



Government of **Western Australia**  
Department of **Commerce**  
Consumer Protection

# INC:

**A Guide for Incorporated Associations  
in Western Australia**

**November 2014**

## Contents

<b>INTRODUCTION TO THE INC GUIDE</b>	<b>3</b>
<b>INTRODUCTION TO INCORPORATED ASSOCIATIONS</b>	<b>7</b>
<b>BECOMING AN INCORPORATED ASSOCIATION</b>	<b>13</b>
<b>THE MANAGEMENT COMMITTEE</b>	<b>22</b>
<b>RECORD KEEPING</b>	<b>36</b>
<b>MEETINGS</b>	<b>49</b>
<b>ALTERING THE RULES</b>	<b>64</b>
<b>GRIEVANCES AND DISPUTES</b>	<b>73</b>
<b>ACCOUNTS AND AUDITING</b>	<b>81</b>
<b>TAXATION</b>	<b>87</b>
<b>FUNDRAISING</b>	<b>101</b>
<b>GRANTS</b>	<b>113</b>
<b>EMPLOYMENT</b>	<b>118</b>
<b>DISCRIMINATION AND HARASSMENT</b>	<b>135</b>
<b>INSURANCE AND RISK MANAGEMENT</b>	<b>147</b>
<b>OCCUPATIONAL SAFETY AND HEALTH AND WORKERS' COMPENSATION</b>	<b>154</b>
<b>VOLUNTEERS</b>	<b>161</b>
<b>SPORTING AND RECREATIONAL CLUBS</b>	<b>166</b>
<b>COPYRIGHT</b>	<b>176</b>
<b>THE END OF THE ROAD</b>	<b>182</b>

# Introduction to the INC Guide

People often come together to form groups to pursue a range of common interests of a recreational, social, political, economic, cultural, spiritual or professional nature. In Western Australia alone, there are over 17,000 of these groups that have registered as incorporated associations.

Many groups decide to register as a 'not-for-profit' incorporated association because it enables them to create a separate legal entity through which to conduct their activities. There are several significant advantages:

- the individual members limit their exposure to personal legal liability;
- bank accounts can be opened in the name of the association; and
- the association can apply for government grants and it can hold property.

INC. A Guide for Incorporated Associations in Western Australia has been developed as a comprehensive operational document to assist associations in performing their role effectively.

The purpose of this guide is to provide information on some of the key legal obligations and rights that apply to associations once they are incorporated under the *Associations Incorporation Act 1987* (the Act).

It also provides a basic introduction to various aspects of managing an association, for example:

- conducting meetings;
- record-keeping;
- employing staff; and
- engaging volunteers.

In effect, the guide may be used by members of associations as a reference source on good governance practices.

There are many government departments and non-government organisations that provide assistance to incorporated associations. The guide also attempts to draw together these resources by providing examples, references and direct links wherever possible.

Although the process of incorporation is quite simple and inexpensive, there are a number of steps that groups have to comply with when establishing an incorporated association.

**For more information regarding the incorporation process you can refer to [Becoming an Incorporated Association](#).**

The Consumer Protection Division of the Department of Commerce (“Consumer Protection”) is responsible for regulating associations in Western Australia.

**For information regarding incorporated associations contact the Associations Branch of Consumer Protection:**

Postal Address: Locked Bag 14 Cloisters Square WA 6850

Telephone: (08) 6251 2901 or  
1300 304 074 (country callers)

Facsimile: (08) 6251 2817

Email:

[associations@commerce.wa.gov.au](mailto:associations@commerce.wa.gov.au)

Website:

[www.commerce.wa.gov.au/associations](http://www.commerce.wa.gov.au/associations)

## Genesis

The guide was initially developed by the Gosnells Community Legal Centre Inc. (GCLC) and was first published in May 2005. Consumer Protection has supported the guide from its inception and has actively promoted its use at association information sessions throughout the State. In 2007, Consumer Protection agreed to take over responsibility for the further development and publication of future editions of this guide. Consumer Protection acknowledges the extensive research and consultation undertaken by GCLC in developing the original version. In 2010 Consumer Protection undertook an extensive review of the Inc Guide.

Throughout the document, we have also continued with GCLC’s concept of explaining the requirements for registration and rules of associations by referring to a fictitious association – the Harmony Community Development Association Inc.

The Harmony Community Action Group had been operating for a number of years. They were actively involved in organising various educational, cultural, environmental and social community projects to help build their local community, promote local interests and improve services to the community. The Harmony Community Action Group managed to raise substantial funds for charity and an increasing number of people wanted to become members of the group. The group decided to become an incorporated association, known as the Harmony Community Development Association Inc.

## Layout and structure

Unlike the first edition, the guide is now available [online](#). This has resulted in a more interactive information tool, whereby the reader/user can be taken directly to a useful website (or a specific part of a website) or to another part of the guide itself. This also allows for easier updating of information.

The guide is structured into 20 separate parts and each part is available electronically or to print independently of each other, or as a whole.

## Review of the Act

On 11 September 2014 legislation was introduced into Western Australian Parliament to update the existing Act. The *Associations Incorporation Bill 2014* (“the Bill”) is currently under consideration.

For updates on the progress of this Bill visit Consumer Protection’s [website](#).

To the extent possible, this edition of the guide integrates both the requirements of the current Act, as well as some of the provisions proposed for the revised legislation. This occurs in two ways:

In some cases, there are no significant changes proposed to the current provisions. Where these provisions are discussed in this guide, the specific section reference (or number) has been removed so that there is no possibility of confusion with those same provisions (but with different numbers) proposed in the Bill.

There are also a number of new provisions proposed which, if passed by Parliament, will introduce some changes to the way associations are managed. Where they are judged to be significant, these proposals have been separately highlighted within the appropriate chapter, as shown below.

### **NEW BILL**

**The intention is to draw these possible changes to the attention of current associations and their members. Please note that these provisions will not necessarily become part of any new legislation, and must be considered in that context.**

**For the avoidance of doubt, the legislation presently regulating incorporated associations in Western Australia is the *Associations Incorporation Act 1987*.**

**You can download a copy of the Act from the State Law Publisher’s [website](#) or contact (08) 6552 6000 to purchase a copy.**

## AssociationsOnline

In March 2012 Consumer Protection launched AssociationsOnline allowing associations to submit applications online saving time, money and paper.

AssociationsOnline is a secure online portal that can be used to check the status of an incorporated association, purchase copies of documents, submit a range of forms and update association contact information.

While many of the services are available directly, incorporated associations will need to enrol for **MyAssociation** to access certain features. Throughout the guide you will be advised what applications may be lodged using AssociationsOnline and if an enrolment is required.

It should be noted that hardcopy forms are still available and will be accepted by post for associations that do not have access to the internet.

For more information or to enrol visit [www.commerce.wa.gov.au/associationonline](http://www.commerce.wa.gov.au/associationonline).

## Sources and referencing

This guide is written primarily for people without a legal background and, therefore, every attempt has been made to present it in an informal and easy-to-read style. A number of legal and non-legal sources have been used to write this guide, but in order to keep the content simple and information easy to read, references have been kept to a minimum.

## A note on copyright

Throughout this guide, we have referred to various websites to obtain additional information, forms and policies. In most cases, this information will be protected by copyright and therefore 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 ask for permission to use the material.

