relating to insolvency

A committee member has a duty to prevent an association incurring debts while it is insolvent or in situations where the debt would cause it to become insolvent. This duty is breached if:

- an association incurs debt while it is insolvent or it becomes insolvent by incurring the debt;
- before incurring the debt there were reasonable grounds to expect that the association was already or would become insolvent by incurring the debt; and
- the person was a member of the committee at the time the debt was incurred.

It should be noted that a breach of this duty would not generally make a committee member personally liable for the association's debt.

Allowing an association to trade while insolvent is a serious matter and to fulfil their duty committee members should all work to ensure:

- that accounts are kept of the transactions, financial position and performance of the association;
- the association's solvency status is monitored on an ongoing basis; and
- the committee are fully aware of the association's financial position when considering decisions that will incur new debt.

Individual committee members' responsibilities

Complying with the rules

The management committee is responsible for implementing the association's rules and ensuring it meets its obligations under the Act. Committee members must comply with the rules at all times and be familiar with the main provisions. A copy of the rules should also be on hand at each committee meeting for easy reference.

Conflicts of interests

Committee members must not put themselves in a position where there is a conflict between their duties and responsibilities to the association and their personal interests.

The Act requires committee members to disclose any material personal interest they may have in any matter being considered by the committee. A committee member has a material personal interest when that member has a personal interest in a matter which could be seen to influence their decision. The interest may be financial or non-financial.

For example:

- the committee member owns a business that contracts with the association;
- a committee member's spouse applies for employment with the association; and
- the committee member serves on the committee for two associations that are competing for the same tender or grant.

It must be remembered that not all personal interests are 'material' in the context of the decision being made and common sense should apply. For example: in a junior sports club, committee members are likely to have children who participate and as a result have an interest in matters such as team selection, coaching and scheduling of matches. These situations would not ordinarily require declaration of an interest, but should a committee member have a child who has been singled out for disciplinary action or to receive a substantial prize, then it would be appropriate for the committee member to declare a conflict of interest with regard to any consideration of that matter.

Disclosures must be made as soon as the member becomes aware of their conflict. If a committee member declares an interest in a matter being considered, the Act requires that:

1. the disclosure must be recorded in the minutes of the meeting and include the nature and extent of the interest;
2. the committee member with the conflict of interest must not discuss or vote on the contract and must leave the meeting while the matter is being considered.

3. If there are not enough members remaining to form a quorum, a special general meeting must be called and a resolution on the matter passed by the members.
4. the member with the conflict of interest must then disclose the nature and extent of their interest in the matter at the next general meeting of the association.

A useful way to help committee members comply with these requirements is to make 'disclosures of interest' a standard agenda item for committee meetings. In most cases there will be nothing to note, and will serve as a reminder to members of the need to remain aware of conflicts of interest.

Roles of particular office bearers

The Act does not assign specific responsibilities to individual committee members. It is up to the association to decide the role and responsibilities of each committee member and ensure these are correctly set out in the association's rules.

PAYING COMMITTEE MEMBERS

Out of pocket expenses

The Act allows a member to be reimbursed for any out of pocket expenses relating to the affairs of the association. It is normal to request that the member provide evidence of the payment such as a receipt before being reimbursed.

Honorariums

There may some situations where an association would like to pay a committee member an honorarium for the service they provide to the group. The Act does not refer to 'honorariums' and whether the

payment is permitted will depend on the actual reason for the payment.

For example, an association cannot use honorariums as a way of distributing its income to members, but can make payments of wages or other remuneration to members, so these payments may be made if they represent remuneration for services actually provided to the association (even if the rate at which payment is made is less than the usual market rate).

If any payments are to be made to committee members (apart from reimbursement of expenses), the rules must provide for the circumstances under which payment may be made and the payments must also be approved by the members at a general meeting.

LIABILITY OF MANAGEMENT COMMITTEE MEMBERS

Members and office bearers of the association are generally not liable for the debts or liabilities of the association. Debts are most commonly incurred as a result of a contract it has entered into. An association may also incur a liability if sued. For example negligent acts done by the management committee, employees or volunteers.

Management committee members are not immune from personal liability and if a committee member or officer acts in bad faith or contrary to the rules of association, he or she may personally be criminally prosecuted or be the subject of civil proceedings. For example if an officer enters into a contract against the instructions of the management committee.

Likewise, if a committee member is negligent in the performance of their

office, they may be held personally liable for any resulting loss or damage.

It is possible for incorporated associations to adopt rules which indemnify committee members against breaches of their duties to the association and/or against liability to third parties. Before an indemnity is granted, the association should consider their objects and make an assessment of the risks the organisation may face.

Duty of care and risk management

Incorporated associations have a duty of care to ensure the activities of the association do not cause harm, damage or injury to any participant or recipient of services, or any other person who is reasonably likely to be affected. If an injury is a foreseeable result of the association failing to exercise reasonable care in providing these services, then the association will be liable for any loss or damage suffered.

Management committees should ensure the standard of care provided by the association is reasonable in order to minimise the risk of liability. The committee should identify and evaluate the risks for all activities and where there is a likelihood of harm or a greater risk of harm, a higher degree of care is required. For example a higher degree of care and supervision is required for young children taking part in physical games than for children sitting listening to stories being read.

Codes of conduct

Associations often develop a code of conduct for the committee, management, staff and volunteers. A code of conduct defines the expected behaviour of people involved in the association's activities. A

code of conduct for committee members might include:

- complying with all policies, procedures and rules of the association;
- attendance and participation in management committee meetings and the work of the management committee;
- clarifying who has authority to speak on behalf of the association;
- maintaining confidentiality;
- behaving in a manner that does not obstruct the association's pursuit and fulfilment of its objectives;
- behaviour that is respectful of diversity, is non-discriminatory and upholds the association's values (if defined); and
- behaviour that does not abuse, physically, sexually or verbally any member of the association, staff, volunteers or members of the public.

LEAVING THE COMMITTEE

The committee is responsible for maintaining the documents and records of the association, but these remain the property of the association. The Act requires any committee member who has possession of these documents when they cease to be a committee member to deliver the records to a current member of the committee as soon as practicable. See also [Custody and handover of records](#).

Committee Handover Checklist

There are steps that both new and outgoing committee members can take to ensure the handover of responsibility for managing an association is as smooth as possible.

The following list is not exhaustive but may assist an association to develop their own checklist:

1. Hold a meeting of new and outgoing committees to familiarise new members with association's policies, procedures and current issues. This would also be a good opportunity to provide the new committee with a summary of the association's registration details, licences and reporting obligations (see [Sample - about our association](#)) and an orientation kit.
2. Outgoing committee members must return all documents in their possession to the new committee as soon as practicable after the election.
3. Update bank signatories replacing outgoing committee members with signatories from the new committee.
4. Update [AssociationsOnline](#) users by retiring any outgoing users and adding new primary users.
5. Update contact details with external agencies and association stakeholders. For example:
 - Consumer Protection;
 - Licensing authorities;
 - Australian Taxation Office (ATO);
 - Australia Charities and Not for Profits Commission (ACNC);
 - Insurance providers;
 - Accountants, bookkeepers, reviewers and auditors;
 - Funding bodies; and/or
 - Parent/affiliated bodies.
6. Update the record of office holders to reflect the new committee.
7. Provide relevant passwords and log in information for any online accounts to the new committee.

8. Update website to include details of new committee members, and any relevant contact details.

ORIENTATION AND TRAINING FOR MANAGEMENT COMMITTEE MEMBERS

New management committee members need to know about their responsibilities and the workings of the association. It is good practice to provide a structured, comprehensive and practical orientation to the activities, policies and structure of the association. Orientation kits for management committee members are another useful way of providing newcomers with all the essential information including:

- information about the association, objectives, structure, activities and achievements;
- the role of committee members;
- a list of committee members and their contact details;
- practical expectations (e.g. number of meetings, other tasks);
- general requirements and expectations;
- the rules of the association;
- a guide to meeting practices; and
- policies and procedures.

SAMPLE: ABOUT OUR ASSOCIATION

Use this template as a starting point for the committee to summarise the affairs of the association. This document can be included as part of a handover to the new committee members.

Association registration

Legal registered name: _____
 Incorporated Association Registration Number (IARN): A _____
 Date of incorporation: _____

The association is registered as an incorporated association under the Associations Incorporation Act 2015 (WA). The Department of Mines, Industry Regulation and Safety – Consumer Protection Division is responsible for administering this Act.

Business/trading names

Registered business name	Registration number	Renewal date

Authorised contact for Australian Securities and Investments Commission (ASIC):

Taxation

Australian Business Number (ABN): _____
 Tax File Number (TFN): _____
 Taxation registrations (i.e. GST, PAYG, FBT): _____
 Taxation exemptions (i.e. PBI, DGR): _____

Authorised contact for Australian Taxation Office (ATO):

AssociationsOnline

Primary user: _____
 Authorised user(s): _____

Licences

Licence type	Licence number	Renewal date
<i>e.g. Liquor licence</i>		
<i>Charitable collections licence</i>		

Financials

Financial year: _____
 Banks accounts held with: _____
 Current signatories: _____
 Accountant/bookkeeper: _____
 Auditor or Reviewer: _____

Insurance

Provider: _____
 Policy number: _____
 Current signatories: _____

Committee meetings

Complete this section using the relevant information in the Association's rules

How often does the committee meet: e.g. monthly, quarterly

Notice requirements for committee meetings: _____

Quorum for committee meetings: _____

Custody of records

Record	Current custodian or storage location
<input type="checkbox"/> Rules/Constitution	
<input type="checkbox"/> Certificate of Incorporation	
<input type="checkbox"/> Licences and registration certificates	
<input type="checkbox"/> Register of Members	
<input type="checkbox"/> Record of Office Holders	
<input type="checkbox"/> Member application forms	
<input type="checkbox"/> Financial records <i>e.g. cash book, receipt book, tax invoices</i>	
<input type="checkbox"/> Banking records	
<input type="checkbox"/> Employee records <i>e.g. contracts, payment summaries, superannuation</i>	
<input type="checkbox"/> Financial reports	
<input type="checkbox"/> Contracts and agreements <i>e.g. insurance contracts, finance and lease agreements</i>	
<input type="checkbox"/> Meeting minutes	
<input type="checkbox"/> Correspondence	
<input type="checkbox"/> Policies and procedures	
<input type="checkbox"/> Website/Facebook details	
<input type="checkbox"/>	
<input type="checkbox"/>	

Reporting responsibilities

Reporting requirement	Reported to	Due date
Associations Information Statement	Consumer Protection through AssociationsOnline	Within 6 months after the end of every financial year.
Changes to address or address for service	Consumer Protection through AssociationsOnline	Within 28 days of a change occurring

KEY OBLIGATIONS OF ASSOCIATIONS UNDER THE ASSOCIATIONS INCORPORATION ACT 2015

Committee members are required to take all reasonable steps to ensure that their association complies with all of these obligations.

	Section of the Act
ANNUAL GENERAL MEETING	
Must be held each year within six months after the end of the association's financial year.	50
Annual accounts must be prepared and presented to members at each Annual General Meeting.	Tier 1 – 68 - 70 Tier 2 – 71 - 73 Tier 3 – 74 - 76
SPECIAL RESOLUTIONS	
Special resolutions are needed to amend the rules, voluntarily cancel or amalgamate the association. A special resolution must be approved by 75% of the members who attend and vote at a general meeting that has been properly convened under the rules. Details of the special resolution must be lodged with Consumer Protection for it to have legal effect.	51
RECORDS	
Accounting records must be kept in such a way that true and fair accounts of the association can be prepared from time to time according to the requirements for the association's financial reporting Tier.	66
An up-to-date members' register must be maintained and made available to any member to inspect and copy on request.	53 and 54
Provide a copy of the register of members upon receipt of a written request from a member.	56
The rules of association must be kept up-to-date and made available to any member to inspect and copy on request.	35
A copy of the rules must be provided to each member when they join the association.	36
A list of committee members and office bearers, together with their residential, postal, business or email address must be maintained and made available to any member to access or copy on request.	58
NOTIFYING CONSUMER PROTECTION	
Notify Consumer Protection of any change in the association's address within 28 days of the change occurring.	175
Submit annual information statements within 6 months after the end of each financial year.	156

RIGHTS AND RESPONSIBILITIES OF MEMBERS

The specific responsibilities that apply to committee members are outlined in this chapter however all members have significant rights and responsibilities.

Members' responsibilities

As incorporated associations are traditionally regarded as essentially community-based organisations, they are largely independent of government intervention. Members have a crucial role in ensuring that their association, and therefore the committee, conducts itself in a way that is acceptable. The rules set out the processes and procedures for the management of an association's affairs and members agree to be bound by the rules of the association unless those rules are inconsistent with the Act or some other legal obligation.

Members' rights

The Act also sets out some important rights for members that cannot be given up, even where the association rules may be inconsistent with these requirements. All members have the right to:

	Section of the Act
RECORDS	
Inspect and copy the association's register of members.	54
Inspect and copy the association's rules.	35
Inspect and copy the association's record of office holders.	58
Receive a copy of the rules when they join the association.	36
ANNUAL GENERAL MEETING	
Receive notice of a general meeting, including the Annual General Meeting.	Required to be included in the rules (Schedule 1(7))
Have financial statements or a financial report showing the financial position of the association submitted to them at the annual general meeting.	Tier 1 – 70 Tier 2 – 73 Tier 1 – 76
SPECIAL RESOLUTIONS	
Have proper notice of any general meeting at which it is proposed to alter the association's rules including to change its name or adopt the model rules.	30 & 51
Have proper notice of any general meeting at which it is proposed to voluntarily cancel the association.	51, 129 & 141
Have proper notice of and to attend any general meeting at which it is proposed to amalgamate the association with another group, apply for registration/incorporation under another jurisdiction or to voluntarily wind up.	51 & 102

RECORD KEEPING

This chapter describes the kinds of records that should be kept, members' rights to access these records and how they can be stored.

KEY POINTS

- There are a wide variety of records an association needs to keep.
- Members have a legal right to access the register of members, record of office holders and the rules of association.
- Record keeping systems will vary from one association to another depending on the type of association, its activities and size.

TYPES OF RECORDS TO BE KEPT

The Act requires every incorporated association to keep the following records:

- an up-to-date register of all members;
- an up-to-date copy of the rules (often called the constitution);
- an up-to-date list of the names and addresses of people who are office holders under the rules of the association;
- accounting records that record and explain the financial transactions and position of the association; and
- every disclosure of interest made by a committee member to be recorded in the minutes of the meeting at which the disclosure was made.

Members have the right under the Act to access the register of members, rules and record of office holders and receive financial statements or reports at each Annual General Meeting (see also [Members' access to the records](#)).

Minutes

Minutes should be taken for all meetings, especially the annual general meeting (AGM) and management committee, as they serve as record of what happened during a meeting (see also [Meetings](#)). Approved minutes provide an official record of:

- attendance;
- business discussed;
- correspondence received;
- reports tabled;
- decisions made; and
- resolutions adopted.

The level of detail recorded in the minutes may vary between associations but any decisions recorded should clearly state:

- what decision has been made;
- who will be responsible for its implementation;
- when the decision is to be implemented by;
- if the decision is to be reviewed, and if so, when and by whom; and
- who should be notified of the decision and how.

The minutes must also record when a committee member has disclosed a material personal interest in a matter being considered by the committee (see also [Individual committee members' responsibilities](#)).

Notice of meetings

Notice of association meetings and special resolutions must be given to all members within the notice periods

specified in the rules of association. Copies of notices showing the date issued should be kept in case of a later dispute. Notices are often filed with the related minutes.

Certificate of Incorporation

The certificate of incorporation is issued when the association is first incorporated or if a change of name occurs. It is important the certificate is stored safely as it is evidence of the association's corporate status. The certificate can be required for example, when applying for funding grants or opening a bank account.

If the original certificate cannot be located the committee may apply through [AssociationsOnline](#) for a duplicate certificate to be issued.

Financial records

The Act requires records to be kept of the association's finances. Taxation and industrial legislation also require financial records to be kept. Access to accurate and up-to-date financial information also ensures that the association and its services remain viable.

The requirements of the Act are:

- associations must keep sufficient accounting (or financial) records so that the financial transactions, financial position and performance of the association are correctly recorded;
- these records need to be kept in a way that will allow true and fair accounts (or financial statements) to be prepared, and so that these accounts can be conveniently audited if required; and
- the financial records are required to be kept for at least seven years.

Depending on the association's annual revenue there may be additional accounting requirements to be met. These requirements are discussed in detail in [Accounts and Auditing](#).

Annual report

Many associations compile an annual report that summarises the main achievements and highlights of the past 12 months. There is no set format for an annual report, but it is usually submitted to members at the AGM and includes:

- Chairperson's report.
- Staff report.
- Activity report.
- Annual statistics.
- Annual financial report.
- Interest stories, highlights and low points.
- List of staff, management and volunteers.