This guide has been provided free of charge and Consumer Protection permits its reproduction.

Copyright is covered in more detail in [Copyright](#) if you would like to read more now.

## A final word

This guide 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 1 August 2013.

# Introduction to Incorporated Associations

*What does incorporation really mean and what are its consequences?*

*Can your association run a business and what does not-for-profit mean in terms of the law?*

*Before we get down to the detail of the day-to-day running of an association, it may be useful to review some of the legal matters that back up your incorporated status. This section deals with the more significant of these, as well as what you may need to do if your association is going to conduct any business activities.*

## Key Points

- Incorporation creates a new legal entity with powers similar to those of a natural person.
- An incorporated association can operate a business to help fund its objects or purposes, but commercial trading cannot be the major part of its activities.
- An incorporated association does not need to register a business name to conduct a business if it wants to trade under its incorporated name. However, if the association wants to trade a part or all of its business under a different name, it will need to register the business name with the Australian Securities and Investments Commission (ASIC).
- An incorporated association must have a common seal, which is the official stamp of the association. The common seal can only be used by those people authorised to use it in accordance with the rules.

## Effect of incorporation

Once an association becomes incorporated, it acquires a new legal status – it becomes a legal entity in its own right, separate from the individual members. In general, it has the following characteristics:

- the association becomes a body corporate with perpetual succession (that is, it may exist forever in its own right, even as the members of the association change);
- the name of the association is the name stated on the certificate of incorporation and must end with the word 'Incorporated' or 'Inc'. For example, Harmony Community Development Association Inc;
- members or officers of the association are generally not liable to contribute towards the payment of debts or liabilities of the association;
- all rights and liabilities that were held by members or officers in their personal capacity in relation to the running of the activity now become the rights and liabilities of, and against, the incorporated association. (This, however, does not relieve any person from liabilities incurred by or on behalf of the association prior to incorporation); and
- the association may sue or be sued in its own corporate name.

## Powers of an incorporated association

The effect of incorporation, generally, is to give an association a similar legal status to that of a natural person.

The Associations Incorporation Act 1987 specifically provides that an incorporated association may do all things that are necessary or convenient for carrying out its objects and purposes. In particular, it may:

- a) acquire, hold, deal with, and dispose of any real property (land) or personal property (goods, shares, etc);
- b) open and operate bank accounts;
- c) invest its money;
  - i. as trust funds may be invested under Part III of the Trustees Act (1962); or
  - ii. in any other manner authorised by the rules of the association;
- d) borrow money upon such terms and conditions as the association thinks fit;
- e) give such security for liabilities incurred by the association as the association thinks fit (e.g. a mortgage);
- f) appoint agents to transact any business of the association on its behalf; and
- g) enter into any other contract it considers necessary or desirable.

An incorporated association is not limited to doing only these things. In addition it can do almost any lawful act so long as it is necessary or convenient for carrying out the association's objects or purposes.

So it would seem that, just like a natural person, an association can operate a business as part of its activities, but are there any limitations on running a business under the Act, and can it make a profit?

## Not-for-profit

To become an incorporated association, the organisation must be not-for-profit. 'Not-for-profit' refers to the membership, purpose and activity of the association. It does not mean that an association cannot make a profit from its operations, but any profits must be used to further the objects of the association and cannot be distributed to the members.

This is different to a 'for-profit' company like Telstra or Qantas, where profits can be lawfully distributed to the members (i.e. shareholders) in the form of cash dividends.

If an association is going to run a business as part of its operations, two important conditions must be met:

- i. any trading, either with members or the public, must be secondary to the main purpose of the association; and
- ii. trading with the public must not be substantial in volume in relation to the other activities of the association.

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

### NEW BILL

**It is proposed that the restriction on an association trading be removed provided that all profits from such activities are used to further the association's objects or purposes and individual members do not profit from such activities.**

To clarify, the restrictions on trading and profit making in the Act do not prevent incorporated associations from:

- making a profit (e.g. by fundraising), as long as individual members do not receive any of the profit;
- employing people (including members) and paying them wages or salary;
- allowing 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);
- protecting or regulating 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 trading, as long as the trading is ancillary and not substantial in volume in relation to the main activities of the association (e.g. a community organisation selling publications while its main function is to provide a counselling service);
- charging admission fees to events organised for the promotion of the association's objectives;
- arranging competitions between members for prizes and trophies, other than money prizes; or
- providing facilities or services for members (e.g. a bowling club running a bar).

## Potential business requirements

### Registering a business name

If your association is going to operate any business component of its activities under its incorporated name (e.g. Harmony Community Development Association Inc.), there is no need to register the association's name as a business name.

You will only need to register a business name if the association wants to trade under a different name (including a shortened version of the association name, such as “Harmony Community”) for part or all of its business.

For example, Twinkle Toes Child Neighbourhood Inc, a group providing support to single mothers, decides to run a business name under the name “Nappies2U” that provides a commercial service to working parents. It would need to register this name as a business name.

On the other hand, having a registered business name does not mean that a group has become incorporated and created a separate legal entity. The two processes are separate.

A registered business name is a trading name under which an organisation, group of people or an individual can conduct their business activities within the state of registration.

An incorporated 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 registered business name cannot generally be the same name as the name of incorporation.

The business name registration service is managed by the Australian Securities and Investments Commission (ASIC).

It is possible to search ASIC’s register of business names, and register or renew a business name online and in most cases receive confirmation of your registration straight away. There is also a choice of registering or renewing a national business name for one or three years.

It is important to note that once registered, a name cannot be changed. In these circumstances, an association would need to cancel the existing registered name and apply for a new one, at the normal cost.

Contact the **Australian Securities and Investments Commission** on telephone **1300 300 630** or visit [www.asic.gov.au](http://www.asic.gov.au) for more information.

User guides relating to all services concerning business names are available from [ASIC Connect help](#).

## Operating interstate

As incorporated associations are created under State laws, you may encounter problems if your association wants to operate interstate or nationally. A formal application for registration as a **Registered Australian Body** can be made to the Australian Securities and Investments Commission which, if granted, will give association recognition outside of Western Australia. The association will be subject to the legal requirements of the *Corporations Act 2001* when conducting business interstate.

Contact the **Australian Securities and Investment Commission** on telephone **1300 300 630** or visit [www.asic.gov.au](http://www.asic.gov.au) for more information.

## Bank signatories

Even if there is no intention to run a business, an association will generally need people who can sign on behalf of the association, set up accounts, sign cheques, etc. Often, although not necessarily, these people are members of the management committee. Sometimes the authorised signatories and signing procedures are nominated in the rules of the association. If the rules do not cover this, the association needs to resolve who the signatories are and the requirements for signing documents and cheques.

Generally, some combination of 3-4 signatures is agreed to provide financial and security safeguards. The necessary paperwork can then be set up with the bank or credit union.

Decisions regarding accounts and signatures should be properly resolved and recorded in the minutes. Resolutions are dealt with in [Meetings](#).

## Common seal

A common seal is the official stamp or "signature" of an association. As a body corporate, an association is entitled to a common seal, and the Act requires an association's rules to provide for the "custody and use of a common seal". This means that an association must have a common seal and should maintain a list of those office bearers who are authorised to use the common seal. Common seals are not expensive to purchase and can be obtained from most stationery shops or rubber stamp suppliers.