Where an annual report is produced, it is usual to include the annual financial report. As an annual financial report is required under the Act, it is a convenient way of ensuring that the association meets its obligation to submit its annual accounts to its members at the AGM.

Many associations also distribute an annual report as a public relations exercise. Some funding agreements require annual reports.

Employment records

In addition to the records required by the [Australian Taxation Office](#) (ATO) and State and Commonwealth industrial laws (see [Employment and volunteering](#)), associations may wish to set up employment-related record systems.

These could include:

- Recruitment records such as job descriptions, selection criteria, related industrial agreements, advertisements, selection processes and outcomes;
- formal records of any meeting or discussion related to issues of employee performance and position review;
- formal documentation of all proceedings related to any grievance;
- records on staff training and professional development; and
- copies of all correspondence and memoranda relating to individual conditions of employment, changes or requests.

Safety records

The following health and safety records should be kept in a separate file for easy access and reference:

- complaints;
- incidents;
- risk management analysis;
- training details;
- safety committee minutes; and
- copies of specific management committee resolutions.

Insurance records

Copies of all insurance policies should be kept in a secure place. Changes to policies should be updated on the files immediately when they are received.

Insurance policies may require an association to keep specific records for the purposes of validating a policy. For example health declarations and assets register.

Associations must notify their insurer as soon as possible after events such as an

accident, theft or fire. It is important associations keep copies of all notifications and correspondence to prevent the possibility of any dispute regarding an association's obligations.

Service delivery records

Some associations need to keep service delivery and activities in order to:

- acknowledge achievements;
- minimise risk of professional negligence;
- facilitate communications and change overs;
- ensure industry or professionally-based requirements are met; and
- assist in evaluation and planning.

This may take the form of statistic sheets, case files or employee reports.

Funding arrangements may also require certain records to be kept and reported on.

MEMBERS' ACCESS TO THE RECORDS

The rules of an association will set out the rights of members to access records such as meeting minutes, financial records and correspondence. Specific arrangements should be made for confidential materials such as staff or client files and the procedures for any access to this information by members should be clearly documented.

Members also have specific rights under the Act to access the register of members, record of office holders and rules of association.

Register of members

The Act requires associations to maintain an up-to-date register of members, which must include each member's name and:

- residential address; or
- postal address; or
- email address.

An association's rules may specify other information to be included in the register such as categories of membership or the date the member joined the association. Where any change in the association's membership occurs the register must be updated within 28 days of the change.

The Act gives members the right to inspect the register of members and make a copy of any part of its contents. A member does not have the right to remove the register from the association's possession. Alternatively a member may make a written request for the association to provide them with a copy of register.

The rules of the association may require a member who requests a copy of the register to complete a statutory declaration before the copy is provided. This can also be requested where a member inspecting the register wants to make a copy of the document. The statutory declaration must state the purpose for which the information is required and confirm that the purpose is related to the affairs of the association. A [sample statutory declaration](#) is included at the end of this chapter. Provided these requirements are met (if applicable) the association must grant the member's request for a copy or extract of the register.

A person must not use or disclose any information obtained from the register for any purpose that is not directly related to

the affairs of the association. For example the information cannot be used to send material for political, religious, charitable or commercial advertising purposes.

In some cases it may be necessary for a request to access the register of members to be referred to a committee meeting so that the committee can consider whether a statutory declaration should be requested (if allowed by the rules) or a fee imposed for the provision of a copy of the document. The committee may also need to agree who will be in attendance if a member has requested a time to inspect the register. If access to the register is required within a particular timeframe, such as prior to a particular meeting or event, the requesting member should ensure that the committee is made aware of the relevant dates.

It is easy to comply with the requirements of the Act, while at the same time minimising the concerns that people may have over their name and address being made available to other members, such as:

- ensuring the register contains only each member's name, address and any information required to be included under the rules. Any other information the association wants or needs to keep about its members (telephone numbers, spouse's details, etc.) should be kept separately. This information should be kept secure and confidential as it could be subject to privacy considerations (see [Privacy and confidentiality of records](#)).
- safe guarding the privacy of under-age members by creating a 'non-member' category for them such as 'players' for juniors in a sporting club. By making them 'something other than members' means their details are

not available to other members through the association; however an association should confirm whether these 'non-members' will be covered by insurance cover before implementing any changes. Creating a 'non-member' category may involve an amendment to the association's rules. This topic is dealt with in [Altering the Rules](#).

Privacy laws and the member register

Some people have held a belief that the Commonwealth's privacy legislation overrides the rights of members to access the register of members.

In the case of the register of members, the privacy legislation does not protect this information from other members and members do not need to give consent for another member to view the register. The Australian Privacy Principles allow for an organisation to disclose personal information when required or authorised under law. The *Associations Incorporation Act 2015* is the law that enables a member to access the members' register as discussed above.

It is a good idea to advise people of these legal requirements when they apply to become members. If someone raises a concern about their name and address being made available to other members, it can defuse some of the emotion by pointing out that this information can also be obtained through sources such as the electoral roll and the telephone directory. Alternatively members can give an email address or post office box address for the purposes of the register.

Record of office holders

Associations are required to maintain an up-to-date record of the names and addresses of all current office bearers, committee members and those members who are authorised to use the common seal or act as trustees for the association. The address recorded in the record office holders may be a residential, business or post office box address or an email address.

As is the case with the members' register, members are entitled to view the record of office holders upon request and make a copy of all or part of the record. They may not remove the record for this purpose. Furthermore the inspecting member must not disclose or use the information unless the purpose is directly connected to the affairs of the association.

Organisations run best when members can easily contact their committee and many groups make committee contact information freely available for this purpose.

Rules of association

Every association must have a set of rules, often known as a 'constitution', that govern the way in which an association operates. Changes to these rules may only be made by passing a special resolution at a general meeting. This process is explained in [Altering the Rules](#).

The Act also requires a copy of the rules to be held by Consumer Protection as the 'official' version of the association's rules. The rules lodged by an association with Consumer Protection (including any amendments) are the only effective rules of the association.

The association must give each new member a copy of the rules in force when their membership starts. The association can comply with this obligation by:

- providing a hard copy of the rules
- emailing an electronic copy of the rules to the member; or
- providing the details for a website where the member can download a copy.

Please note that if the member specifically requests a hard copy of the rules the association must provide the document in this format.

At any time a member can request to inspect and make a copy of the rules or ask the association to provide them with a copy of the rules or any particular part in force at the time of the request (free of charge).

PRIVACY AND CONFIDENTIALITY OF RECORDS

Associations need to ensure they comply with legal requirements regarding any personal information it holds about clients, employees, members and other individuals. Any personal information collected must be kept private and confidential and individuals have a right to:

- have their privacy rights respected;
- be assured their information will not be passed onto a third person unless it is authorised by law or they have given their consent;
- know what information will be kept and why; and
- be assured that information will only be used for the purpose it was supplied.

The Commonwealth's [Privacy Act 1988](#) regulates how personal information is handled by an organisation. The Privacy Act includes thirteen Australian Privacy Principles setting out the standards, rights and obligations for the handling, holding, use, accessing and correction of personal information. While these principles may not be legally binding for all incorporated associations they do provide a framework for managing personal information which any group could use.

Visit the website for the [Office of the Australian Information Commissioner \(OAIC\)](#) or telephone 1300 363 992 for more information about privacy laws.

CUSTODY AND HANDOVER OF RECORDS

The Act requires an association's rules to include details of who will have custody and responsibility for keeping the records. These responsibilities are typically shared between the members of the management committee, for example the Treasurer may be responsible for custody of the financial records while the Secretary may keep everything else.

If a person ceases to be a member of the management committee through the ending of their term, resignation or death, it is a requirement that any association records they hold be delivered to a current member of the association's committee as soon as practicable (see also [Leaving the Committee](#)).

RECORD KEEPING AND CONSUMER PROTECTION

Annual Information Statements*

The annual information statement is required to be lodged with Consumer Protection within 6 months after the end of the association's financial year and confirms:

- the association's address
- that the association has at least 6 voting members
- the date of the most recent Annual General Meeting; and
- the revenue for the most recent financial year.

The annual information statement can be submitted using [AssociationsOnline](#). There is also a [step-by-step video](#) available about lodging the statement.

***Exemption for associations registered with the Australian Charities and Not-for-Profits Commission (ACNC)** - associations that are also registered with the ACNC are [exempt from providing Consumer Protection with an information statement](#).

Updating the association's address

It is important to ensure the association's contact address recorded with Consumer Protection remain up to date and correct. The Act requires associations to provide the Commissioner with an address and an address for service of notice and any changes to these addresses must be lodged within 28 days. The new address can be easily registered through [AssociationsOnline](#).

RECORD KEEPING SYSTEMS

There are various manual (filing cabinets) and electronic (computer-aided and online) ways to record, store and retrieve information. Each association should

decide on a record-keeping system that suits its particular needs, circumstances and resources (availability of space or computers). The system should be functional, accurate, reliable and user-friendly.

Record-keeping systems need to consider the:

- nature of information to be stored and retrieved;
- security and access of files and information (particularly computer records);
- validity and reliability of the information collected and the system on which it is recorded;
- resources and training required; and
- length of time that the records should be kept (general legal requirement is seven years).

Electronic records

Electronic records include document files, databases, spreadsheets, electronic mail and internet documents. Electronic records need to be kept securely and at the same time, be easily accessible for retrieval. Associations will also need to have appropriate processes in place to ensure that the electronic records are backed up and recoverable in the event of a computer or system failure.

Tracking documents

Associations may consider developing a simple policy for identifying documents. It is very easy for there to be suddenly two or more versions of a document and no one is sure which is the most accurate. The policy could require all official documents, minutes, reports, records, forms and orientation documents must:

- be clearly titled;
- show authorisation;
- show date of authorisation;
- show date of review;
- title original copies as 'Original Copy'; and
- title any non-original document as 'Copy'.

Storage management

The way in which records are stored will depend on:

- the purpose of the records;
- the type of records;
- how long records must be kept; and
- access needs.

Physical records may be stored on-site at the association's place of business. If there is insufficient and appropriate space, records can be stored off-site by storage companies. It is essential documents are stored in safe, secure and appropriate facilities.

Destroying and archiving records

Some records may be destroyed after their legal retention period has expired (in most cases this period is seven years).

Records should not be destroyed unless the association is absolutely certain that this can be done both safely and legally. An association should have a policy on storing and destroying records and no records should be destroyed without the appropriate authorisation.

If the records of your association have not been destroyed, you may wish to consider passing them to the [Battye Library](#). The Library maintains an extensive archive of the social history of Western Australia and its people and has expressed an interest in the records of defunct associations.

Records that must be kept permanently should be archived and not destroyed. Records that have permanent value are historical documents, minutes of meetings and legal documents. Archived records can be stored on-site or at an off-site storage facility.

RECORD KEEPING AND THE RULES

The Act requires an association to make provision for the following matters, related to record keeping, in the rules:

- The register of members of the association.
- The custody of books and securities of the association.
- The inspection by members of the association's records and documents.

From 1 July 2019, if any of these matters are missing from the rules then the relevant clause of the [prescribed model rules](#) is deemed to apply to the association until action is taken to correct the rules. [Refer to Consumer Protection's website for more information.](#)

SAMPLE FORM

STATUTORY DECLARATION

Oaths, Affidavits and Statutory Declarations Act 2005

Request for a copy or extract of Association's Register of Members (s54(3) or s56(2) of the Act)

I, _____ (name of person making declaration)
of _____ (address of person making declaration)
occupation _____ (occupation of person making declaration)

sincerely declare as follows:

1. I am a current member of _____ (insert incorporated association name) (**Association**).
2. My request of _____ (insert date of request) to obtain a copy or extract of the register of members of the Association is made for the purpose of _____ (insert purpose of obtaining information), which is connected with the Association's affairs.
3. I declare that this purpose is connected with the affairs of the Association.
4. I understand that it is a criminal offence to disclose information in the register of members for a purpose that is not directly connected with the affairs of the Association or that is not related to the administration of the *Associations Incorporation Act 2015* (**Unlawful Purposes**).
5. I will not disclose information obtained from the register for Unlawful Purposes.
6. I understand that Unlawful Purposes include, but are not limited to, advertising for political, religious, charitable or commercial purposes.

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005*

At _____ (place)
On _____ (date)
By _____ (signature of person making the declaration)

In the presence of:

(signature of authorised witness)

(name of authorised witness)

(qualification as such a witness)

Information about preparing and witnessing statutory declarations is available from www.courts.dotag.wa.gov.au.

MEETINGS

Meetings are essential for managing the affairs of an association and keeping members informed. This chapter discusses the various types of meetings and some meeting procedures.

KEY POINTS

- The management committee must convene an annual general meeting every calendar year within six months after the end of the association's financial year.
- Members must be given notice of all meetings in accordance with the rules.
- The chairperson needs to be familiar with the meeting procedures set out in the rules of association.

TYPES OF MEETINGS

Annual General Meeting

The Annual General Meeting (AGM) holds an association accountable to its members and is important for maintaining good governance.

An association's first AGM must be held within 18 months of becoming incorporated. Associations must then hold an AGM once in every calendar year within six months after the end of its financial year, which is defined in its rules.

If the association is unable to hold its AGM within the timeframe, the Commissioner can approve an extension to hold the AGM outside of the six month period, but only if the request is made before that period expires. An application for an extension of time to hold the AGM can be lodged using [AssociationsOnline](#).

Notice of an AGM should be sent to **all** members, irrespective of voting rights, and in accordance with the association's rules. Some associations invite guests or

allow the public to attend as a way of self-promotion and to encourage new members to join.

The business of the AGM often includes the president and/or treasurer reporting to members on the past years progress. Also, the management committee and office bearers are often appointed at the AGM. The rules of association must set out the procedure to be followed at the AGM.

The Act requires annual financial statements or reports to be presented to members at each AGM (for further information see [Members' rights to the financial accounts](#)). Tier 2 and 3 associations are also required to present the reviewer or auditor's report (see [Accounts and auditing](#) for information about requirements for different associations)

If the association's chairperson is standing for re-election, he or she will usually step aside as chair of the meeting and arrange for another officer to chair that section of the meeting and conduct the election.

Special (or extraordinary) general meetings

A general meeting of members other than an AGM is often referred to as a special general meeting. These meetings are held so the whole membership can deal with specific motions or business. For example, to change the rules of the association.

The rules of association set out the grounds for calling a special meeting being called (e.g. by petition of a certain percentage of the membership) and the notice period and procedures required.

Management committee meetings

Management committees will need to hold regular meetings in order to manage the affairs of the association. General meeting procedures apply to committee meetings.

General meetings directed by the Commissioner

In rare circumstances, the Commissioner for Consumer Protection has the power to direct an association to hold a general meeting. This action would only be considered in circumstances where the matter is affecting the proper conduct of the association's affairs and the members cannot otherwise resolve the issue. Such powers would not be exercised to resolve private member disputes. See [Resolving complaints and disputes](#) for options to resolve individual matters.

MEETING PROCEDURES

General requirements for a meeting

All formal meetings must be properly convened in accordance with the association's rules. All members must be notified of:

1. the type of meeting being held;
2. the place, date and time of the meeting; and
3. the business to be considered at the meeting, including the full text of all motions or resolutions that will be put to members at the meeting.

Before the meeting commences, it is important to confirm there is a quorum present and that it is maintained during

the meeting. A valid motion cannot be passed unless a quorum is achieved.

If there is a quorum, then all voting and passing of resolutions must be carried out in accordance with the rules and recorded accurately in the minutes.

Notice and agenda of meeting

The notice of meeting informs the members when and where the meeting will be. The agenda informs the members what is to be discussed and done at the meeting so that the members can decide:

- if they want to attend the meeting; and
- if they do not plan to attend in person, how to cast their proxy or postal vote (if allowed by the rules).

The agenda commonly forms part of the notice or is attached to it so members receive all the necessary details at once. Any reports should be sent out in advance to allow people time to read the documents and where proxy or postal voting is allowed, it is suggested that the relevant forms or voting slips be sent at this time.

The time and manner for giving notice of a meeting is set out in the rules of the association, and must be strictly adhered to. Inadequate notice may invalidate a meeting. All members who are entitled to attend a meeting must be given proper notice in accordance with the rules.

A typical agenda briefly sets out what matters will be covered and in what order. If members are notified of the business to be conducted at the meeting, then the meeting must be confined to dealing with those particular matters. Any new agenda items raised during a meeting should be put on the agenda for the next meeting. This allows members time to consider

matters properly and avoids disadvantaging members who are not in attendance at the meeting and therefore unaware the new business.