The Act also provides that a common seal is only required for contracts which, if made between natural persons, would be required to be made in writing and under seal. In Western Australia, it is not necessary to seal any contract made between natural persons. On this basis, it is not necessary for an incorporated association to use a common seal to execute contracts in this State.

However, even though an incorporated association does not have to use a common seal to execute contracts, your association may decide to use the seal on contracts and other formal documents as the official signature of the association. It is good practice to limit the use of the common seal through the association's rules by requiring that the stamp only be used if the committee formally resolves to "affix" it to a document. Whatever your association decides, the rules should clearly indicate whether or not the association must use the common seal when executing contracts.

If the seal is used on a contract or other document, the fixing of the seal should be witnessed only by those who are authorised in the rules to witness the sealing of the document. Usually association rules require the sealing of a document to be witnessed by more than one officer bearer.

# Becoming an incorporated association

## *Should your group or association become incorporated?*

*Registering as an incorporated association is a popular and suitable option for many community and charitable groups because this structure is specifically designed for not-for-profit organisations and is simple and cost effective. The decision to incorporate is not one to be taken lightly. It means the organisation enters into a regulated system with formal accountability requirements. This chapter sets out the steps that a group needs to take to become incorporated and lists the requirements for registration. For information regarding the benefits and consequences of becoming incorporated refer to [Introduction to Incorporated Associations](#)*

## Key Points

- Only certain groups may qualify to register as an incorporated association.
- To become incorporated, an association must lodge an application with Consumer Protection.
- 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.
- An advertisement of Intended Application for Incorporation must be published in a newspaper circulating in an area where the association is situated or conducts its affairs before an application is lodged with Consumer Protection.
- The application (Form 1) 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. This is a very important document and must be kept in a safe place.

## Which groups are eligible for incorporation?

To become incorporated, Section 4 of the *Associations Incorporation Act 1987* requires the following requirements to be met:

- the group must have at least 6 members;
- be not-for-profit; and
- formed for one or more of the following purposes:
  - religious, educational, charitable or benevolent purposes;
  - promoting or encouraging literature, science or the arts;
  - sport, recreation or amusement purposes;
  - establishing, carrying on or improving a community, social or cultural centre or promoting the interests of a local community;
  - political purposes; or

any other purposes approved by the Commissioner.

## Steps to becoming an incorporated association

The procedure for registering an incorporated association is fairly simple and involves a few basic steps.

The key steps are:

1. hold an initial meeting to obtain members' approval for incorporation;
2. determine a suitable name and check that the group is eligible for incorporation;
3. develop a set of rules (there are [Model Rules](#) available);
4. hold a meeting to formally pass a resolution to adopt the rules and approve the proposed name of the association;
5. advertise your intention to incorporate; and
6. complete and submit the application.

### 1. Hold an initial meeting

Before a group can proceed with an application for incorporation, it needs to determine whether or not the group wants to become incorporated and to decide who will be responsible for making the application. The group should hold a meeting of all its members to vote whether it wants to incorporate.

If the members agree that they do want the organisation to become an incorporated association then the members need to:

- authorise one or more members to prepare and submit the application for incorporation;
- decide on a possible name for the association;
- decide on the aims of the association; and
- elect a member or committee to draft the rules.

## 2. Determine a suitable name and eligibility

### Checking the Name

If your organisation wants to apply to become incorporated, you should first check that the proposed association name is available for registration. Although this step is not compulsory, it may save you time and effort later. 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.

Associations may confirm the availability of their proposed name by completing a free **Availability of an Associations Name Enquiry** online on [AssociationsOnline](#).

Consumer Protection will notify you in writing whether or not the name is available.

Alternatively you may fax or post a [Form 8: Enquiry as to the Availability of Association Name](#) to Consumer Protection.

Please be aware that while a name may be available for use at the time of your enquiry it cannot be reserved or protected in any way. Final approval of the name will be subject to a formal assessment of the application for incorporation.

### Approval of Purpose

It is also important to make sure that the objects of your association are consistent with the Act. If the purpose of the association is not one which is specified in section 4 of the Act, the association can only be incorporated if the purpose is approved by the Commissioner under section 4(1)(f).

This section allows for incorporation 'for any other purpose approved by the Commissioner'.

There is a [fee](#) payable for this application.

### 3. Develop a set of rules

The Act requires an incorporated association to have a set of rules that govern the day-to-day management of the association.

You may draft your own rules, however the rules must:

- be consistent with the requirements of the Act;
- provide for all the matters set out in Schedule 1 of the Act; and
- comply with any taxable status provisions the group is seeking (see [Taxation](#) for more information).

Section 5(2)(a) of the Act requires that a copy of the adopted rules accompany the Application for Incorporation. The submitted rules will be retained as the definitive record of the association's rules in the event of a dispute.

#### What matters must be provided for in the rules of an incorporated association?

Any new association incorporated in Western Australia is required to make provision for 14 specific matters in its rules. These matters are detailed in Schedule 1 of the Act and are included in a checklist at the end of this chapter.

While an incorporated association's rules must provide for the Schedule 1 matters as a minimum, they can have other rules if they wish; provided that those rules do not breach any laws. For example, the rules cannot discriminate in membership on grounds prohibited by legislation, unless special exemption is obtained (see [Discrimination and Harassment](#)).

There are no requirements about the length or complexity of rules for an incorporated association. However, to avoid misinterpretation, the rules should be written in clear simple language.

#### Using the model rules

To assist associations, Consumer Protection has developed a set of [model rules](#) that can be adopted outright or used to provide examples of rules or proposed wording. You may use the model rules as a guide for developing your own set of rules but any new or altered rules must still comply with the basic requirements set out in Schedule 1.

To check that the association's rules are consistent with the Act and in particular the Schedule 1 requirements you can complete the checklist included with the model rules.

The Association can also complete the checklist included as an [Attachment to Application for Incorporation of an Association](#).

#### NEW BILL

**The Bill will allow an association to either adopt the Model Rules or adapt them to best suit their situation. Work is underway to update the Model Rules and the new version is expected to be finalised while the Bill is progressing through Parliament.**

## Drafting a set of rules

When developing a set of rules for the association, you may wish to follow a systematic and democratic process such as the following:

1. Draft the rules using the [model rules](#) as a guideline. It is also useful to have copies of rules (or constitutions) from existing associations to serve as examples.
2. Check the minimum requirements of the Act are met (using the model rules checklist or [Attachment to Application for Incorporation of an Association](#)).
3. Circulate the rules to the entire membership for consideration, discussion and feedback. You may also seek legal, tax or other professional advice.
4. Decide on any changes and redraft the rules.
5. Repeat points 3 and 4 until a final draft is produced.
6. After a final draft has been developed, call a meeting of the association's membership to formally adopt the set of rules.
7. The rules can then be sent to Consumer Protection along with the other documents for incorporation under the Act.

## 4. Hold a meeting to formally pass a resolution to adopt the rules and approve the proposed name of the association.

After a draft set of rules has been developed, a meeting to adopt the rules of the association and approve the proposed name should be held. The motions should be formally moved, seconded and recorded in the minutes (see [Meetings](#) for more information regarding motions).

## 5. Advertise your intention to incorporate

The person authorised by the association to apply for incorporation must place an **Advertisement of Intended Application for Incorporation** in a newspaper circulating in an area where the association is situated or conducts its affairs. Depending on the size, membership and activities of the association a local community paper may be acceptable. However, if the association is likely to operate throughout the state or nationally a newspaper such as The West Australian or The Australian may be more appropriate.

It is important to note that classifieds such as The Quokka are not deemed newspapers for the purposes of the Act and Consumer Protection will not accept advertisements from such publications.

The advertisement must be published in a prescribed format and include specific information.

Associations can complete a [Form 2 – Advertisement of Intended Application for Incorporation](#) and send this directly to the newspaper to be published.

Before submitting the Form 2, associations should complete the Advertising section of the [Attachment to Application for Incorporation of an Association](#) to check that the advertisement meets the requirements of the Act.

The advertisement must be published at least one month but not longer than three months before submitting your application to Consumer Protection.

A copy of the published advertisement must accompany the application. Associations should be aware that Consumer Protection cannot accept late applications and the advertising process will have to start again if you lodge the application after the three-month period.

Within one month after the publication of the advertisement, any person may request the Commissioner to decline the application. If the Commissioner refuses the request to decline the application, the person who made the request may apply to the State Administrative Tribunal to review the decision within 14 days of receiving the notice of refusal.

## 6. Complete and submit the application

Once the one month has passed since your advertisement was published in a newspaper and no request was made to the Commissioner to decline incorporation of your association, then the association may now submit the application for incorporation. The application can be made in one of two ways:

### Using AssociationsOnline

The online application form will require the following information:

- the name of the association (including the word “Inc” or “Incorporated”);
- the main purpose of the association;
- details of the applicant;
- details of a contact person (if not the applicant);
- the name of the newspaper and the date of advertisement;
- names and postal addresses for 6 of the association’s members; and
- copies of your adopted rules (constitution), the published advertisement and any other documents to be submitted, ready to upload to the system.

Once all information is entered and uploaded, payment can be made using a secure payment system.

[AssociationsOnline](#) guides you through completing the form but won’t allow you to lodge the application if you have missed any sections. This helps to ensure that your form is processed quickly once submitted.

Applicants are also given the opportunity to enrol for MyAssociation which will allow the Association to complete future applications online.

### By paper form

The association should complete a [Form 1 – Application for Incorporation of an Association](#). The application will also require the adopted rules, a copy of the published advertisement and payment of the application fee.

Please note that the Act provides that the rules of an association as well as every other document which is required by the Act (including the Form 1) to be lodged with the Commissioner are to be available to members of the public upon request and payment of a prescribed fee.

### When submitting your application to Consumer Protection remember to:

- Submit the documents **one month** after the date of the advertisement **but no longer than three months**.
- Complete the Form 1 in full and sign the declaration.
- Pay the correct fee.
- Provide a copy of the published advertisement (advertising proofs will not be accepted).
- Attach a complete copy of the association's rules with the signed annexure statement:

"This is the annexure of [insert number of pages] pages marked "A" referred to in the Form 1 signed by me and dated [insert date] [insert signature].

- Keep a copy of all the documents submitted. Consumer Protection does not provide a final copy to the association.

### The certificate of incorporation

The Commissioner will approve the application if satisfied that the:

- association is eligible for incorporation;
- rules of the association conform with the Act;
- name of the association is appropriate in accordance with the Act; and
- time during which any request for refusal of incorporation can be made has expired and any request for refusal to incorporate has been declined by the Commissioner.

If the application is approved, the Commissioner will incorporate the association by issuing a Certificate of Incorporation. The Certificate will show the name of the incorporated association, the date of incorporation and the registration number also referred to as the Incorporated Association Reference Number (IARN). Associations may request the certificate be laminated for a small additional fee.

**The Certificate of Incorporation is a very important document and needs to be kept in a safe place.**

## What happens if the application is not approved?

The Commissioner shall not incorporate an association if in his or her opinion:

- it is more appropriate for the activities of the association to be carried on by a body corporate incorporated under some other law (e.g. as a company under the *Corporations Act 2001*); or
- the incorporation is against the public interest (e.g. a political organisation promoting political intolerance and discrimination).

If the application is not approved the association can within 28 days of receiving the notice of refusal, apply to the **State Administrative Tribunal (SAT)** to review the decision of the Commissioner. Decisions made by the SAT may also be appealed in certain situations, usually on a point of law and to the Supreme Court.

### State Administrative Tribunal

Postal Address:

GPO Box U1991 Perth WA 6845

Telephone:

(08) 9219 3111 or 1300 306 017

Website: [www.sat.justice.wa.gov.au](http://www.sat.justice.wa.gov.au)

Contact SAT by [email](#)

## What are the costs of incorporation?

There is a one-off fee to become incorporated. Once incorporated there no annual fees are required. An association may need to pay additional fees in the future for example if they change their rules. For a complete list of fees please refer to the current [Schedule of Fees](#).

Other costs can include:

- Cost of legal advice, if required;
- Cost of advertising;
- Cost of meeting reporting and accounting requirements; and
- Obtaining a common seal.

# The Management Committee

***Under the Associations Incorporation Act 1987, the management committee is the group of persons that has the authority to exercise the powers and functions of the association and to manage its affairs. This is an important provision because people who are identified as committee members have special responsibilities under the Act, both as individuals, and as part of the group.***

***This chapter describes the role, functions, structure and liability of management committees of incorporated associations under the Act.***

## Key Points

- An incorporated association must appoint or elect a management committee that is responsible for managing the affairs of the association.
- The management committee must comply with the rules of the association and ensure that committee members comply with the rules.
- The management committee has a duty to act in good faith and in the best interests of the association.
- The management committee has a duty of care to ensure that its activities and the activities of the association are conducted with reasonable care, skill and diligence.
- Every member of the management committee has a personal obligation under the Act to take all reasonable steps to ensure that the association itself complies with the obligations set out in the Table of Obligations at the end of this Chapter.

Usually, associations refer to this group as the committee, but sometimes it is referred to by other names, such as ‘the council’ or ‘the board’.

Some large incorporated associations have both a board of governors and a management committee. In this case, a distinction may be made between the role of the board responsible for governance, and the day-to-day management of the association that is carried out by the management committee. In general, governance refers to policy-making and rule making, and management is concerned with the implementation of policy and all the organisational and administrative activities that are carried out in order to achieve the objects of the association.

In this two tier system the management committee derives its authority to function from the board of governors. A board of governors focuses on the overall strategic direction of the association, compliance with the legislation and policy in general. Governors are also concerned with the overall financial management, providing resources and promoting the objects of the association.

The management committee attends to the day-to-day administration and activities.

In associations where a board of governors and a management committee co-exist, it is essential for these two groups to work as partners. Both need to understand and support their different roles and have a clear understanding of the various areas of responsibility and authority.

It is also important to be very clear about which group is the management committee for the purposes of the Act.

The Act contemplates there being only one management committee responsible at law, and the rules must clearly identify which group it is. However, in most associations, one committee is responsible for both governance and management.

## **Membership of the committee**

Effective and efficient management committees are ideally made up of people with a range of skills, knowledge and experience that can add to the overall strength of the committee. Members of management committees may include people who represent certain groups or organisations who provide a particular service, for example, people representing consumers, Indigenous interests, mental health services, disability services, youth services, etc. Often, associations don't have the luxury of nominating their 'ideal' committee, but it is a principle worth pursuing. Few things create more difficulties in associations than a dysfunctional committee.