The role of the meeting chairperson

A proper meeting must have a chairperson to chair the proceedings. The chairperson is required to control the meeting procedures and has the task of:

- ensuring proper notice was given and an agenda provided;
- checking (and usually signing) the minutes of previous meetings;
- ensuring the meeting gets through its business in the allocated time. This may involve limiting the time members get to speak;
- dealing with the order of business;
- keeping order and facilitating discussion;
- ensuring everyone has an opportunity to speak. People who tend to dominate should be managed so quieter members can also share their views.
- receiving motions, putting them to the vote and declaring the result;
- making sure decisions are reached on issues discussed and that everyone understands what the decisions are; and
- declaring the meeting closed.

The chairperson may choose not to vote on a motion despite being entitled to do so as a member. The rules may provide that the chairperson has an additional 'casting' vote if there is a tie in the vote.

Quorum

A quorum is the minimum number of people required for the meeting to be valid. The Act requires that a quorum be stated in the rules of the association for

both general meetings and committee meetings. The quorum may be set as a percentage of the membership rather than a fixed number, to allow for changing membership numbers.

If a quorum is not present, the association will need to consider its options to reconvene the meeting on another date (the rules may set out this process).

Motions and resolutions

A motion is a proposal that is put before a meeting for discussion and a decision. If a motion is passed it becomes a resolution. Resolutions are binding and should be recorded in the minutes of the meeting.

An association's rules will outline how motions should be dealt with. It is best practice for motions to be placed on the agenda so members have adequate time to consider them before the meeting.

Putting forward and voting on a motion

Associations should be guided by the procedures in the rules but proposing and passing a motion will generally involve the following steps:

- a member puts forward a clear and concise proposal for a decision or action to the meeting via the chairperson. This is called a motion.
- a second person agrees to 'second' the motion so it can be put before the meeting for consideration. A motion that is not seconded will lapse.
- there is an opportunity for members to discuss and speak for or against the motion.
- the motion is read aloud and voted on.
- if the motion is passed, it becomes a resolution. A resolution passed by a simple majority of votes (more than

half of the members who cast a vote) is known as an ordinary resolution.

- the resolution is formally documented in the minutes along with the name of mover and seconder.

Resolutions become binding on the association as long as the people making the decision have the authority to pass them. It is a good idea to always follow up a resolution with a clear understanding of how the resolution will be implemented, by whom and when.

Amending a motion or resolution

The mover with the agreement of the meeting can usually amend a motion. Alternatively, someone may move an amendment to the original motion, which if successful creates a second motion.

Motions to amend motions can create confusing discussion if everyone is not clear on exactly which motion is being debated and it is important the chairperson keeps proceedings as simple as possible. If a motion does not fully express the view of the meeting, it may be easier to simply vote on it and let it be defeated.

Resolutions can be withdrawn or cancelled at the same meeting using the same procedure that applies for moving and adopting a resolution.

Special resolutions

There are a number of occasions when the Act requires more than a simple majority vote to pass a resolution. These special resolutions need a majority of 75% to be passed and are required to:

- amend the rules or change the name or objects of the association;
- apply for voluntary cancellation; and
- amalgamate with another association.

A special resolution is passed by 75% of the members who are eligible to vote and actually do so in person (or by proxy or postal vote) at the meeting. It does not mean 75% of the total membership of the association. The requirements for passing a valid special resolution are discussed in detail in [Altering the Rules](#).

As a motion proposing a special resolution is subject to specific notice requirements it cannot be amended at the meeting. A major change would potentially disadvantage those members not present at the meeting who may have made their decision not to attend on the basis of the advertised motion. As new motions or amendments cannot be taken from the floor, it may be necessary to provide notice of 2-3 different motions so that if one fails another may be looked at. This gives people time to consider alternative motions. If a motion is not moved it lapses.

Voting methods

When a meeting wants to decide on a matter, it does so by voting. The rules will outline the voting rights of members and the voting methods to be used. Common voting methods include:

- show of hands: members vote by raising their hand when asked if they are in favour or against the motion and a count is taken.
- voice vote: a simple method by which members indicate their vote by saying 'yes' or 'no'. The decision is based on the volume of sound and there is no clear count of those in favour and against the motion;
- rising method: similar to show of hands but members exercise their vote by standing up;

- ballot: members cast their vote in writing. This is generally used for the election of committee members and important matters where secrecy or confidentiality is required. Once the vote has been taken the chairperson or returning officer (an independent person) collects and counts the papers.
- proxy and/or postal votes: the rules of association must make provision for these forms of voting to be used. A proxy vote is where someone else votes on behalf of another member who is unable to attend the meeting;
- chairperson's casting vote: if the votes are equal or tied the chairperson may exercise a second or casting vote to decide on a motion (if the rules provide for this). Although the chairperson may use the vote to decide either for or against a motion, it is usual for the vote to be cast against the motion.

Proxy and postal voting

Proxy and postal voting can only be used if these forms of voting are specifically provided for in the association's rules.

Associations should carefully consider whether to include these voting methods in the rules. These are convenient methods of voting for members who cannot attend general meetings, for example where members live all over the State making attending meetings on even an irregular basis problematic. However their decisions are based solely on the material circulated in advance rather than arguments put forward in the debate at the meeting. These voting methods also involve additional work to implement.

If proxy votes are allowed, a written proxy form must be completed giving the proxy

authority to vote either as the proxy sees fit or only in a certain way.

Proxy forms are usually sent out with the notice of meeting and agenda papers and returned to the association well before the start of the meeting. This ensures their legitimacy for inclusion in the voting process during the course of the meeting.

Postal voting is where a member casts their own vote, rather than relying on a proxy. The vote must generally be directed to one or more specific resolutions such as the election of committee members and office bearers. Postal voting allows more members to cast a vote than might be the case if the vote were restricted to only those who attend the meeting and extends the democratic process to as many members as possible.

The postal vote must clearly show the voter's intent, so using a formal ballot paper may be helpful. It is important to set a deadline for when these votes must be received. Associations should also consider safeguards to prevent a person casting multiple votes.

Points of order

In general someone speaking about a motion should not be interrupted unless:

- there is a procedural motion passed to stop debate,
- the chairperson interrupts in the interest of orderly conduct or
- there is a point of order.

A person may challenge a speaker's right to continue by raising a point of order. It may be that:

- the speaker is addressing issues outside the subject matter of the motion;

- fair rules of debate are not being followed;
- time limits have been reached;
- a quorum is not present; or
- the language is offensive or abusive.

The original debate is suspended while the chairperson listens to the reasons why the point of order has been raised and may invite discussion about the issue. It is the task of the chairperson to rule on the point of order and their decision is final.

Minutes

Although not a general requirement under the Act, it is essential to keep accurate minutes of all association meetings.

Minutes provide a record of what transpires at a meeting including who attended, the decisions made and resolutions passed.

It is important to ensure that someone is nominated to take the minutes and this is often the Secretary's responsibility. Attendances and apologies should be noted as a record that there was a quorum present at a meeting. 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.

The level of detail recorded in the minutes will vary between associations; some like to keep detailed minutes showing the main points discussed before a decision is made. Alternatively the minutes may only record the decisions and actions of the meeting.

The minutes should be presented for approval at the next meeting of a similar kind. Members should be given the opportunity to propose corrections to the minutes or request additional details of what occurred be recorded. Minutes

should only be approved on the basis that they are a correct record of the meeting. It is good practice to have an office-bearer sign that the minutes are the approved minutes of the meeting. When storing the minutes it can be useful to attach copies of any correspondence or other documents tabled at the meeting, attendance sheets and a copy of the notice.

Reports

Tabling reports at a meeting is an efficient way of facilitating discussion and decision-making. Reports are often submitted to management committee meetings by sub-committees or individuals to provide:

- information (e.g. demographics of the local area);
- research (e.g. type of services needed by a specific demographic);
- analysis (e.g. cost benefits of contracting out services); or
- recommendations (e.g. recommendation on the type of service to be delivered).

If possible written reports should be circulated in advance of the meeting. This shortens the meeting and permits more informed discussion. Reports from committees and individuals tabled at a meeting can be either **adopted** or **received**. A meeting adopts the report when it accepts the report's findings or recommendations. If the management committee does not agree with the report, needs more information or time for further decision-making the report may be received and motions dealing with specific recommendations can be dealt with at a later meeting.

Meeting procedures and the rules

The Act requires an association to make provision for the following matters, related to meetings, in its rules:

- the quorum and procedure at meetings of the committee.
- the making and keeping records of the proceedings at committee meetings of the.
- the quorum and procedure at general meetings.
- the notification of members or classes of members of general meetings and their rights to attend and vote at meetings
- the time and manner in which notices of meetings and notices of motion are to be given
- the number of members expressed as a percentage of the membership (not exceeding 20%) who may require a general meeting to be convened.
- the intervals between general meetings and the manner of calling general meetings.

If any of these matters are missing from the rules then the relevant clause of the [prescribed model rules](#) is deemed to apply to the association until action is taken to correct the rules. [Refer to Consumer Protection's website for more information.](#)

ALTERING THE RULES

Consumer Protection recommends that associations regularly review their rules to ensure they are relevant and compliant. This chapter describes the process for making alterations to the rules so that they are legally effective.

KEY POINTS

- An association can only change its name, objects or the rules at a general meeting by passing a special resolution.
- Notice of each special resolution to be considered at the meeting must be provided to all members in writing in accordance with the existing rules and include a copy of the wording of the new rules.
- The special resolution(s) must be passed by a majority of 75% of members voting at the meeting and then lodged with Consumer Protection within one month after being passed.

- send written notice to all members stating in full all proposed special resolutions to be voted on and the time and place of the general meeting where the proposed special resolutions will be moved;
- include details of the proposed changes to the rules with the notice so members are aware what they will be expected to vote on;
- pass the amendments by one or more special resolutions (75% majority of members who cast a vote); and
- lodge the changes with Consumer Protection within one month of being passed.

Consumer Protection has developed useful resources to assist associations when reviewing the current rules and ensuring they are compliant:

- [Schedule 1 checklist](#) (page 8 of the Rules Workbook)
- [The model rules](#)
- [What's in the rules: Explaining the Schedule 1 requirements](#)
- [Video: Review the rules](#)

A STEP-BY-STEP GUIDE

An association can only change its rules by passing a special resolution at a general meeting. The [Meetings](#) section provides an introduction to the concept of a special resolution.

The main steps in changing an association's rules are to:

- review the current version of your rules to determine what amendments are needed. This is usually the time to consult with your members and get their feedback;
- prepare an updated copy of the rules and ensure the amendments comply with the Act;
- convene a general meeting of members to consider the proposed amendments;

Using the model rules

The [model rules](#) are a complete set of rules prescribed by the *Associations Incorporations Regulations 2016* that may be adopted. The model rules cover all the matters required under the Act and only require the association to provide:

- the name of the association;
- the objects or purposes of the association;

- the quorum for a general meeting of members of the association;
- the quorum for a meeting of the management committee of the association; and
- the period of the first financial year of the association.

While not compulsory, the model rules greatly reduce the work involved in preparing the new rules whether you adopt them in their entirety or use them as the starting point to develop your own rules.

Do the rules comply?

The rules are required to be consistent with the Act, including the 19 matters specified in Schedule 1. Before the new rules are presented to members for approval the committee should complete an assessment to confirm that all of the Schedule 1 matters have been addressed. Refer to the [checklist](#) included at the end of the Rules Workbook.

IMPORTANT: If an association's rules did not include all of the Schedule 1 requirements, the relevant clause in the model rules is deemed to apply until the deficiency is corrected.

Do the changes meet your other obligations?

Depending on the association's activities there may be other matters that need to be included in the rules. An association should be careful that any changes made to the rules do not affect its eligibility to hold certain licences, receive taxation endorsements or alter any funding arrangements already in place.

In some situations, associations may also need to have the changes endorsed by outside bodies (for example a national

body or other government department) before presenting them to members for a vote and lodging with Consumer Protection. If in doubt, contact the relevant authorities to discuss the proposed changes.

Calling the meeting

The special resolution to change the rules can only be passed at a general meeting of the association. All members, whether they have voting rights or not, must be given written notice of the meeting and invited to attend. Under the Act, the rules of an association cannot be changed without all members being advised.

The notice must include:

- the time, date, venue and purpose of the general meeting;
- the full wording of the proposed special resolution(s) to be voted on at the meeting; and
- sufficient information about the changes to enable members to make an informed decision.

If the association is adopting a new or substantially different version of the rules a full copy of the new rules is to be included with the notice.

If notice is not given in accordance with all of the above, the special resolution may have no effect.

If your current rules provide for proxy or postal voting the relevant forms should be forwarded to members with the meeting notice or in accordance with any process specified in the rules. [Meetings](#) provides more information on this topic.

A special resolution

Before commencing the meeting the committee needs to ensure a [quorum](#) is present. The special resolution(s) can then be moved in the same way as any other resolution.

Any resolution(s) to alter the rules must be passed by a majority of at least 75% of members voting in person at the meeting and (if permitted) by proxy or postal vote, to vote in favor of the proposed alterations.

A special resolution **does not** require 75% of the total membership to vote in favor of the change. The video [Voting on the changes](#) provides step by step instructions for passing a special resolution.

Lodging the changes

A special resolution to alter the rules must be lodged with Consumer Protection within one month of passing to have effect. The application can be lodged through [AssociationsOnline](#) with the applicable [fee](#). There is a [step by step video](#) available if you need help lodging the application using the system.

Applications lodged late will incur additional fees and need to include an explanation for the delay. If the Commissioner does not allow an extension, it will be necessary to start the process all over again by calling another general meeting.

Remember: Keep a copy of the documents submitted as Consumer Protection does not send back a copy to the association once processed.

You will receive written confirmation of the lodgment from Consumer Protection that includes the date the changes take effect.

The new rules cannot be used until this notification is received. Therefore, an association cannot alter the rules and then use the new rules later in the meeting.

ALTERING THE OBJECTS OF THE ASSOCIATION

Altering the objects or purposes is also done by passing a special resolution using the same process as detailed above.

The Commissioner is required by the Act to approve the change to the objects or purposes. Should the Commissioner refuse to approve an alteration of the objects and purposes, the association may apply to the State Administrative Tribunal (SAT) within 28 days of receiving notice of the refusal to request a review of the decision of the Commissioner. Further information is available on the [SAT's website](#).

CHANGING THE ASSOCIATION'S NAME

To change the name of the association requires a special resolution to be passed by the members at a general meeting. The procedure is the same as that previously discussed in this chapter. Once the new name is approved, the Commissioner will issue a new certificate to show the change of name and date of registration.

Legally, the association has not formally changed its name until the notice of the special resolution is approved by the Commissioner.

So until the name is approved by the Commissioner in writing, **do not**:

- use the new name;
- arrange for the printing of new signage, letterheads, business cards, etc.;
- change bank account and/or insurance policy details;
- notify the tax office;
- notify essential services;
- notify creditors; or
- notify members, clients, customers, etc.

For a period of time the association may choose to include the old name on all correspondence ('formerly XYZ Inc') until people become familiar with the new name.

What happens if the name change is not approved?

The Commissioner may reject a proposed change of name if it is:

- already in use;
- offensive or undesirable;
- likely to mislead the public; or
- likely to be confused with the name of an existing body corporate or registered business name.

If the Commissioner refuses to approve the change of name the association may request a review of the decision by applying to the [SAT](#). The association must make the review application within 28 days of receiving notice of the refusal.

RESOLVING COMPLAINTS AND DISPUTES

During the life of an association there are bound to be times when a person has a concern about the running of the association. This chapter outlines some processes available to the committee and members for dealing with disputes.

KEY POINTS

- Disputes do happen in associations and it is advisable to have a simple procedure in place for resolving complaints.
- Members and the committee share the responsibility for ensuring that the association operates in accordance with its rules.
- Most concerns can be resolved through informal processes and members are encouraged to discuss their issues with the appropriate person within the association.
- All incorporated associations are required to include a dispute resolution process in the rules which may be required to resolve more complex or serious matters.
- The aim of a dispute resolution process is to reduce disharmony in an association and to provide a fair, consistent and timely approach to dealing with complaints and disputes.

Managing internal grievances and disputes as well as complaints from the public is an important task of the management committee.

Most concerns are resolved by simply contacting the appropriate person in the association or discussing the issue with other members. Failure by an association to allow its members to be heard and ensure their concerns are understood and given due consideration can result in relatively minor issues escalating.

SOURCES OF DISPUTES

Concerns about an association may be brought to a committee's attention by:

- members of an association;
- employees of the association; or
- external clients or organisations.

Grievances arising from within the membership may relate to a range of issues including the conduct of individual members, the functioning of the management committee, how the association operates, membership and non-compliance with the rules of association.