The Act requires an incorporated association's rules to include provisions about the name, constitution, membership and powers of the committee responsible for management of the association. So, the rules need to be clear about the committee membership, what the committee is to be called, and what functions it is permitted to carry out. The rules of the association must also include rules 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; and
- the quorum and procedure at meetings of the committee.

The Act also requires associations to keep an up-to-date record of the names and addresses of all members of the committee and any other office bearers. Members of the association are entitled to inspect and copy the record on request, but members are not allowed to remove the record.

Although these requirements are legislated, they reflect commonly accepted and sensible expectations. Members have a right to know who their committee members are, and if necessary, how to contact them. Well-managed associations ensure that this information is readily available to their members, often through newsletters or other means.

## NEW BILL

**To ensure that associations are run by suitable persons the Bill will provide for certain persons to be disqualified from being committee members. For example undischarged bankrupts and persons convicted of offences involving fraud or dishonesty.**

## Electing the committee

In most cases, committee members are elected at an annual general meeting. The procedures for the election of management committee members and office bearers should be set out in the rules of the association.

Consumer Protection has produced a set of model rules for associations that also include provisions for the election of management committee members.

The committee election provisions are found in Clause 10 of the current [model rules](#).

## The role and duties of the management committee

Membership of a management committee is not necessarily onerous, but it does carry with it a number of significant responsibilities. It is useful to consider these responsibilities as falling into two categories: those of the committee acting as a group, and those responsibilities held by its members as individuals.

In practice, however, each member should consider every group responsibility as an individual responsibility. As discussed later, when it comes to any failure to meet a responsibility, the Act places the liability on the individual, not the group.

## Group responsibilities

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

- obligations under the Act (there are several of these and they are separately highlighted in a table at the end of this chapter);
- rules and any funding agreements or other contracts;
- legal responsibilities to any employees, such as complying with employment awards or agreements, paying tax and superannuation and providing a safe working environment (these matters are dealt with in later chapters);
- legal responsibilities to members, volunteers and any clients or customers who may use the association's services; and
- an assessment has been made whether insurance cover is required and to what extent; and
- any other relevant laws or regulations are complied with.
- Specific financial responsibilities include making sure that:
  - there is compliance with requirements under the Act in relation to financial accounting and reporting to members;
  - the association can pay all its expenses (it may assist to develop a budget annually);

- the conditions of any funding agreement are followed;
- the accounts are audited, if required by the association's members, rules or funding agreements; and
- good risk management procedures are in place. For example, a requirement that two authorised signatories sign off on any association cheque and that another member or employee completes cheque account reconciliations can be a good method for minimising risk.

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

Although there is no common law authority on the duties of members of incorporated associations, it is assumed that association committee members owe the same duties to association members as company directors owe to members of a company.

This means that, when committee members exercise their powers and responsibilities to act on behalf of the association, they must:

- act in good faith and in the best interests of the association;
- not make improper use of information or their position for personal profit;
- avoid any conflicts of interest; and
- exercise powers in accordance with the rules of the association.

To act in good faith means to act in the best interests of the association and not to

engage in any conduct that harms the association. Committee members and office bearers are expected to act with honesty and integrity when carrying out their duties. They may not misuse their position or promote their own interests ahead of those of the association. They must also make sure that they are 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.

## **NEW BILL**

**These duties will be included in the Bill to provide a solid governance framework for associations and reduce uncertainty about the obligations of committee members and office holders.**

## **Individual committee members' responsibilities**

### **Complying with the Act**

Every committee member of an incorporated association is obliged to take all reasonable steps to ensure the association complies with its obligations under the Act. A committee member who fails this obligation commits an offence and is liable to prosecution and a fine if convicted. This personal obligation of committee members is a very important one. It means that all committee members must do what is reasonable to make sure that the obligations on the association under the Act, such as those outlined later in this chapter, are complied with.

The duties of individual committee members described in their association's rules (or later in this chapter) may assist them in working out what are the reasonable steps for them to take.

## Complying with the rules

As noted above, the management committee is responsible for implementing the rules of the association and ensuring that the association meets its obligations under the Act. They must comply with the rules of the association at all times and act within those rules. While this looks to be stating the obvious, it is unfortunately not always the case.

It is good practice for all committee members to be supplied with an up-to-date copy of the association's rules, and be familiar with at least its main and most-used provisions. It may also be beneficial for committee members to bring the rules with them to every meeting. As a minimum, the Secretary should ensure that a copy of the rules is on the table at each meeting.

## 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 members of the committee to disclose any direct or indirect financial interest they may have in any contract, or proposed contract, entered into or being considered by the committee. The disclosure must explain the nature and extent of the interest and must be made as soon as the member becomes aware of it. Failure to declare an interest as soon as possible is a criminal offence and could result in a fine.

If a committee member declares a monetary interest in a contract or proposed contract, the Act also provides that:

- a) the disclosure must be recorded in the minutes of the meeting; and
- b) the committee member with the conflict of interest must not take part in any committee deliberations or voting in relation to that contract. In fact, it would be preferable if the relevant member left the room while the rest of the committee discussed and voted on the contract.

For example

Brian sits on the management committee of the Harmony Community Development Association Inc. The Association is planning to give small grants to local groups for tree planting programs. Brian is the president of the local tree planting co-operative which wants to apply for the funds. As the co-operative is a potential benefactor of the grant, Brian must tell the management committee of his involvement in the co-operative.

A useful way to help committee members comply with these requirements is to make “disclosures of interest” a standard item on the committee meeting agenda. More often than not, there will be nothing to note, but it serves as a constant reminder to members of the need to remain aware of conflicts of interest.

## **NEW BILL**

**The Bill will extend these requirements to non-financial interests as well by requiring “material personal interests” to be disclosed.**

## **Roles of particular office bearers**

The roles of some common office bearers are summarised below.

### **Chairperson**

(sometimes called the President)

The chairperson is usually the formal 'voice' of the association and is responsible for the overall co-ordination of the activities of the association.

The chair is generally responsible for:

- chairing meetings;
- signing documents on behalf of the association;
- ensuring all relevant information is made available to committee members;
- ensuring the association is run according to its rules and any other strategic plan that has been agreed to;
- resolving disputes and grievances;
- initiating projects;
- overseeing activities and projects; and
- representing the association at external meetings and events.

In the chairperson's absence, the vice-chairperson can represent the association and preside over meetings. See [Meetings](#) for the role of the chairperson in meetings.

## **Treasurer**

The treasurer is primarily responsible for managing the finances of the association. This involves:

- maintaining all financial records;
- monitoring the income and expenditure of the association;
- keeping committee members informed of the financial position of the association;
- preparing and presenting financial statements to the Annual General Meeting;
- allocating funds;
- developing budgets for new projects;
- making payments and bank deposits;
- preparing and managing the budget;
- representing the association on funding applications; and
- maintaining custody of all securities, books and documents of a financial nature.

## **Secretary**

The secretary is generally responsible for day-to-day administrative tasks, which include:

- maintaining the register of members;
- arranging meetings;
- assisting the chairperson to prepare the agenda;
- sending out notices for meetings;
- keeping minutes and records;
- attending to correspondence;
- making sure all letters and other documents are properly filed;
- organising activities and events;
- preparing newsletters; and
- maintaining custody of all books, documents, records and registers of the association.