In addition to these internal grievances, employees, volunteers or members may initiate complaints against associations in respect of legislation governing such areas as employment, discrimination and incorporation/governance. For example, a discrimination complaint may be possible under the *Equal Opportunity Act 1984*.

Where associations deal with the public by offering any form of service, there is also the potential for external grievances to arise for example, over the extent or quality of the service provided.

ENFORCING THE RULES OF AN ASSOCIATION

The rules of an incorporated association outline how the organisation will operate and manage its affairs. The rules represent a binding agreement between the association and its members.

Members and the committee share the responsibility for ensuring that the association operates in accordance with its rules. Disputes about the interpretation or application of the rules should be dealt with by the association using the [internal dispute resolution processes](#).

Examples of matters which need to be dealt with by members include:

- the admission or expulsion of members;
- renewal of memberships;
- the conduct of committee meetings; and
- the inspection of records other than those referred to under the Act (being the register of members, rules and list of office bearers).

DISPUTE RESOLUTION PROCEDURES

In many cases, associations can resolve disputes internally and successful outcomes are usually achieved when the association has a well-publicised and simple procedure. The primary purpose of a dispute resolution process is to set out the steps to be followed in dealing with a grievance or dispute and to ensure a fair and timely response.

The process does not need to be complex and a fair process can often avoid having to resort to more drastic measures such as calling general meetings or the suspension/expulsion of members. Given the potential expense, not just in monetary terms, but in time and effort as well, it is worth taking the time to develop a dispute resolution process that encourages people to use it as a first step.

Some disputes may be subject to procedures set out in employment agreements, awards or contracts. This

may apply to internal disputes either in conjunction with, or instead of a dispute resolution procedure.

What to include in the rules

The Act requires an association's rules include a procedure for dealing with any dispute under or relating to the rules. It is up to the committee and members to decide on the procedure to be adopted but the process should give each party to the dispute an opportunity to be heard on the matter and ensure that there is an unbiased decision maker.

At a minimum it is recommended that the rules include procedures that:

1. inform the member or association of the complaint including details of the issues along with copies of any supporting materials. Information about the possible outcomes of the complaint should also be provided;
2. invite the member or association to respond to the issues raised (this may include opportunities to make written submissions or speak at a meeting called to decide the issue);
3. inform the respondent of the outcome of the complaint and any consequences or penalties; and
4. inform the respondent of any rights to appeal the outcome and how these might be exercised.

If an association is unsure how to develop its own process it may wish to adopt the procedure included in the [model rules](#). Rules 17 to 25 of the model rules outline the procedure for dealing with disputes.

RESOLVING DISPUTES INTERNALLY

Informal communication is the most common method for resolving a problem. However if informal discussions fail, then it may become necessary to use the formal dispute resolution process outlined in the association's rules.

Try to resolve the concern informally

- The person making the complaint approaches the chairperson or a committee member to discuss their concerns and outline the outcomes being sought. It is often useful to put this information in writing so the issue is clearly explained.
- The person receiving the concern may need to obtain further information in order to evaluate the issues and explore options for resolution. They may be able to provide an explanation or direct the person to additional information which addresses the concern. Alternatively, the committee might decide that the issue needs further consideration and look to make changes to how the association conducts itself.
- The person making the complaint should be advised of their right to use the dispute resolution process in the rules if they are not satisfied with the decision and outcome of the informal process.

Using the process in the rules

It is important that the members and committee utilise the association's dispute resolution procedures where the issues cannot be resolved informally. All incorporated associations are required to ensure their rules contain a procedure for

dealing with internal disputes involving members and the association.

If the association's rules don't include a dispute resolution process the procedure in the [model rules](#) is deemed to apply (Refer to [Consumer Protection's website](#) for more information).

If the dispute resolution processes under the rules are exhausted and the complaint remains unresolved the parties may explore other options such as making an application to the [State Administrative Tribunal](#) for orders or calling a special general meeting of the membership.

Calling a special general meeting

The rules of an association may provide for members to call a special general meeting of the association. The rules will set out the minimum number of members that need to sign a request for a general meeting and you should also check the rules of the association to see if there are any specific timeframes to be followed.

Upon receipt of a request for a special general meeting the committee should confirm that it meets the requirements of the rules and make the necessary arrangements to convene the meeting. If the request is deficient in some way, the committee should provide the requesting members with guidance on the steps to be taken to correct the request.

Normal meeting procedures should be followed at the special general meeting in accordance with the rules of association (see [Meetings](#)).

Removal of a management committee member

Grievances and disputes may arise as a result of the conduct of one or more management committee members. For

example, a committee member may not be acting in the best interests of the association or a committee member may be causing discontent amongst the committee, making it difficult for the management committee to operate.

An association may generally remove a committee member by means of a resolution at a general meeting. The process for removing a committee member should be set out in the rules of the association and the committee member should be given the opportunity to respond to the issues raised.

Where a committee member is removed, the association should take steps to appoint another member. This may be done by a vote of the members at the same meeting or the committee may fill the position using the casual vacancy process (the procedure to be used will depend on the association's rules).

Suspension and expulsion

In some situations, it may be necessary for an association to suspend or expel a member. Members may be expelled for a number of reasons such as serious criminal conduct, failing to comply with the rules of the association and bringing the association into disrepute. Expulsion should be seen as a last resort, when all other options to resolve the problem have been exhausted.

The process for suspension and expulsion are normally set out in the rules of association and must be followed precisely. As a matter of natural justice, the member being suspended or expelled should be given a fair opportunity to be heard (to state their case) and to appeal against a decision.

IMPORTANT INFORMATION FOR MEMBERS AND COMMITTEES

As a suggestion when working to resolve a complaint or dispute within an association (whether informally or using the dispute resolution process), committees and members should be mindful of the following:

For members

- The committee should be given an opportunity to respond to an issue before the concerns are raised with external parties.
- It is important to understand that committees are generally made up of volunteers with limited time and resources available to them. Be realistic about the timeframes in which your concerns can be dealt with.
- If you intend to raise concerns or allegations about an individual you should always make sure you have some proof to support your claims.
- Be respectful in your discussions and communications with the committee and association.

For committees

- Members have the right to raise concerns about their association and seek the support of other members to effect change. Members should not be punished for speaking up about an issue.
- The committee have a responsibility to ensure that complaints are given proper consideration and the process used to resolve the dispute is fair and unbiased.
- If the concerns relate to a particular member of the committee it is not appropriate for that person to act as the decision maker for the complaint.

- Complaints should be responded to in a timely manner and any agreed timelines should be followed.
- Be respectful in your discussions and communications with the member or complainant.

SEEKING EXTERNAL ASSISTANCE

Most grievances and disputes can be resolved using internal procedures. Occasionally, these processes fail and help from an external party may be required.

Professional dispute resolution services

An association can make use of professional mediation and dispute resolution services that are available. These services provide intervention in the form of negotiation, mediation and arbitration. This may avoid court action and the services are generally less time consuming and costly.

State Administrative Tribunal

Where a dispute between individual members or members and the association relating to the rules cannot be resolved through the dispute resolution process as set out in the rules, an application may be made for the dispute to be heard by the State Administrative Tribunal (the SAT).

The SAT has powers to:

- refer the dispute for mediation;
- give orders:
 - directing for the rules to be followed.
 - declaring and enforcing the rights and obligations between members.

- declaring and enforcing the rights and obligations between the association and member(s).

There are fees associated with applications to the SAT and more information about the application and hearing processes can be found at www.sat.justice.wa.gov.au or by calling 1300 306 017.

You can also find more information in fact sheets [Going to the State Administrative Tribunal](#) and [Mediation in the State Administrative Tribunal](#).

Courts

An application can be made to a court to settle certain disputes, for example, where a committee member has mismanaged association funds. Resolving disputes through court action is likely to be costly and may not have the desired outcome. Courts are generally reluctant to interfere with the internal management of associations, particularly where the members have the power to resolve matters themselves. You should seek your own independent legal advice about the avenues available.

Other government regulators

Depending on the nature of the concerns, some government departments may be able to provide assistance or advice. For example if the problem relates to:

- an employment issue, contact [Wageline](#) on 1300 655 266.
- a licensed premises, contact [Department of Local Government, Sport and Cultural Industries - Racing, Gaming and Liquor](#).
- taxation or superannuation, contact the [Australian Taxation Office](#).

If the association receives funding and your concerns relate to matters within the funding agreement you may wish to discuss the matter with the funding body.

Consumer Protection

Consumer Protection's role is to ensure associations comply with the *Associations Incorporation Act 2015*. If there has been a breach of the Act, a formal complaint can be made to Consumer Protection. For example, if the association fails to present annual financial statements or reports at its Annual General Meeting.

It is **highly recommended** that members and committees make all reasonable attempts to resolve any complaints themselves, whether informally or through the dispute resolution process in the rules, prior to lodging a formal complaint.

Lodging a complaint

Consumer Protection will only investigate where it appears a possible breach of the Act or the Regulations has occurred and information about what the Department will investigate is also included [at the end of this chapter](#). Anyone thinking of lodging a complaint against an association should read this information carefully before submitting their complaint.

Consumer Protection will not:

- **Investigate a breach of the association's rules**
It is not Consumer Protection's role to resolve internal disputes concerning the application of the rules. The Association must deal with such matters using its [internal dispute resolution processes](#).
- **Interpret the association's rules**

Consumer Protection cannot adjudicate on what an association's rules mean. This should be dealt with as provided under the rules or otherwise is for members to determine.

- **Investigate disputes between individual members of the association or an individual and the association.**

If an association is unable to resolve the dispute using its own internal processes some matters may be considered by the State Administrative Tribunal.

If your concerns relate to a potential breach of the Act a [Complaint Form for Incorporated Associations](#) may be submitted along with copies of any supporting documents.

What to expect

Consumer Protection assesses all complaints against the requirements of the Act and considers whether there is sufficient information and documentation provided to investigate the complaint further. Priority is given to dealing with complaints according to the seriousness of the conduct identified.

An association will always be given an opportunity to comment on any allegations made in a complaint relating to a potential breach of the Act.

Please note, even in cases where it appears after investigation there has been a breach of the Act, if the breach does not appear to be deliberate or fraudulent and the association agrees to comply with its obligations in the future, Consumer Protection may form the view that formal action is not in the public interest.

Key provisions of the *Associations Incorporation Act 2015*

If your concerns **do not** relate to any of the matters listed below Consumer Protection is not able to consider your complaint. Please refer to the other sections of this chapter for information about the avenues available to resolve such concerns.

MEETINGS	
Annual General Meeting (AGM) to be held in each calendar year within 6 months after the end of the association's financial year.	s50
DECISIONS OF THE COMMITTEE	
Committee members are required to disclose any material personal interests they have in matters being considered at meetings of the Association's committee.	s42
Disclosed material personal interests to be recorded in the minutes.	s42(6)
Committee member to leave the meeting while the matter is discussed and voted on.	s43
Committee member to disclose their material personal interest to the members at the next general meeting occurring after the relevant committee meeting where the matter was considered.	s42
Committee members and officers have duties to act with care and diligence and in good faith and for a proper purpose. Committee members and officers must not improperly use their position or information to gain an advantage or cause detriment to the association.	s44 - 47
RULES OF ASSOCIATION	
The association keeps an up to date copy of its rules.	s35
Each new member of the association is provided with their own copy of the rules when they join the association.	s36
The rules are made available to members to inspect and copy if requested.	s35
A copy of the rules or any particular part is given to a member, free of charge, if requested.	s36
CHANGING THE RULES	
Written notice specifying the proposed special resolution(s) to alter the rules and detailing the time and place of the general meeting given to all members in accordance with the rules.	s51
Proposed special resolution(s) passed by 75% majority of members who are eligible to vote at general meeting.	s51
Amendments to the rules lodged with Consumer Protection within one month of passing the special resolution.	s30
REGISTER OF MEMBERS	
The association to keep an up to date register of members.	s53
The Register of Members is updated to include any changes in membership within 28 days of the change occurring.	s53
The Register of Members is made available to members to inspect and copy if requested.	s54
A copy of the Register of Members is provided to a member if requested in writing (subject to any requirements to pay a reasonable fee or provide a statutory declaration).	s56

ACCOUNTING RECORDS AND REPORTING	
Accurate accounting records kept that record and explain the financial transactions.	s66
Annual financial statements or reports prepared in accordance with the requirements of association's Tier.	s68,71,74
Annual financial statements or reports presented to the members at the AGM.	s70,73,76
For Tier 2s – The annual accounts are to be reviewed.	s72
For Tier 3s – The annual accounts are to be audited.	s75
All financial records are to be kept for at least 7 years.	s67
OTHER RECORD KEEPING REQUIREMENTS	
The association keeps an up to date Record of Office Holders.	s58
The Record of Office Holders is made available to members to inspect and copy if requested.	s58
All records belonging to the association in the possession of an outgoing committee member are returned to the association as soon as practicable after their appointment ceases.	s41

ACCOUNTS AND AUDITING

This chapter outlines the requirements under the Act in terms of accounting and auditing procedures.

KEY POINTS

- All incorporated associations must keep accurate and up-to-date financial records and present financial statements at each Annual General Meeting.
- Financial reporting requirements are based on a three tiered system with responsibilities increasing depending on an association's total annual revenue.
- The Act does not require all associations to audit their financial statements however there may be other reasons for an association to do so.

ACCOUNTING REQUIREMENTS

All incorporated associations must:

- keep financial records that correctly record and explain the financial transactions and the financial position of the association in a manner that can be conveniently and properly audited; and
- submit accounts to the members at each Annual General Meeting.

In addition to these legal obligations, an association's management committee needs clear, accurate and up-to-date financial information to ensure the association is viable and operating efficiently.

KEEPING ACCURATE ACCOUNTS

How an association organises its accounts, payments and record keeping will vary depending on the size and complexity of its financial situation. A small association may have a voluntary treasurer who 'keeps the books' while an organisation requiring more skilled accounting services might employ its own finance staff or engage an accountant or book-keeper.

Good financial practices

It is good financial practice to develop policies and procedures regarding:

- preparing budgets;
- recording income received such as grants, membership fees, donations, fundraising, sales of goods and interest;
- developing a system to record and pay necessary bills;
- recording and authorising petty cash transactions;
- where necessary, recording taxation information, such as goods and services tax, superannuation, fringe benefits, income tax records and withholding payments;
- where necessary, recording salary and leave payments, and reimbursements to employees. Time and wages records must be kept in accordance with the relevant award or industrial law;

- undertaking bank reconciliations (i.e. checking association records against bank records);
- maintaining an up-to-date register of association assets; and
- maintaining an effective and secure filing system for insurance policies, leases, contracts and funding agreements.

MEMBERS' RIGHT TO THE FINANCIAL ACCOUNTS

The Act requires the annual financial statements (tier 1) or reports (tiers 2 and 3) to be presented to the members at each AGM. Time must be allocated for the treasurer or other committee member to present a summary of the accounts and explain the major items. Members should also have the opportunity to ask questions. Ideally copies of the accounts should be available to members at the meeting, accessible online or circulated before or after the meeting.

The members' rights to view the financial records at other times will depend on the inspection of records provisions in the rules.

TIERED FINANCIAL REPORTING

The financial reporting responsibilities of an incorporated association will depend on the tier that it falls into. The purpose of this system is to minimise the reporting burden for small associations while ensuring that larger associations are accountable for the significant resources they control.

An association's tier is determined by its annual revenue which is calculated based on the total amount of money received through the association's activities during a financial year.

The tiers are set as follows:

- Tier 1: less than \$250,000 in revenue.
- Tier 2: over \$250,000 but under \$1,000,000 in revenue.
- Tier 3: \$1,000,000 or above in revenue.

Calculating revenue

Revenue is calculated in accordance with the Australian Accounting Standards and is the income that arises in the course of the ordinary activities of an incorporated association before any allowance is made for any relevant tax liabilities.

The following examples are likely to be revenue if they relate to the association's ordinary activities:

- membership fees and subscriptions;
- fees and charges for provision of services;
- interest earned;
- government and other grants, donations, bequests, sales of goods and inflows from other fundraising activities.

The following is not included in the calculation of revenue:

- gains from the sale of non-current assets e.g. club property;
- unrealised gains (profit which has been made but not yet realised through a transaction) e.g. revaluation of inventory or club property; and
- amounts collected on behalf of third parties.

One off increases in annual revenue

Sometimes an association's revenue may increase because of a one off or unusual event and this increase pushes the association into a higher reporting tier. For example the association is awarded

funding or receives a particularly large donation. If the association wishes to continue reporting in accordance with its usual tier an [application can be made to the Commissioner to be declared as a specific tier](#) for that particular financial year.

This application must be made no later than three months after the end of the financial year and will only be granted if the Commissioner is satisfied that the change in revenue is the result of unusual and non-recurring circumstances.

Requirements for a Tier 1 association

To understand the reporting requirements of a Tier 1 association you need to know whether the association keeps its accounts on a cash or accrual basis.

Under cash accounting the income is recorded when it is received and the expenses when they are paid.

Using accrual accounting the income is recorded the date it is earned (irrespective of whether the payment is actually received on that date) and the expenses when they are incurred. This method is more common where the association delivers services in return for payment or receives grants to complete particular projects.

The financial statements of an association operating on a **cash basis** may include a:

- statement of all the monies received and paid during the financial year;
- reconciled statement of all bank account balances as at the end of the financial year; and
- statement detailing the association's total assets and liabilities as at the end of the financial year.

An association operating on an **accrual basis** may prepare a financial statement that includes:

- a statement of the income and expenditure for the financial year; and
- a balance sheet.

Auditing requirements for Tier 1 associations

Under the Act a tier 1 association is only required to complete a review or audit of its accounts if:

- the majority of members at a general meeting pass a resolution that an audit will be completed; or
- the association is directed to do so by the Commissioner.

If the decision to review or audit the accounts is made by a resolution of the members, the requirements of the Act regarding the [qualifications](#), [appointment](#) and [removal](#) of the reviewer or auditor become applicable.

Where it is a condition of a funding agreement or licence that an audit be completed, the members will need to pass a resolution at a general meeting that an audit be undertaken.

Requirements for a Tier 2 association

A Tier 2 association is required to prepare an annual financial report that complies with Australian Accounting Standards and contains all of the following:

- the financial statements for the year (includes an income and expense statement, balance sheet, cash statement and statement of changes in equity);
- the notes to the financial statements including all disclosures required by the accounting standards and

information required to give a true and fair view of the financial position; and

- the management committee's declaration.

The Management Committee Declaration

The committee must pass a resolution declaring whether:

- there are reasonable grounds to believe that the association will be able to pay its debts when they become due and payable; and
- the financial statements and notes have been prepared in accordance with the requirements of the Act.

The declaration included in the financial report must specify the date of the committee's declaration and be signed by at least two authorised committee members.

Review requirements for Tier 2 associations

All Tier 2 associations must have their financial reports reviewed and the review report must be presented to members at each annual general meeting.

Reviewer qualifications

A review must be conducted by an independent person who is:

- a member of Chartered Accountants Australia and New Zealand (CA or FCA), CPA Australia (CPA or FCPA) or Institute of Public Accountants (MIPA or FIPA);
- a registered company auditor; or
- [approved by the Commissioner for Consumer Protection](#).

Before the appointed reviewer begins they must provide the committee with a written independence declaration.

Differences between a review and audit

The process of reviewing an association's accounts is not as detailed as completing an audit. A reviewer will look over the report and advise whether anything has come to their attention to suggest that the report does not comply with the requirements of the Act.

In comparison, an auditor must collect evidence relating to the financial records and transactions to satisfy themselves that the report is a true and correct reflection of the association's finances. This enables them to provide a formal opinion whether the accounts meet the relevant legal requirements.

When an audit is required

Under the Act a tier 2 association is only required to audit its accounts if:

- the majority of members at a general meeting pass a resolution that an audit will be completed; or
- the association is directed to do so by the Commissioner.

Requirements for a Tier 3 association

Tier 3 associations must prepare an annual financial report in accordance with Australian Accounting Standards that includes:

- financial statements for the year;
- notes to the financial statements; and
- management committee's declaration.

The Act requires all Tier 3 associations to have their annual financial report audited and a copy of the audit report must be presented to the members at each annual general meeting.

Auditor qualifications

An audit must be conducted by an independent person who holds a current Certificate of Public Practice and is:

- a member of Chartered Accountants Australia and New Zealand (CA or FCA), CPA Australia (CPA or FCPA) or Institute of Public Accountants (MIPA or FIPA);
- a registered company auditor; or
- [approved by the Commissioner for Consumer Protection](#).

The auditor must provide the committee with an independent declaration prior to commencing work on the audit. The auditor must prepare a report which:

- includes a statement whether, in their opinion the financial statements or report have been prepared in accordance with the Act. If they are not of this opinion they must explain why.
- describes any defects or irregularities identified in the financial statements or report;
- includes any statements or disclosures required by the auditing standards; and
- specifies the date the report was prepared.

APPOINTING AN AUDITOR

The management committee may appoint the auditor or reviewer for the purpose of meeting the Tier 2 or 3 reporting requirements. Where the auditor or reviewer is appointed by the management committee they will remain in office until their report has been presented for consideration at the annual general meeting (or they resign).

If the association appoints an auditor or reviewer for any other purpose such as at the request of the members or to provide ongoing services the appointed auditor or reviewer will then remain in office unless they:

- resign;
- are removed from office;
- cease to be qualified to conduct audits or reviews;
- die; or
- become an insolvent under administration.

To ensure there is a clear understanding of the duties and responsibilities of the auditor or reviewer the committee should request an engagement letter setting out:

- their responsibilities;
- the scope of the work to be completed;
- the total cost; and
- the expected time frame for completion.

The auditor or reviewer must be independent and the association should avoid appointing:

- a past or present member of the management committee;
- a member of the association;
- an employee, supplier of goods or services or a servant of the association; or
- an employer, partner or family member of a member of the association's management committee.

RESIGNATION OF AN AUDITOR OR REVIEWER

An appointed auditor or reviewer may resign at any time by giving written notice to the association. If this occurs the association must [lodge notification with Consumer Protection](#) within 14 days.

REMOVING AN APPOINTED AUDITOR OR REVIEWER

To remove an appointed auditor or reviewer requires members to pass a resolution at a general meeting of the association. Written notice of the intention to move such a motion must be given to all members at least two months before the meeting is held.

It is also required that a copy of the notice is sent to the auditor or reviewer and the Commissioner for Consumer Protection ([form available for this purpose](#)).

Once the notice has been received the auditor or reviewer has 30 days to make a written submission to the committee. If such a submission is received the committee must give a copy to all members at least seven days before the meeting and allow the auditor or reviewer to attend the general meeting and speak to the members prior to any vote taking place.

A resolution to remove the auditor or reviewer will have no effect if the above actions are not completed.

RIGHTS OF THE AUDITOR/REVIEWER

Under the Act an appointed auditor or reviewer is entitled to:

- receive all notices and communications that are sent to

members regarding general meetings of the association;

- attend any general meeting of the association; and
- be heard at any general meeting where the business being discussed relates to their functions as the auditor or reviewer.

It is the responsibility of the association's committee to ensure that the above rights are afforded to the auditor/reviewer.

THE ROLE OF THE AUDITOR OR REVIEWER

It is the responsibility of the management committee to provide the financial statements. The role of the auditor or reviewer is to give a professional and independent opinion on these financial statements. The review or audit of an association's financial report can ensure greater accountability to the members and provide an assurance that all funds received by the organisation have been correctly accounted for.

The committee should not rely on the auditor to find all errors in the statements and identify any fraud. It remains the committee's responsibility to pay close attention to the association's financial statements at all times.

The auditor's task is to provide a professional opinion on the state of the financial affairs of the association. Auditors have a legal responsibility for their opinion and can be held liable for negligence if the audit is not completed according to professional standards, or for damage to the association as a result of negligence.

WHAT IF THE AUDIT REPORT IS UNFAVOURABLE?

There is always the possibility an auditor may present a critical report identifying areas that the association needs to address. To ignore an auditor's report is likely to place the association at risk.

If the association is unsure what the auditor is saying it should seek clarification as irregularities in the financial statements could occur for a number of reasons including:

- a lack of understanding in preparing financial statements;
- a lack of understanding in assessing financial statements;
- poor controls over money in and out; or
- dishonesty.

If problems suggesting dishonesty are found in the financial records, the association should obtain prompt legal advice and attend to any immediate matters such as freezing accounts, securing assets, investigation, contacting the police and/or the insurer.

TAXATION

Incorporated associations are subject to taxation but may be eligible for certain concessions. This chapter provides a basic overview of taxation obligations and concessions.

IMPORTANT

Taxation issues can be complex and it is important to seek expert advice when dealing with these matters. For detailed information on not-for-profit taxation visit the Australian Taxation Office (ATO) website at www.ato.gov.au/nonprofit or telephone 1300 130 248.

KEY POINTS

- Incorporated associations are subject to taxation unless a relevant tax exemption applies.
- Some associations may be eligible for taxation concessions.
- Incorporated associations that employ staff are subject to PAYG withholding obligations, and may be subject to paying fringe benefit tax.
- Incorporated associations are required to pay goods and services tax on some goods and services, and they are exempt from others. This is a complex area of taxation and associations should seek professional advice.

TAXATION CONCESSIONS AVAILABLE FOR SOME ASSOCIATIONS

Tax concessions are available for a range of not-for-profit organisations, including charities, public benevolent institutions and other types of incorporated associations. Concessions include:

- exemption from [income tax](#),
- rebates to reduce [fringe benefits tax](#) (FBT), and
- [goods and services tax](#) (GST) concessions.

Not-for-profit status

To qualify for these tax concessions, an organisation must be a not-for-profit organisation which does not operate for the financial gain of its members. Incorporated associations are by legal definition not-for-profit organisations, and therefore many will be eligible for one or more tax concessions.

Charities

A charity is a fund or institution that pursues charitable purposes that are of public benefit. To be recognised as a charity by the ATO, and therefore eligible for charity tax concessions, an organisation must:

- be not-for-profit;
- exist for the benefit of the public or the relief of poverty;
- have a purpose that is a charitable purpose under the law; and
- be registered with the Australian Charities and Not-for-Profits Commission (the ACNC).

Charitable purpose

In terms of Australian taxation law, charitable purposes are those directed towards:

- the relief of poverty where the benefit is provided to persons in a particular class.

- the advancement of education.
- the advancement of religion where the religious purpose is for the benefit of the community.
- advancing social or public welfare.
- other purposes that are beneficial to the community. For example animal protection, health promotion, aged care and preservation of cultural and historical sites.

Sporting, recreational, social, political or promotional purposes are not considered charitable.

The Australian Charities and Not-for profit Commission (ACNC)

The Australian Charities and Not-for-profits Commission (ACNC) is responsible for determining charity status for all federal tax purposes. As part of its determinations, the ACNC also decides whether a charity is a public benevolent institution (PBI) or health promotion charity (HPC).

The ACNC will be responsible for administering tax concessions relevant to charities, including:

- income tax exemption
- Fringe Benefits Tax (FBT) rebate or exemption
- Goods and Services Tax (GST) charity concessions
- Deductible Gift Recipient (DGR) status.

The ATO remains responsible for deciding eligibility for charity tax concessions and other Commonwealth exemptions and benefits. A charity must be registered with the ACNC before it can receive any charity tax concessions from the ATO.

For more information concerning charities and taxation, visit the ACNC website at www.acnc.gov.au.

TYPES OF TAX CONCESSIONS

All charities that register with the ACNC and some incorporated associations can apply for the following tax concessions.

Income tax exemptions

Income tax applies to any taxable income received by an organisation. Only certain types of not-for-profit organisations are exempt from paying income tax.

Charities and PBIs are generally exempt from income tax, but this is not automatic and an application must be made to the ATO for endorsement as a tax concession charity.

An incorporated association that is not a charity or PBI may still be exempt from income tax under another category. In this case, the association does not need to apply to the ATO, but can conduct its own self-assessment to determine whether or not it is eligible for tax exemption. The [ATO website](#) also has useful information about self-assessment.

If an association is exempt it will not have to pay income tax nor lodge income tax returns. If the association does not qualify for exemption, then it is taxable and must lodge tax returns each year.

REGISTERING WITH THE ATO

To apply for taxation concessions and comply with taxation obligations an association may need to register for an Australian Business Number (ABN).

This can be used to:

- register for GST and claim input tax credits;
- register for PAYG withholding;
- deal with investment bodies;
- apply to the ATO for endorsement as a deductible gift recipient or a tax concession charity;
- deal with other government departments and agencies; and
- deal with the ATO on tax matters.

To apply for an ABN visit the Australian Business Register's website at www.abr.gov.au. Application forms can also be downloaded from the [ATO website](http://www.ato.gov.au) or submitted through a tax agent.

Goods and Services Tax (GST)

Goods and Services Tax (GST) is a broad-based tax of 10 per cent on the sale of most goods, services, real property or other things consumed in Australia.

GST is paid on each transaction in the supply chain. GST-registered businesses are liable to pay the GST on the goods and services they supply, which they generally aim to recover from the buyer. These businesses can also generally claim back the GST they pay on business purchases or supplies as input tax credits. The cost of GST flows along the supply chain and is finally included in the price paid by the end consumer. End consumers can't claim input tax credits.

Associations must register for GST if their annual turnover is \$150,000 or more, but can choose to register if their annual turnover is lower. GST concessions are also available to not-for-profits who are registered charities with the ACNC, endorsed to receive GST concessions and organisations registered as deductible gift recipients.

More information on GST concessions and how to register for GST can be found on the [ATO website](http://www.ato.gov.au).

Fringe Benefits Tax (FBT)

Fringe Benefits Tax (FBT) is paid on any benefits that an employer provides to their employees outside their salary or their superannuation, such as the use of a work car or phone. If an association provides fringe benefits to its employees, the association may be liable to pay FBT. This is quite separate from income tax, and even if the association is exempt from income tax, it may still incur an FBT liability.

Benefits exceeding the total value of \$2000 in an FBT year (which runs from April 1 to March 31) must be reported on an employee's payment summary. Please note that reimbursing an unpaid volunteer for out-of-pocket expenses does not make them an employee. Generally, benefits provided to volunteers do not attract FBT.

The FBT concessions that will apply to some incorporated associations include an exemption from FBT and the FBT rebate.

Registered charities and associations that are public benevolent institutions or health promotion charities may be eligible for an exemption from FBT. Remember, an association must be endorsed by the ATO as a tax concession charity in order to access the FBT exemption or the FBT rebate.

More information on FBT and how to register may be found on the [ATO website](http://www.ato.gov.au).

Deductible gift recipient (DGR) status

As well as applying for the tax concessions listed above, charities can apply for deductible gift recipient (DGR) status when registering with the ACNC.

All DGRs should review whether they are required to register with the ACNC by following the [guidance provided by the ATO](#). For a short summary, you can also read the [ACNC factsheet](#).

Public benevolent institutions (PBI)

A public benevolent institution (PBI) is a not-for-profit institution set up for the relief of poverty, sickness, suffering, distress, misfortune, disability or helplessness. Some charities will be classified as PBIs. For PBI status, the emphasis is on the provision of a service directly to those people requiring 'benevolent relief' in order to meet their particular needs for example hostels for homeless people, disability support, crisis care and emergency relief services.

Not-for-profit associations that do not provide direct benevolent relief will not be assessed as public benevolent institutions, despite their good deeds. More detailed information about PBIs is available on the [ACNC website](#).

TAX CONCESSIONS FROM STATE AND LOCAL GOVERNMENTS

There are a number of tax concessions available to charities from state and local governments including:

- stamp duty (a tax on some financial and property transactions),
- payroll tax (a tax on wages that exceed a certain threshold paid by employers) and
- land tax (a tax on land owners).

Each state and territory has different requirements for accessing these concessions. Some organisations may be eligible to apply for exemptions from state taxes. Property transfers by incorporated associations on amalgamation and surplus property distributions on cancellation or wind up may be exempt from the requirements to pay stamp duty.

For information about payroll and land taxes, stamp duty and compliance requirements in Western Australia contact the Department of Finance:

Department of Finance (WA)

✉: Locked Bag 11
Cloisters Square WA 6850

☎: (08) 6551 1000

🌐: www.finance.wa.gov.au

✉: customerservice@finance.wa.gov.au

PAY AS YOU GO (PAYG)

Associations are required to withhold an amount from an employee's pay and send this to the ATO. This is called a PAYG withholding obligations. The amount of money that is withheld depends on how much the employee earns and the information the employee has provided in the Tax File Number Declaration. Associations are still subject to these requirements even if exempt from income tax obligations.

FUNDRAISING AND GRANTS

Many associations undertake some form of fundraising or seek grants in order to help finance their not-for-profit activities. This chapter provides information on the legal requirements that associations must take into consideration.

KEY POINTS

- Incorporated associations that wish to collect funds from the public for a charitable purpose must have a licence in Western Australia.
- Permission to fundraise in shopping centres must be obtained from the shopping centre management.
- Permits or licenses are required to conduct raffles, sell alcohol or food and conduct street appeals.
- Applying for and receiving grants can contribute towards the costs of all kinds of initiatives and assist the furtherance of an association's objects.