## Liability of management committee members

One of the benefits of incorporation is that members (including management committee members) and office bearers of the association are generally not liable for debts or liabilities of the association. However, this does not apply to liabilities incurred by, or on behalf of, the association before incorporation.

The most common form of liability incurred by an association is liability under contracts that it enters into. An association may also incur liability under tort law, e.g. for negligent acts done by the management committee, employees or volunteers. An association can also be liable under criminal law, for example, for fraud.

However, management committee members are not immune from personal liability. They have a duty to fulfil the functions of their office to the best of their ability. If a committee member or officer acts in bad faith or contrary to the rules of association, he or she may incur a personal liability, for example, if an officer enters into a contract against the instructions of the management committee.

Likewise, if a management committee member acts negligently in the performance of his or her office, he or she may be held personally liable for any resulting loss or damage. (See [Insurance and Risk Management](#) for information on insurance for office bearers/committee members.)

## Duty of care and risk management

Incorporated associations have a general duty of care to ensure that the activities of the association do not cause harm, damage or injury to any participant or recipient of its services, or any other person who is reasonably likely to be affected.

If, for example, someone is injured:

- while participating in a sporting event or school holiday program provided by the association; or
- while attending a childcare facility provided by the association;

and the 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.

With this in mind, management committees need to ensure that the standard of care provided is reasonable in order to minimise the risk of liability. The committee should identify and evaluate the risks for all activities. In situations where harm is more likely to occur or there is 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.

An example of duty of care:

The Harmony Community Development Association Inc arranges a day of activities to celebrate Youth Day.

Activities include:

- crazy sports
- competitions that involve activities with some risk (eg darts)
- go-kart racing
- animal rides
- amusement park rides

All these activities involve some foreseeable risk. Therefore, the association has a duty to take all reasonable steps to ensure that all the activities and rides are safe, appropriate for the age levels and properly supervised. Attendees and participants must be warned of any dangers. It is also important for the association to make sure that their insurance policy covers such an event, and if not, to take out additional insurance for the day (see also [Public liability insurance in \*\*Insurance and Risk Management\*\*](#)).

## Codes of conduct

Increasingly, management committees are developing codes of conduct for management, staff and volunteers. A code of conduct defines the expectations that the association has about the behaviour of people involved in the group's activities. While a code of conduct can theoretically cover a range of behaviours, it cannot be discriminatory, unreasonable or advocate unlawful activities.

A code of conduct for committee members might deal with the following topics:

- 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.

## Orientation and training for management committee members

It is important for new management committee members to know about the workings of the association and their responsibilities as a committee member. It is good practice to provide a structured, comprehensive and practical orientation to the activities, policies and structure of the association. This may take the form of interactive workshops and seminars, as well as informal individual discussions with outgoing members and experienced committee members.

An orientation programme might address the following topics:

- association objectives and rules of the association;
- legal responsibilities of committee members;
- strategic and business planning;
- policies and procedures;
- current issues impacting on the association;
- record systems;
- occupational health and safety; and
- financial management.

WACOSS (the Western Australian Council for Social Services Inc.) provides training and resources for boards and committees on the function and elements of organisational governance.

**Contact WACOSS on (08) 9420 7222 for further information or visit their website at [www.wacoss.org.au](http://www.wacoss.org.au).**

Orientation kits for management committee members are a useful way of providing newcomers with all the essential information. The kits can be given to newly elected members and might include:

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

## KEY OBLIGATIONS OF ASSOCIATIONS UNDER THE *Associations Incorporation Act (1987)*

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

### ANNUAL GENERAL MEETING

Must be held each year within 4 months of the end of the association's financial year.	Section 23 of the Act
Annual accounts must be presented to members at each Annual General Meeting.	Section 26 of the Act

### SPECIAL RESOLUTIONS

<p>Special resolutions are needed to amend the rules or to wind up the association.</p> <p>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.</p> <p>Details of the special resolution must be lodged with Consumer Protection for it to have legal effect.</p>	Section 24 of the Act
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### 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 and be conveniently and properly audited (if required).	Section 25 of the Act
An up-to-date members' register must be maintained and made available to any member to inspect and copy on request.	Section 27 of the Act
The rules of association must be kept up-to-date and made available to any member to inspect and copy on request.	Section 28 of the Act
A list of committee members and office bearers, together with their residential or postal address, must be maintained and made available to any member to access or copy on request.	Section 29 of the Act

## **Rights and responsibilities of members**

The specific responsibilities that apply to committee members have been outlined in this chapter. However, all members have significant rights and responsibilities.

### **Members' responsibilities**

Members agree to be bound by the rules of the association unless those rules are inconsistent with the Act or some other legal obligation

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

### **Conduct of the association**

As incorporated associations traditionally have been regarded as essentially community-based organisations they are largely independent of government intervention. Therefore members in particular have a crucial role in ensuring that their association conducts itself in a way that is acceptable to them. If members fail to be active in ensuring their association is run in a fair, democratic and financially accountable manner, they may end up with an association they no longer wish to be associated with.

## **False or misleading statements**

It is the responsibility of all members to ensure that all documents lodged with Consumer Protection under the Act or presented to meetings of members are accurate. If a person knowingly lodges a document that is false or misleading they commit an offence that can result in criminal prosecution and is subject to a maximum fine of \$500.

## Members' rights

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

**All members have the right to:**

### RECORDS

Inspect and copy the association's register of members.	s27 of the Act
Inspect and copy the association's rules.	s28 of the Act
Inspect and copy the association's rules.	s29 of the Act

### SPECIAL RESOLUTIONS

Have proper notice of, and to attend, any general meeting at which it is proposed to alter the association's rules.	s24 of the Act
Have proper notice of, and to attend, any general meeting at which it is proposed to wind up the association.	s24 of the Act

### ANNUAL GENERAL MEETING

Attend the annual general meeting.	s23 of the Act
Have financial accounts showing the financial position of the association submitted to them at the annual general meeting.	s26 of the Act

# Record Keeping

*Good record keeping is essential for effective and efficient management and administration. Records allow an association to document and retrieve information that can be used for the purposes of reporting, assessing, planning, monitoring and reviewing. In addition, some records are required by legislation. This chapter describes the kinds of records that should be kept, record keeping systems, storage and members' access to these records.*

## Key Points

- There are a number of different types of records that an association will need to keep.
- Members have a legal right to access the members' register, 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.
- Records that are not active are archived and are generally kept for 7 years.
- Records can be stored off site by companies that specialise in document storage, management and retrieval.

## Types of records to be kept

There is a wide variety of records that an association should keep as a matter of good policy and sound administration. Some records, however, are required to be kept by law (eg a members' register, employment records and tax records).

## Records required by the Act

The *Associations Incorporation Act 1987* requires an association to keep the following records:

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

The Commissioner for Consumer Protection can request an association to produce any or all of the records listed above. Under the Act, members have the right to inspect and copy each of the first three records listed above (see also '**Members' access to the records**' below).

## Minutes

Minutes of all meetings, especially of the AGM and management committee, should be recorded, approved and filed for easy retrieval (see also [Meetings](#)). Approved minutes provide an official record of:

- Attendance;
- Business discussed;
- Correspondence received;
- Reports tabled;
- Decisions made; and
- Resolutions adopted.