REGULATION OF FUNDRAISING ACTIVITIES

There are a number of laws applicable to fundraising in Western Australia:

- the *Charitable Collections Act (1946)* regulates fundraising for a charitable purpose;
- the *Street Collections (Regulation) Act (1940)* regulates fundraising conducted in public streets;
- the *Gaming and Wagering Commission Act (1987)* imposes controls on fundraising activities such as raffles, bingo and all forms of gambling; and
- the *Liquor Control Act (1988)* imposes controls on fundraising events where liquor is to be sold.

FUNDRAISING FOR CHARITABLE PURPOSES

If an association or club is collecting donations of money or goods from the public in Western Australia for a charitable purpose it must have a licence under the *Charitable Collections Act 1946* (the CCA).

Your association will need a charitable collections licence if the purpose of the fundraising falls within the definition of charitable purpose under the CCA which includes:

- the relief of the sick, infirm, poor, destitute, helpless or unemployed;
- the relief of distress caused by war, and the support of members of the armed forces;
- animal welfare, conservation and environmental causes;
- the support of hospitals, infant health centres and other activities of a social or welfare character.

The types of fundraising activities that require a licence include:

- the sale of badges, flowers, tokens or other device for any charitable purpose;
- charging an entry fee for sports events, fetes, concerts etc. where it is implied that any part of the fee will be applied to a charitable purpose; or
- advertising a function where it is implied that any part of the proceeds will be donated to a charitable purpose.

Charitable collections licences are issued by Consumer Protection. More information about licensing requirements is available on [Consumer Protection's website](#).

Fundraising under an existing licence

There may be times when your association wants to conduct a one off or short term appeal for a charitable purpose. For example to raise money to help someone in need in the community, to assist in disaster relief efforts or for someone who needs urgent medical treatment.

In these cases it is best to obtain authority from an existing licence holder to collect under their licence rather than applying for a licence in the association's name. Refer to Consumer Protection's website for more information about [fundraising under a licence](#) or to download a Guidance Pack (for licence holders).

Reporting requirements

Licence holders are required to submit an Annual Financial Return to Consumer Protection each year. The return includes information about the money or goods collected and the way they were distributed. Refer to Consumer Protection's website for more information about the [reporting requirements for licenced charities](#).

Exemption for charities registered with the Australian Charities and Not-for-Profits Commission (ACNC)

Licence holders who are also registered charities with the ACNC are not required to submit an Annual Financial Return to Consumer Protection or provide copies of financial reports. This exemption is

conditional on the licence holder meeting its reporting obligations to the ACNC.

THE AUSTRALIAN CHARITIES AND NOT FOR PROFIT COMMISSION (ACNC)

The ACNC is the regulator of Australian charities. The ACNC offers a range of services including charity registration, assessment of some charitable taxation status (see [Taxation](#) for more information) and educational guidance materials.

Associations registered with the **ACNC** are required to meet certain reporting requirements and more information can be found [online](#) or by telephoning 13 22 62.

It is important to remember that irrespective of an organisation's registration with the ACNC, if it intends to conduct any collections in Western Australia for charitable purposes a licence must be obtained under the *Charitable Collections Act 1946*.

OTHER REQUIREMENTS RELATING TO SELECTED FUNDRAISING ACTIVITIES

Street collections

The *Street Collections (Regulation) Act 1940* applies to any organisation conducting a street collection in the metropolitan area. A 'public street' includes private land used by the public for pedestrian traffic. The car parks and footpaths outside a shopping centre are therefore considered to be a street for the purposes of street collections.

Associations in regional areas should check with their local council whether

there are any requirements for conducting a street collection.

A street collection permit is required whether or not the proceeds are to be used for a charitable purpose. Permits are obtained from Consumer Protection. The application must set out details of the purpose and locality of the street collection, and any other relevant information. Consumer Protection requires at least six weeks' notice to allow time to process the application and issue the permit.

See Consumer Protection's website for more information about [street collections](#) or to download an [application form](#).

Door-to-door collections

An association with a [charitable collections licence](#) may carry out door to door collections from households between the hours of 9am and 6pm on Mondays to Saturdays. All collectors must be over 16 years old and must wear an identity badge.

More information about the requirements of collecting from private residences is available on [Consumer Protection's website](#).

Fundraising in shopping centres

Shopping centres are good places for raising funds because of the large numbers of people passing through. Shopping centres have their own policies and procedures for providing fundraising space and you should contact the centre management for more information and permission.

Lotteries and games

The *Gaming and Wagering Commission Act 1987* allows permits to be issued to charitable groups, community based organisations and sporting bodies for the purpose of raising funds from gaming related activities such as:

- lotteries (raffles);
- trade promotion (e.g. colouring in competition or entries drawn randomly);
- video lottery terminals;
- bingo and two-up;
- sweepstakes and gaming functions; and
- football tipping competitions and minor fundraising activities.

Associations wishing to raise funds from one of these activities will in most cases need to obtain a permit from the Department of Local Government, Sport and Cultural Industries - Racing, Gaming and Liquor Division (RGL). There are different application forms, conditions and fees for each lottery and gaming activity and more information is [available online](#).

Selling food at fundraising events

Selling food is a very popular and profitable way of raising funds, whether it is a cake sale, a sausage sizzle or a large food and wine festival. However, preparing and selling food requires very careful handling and preparation for reasons of hygiene and safety.

Associations that are planning to organise temporary food stalls need to obtain a permit from their local council. Councils will also be able to provide the association with general guidelines on preparing and selling food. Ask to speak to the environmental health officer.

[Food Standards Australia New Zealand](#)

also have fact sheets for charity and community based organisations on matters relating to food safety, including a specific fact sheet on sausage sizzles and barbeques.

Serving alcohol at fundraising events

If a fundraising activity or event includes selling and supplying alcohol, it will be necessary to obtain a liquor licence. Associations organising fundraising events at which liquor will be sold will need to apply for an occasional licence. This is a licence for people/associations that do not hold any other licence under the *Liquor Control Act 1988*.

An occasional licence permits the sale of liquor at a function, which means a 'gathering, occasion or event, including a sporting contest, show, exhibition, trade or other fair or reception, at which liquor is sold and supplied.

For more information about these licensing requirements, associations should contact Racing, Gaming and Liquor:

 Telephone: 6551 4888

 rgl@dlqsc.wa.gov.au

 www.rgl.wa.gov.au.

 PO Box 8349 Perth Business Centre
WA 6849

OTHER MATTERS FOR CONSIDERATION

Commercial fundraisers

An association may wish to engage a commercial fundraiser to collect on its behalf. Commercial fundraisers are not presently required to be licensed under the *Charitable Collections Act 1946*. Any agreement between an association and a commercial fundraiser is subject to contract law, and associations should seek legal advice before entering into agreements.

Consumer Protection has developed some [guidelines](#) for consideration by associations contemplating entering into an agreement with a commercial fundraiser.

Bequests and gifts

Some incorporated associations obtain funds through gifts and bequests. A bequest is a gift of property in a will. While this is a valid means of acquiring funds, it is very important for associations to ensure that gifts and bequests have been given to the association without any undue influence or coercion.

If an incorporated association is planning to raise funds through a request for gifts and bequests, it is essential to discuss the project with a solicitor and to have the solicitor draft all the necessary documents (e.g. letters of request, forms and promotional material) in order to avoid legal pitfalls.

Deductible Gift Recipient (DGR) status

Incorporated associations that qualify as a DGR can receive tax-deductible gifts. This can make them more attractive to donors

wishing to claim an income tax deduction for the gift, for example, sponsors and private donations. More information concerning [Deductible Gift Recipients](#) can be found on the ATO website.

Insurance

A fundraising activity may require specific, one-off insurance, if the event is not going to be covered by existing policies. Personal injury, product liability and cover for volunteers are particular areas to consider. If the association is using a sub-contractor you should also check what insurance they have. Insurance topics are covered in more detail in [Risk Management and Safety](#).

Local authorities

Certain activities may require local government approval for fundraising. This is likely to be the case when using a public space and/or in relation to local health, noise, safety or traffic by-laws.

GRANTS

It is very likely that an association will want to apply for a grant at one time or another over the course of its life. Applying for and receiving grants can contribute towards the costs of all kinds of initiatives and assist the furtherance of an association's objects.

Lotterywest Grants

Each year Lotterywest supports hundreds of community groups and incorporated associations in Western Australia with grants totaling over \$260 million. Lotterywest uses the profits derived from the sale of games such as Lotto and Scratch'n'Win to fund these grants.

Grants are available to not-for-profit organisations and local government

authorities to support charitable or benevolent initiatives with a public benefit within Western Australia.

For more information about available grants and application processes contact Lotterywest:

☎: (08) 133 777

Toll free: 1800 655 270

TTY: (08) 9488 6236

🌐: www.lotterywest.wa.gov.au/grants

✉: hello@lotterywest.wa.gov.au

Preparing grant submissions

Writing competitive grant submissions that will result in a successful grant application can be a daunting task. If an association has any queries regarding the requirements for a specific grant or information regarding the application process it is recommended that they contact the organisation responsible for the grant.

Finding the right grant for your association

Grant programs are available from State and Commonwealth agencies. For example:

Department of Local Government, Sport and Cultural Industries:

- **Sport and Recreation** provides funding to organisations that facilitate sport and active recreation. There are a wide range of avenues to obtain funding including sport and community organisations, facilities and special funding for regional areas. Visit the [Funding, grants and scholarship](#) page for full details of opportunities available.

- **Culture and the Arts** distributes funding to organisations including small businesses, Local Government authorities and not-for-profit organisations.
[Visit the website](#) for more information about the grant programs offered, eligibility requirements and application processes.
- **Office of Multicultural Interests** offers different types of funding, including community grants through its [Community Grants Program](#).

Department of Communities provides one-off grants to community sector organisations and local governments to plan and implement projects, events and initiatives that help to improve the lives of West Australians. Visit the [Community Grants, Funding and Initiatives webpage](#) for more information.

EMPLOYMENT AND VOLUNTEERING

Incorporated associations rely on both employees and volunteers to help carry out the activities of the association. This chapter provides some general information on employment and working with volunteers.

KEY POINTS

- When employing people associations need to comply with employment laws and any relevant industrial agreements.
- If it is necessary to terminate an employee it must be done in accordance with the contract and fair procedures to ensure the termination is lawful.
- Incorporated associations must keep records relating to employment, including payment of wages, leave, tax records and superannuation records.
- Volunteers provide valuable contributions to the activities of an association.

- **Part time:** generally work regular hours each week but fewer than full time employees and their entitlements are pro-rated, based on hours worked.
- **Casual:** usually employed on an hourly, daily or weekly basis and don't usually get paid sick leave or annual leave.
- **Fixed term or contracted:** employed to do a job for an agreed length of time for example to work on a specific project or fill in for employees on leave.
- **Commission:** people in this category may be paid on a 'commission only' basis which means they only receive money when they sell or achieve a specific target.

TYPES OF EMPLOYMENT

Incorporated associations can employ people to undertake a range of duties, including:

- to deliver the association's services.
- to provide administration support.
- to manage the day-to-day operation of the association.

There are a number of different working arrangements that employers can apply when engaging workers and associations should consider what type of employment they wish to offer:

- **Full time:** generally work more than 35 hours per week on a regular, ongoing basis and receive full entitlements such as paid leave.

RECRUITING EMPLOYEES

An association may wish to engage a recruitment agency to assist with the process of employing staff. If the association decides to recruit its own employees it should use a process that is transparent, fair and consistent:

1. Write a job description which explains the essential duties of the position to be filled and the conditions of employment. This will help prospective employees understand the job requirements and decide whether they think they are suitable for the role.
2. Prepare selection criteria which will be used to assess the applicants. This criteria should include the qualities, skills, knowledge and experience that

the association requires of a successful applicant. The selection criteria are usually included with the job description so potential applicants know how they will be assessed.

3. Advertise the position to attract suitable applicants using the best means available to the association (newspaper, online, recruitment agent etc.).
4. Interview suitable applicants and check references to learn more about their experience and suitability for the role.
5. Prepare an [employment contract](#). The employment contract contains the terms and conditions of employment, including matters such as pay, leave and hours of work. A contract of employment should be in writing and signed by both parties.

IMPORTANT: the employment selection process is subject to anti-discrimination legislation including the selection criteria and interview (See [Discrimination and Harassment](#) for more information).

INDUSTRIAL RELATIONS SYSTEMS

When employing people, associations need to be aware of employment law and the relevant industrial agreement with which they are required to comply. Industrial relations and employment in Australia is governed at both State and Commonwealth level and the conditions of an employee contract may be subject to a specific award or agreement.

To clarify whether your association falls under the Commonwealth or the State system, or if you are unsure what industrial award and or agreement may apply to your association, you can contact Wageline on telephone 1300 655 266.

Western Australian industrial relations system

The Labour Relations division of the Department of Mines, Industry Regulation & Safety is responsible for administering the Western Australian industrial relations laws. It provides information through [Wageline](#) on issues including:

- minimum employment conditions;
- pay rates;
- long service leave entitlements; and
- employee termination and dismissals.

More information is also available on the [Labour Relations website](#).


Commonwealth industrial relations system


The Commonwealth Government workplace relations system is regulated by two agencies, Fair Work Australia and the Fair Work Ombudsman. To find out more about Commonwealth awards and agreements, you can contact:

Fair Work Commission

: 1300 799 675

Perth Office contact details


: (08) 9464 5172

: Floor 16, 111 St Georges Tce,
Perth WA 6000

: www.fwc.gov.au

: perth@fwc.gov.au

Fair Work Ombudsman

: 13 13 94

: GPO Box 9887 in your capital city

: www.fairwork.gov.au

EMPLOYMENT TERMS AND CONDITIONS

Industrial awards

An industrial award is a legally binding document that outlines the wages and conditions of employment for groups of employees in an industry or occupation, for example, the Western Australian Hairdressers Award 1989. Generally, employers cannot provide conditions of employment that would be less favourable than award conditions.

Western Australian awards are made by the [Western Australian Industrial Relations Commission](#). Traditionally, Commonwealth awards are made by the [Australian Industrial Relations Commission](#).

Employer-employee agreements

An association may be eligible to make use of an individual agreement known as an 'Employer-Employee Agreement' (EEA). This is a voluntary written agreement between an employer and employee, which forms the basis of the contract between the two parties.

There are a number of requirements that must be met and an EEA must be registered with the [Western Australian Industrial Relations Commission](#).

Common law contract of employment

Common law contracts are individual agreements between an employer and an employee. It is important to note that:

- the terms of any relevant award or collective agreement will still apply even if when not written into the contract; and

- the contract must comply with the minimum conditions imposed by the applicable State and Commonwealth legislation.

Common law contracts may be useful where there is no award that applies to the employees. Labour Relations provides information about [developing a common law contract](#).

TERMINATION OF EMPLOYMENT

If your association needs to terminate an employee's employment, it is important to find out what procedures must be followed. It may be advisable to obtain legal advice before terminating an employee's employment.

Employment may end when:

- the work set out in the contract is completed or the time period for the end of the contract is reached.
- either party gives proper notice to terminate the contract.
- a party terminates the contract because the other party breaches the terms of the contract of employment. Whether a particular breach justifies termination will depend on the nature of the breach and the particular circumstances of the case.

Redundancy

There may be situations where the role the person is employed in is no longer required.

State and Commonwealth awards and agreements will often deal with matters concerning redundancy, including issues such as:

- consultation with the employee,
- notice to and consultation with unions,

- redeployment opportunities (providing the employee with another position), and
- redundancy payments and benefits.

Associations should be clear that a position is no longer required before terminating employment by reason of redundancy. If an employee's employment is terminated on grounds of redundancy in circumstances where this is not a genuine reason for the termination, the association may be exposed to a claim of unfair dismissal.

Summary (instant) dismissal

Some contracts of employment make allowance for instant termination of employment (termination without notice) where an employee has been found to have engaged in serious misconduct, for example:

- theft;
- use of illicit drugs in the workplace;
- criminal conduct, for example, assault; and
- fraudulent conduct.

Any alleged serious misconduct must be investigated thoroughly and fairly, and the allegations substantiated by clear evidence before an association terminates an employee's employment summarily for serious misconduct.

Unlawful termination

Termination of a contract of employment is unlawful if proper notice is not given or it is terminated for a prohibited reason such as:

- union membership (or non-membership) or reasonable participation in union activities;
- prohibited grounds of discrimination;

- temporary absence because of illness or injury;
- absence during maternity or parental leave; and
- filing a complaint or participating in proceedings against an employer.

Unfair dismissal

There are unfair dismissal laws in both the State and Commonwealth industrial relations systems. The process by which the decision to terminate employment was reached and communicated to the employee must always be fair. Key elements of procedural fairness include:

- notifying the employee of reasons for termination of employment;
- giving the employee an opportunity to respond before any final decision is made;
- if employment is to be terminated for reasons, such as repeated misconduct or poor performance, advising the employee of the issues and giving the employee an opportunity to improve prior to termination (e.g. by way of warnings, counselling).