Recorded decisions 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.

In addition to minutes, it is a common practice for associations to keep a register of all significant resolutions passed by the association over time so that they are collected in one place.

## Notices

The Act requires that adequate notice of association meetings and special resolutions be given to all members, and that notice periods be specified in the rules of association. Notices of meetings should include the time, date, place and general purpose of the meeting, and be given in accordance with the rules of the association. It's a good idea to keep copies of notices, showing the date of issue in case of later dispute. Notices are often filed with the related minutes.

## Certificate of Incorporation

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

If the certificate cannot be located, an association can apply to have a duplicate certificate issued. Please note that a small [fee](#) applies for Consumer Protection to provide a duplicate certificate.

An application can be made:

- Using [AssociationsOnline](#) if the association is registered for MyAssociation. Click [here](#) to access the MyAssociation registration form.
- by writing to Consumer Protection, either on letterhead paper, or with the common seal affixed to the letter; or
- by completing and posting [Form 9 – Application for a Replacement Certificate](#).

## Financial records

As already noted, the Act requires associations to keep records of the association's finances. Taxation and industrial legislation also require financial records to be kept.

Apart from these legal obligations, effective management committees need clear and accurate up-to-date financial information to keep them well-informed and to ensure that the association and its services remain viable.

The requirements of the Act are quite specific:

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

The types of accounting records that associations need to keep varies depending on their size and complexity, but we can safely assume that it is not sufficient to simply keep the cheque-book and receipts in a shoebox.

These requirements are discussed in more detail in [Accounts and Auditing](#).

## Annual report

Many medium to large associations compile an Annual Report, which is tabled at the AGM. An annual report is an excellent way of summarising the main achievements and highlights of the past 12 months.

There is no set format for an annual report, but it can include the following items:

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

Where an Annual Report is produced, it is general practice to include the annual financial report. An annual financial report is required under the Act, so this 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 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](#)), associations may wish to set up some of the following employment-related record systems that can help organisations run smoothly.

These could include:

- Records of all job descriptions, selection criteria, related industrial agreements, past advertisements and job position evaluations;
- Records of 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 employer/employee, employee/employee, or employee/third party grievance;
- Records on staff training and professional development; or
- Filed copies of all correspondence and memoranda relating to individual conditions of employment, changes or requests.

## Safety records

Occupational health and safety assessments and data should be kept as a means of recording the association's management of its legal responsibilities to provide a safe workplace (see also [Occupational Safety and Health and Workers' Compensation](#)).

Complaints, incidents, risk management analysis, training details, safety committee minutes, and copies of specific management committee resolutions regarding health and safety should be kept in a separate file for easy access and reference.

## **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 in addition to those already kept, for the purposes of validating a policy. Such records may include health declarations, assets register, numbers of volunteers and number of hours undertaking certain activities.

Associations are required to notify their insurer as soon as possible after the occurrence of certain events such as an accident, theft or fire. It is important that 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 have some means of recording its 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. Failure to properly keep the records or report as required (quarterly, annually) may result in a breach of funding agreement and subsequent loss of funding.

## Members' access to the records

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

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

## Members' register

The Act requires that associations maintain an up-to-date register of members, which must include each member's name and residential or postal address. Importantly, the Act also provides each member with the right to inspect the register, and to make a copy of any part of its contents. A member does not, however, have a right to remove the register from the association's possession.

The members' register has proven to be problematic for some associations, and a refusal by some committees to allow access to the register has in the past led to the prosecution and fining of a number of committee members. Some people have held a belief that the Commonwealth's privacy legislation overrides this requirement of the

*Associations Incorporation Act*, but the courts have not supported this view. Instead, it is clear that committees do not have the power to deny members this fundamental right of access to the member's register.

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

- Make sure that the register contains only each member's name and their residential or postal address. If the association wants (or needs) to keep other information on its members (such as telephone numbers, or spouse's details, etc.), then develop a separate register that contains these details. This should be kept secure and confidential, as it could be subject to privacy considerations (see '**Privacy and confidentiality of records**' below). The simple register of names and addresses is the only register that is required to be accessed under the Act.
- Ensure that members are made aware that it is a legal requirement that their name and address can be made available to other members. It is a good idea to advise people of this requirement when they apply to become a member; for example, by making it clear on the application form. For current members, it can be useful to defuse some of the emotion by pointing out that their names and addresses are also obtainable through sources such as the electoral roll and the telephone directory. Members can of course, give a Post Office box as

their address for the purposes of the register, although the cost may not be justified for most.

- Do not allow members to record their contact address as c/- the association. Legal advice indicates that the address on the register must be at least the postal address to which mail for that person would normally be delivered.
- Safeguard the privacy of under-age members by creating a “non-member” category for them (such as “players” for juniors in a sporting club). There can often be particular concerns about privacy for this group, and by making them ‘something other than members’ means that their addresses would not be available to other members through the association. As non-members, juniors would not be able to join the committee for example, but in any event, there is a doubt over whether it is legally appropriate for under-age persons to serve in that capacity. Creating a ‘non-member’ category would probably involve an amendment to the rules of association. This topic is dealt with in [Altering the Rules](#).
- Remember that your association does not have to provide a copy of the members’ register for a person to take away and use. The requirement is simply to allow a member to view the register and for the member to make a copy of all, or part, of the register.

### **Important!**

If the association maintains a members’ register that includes information, other than the names and addresses as required by the Act, the association might find itself in breach of privacy laws if it makes that register available for inspection by members. (See also ‘*Privacy and confidentiality of records*’).

The only certain way to comply with both the Western Australian and Commonwealth legal obligations is to maintain the register (or registers) as described above.

### **NEW BILL**

**In order to balance the needs of both associations and their members the Bill will include a flexible approach to what contact information a member must provide to their association as well as limits on what can be done with that information. The proposed changes are in recognition of the strong public interest in the protection of personal privacy.**

## Record of office holders

Associations are required to maintain an up-to-date record of the names and residential or postal addresses of:

- all office bearers;
- all committee members;
- those members who are authorised to use the common seal; and
- any persons who are appointed or act as trustees for the association.

As is the case with the members' register, members are entitled to view this record upon request. Once again, they may make a copy of all or part of the record, but may not remove the record for this purpose.

The record of office holders does not appear to have generated the same levels of anxiety as the register of members, and many associations make this information freely available and without the need for a request by a member. Associations usually find that where members can make contact easily with their committee, this assists with the smooth running of the organisation.

## Rules of association

Every association must have a set of rules, often known as a 'constitution'. The way in which an association operates is largely governed by its rules. The Act requires that the rules of an association must be maintained in an up-to-date condition. In order to keep them current, the rules can be amended by a special resolution of the members, and this process is explained further in [Altering the Rules](#).

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

It is important that Consumer Protection is notified of any amendment to the rules within one month of the date of the meeting where the special resolution was passed. If there is a dispute to which an amendment to the rules is relevant, and Consumer Protection has not been notified, then it may not be possible to rely on the amendment to resolve the dispute.

As with the members' register and record of office holders, an association's rules must be accessible to all its members and members can copy or take an extract from the rules, although members cannot remove the rules for that purpose.

However, many associations provide their members with a personal copy of the rules as a matter of policy. Provided that the cost is not prohibitive, it is a good practice that can assist with the smooth running and effective management of the association.