Employees are entitled to be told if their work is not satisfactory, given a chance to change and warned if their performance is still unsatisfactory. It is essential to keep detailed and up-to-date records of these processes as they may be required later to support decisions.

More information about unfair dismissal is available from both [Labour Relations](#) and the [Fair Work Commission](#).

OTHER EMPLOYER OBLIGATIONS

Superannuation

All employers are required to make superannuation contributions on behalf of their employees. Employees may (depending on the terms of an applicable award) have the right to nominate their preferred superannuation fund and if so, employers must notify employees of their right to choose. If an employee does not provide written details of their preferred fund, the employer can use a fund of its choice until such time that the employee requests a change.

Workers' Compensation

All incorporated associations that employ staff should arrange appropriate workers' compensation insurance and an employee's legal entitlement to compensation for injury in a workplace cannot be nullified through any employment contract or individual agreement.

For more information on worker's compensation insurance, refer to the [Risk Management and Safety](#) chapter.

Records

Employers are required to keep time and wage records for each employee. The records must accurately document the employee's wages and entitlements. The record keeping requirements may vary depending on the relevant industrial system, award, agreement, industry standard, or the association's policy but as a general guide, there should be a separate record for each employee detailing:

- the name of the relevant award or agreement regulating the employee's employment;
- the classification of the employee under the award or agreement;
- whether the employee works full-time or part-time, or is employed on a casual basis;
- the date the employee began work;
- hours worked, including breaks;
- leave entitlements taken and due;
- remuneration; overtime, flexitime or time-in-lieu.

Employment of children

Generally speaking children of any age can work for charities and not-for-profit organisations so long as the work does not prevent school attendance.

VOLUNTEERING

Volunteer work is unpaid and provides an opportunity for people to participate in the activities of their community. Volunteers (either as members or non-members of the association) can contribute to an association in a wide variety of roles to an associations such as:

- bookkeeping and administrative support;
- professional services (e.g. free legal or accounting advice);
- participation on sub-committees;
- participation in, or co-ordination of, activities and events run by the association; and
- fundraising.

Although volunteers are not normally classified as employees for the purpose of employment and taxation laws, associations generally owe their volunteers a duty of care in relation to the work they undertake for the association. There are additional legal obligations

imposed under the *Occupational Safety and Health Act 1984* (see [Occupational Safety and Health](#)).

Volunteer liability and insurance


In certain circumstances, the *Volunteers and Food and other Donors (Protection from Liability) Act 2002* relieves volunteers of incorporated associations from civil liability for acts done in the course of their volunteer work, and transfers that liability to the incorporated association. An incorporated association will generally be liable for anything a volunteer does in good faith when doing work organised by the association unless the volunteer:

- acts outside the scope of the work organised by the association;
- acts contrary to instructions given by the association; or
- is unable to do their work in a proper manner because his or her actions were significantly impaired by alcohol or non-therapeutic drugs.

Volunteering Western Australia

Volunteering Western Australia is the peak body for volunteering in this State. It supports and promotes the role of volunteers, provides general information about volunteering, opportunities to volunteers, and the rights and responsibilities of both parties.

Volunteering WA

: (08) 9482 4333

: www.volunteeringwa.org.au

: Level 1, 3 Loftus Street
West Leederville WA 6007

DISCRIMINATION AND HARASSMENT

There are laws prohibiting discrimination in certain areas of public life. This chapter provides an overview of the legislation and the implications for associations.

KEY POINTS

- Legislation exists that prohibits unlawful discrimination and harassment.
- Associations are subject to anti-discrimination legislation, and need to be mindful of discrimination in the areas of employment, the provision of goods, services and facilities, and membership of the association.
- Complaints of unlawful discrimination or harassment can be made to the Equal Opportunity Commission (in relation to Western Australian legislation) or the Australian Human Commission (in relation to Commonwealth legislation).

WHAT IS DISCRIMINATION?

Discrimination occurs where a person is given less favourable treatment than someone else. There are a number of grounds under which it is unlawful to discriminate against a person.

Direct discrimination occurs when a person is treated less favourably than another person in the same or similar circumstances. For example, unlawful sex discrimination may arise if a person is refused a job interview because she is a woman.

Indirect discrimination occurs when there is a requirement that adversely impacts on a particular person with an attribute covered by anti-discrimination legislation (e.g. sex, race, marital status, etc.). There may be no intention to discriminate, but

the conduct or decision leads to a discriminatory effect if the conditions imposed are not reasonable.

For example: it may be indirect discrimination if the only way to enter a public building is by a set of stairs as people with disabilities who use wheelchairs are unable to enter the building.

GROUND OF DISCRIMINATION

The grounds on which discrimination is unlawful are set out in Commonwealth and State legislation. It is unlawful to discriminate against a person on any of the stated grounds.

Commonwealth legislation

The main Commonwealth anti-discrimination laws are:

- the *Racial Discrimination Act 1975* - unlawful to discriminate against a person on the ground of race, colour, descent, national or ethnic origin.
- the *Disability Discrimination Act 1992* - unlawful to discriminate against a person on the ground of disability.
- the *Sex Discrimination Act 1984* - unlawful to discriminate against a person on the ground of sex, marital or relationship status, gender identity, sexual orientation, pregnancy or potential pregnancy, breastfeeding or family responsibilities (in some circumstances).
- the *Age Discrimination Act 2004* - unlawful to discriminate against a person on the ground of age; and

- the *Human Rights and Equal Opportunity Commission Act 1986*, include grounds on which complaints of discrimination in employment can be made to the Australian Human Rights Commission.

The *Fair Work Act 2009* also sets out a number of grounds on which it is unlawful to discriminate against an employee.

Areas where Commonwealth legislation applies

Discriminatory behaviour will only constitute unlawful discrimination if it takes place within one of the following areas of public life that are prescribed by the legislation:

- employment;
- provision of accommodation;
- education;
- provision of goods, services and facilities;
- access to places and vehicles;
- disposal of land;
- clubs and sport;
- administration of Commonwealth laws and programs;
- advertisements.

Western Australian legislation

The *Equal Opportunity Act 1984* (EOA) is the relevant piece of State anti-discrimination legislation and makes it unlawful to discriminate against a person on grounds, including:

- race;
- sex;
- age;
- pregnancy;
- impairment;
- marital status;
- gender history;
- sexual orientation;

- religious or political conviction;
- family responsibility or family status.

Under the *Industrial Relations Act 1979*, it is unlawful to discriminate against a person on the ground of trade union membership or non-membership.

Areas where Western Australian legislation applies

Like the Commonwealth legislation, discriminatory behaviour will only constitute unlawful discrimination if it takes place within one of the areas of public life that are prescribed by the legislation.

The issues that are most likely to be relevant to incorporated associations are in the areas of employment, and the provision of goods, services and facilities. In addition, an incorporated association may not discriminate on the ground of impairment, age or race in relation to membership of the incorporated association.

Employment

Incorporated associations are prohibited from discriminating against employees (both current and prospective). It is unlawful to discriminate against a person when deciding who should be offered employment, the terms on which employment is offered, the terms and conditions of employment, and allocation or access to benefits (e.g. promotion and training).

There are some legislative exceptions where discrimination may not be unlawful. For example, where the duties performed need to be done by a person of the relevant sex to preserve privacy, discrimination on the ground of sex is lawful.

Goods, services and facilities

It is generally unlawful to discriminate against a person on a prohibited ground when providing goods or services, whether for payment or not. However there are also exceptions in this area and it is generally lawful:

- to supply bona fide concessions or benefits to persons on the basis of age (e.g. pensioner travel concessions); or
- to give persons of a particular race, sex, age (or other attribute covered by the legislation) access to facilities, services or opportunities to meet their special needs in relation to employment, education, training or welfare.

Membership

In relation to membership of an association it is unlawful to discriminate against a person on the grounds of age or impairment in relation to:

- a person's application for membership;
- the terms and conditions on which an incorporated association is prepared to admit the person to membership;
- the general terms and conditions of membership; and
- access to benefits and facilities provided by the incorporated association.

Discrimination is not unlawful:

- where the principal object of the incorporated association is the provision of benefits to persons with a particular impairment or of a particular age;
- where a benefit has to be provided to a person with an impairment in a

special manner and it would be an unjustifiable hardship on the association to do so;

- where a bona fide benefit or concession is based on age;
- where membership categories are based on age.

Clubs

There are certain anti-discrimination provisions that refer specifically to 'clubs' and may apply to incorporated associations who meet specific criteria. Under the EOA, a club is defined to include an incorporated association of not less than 30 persons associated together for a purpose including social, cultural, sporting or political purposes that:

- provides and maintains its facilities from the funds of the association; and
- sells or supplies liquor for consumption on its premises.

In relation to membership of a club, the anti-discrimination provisions are more extensive. It is generally unlawful to discriminate against a person on **any prohibited ground** in matters relating to:

- a person's application for membership;
- the terms and conditions on which the club is prepared to admit the person to membership;
- the general terms and conditions of membership; and
- access to benefits and facilities provided by the club.

HARASSMENT

Harassment includes any unwelcome behaviour that offends, humiliates or intimidates a person. Generally, unlawful harassment occurs when someone is subjected to prohibited behaviour under

anti-discrimination legislation. Harassment can involve physical conduct, verbal conduct or visual conduct (e.g. in the form of posters, email, or SMS messages).

Sexual harassment

In Australia, sexual harassment is a legally recognised form of sex discrimination and includes any form of sexually related behaviour that is unwelcome and that offends, humiliates or intimidates a person in circumstances where a reasonable person would have anticipated that the person harassed would be offended, humiliated or intimidated.

Unlawful sexual harassment can be a one-off incident or repeated/continuous. The Commonwealth *Sex Discrimination Act 1984* makes sexual harassment unlawful in a wide range of areas that could apply to incorporated associations. The Australian Human Rights Commission has published [Sexual Harassment: A Code of Practice](#) to assist employers to understand their responsibilities under the Commonwealth *Sex Discrimination Act 1984*.

Racial harassment

Racial harassment generally includes racially-based threats, taunts, abuse or insults that disadvantage another person in their workplace or other area covered by anti-discrimination laws. For example, racist jokes, racist graffiti and name-calling. In certain circumstances, aspects of racial harassment can constitute a criminal offence.

Racial vilification

The Western Australian Criminal Code makes aspects of racial harassment, and incitement to racial hatred criminal

offences punishable by substantial jail terms.

Disability harassment

Under the Commonwealth *Disability Discrimination Act 1992*, disability harassment is unlawful in employment, education and provision of goods and services. In some circumstances, disability harassment may be unlawful disability discrimination.

DEALING WITH DISCRIMINATION OR HARASSMENT

Most instances of discrimination or harassment constitute unlawful behaviour, rather than a criminal offence. As such, they are generally dealt with by lower authorities than the courts. It is the person experiencing the discrimination or harassment who normally has to initiate the action to seek some form of resolution.

Incorporated associations can assist with this process by undertaking some proactive planning. For example, it is important for associations to have a policy (and grievance procedure) in place that deals with discrimination, harassment and victimisation. Training for employees and members about discrimination and harassment may also be necessary.

Complaints to external bodies

Commissioner for Equal Opportunity

Complaints of discrimination or harassment under the EOA can be made to the Equal Opportunity Commission who have the power to investigate and attempt to conciliate complaints of unlawful discrimination lodged under the EOA. Complaints should generally be made within 12 months of the alleged

act/s of discrimination or harassment. If conciliation is not successful, the matter may be referred to the SAT.

The SAT is independent of the Commission, and is a statutory body that makes and reviews a range of administrative decisions.

Commissioner for Equal Opportunity

✉: PO Box 7370
Cloisters Square WA 6850
☎: (08) 9216 3900
Country Callers: 1800 198 149
TTY: 9216 3936
💻: www.eoc.wa.gov.au
📧: eoc@eoc.wa.gov.au

Australian Human Rights Commission

Complaints of discrimination or harassment under Commonwealth anti-discrimination legislation can be made to the Australian Human Rights Commission within 6 months of the alleged act/s of discrimination or harassment. The President of the Commission is responsible for inquiring into and attempting to conciliate the complaint. If the complaint is not resolved at this level, the complainant may apply to the Federal Court of Australia or the Federal Magistrates' Court of Australia to have a hearing conducted into their complaint.

Australian Human Rights Commission

✉: GPO Box 5218
Sydney NSW 2001
☎: (02) 9284 9600
TTY: 1800 620 241
Complaints Infoline: 1300 656 419
💻: www.humanrights.gov.au
📧: complaintsinfo@humanrights.gov.au

RISK MANAGEMENT AND SAFETY

An association should assess any risks associated with its activities and take steps to reduce and manage these risks. This chapter outlines the process for managing risks, options for insurance and the responsibilities to provide safe and healthy environments for employees, volunteers and sporting participants.

KEY POINTS

- All associations should identify and take steps to reduce exposure to risk.
- There are various types of insurance cover that an association may require.
- Some insurance is compulsory for associations (e.g. workers' compensation for employees).
- There are a range of specific obligations under the *Occupational Safety and Health Act 1984* and Regulations (the OSH Laws).
- Sporting and recreation clubs must take reasonable steps to protect participants, coaches, referees and spectators from foreseeable harm.

example, an association may choose to remove the risk by not continuing with a particular activity, or determine that existing control is satisfactory as the impact would be very minor and it is extremely unlikely to occur.

3. Treat risks by considering any existing risk control measures (e.g. insurance, security alarm, warning signs), deciding whether the existing measures are adequate and considering any additional measures that may be required.
4. Monitor and review the process on a regular basis. It is important to regularly review if there has been any change in the association's risk position and, if necessary, repeat and review the process set out above.

RISK MANAGEMENT

'Risk management' is a formal and structured process of identifying and managing risk. It involves assessing and then actively managing an organisation's potential exposure to loss, damage or litigation. Effective practical strategies for reducing risk, such as safety protocols and security devices, can work together with insurance to reduce risk exposure.

Basic risk management steps

1. Identify each risk with a thorough analysis of the association's operations, activities and business.
2. The association needs to decide how to manage risks by determining the likelihood of a risk occurring against the potential consequences. For

REASONS FOR OBTAINING INSURANCE

Becoming incorporated does not mean an association is automatically protected from exposure to risk. There are various reasons to obtain insurance:

- compulsory insurance requirements imposed by law (e.g. worker compensation);
- the association may have property or other assets that should also be insured;
- the association organises or participates in activities that require suitable insurance (e.g. sporting activities) or

- members, executives, staff and volunteers may need to be insured against certain risks or personal liability that may arise as a result of their role in the association.

TYPES OF INSURANCE

The following are common types of insurance that may be relevant to associations.

- **Professional indemnity** - covers claims in respect of a breach of duty.
- **Portable/ valuable items** - covers loss of specified items.
- **Theft** - to cover theft of contents, cash and stock.
- **Events insurance** - covers an event against loss (e.g. cancellation due to bad weather).
- **Workers' compensation** - covers employees for work related injuries.
- **Public liability insurance** - covers claims by third parties; e.g. negligence
- **Directors' and officers' liability** - covers the directors and officers against legal liability.
- **Volunteer insurance** - covers volunteers for personal injury and public liability.
- **Building insurance** - covers against events such as fire, storm and vandalism.

Compulsory insurance

Some insurance cover is compulsory under applicable laws. For example, it is compulsory for an incorporated association that employs staff to have workers' compensation insurance. An association should consult a qualified adviser (such as an insurance broker or lawyer) to determine its compulsory insurance obligations.

DECIDING ON INSURANCE

An association should consider the cost of any non-compulsory insurance against the risks covered by that insurance in the context of the activities carried out by the association. The committee may wish to engage a qualified broker to assist it to identify suitable insurance cover. A review of the association's activities and risks should be conducted on a regular basis to assess whether its existing insurance program provides appropriate cover.

Exclusions

Exclusions in insurance policies are those events, occurrences or types of damage or loss not covered by a policy. For example:

- workers' compensation and professional indemnity cover may not extend to volunteers;
- the loss of cash kept on premises may not be covered;
- items valued over a certain amount may not be covered; and
- the use of private cars for work purposes may not be covered under the owner's private car insurance.

Exclusions can vary between policies and an association should pay special attention to any exclusions when considering the type and extent of cover.

Hints when considering insurance and risks

- Obtain professional advice and assistance from a qualified insurance broker.
- Investigate group insurance schemes, which may reduce premium costs.

- Regularly check insurance cover and policies to ensure that you are not under-insured or over-insured.
- Consolidate policies where possible – packaged insurance may be more cost effective than individual cover.
- Undertake regular risk management to identify, assess and manage risks.
- Ensure that all office bearers, committee members, management and staff are aware of their legal responsibilities.
- Ensure that relevant policies and procedures concerning risks (e.g. professional standards and health and safety) are developed, implemented and maintained.

OCCUPATIONAL SAFETY AND HEALTH

Associations generally owe an obligation to provide and maintain a safe, healthy working environment. The *Occupational Safety and Health Act 1984* and its associated Regulations (collectively referred to as the OSH Laws) sets out the requirements for providing a safe and healthy work environment. It is important for associations to take note of the rights and duties in the OSH Laws, and comply with the relevant provisions concerning safety requirements.

Duties of employers

In addition to a general duty to provide and maintain a safe and healthy work environment, under the OSH Laws, employers must so far as is practicable:

- provide and maintain workplaces, equipment and systems of work so that employees are not exposed to hazards;
- provide necessary information, instruction, training and supervision so

employees can perform their work safely;

- consult and cooperate with safety and health representatives and other employees on occupational safety and health matters;
- provide employees with adequate personal protective clothing and safety equipment, where required; and
- immediately notify the WorkSafe Western Australia Commissioner if an employee at a workplace suffers an injury that results in death, or an injury such as a fractured skull, spine or bones, some amputations and any injury that, in the opinion of a medical practitioner, is likely to prevent the employee from being able to work within ten days of when the injury occurred). Information about this process is available from the [Worksafe website](#).

Under the OSH Laws, associations may also have obligations to people who are not employees such as volunteers and visitors.

Rights and duties of employees and contractors (self-employed people)

Employees and contractors have a responsibility under the OSH Laws to take reasonable care to ensure their own safety and health at work, and to avoid adversely affecting the safety and health of others. Employees must:

- cooperate with their employer to ensure that the workplace is safe and healthy;
- comply with safety and health procedures and guidelines provided by their employer;
- use any personal protective equipment provided by the employer as instructed; and

- report hazards and injuries to their employer.


Employees also have rights under the OSH Laws including:


- the ability to request safety and health representatives at the workplace. (Refer to the guidance note, [Formal Consultative Processes at the Workplace](#));
- the right to receive adequate information, instruction, training and supervision so as to be able to work safely;
- the right to be consulted about safety and health at the workplace; and
- the right to refuse to undertake work if they have reasonable grounds to believe that doing so involves a risk of imminent and serious injury or harm to health.

WORKSAFE

The [WorkSafe](#) division of the Department of Mines, Industry Regulation and Safety administers the OSH Laws and can provide further information. WorkSafe can investigate breaches under the OSH Laws. Inspectors have broad powers to visit and inspect workplaces and it is an offence to interfere in the performance of an inspector's functions.

Worksafe

: 1300 307 877

: 24 hour serious incident and fatality reporting line: 1800 678 198

: www.dmirs.wa.gov.au/worksafe

Reporting accidents

All accidents and near misses should be reported in writing to the employer (the association) as soon as possible. The

report should set out all the relevant details of the accident.

The WorkSafe Commissioner must be notified of all work related injuries that result in a death or fracture of the skull, spine, pelvis, certain bones in the arm or the leg, some types of amputations, the loss of sight in an eye or an injury that, in the opinion of a medical practitioner, is likely to prevent the employee from being able to work within ten days of when the injury occurred. Further information is available from the [WorkSafe website](#).

Workers' compensation

In Western Australia, all workers must be covered by a valid workers' compensation insurance policy. The definition of a 'worker' is broad and extends to any 'contract of service' or 'contract for service' between a worker and employer. If an association is unsure whether its staff are classified as 'workers' or 'volunteers,' it should contact its insurer or insurance broker to confirm the organisation has the right coverage.

WorkCover WA is the government agency responsible for overseeing and regulating the workers' compensation and injury management scheme in WA. For more information visit the [WorkCover WA website](#) or telephone 1300 570 937.

SAFETY IN SPORT

Many sports and recreational activities have inherent risks and dangers. It is inevitable that injuries amongst participants will occur. Negligence can lead to participants, officials, or the association being held liable (responsible) for conduct that causes harm to another person.

Participants

Participants are generally taken to have voluntarily accepted the risks inherent in a particular sport. This includes the risk of injury that might arise from minor or expected breaches of the playing rules; however participants are expected to behave reasonably. If the person's behaviour falls below the standard required, the person may be said to be negligent.

Coaches and referees

Coaches and referees owe a duty of care to participants in sports activities. They are expected to do what a reasonably competent coach or referee would do in that position including providing reasonable supervision and ensuring that participants are properly instructed in the rules of the activity and safety requirements.

Spectators

Spectators and bystanders are also exposed to risks at sporting events. Spectators and bystanders could be injured in a variety of ways such as by stray balls, racing cars leaving the track and crashing into the spectator area, faulty equipment, grandstands collapsing and unruly behaviour.

A sports association, officials and participants have a duty to take reasonable care not to injure or cause injury to spectators or bystanders. A sporting association may be held liable for injuries to spectators if they failed to take reasonable steps to prevent foreseeable risks.

Effect of the Civil Liability Act 2002

In Western Australia, the *Civil Liability Act 2002* (CLA) limits liability for injury

resulting from recreational activities. A person is not liable for harm occurring as a result of an inherent risk, such as something that cannot be avoided by exercising reasonable care and skill.

If a risk is obvious, there is no duty to warn a person of the obvious risk. For example boxers can expect to get punched. However, a person will not avoid liability if the injured person had specifically asked for advice about the risks.

Insurance and waivers

Sporting groups can obtain insurance specifically designed to cover sports injuries, liabilities and events. Participants, members and officials should be informed of the nature and extent of the insurance cover and participants should be advised to have their own health cover.

It is not uncommon for sporting associations to require members to sign a waiver that indemnifies the association and its officials from liability. Waivers have limited value and in the case of children, parents may not sign away children's rights against negligent acts.

Department of Local Government, Sport and Cultural Industries - Sport and Recreation

The Department of Local Government, Sport and Cultural Industries - Sport and Recreation has a [useful website](#) that provides a wealth of information about managing sport and recreation clubs.

☎: (08) 9492 9700

🌐: www.dsr.wa.gov.au/contact

📄: www.dsr.wa.gov.au

✉: PO Box 8349

Perth Business Centre WA 6849

DEREGISTERING AN INCORPORATED ASSOCIATION

This chapter sets out the procedure for ending the incorporation of an association or transferring to a different corporate structure.

KEY POINTS

- An incorporated association may end its incorporation by applying for voluntary cancellation or by winding up either voluntarily or by order of the Supreme Court.
- If an incorporated association has surplus property when it is cancelled, it must prepare and submit a distribution plan to the Commissioner for approval.
- An association may also transfer to another form of incorporated structure. These include registering as a company, an Aboriginal or Torres Strait Islander corporation or a co-operative.

ENDING AN ASSOCIATION'S INCORPORATION

When a decision is made to cease its activities, the association needs to terminate any agreements, pay its debts and distribute the remaining surplus property. The Act enables an association's affairs to be finalised depending on the particular circumstances. This includes:

- voluntary cancellation (with or without assets);
- voluntary winding up, applying the relevant parts of the corporation law; or
- winding up by order of the Supreme Court.

Voluntary cancellation

An incorporated association can only apply for voluntary cancellation if it is solvent (having sufficient assets to pay all of its debts and liabilities) and it resolves by special resolution to be cancelled voluntarily.

Voluntary cancellation without assets

If an association does not have any property, assets or debts it can be cancelled voluntarily by completing the following steps:

1. The management committee examines the affairs of the association and declares by resolution that it is of the opinion there are no outstanding debts or surplus property.
2. Convene a general meeting of members and pass a special resolution to apply for voluntary cancellation (see [Altering the Rules](#) for information about special resolutions).
3. Submit the application for voluntary cancellation to Consumer Protection using [AssociationsOnline](#).

If the Commissioner for Consumer Protection considers it appropriate the association's incorporation is cancelled. The cancellation takes effect from the date determined by the Commissioner and will be confirmed in writing to the applicant.

Voluntary cancellation with assets

If the association has assets or surplus property there are additional steps that must be completed in order to be voluntarily cancelled. Surplus property refers to any assets of the association that remain after the payment of its debts or liabilities. An association's surplus property may only be distributed to:

- another association registered under the *Associations Incorporation Act 2015 (WA)*;

- a company limited by guarantee registered under the *Corporations Act 2001*;
- an organisation that holds a current licence under the *Charitable Collections Act 1946*;
- an organisation that is a member or former member of the association and whose rules prevent the distribution of property to its members; or
- a non-distributing co-operative registered under the *Co-operatives Act 2009*.

An association with assets can voluntarily cancel its incorporation by completing the following steps:

1. The management committee examines the affairs of the association and declares by resolution that it is of the opinion the association can meet its debts and liabilities.
2. Prepare a draft plan detailing how the surplus property will be distributed include the intended beneficiaries and an estimate of the value of the property.
3. Convene a general meeting of members and pass special resolutions confirming that members wish to apply for voluntary cancellation and approving the plan for the distribution of the surplus property (see [Altering the Rules](#) for information about special resolutions).
4. Within 28 days after the special resolution has been passed submit the application for voluntary cancellation to Consumer Protection using [AssociationsOnline](#).
5. The distribution plan will be approved in writing by the Commissioner for Consumer Protection.
6. Once approved, implement the distribution plan and notify Consumer Protection when the process has been completed.

The cancellation of the association will take effect from the date determined by the Commissioner and is confirmed in writing.

Cancellation of an incorporated association by the Commissioner

The Act provides the Commissioner for Consumer Protection with discretion to cancel an incorporated association where there is cause to believe that the association, among other things, has been inoperative for at least 12 months or has fewer than six members.

Where the incorporation of an association has been cancelled, any property of the association vests in the State and the Commissioner can distribute the property in accordance with the Act. Depending on the circumstances, former members of the defunct association may have little say in how such property is distributed, although efforts are generally made to contact the most recent committee.

Reporting defunct or disbanded associations and clubs

If you are aware of an association that is defunct but has not been cancelled, please use the [online form to report the association](#) to Consumer Protection.

Winding up

An association may choose to wind-up rather than apply for cancellation if it has difficulties identifying or locating assets, is a party to legal proceedings or has any outstanding contractual obligations or disputed debts.

Where the financial affairs of an association are complex, winding up allows the association to appoint a liquidator to manage the process of finalising its financial affairs. It also provides a level of protection for the committee and members in the event

of any subsequent claim against the association.

There are also certain circumstances where an association is forced to wind-up by order of the Supreme Court. An application to the Supreme Court to wind up an incorporated association can be brought by the association, a member of the association, the Commissioner, the Minister, or a creditor. This can be a complex and costly process and anyone considering making an application should seek their own legal advice.

INSOLVENT ASSOCIATIONS

An insolvent association is one that is unable to pay its debts when due for payment. An insolvent association cannot apply for cancellation or be wound up voluntarily. It may only be wound up by the Supreme Court.

If there is a concern that an association may be insolvent, it is recommended that no further debt be incurred until the financial position of the association has been established and appropriate action taken to address the issue.

If it is not possible to restructure, refinance or obtain additional funding it may be necessary to appoint a voluntary administrator or contact a liquidator.

Liquidation is the orderly winding up of an organisation's affairs. It involves realising the organisation's assets, cessation or sale of operations and distributing to the creditors.

Voluntary administration involves an external administrator investigating the organisation's affairs and providing a recommendation to the creditors.

If the association is unsure where to begin it is recommended to do the following:

- make a list of all possible creditors and how much is owed to each.
- arrange to have the association's accounts audited.
- contact creditors and see if an agreement can be reached regarding the debt.
- discuss the situation with a finance professional or a lawyer.

Any association that may be insolvent is encouraged to seek professional advice to determine its rights, obligations and options.

Voluntary administration

Where a management committee resolves that the association is insolvent, or likely to become insolvent, they may appoint an administrator. The administrator takes control of the association's affairs and may perform any function, and exercise any power, that the association or any of its officers could perform or exercise if the association were not under administration.

Voluntary administration seeks to maximise the chances of an association continuing to operate or, if the association cannot continue, achieve a better return for creditors and the association when winding up its affairs.

As soon as practicable, the administrator must investigate the association's circumstances and make a recommendation on its future. The management committee is required to assist the administrator by delivering all books in their possession and reporting on the association's affairs and financial circumstances.

AMALGAMATING EXISTING INCORPORATED ASSOCIATIONS

Merging the activities of two or more incorporated associations together to continue on as a single incorporated association is known as amalgamation. To begin the amalgamation process each of the merging associations must pass its own special resolutions confirming the:

- terms of the amalgamation;
- name and objects of the new group; and
- proposed rules for the new group

More information on the requirements for a special resolution is provided in [Altering the Rules](#). An application to amalgamate the associations should be submitted using [AssociationsOnline](#).

If the Commissioner is satisfied that the:

- required special resolutions have been passed in accordance with the Act;
- proposed new body is eligible for incorporation; and
- rules of the new body comply with the requirements of the Act,

a certificate of incorporation will be issued for the new body and each of the amalgamating incorporated associations will be automatically cancelled.

Transfer of amalgamating associations' property and liabilities

Once the new body has been incorporated:

- the property of all the former associations vest with the new incorporated association;
- the rights and liabilities of the former associations become the rights and liabilities of the new incorporated association;
- any proceedings by or against the former associations that existed immediately prior to the incorporation of the new

association may be continued by or against the new body; and

- any pre-existing agreements of the former associations will apply to the new incorporated association (unless the agreements state otherwise).

TYPES OF INCORPORATED STRUCTURES

There may be circumstances where it may be advantageous for the association to move to another jurisdiction. For example, an association wanting to expand its activities into other States may prefer to become a company, regulated by Commonwealth authorities.

The Act contains provisions that allow the Commissioner to facilitate a transfer to another jurisdiction for example:

- a co-operative;
- an Aboriginal or Torres Strait Islander corporation; and
- an incorporated company.

Incorporation under the *Corporations Act 2001*

An organisation wishing to operate for profit or conduct its activities anywhere in Australia can incorporate as an Australian company under the *Corporations Act 2001*. In general, companies have greater scope than incorporated associations in the activities that they can undertake however they are more highly regulated than other entities and can have higher ongoing costs. There are several types of company including:

- **Unlimited company** with share capital is often used for pooled investments and allows members to withdraw their investment capital. Members are personally liable for the debts of the company.
- **Company limited by shares** is often used for business purposes. Members'

personal liability is limited to any unpaid subscription price for their shares.

- **Public company limited by guarantee** cannot issue shares. The liability of members is limited to the amount agreed to in a guarantee (e.g. membership fee).

For more information about companies contact ASIC on telephone 1300 300 630 or [visit their website](#).

Registration as a co-operative

A co-operative is a legal entity created, owned and controlled by its members. Members benefit by sharing and using the co-operative's products and services. Co-operatives can be set up for a wide range of social and economic activities such as retail, agriculture, irrigation, marketing and taxi services.

There are different types of co-operatives to suit different business needs. A distributing co-operative has a share capital and may give returns or profits to members. A non-distributing co-operative may or may not have a share capital and cannot give any returns or profits to members (other than the nominal value of shares).

It may be decided the association is better suited to the structure of a co-operative and would operate more effectively if it transferred from being an incorporated association to a co-operative company.

For further information please visit the [Co-Operatives website](#) or contact Consumer Protection on 1300 30 40 74.

Incorporation under the Corporations (Aboriginal and Torres Strait Islander) Act (2006)

The *Corporations (Aboriginal and Torres Strait Islander) Act (2006)* provides a simple way for Aboriginal or Torres Strait Islander groups to incorporate.

Eligibility for membership must meet certain requirements relating to required numbers or percentages of Aboriginal or Torres Strait Islander persons. Unlike incorporated associations, Aboriginal or Torres Strait Islander corporations allow groups to share profits and engage in trading activities that incorporated associations are restricted from doing.

Assistance and advice on forming an Aboriginal or Torres Strait Islander corporation is available from the Office of the Registrar of Indigenous Corporations.

Office of the Registrar of Indigenous Corporations

✉: PO Box 2029 Woden ACT 2606

☎: 1800 622 431

✉: info@oric.gov.au

🌐: www.oric.gov.au

TRANSFERRING TO ANOTHER JURISDICTION

The Commissioner for Consumer Protection has authority to approve an incorporated association's transfer to a company, an Aboriginal Corporation or a Co-operative. To transfer to another corporate structure requires the association members to pass a special resolution at a general meeting.

An application for approval to transfer incorporation can be submitted using [AssociationsOnline](#).

BECOMING AN UNINCORPORATED ASSOCIATION

Where an incorporated association has decided to wind up, there may be some members who wish to carry on some or all of the old association's activities. Please note if this course of action is being contemplated, the old association's assets or property **cannot** be handed on to those running the unincorporated association.