## Privacy and confidentiality of records

The Commonwealth's *Privacy Act (1988)* requires private sector organisations to protect and safeguard their collection and use of personal information. The Act outlines the principles (called the National Privacy Principles) that should be followed by organisations, such as associations, and are overseen by the Australian Privacy Commissioner.

Associations need to obtain and keep information on clients, members and employees etc. to provide a good service, and to comply with legal requirements (e.g. the member's register, tax details). Personal information must be kept private and confidential. In general, it may not be used for any unlawful purpose or without the person's consent.

In the case of the register of members, however, the privacy legislation does not protect this information from other members. And nor do members need to give consent for another member to view the register. The National Privacy Principles provide that an organisation must not disclose personal information about a person unless the disclosure is required or authorised under law.

The *Associations Incorporation Act 1987* is the law in Western Australia that requires giving a member access to the members' register in the way discussed above.

But it is very important that the members' register contains only their names and addresses and no other information!

Under the Commonwealth's privacy laws, clients, employees, members and anyone

on whom an association gathers and holds information have a right to:

- have their privacy rights respected;
- be assured that their information will not be passed onto a third person without their consent;
- know what information will be kept and why it needs to be kept (this is why you need to tell members about the members' register!);
- know how information will be used;
- know how they can access this information;
- know how to correct an incorrect or misleading record; and
- be assured that information will only be used for the purpose it was supplied.

Visit the [Office of the Australian Information Commissioner \(OAIC\)](#) for more information.

## Record keeping and Consumer Protection

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

### NEW BILL

**Under the proposed Bill associations would be required to lodge basic, unaudited information in the form of a short annual statement to satisfy the Commissioner that the association remains eligible for incorporation and is operating. The information is likely to include the number of members, whether the association is holding annual general meetings and providing financial information to members.**

## Updating the association's address

While there is no requirement to notify Consumer Protection of changes to office bearers it is important to ensure the association's contact address remain up to date and correct.

Updating your address ensures that you will receive important documents or notices that Consumer Protection sends to Associations from time to time. When there is a change of contact address the association should notify Consumer Protection.

Notification can be given in a variety of ways:

- Using [AssociationsOnline](#) if the association is registered for [MyAssociation](#).
- by writing to Consumer Protection, either on letterhead paper, or with the common seal affixed to the letter; or
- by completing and posting a [Form 4 – Notification of a Change of Address](#).

Please note that there is no fee for this service.

## Record keeping systems

There are various manual (e.g. filing cabinets) and electronic (computer-aided) ways to record, store and retrieve information. Each association will need to work out and decide on a record-keeping system that suits its particular needs, circumstances and resources (eg availability of space or computers). Whatever the preferred system is, it should be functional, accurate, reliable and user-friendly.

In general, record-keeping systems need to consider matters, such as 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
- the length of time that the records should be kept (general legal requirement is seven years).

## Electronic records

An electronic record is any information that is put onto a computer system and used, stored and accessed via that system. Electronic records include document files, databases, spreadsheets, electronic mail and Internet documents.

While very convenient to use, electronic records need to be given special consideration. For example, without an appropriate security system, an original document (e.g. meeting minutes) might be amended without authority and without being readily detected.

Electronic records need to be kept securely, and at the same time, be easily accessible for retrieval.

## Tracking 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! Associations could consider developing a simple policy that prescribes how documents are to be identified.

For example:

The Harmony Community Development Association's policies state that 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'.

A register of all official copies will be kept for reference purposes.

## Bring-up systems

Some organisations use bring-up systems to ensure that open files are regularly checked and policy or management decisions reviewed. A bring-up system is any systematic method used to remind the association that work needs to be done or a decision reviewed. The system can be manual or computer based.

Bring-up systems help ensure that important matters are kept highlighted, policies and decisions regularly reviewed and that nothing important has been forgotten about. This is a useful quality assurance and risk management tool.

For example:

The Management Committee of the Harmony Community Development Association gives a date of review to all policies developed. The date of review is entered into a register maintained by the secretary and for each meeting; any policy 'coming-up' on the register as scheduled for review is put on the meeting's agenda.

The Harmony Community Development Association uses a computer bring-up system as a quality assurance mechanism for service delivery by community staff. Actions taken on a file are recorded and a bring-up date allocated before being given to administration staff for recording and filing. Each morning, a staff member accesses the bring-up list for the day, retrieves the files and places them on the desk of the employee who is working on the file. This reminds the employee that they had requested the file to be 'brought to the top of the pile' for follow up. It may be that a court date is getting near, or the employee wrote a letter four weeks ago and wanted to check if a response had been received.

## 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.

An association may store records on-site at the place of business. If the association does not have sufficient and appropriate space, records can be stored off-site by storage companies. It is very important for documents to be stored in safe, secure and appropriate facilities. There are a number of factors to consider when deciding on a storage facility.

Storage facilities should, for example:

- be conveniently located to the user;
- comply with occupational health and safety standards;
- comply with building standards;
- have secure and controlled access;
- be appropriate for the kinds of documents to be stored;
- facilitate easy access and retrieval;
- have containers that are suitable, durable and appropriate for the kinds of documents; and
- protect documents from disasters (e.g. fire) and deterioration (e.g. by excluding direct sunlight).

## Destroying and archiving records

Some records may be destroyed after their legal retention period has expired (for most purposes, this period is seven years). An association should not destroy any records unless they are absolutely certain that the records can safely and legally be destroyed. An association should have a policy on storing and destroying records. No record should be destroyed without the appropriate authorisation.

If you have not destroyed the records of your association, 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 are archived and must not be 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.

# Meetings

*Meetings are an essential component of managing an incorporated association, whether the association is large or small. They are necessary for communicating, organising, decision-making, problem-solving, keeping members informed and carrying out the objects of the association. This chapter discusses the various types of meetings and outlines some important meeting procedures.*

## Key Points

- A newly incorporated association must hold its first AGM within 18 months after incorporation.
- The management committee must convene an AGM every calendar year within four months after the end of the association's financial year.
- Members must be given notice of all meetings in accordance with the rules.
- Chairpersons need to be familiar with the important meeting procedures, for example quorum requirements, rules of debate, voting procedures and minute taking. These could be set out in the rules of association.

## Types of meetings

There are various types of meetings that serve different purposes and have slightly different requirements.

### Annual General Meeting

The Annual General Meeting (AGM) is a central part of an incorporated association's governance structure, as it holds an association accountable to its members, and in some cases, the public. It is the only association meeting specifically provided for in the Act.

The association must hold its first AGM within 18 months of becoming incorporated. After the first AGM, incorporated associations must hold an AGM once in every calendar year, within 4 months after the end of the association's financial year. Assuming an association's end of financial year is 30 June, then it must hold its AGM on or before 31 October. An association's financial year will often be defined in its rules.

If, for some reason, the association finds itself unable to hold its AGM within the legislated timeframe, it should contact Consumer Protection immediately to seek an extension.

The Commissioner for Consumer Protection has the power to allow an incorporated association to hold an AGM outside of the four month period, but only if the request is made before that period expires.

For example: an Association has a financial year that ends on 30 June. This means that the Annual General Meeting can be held between 1 July and 31 October. If the Association are not able to hold the AGM until after 31 October, then an extension of time must be requested. The application must be received by the Department no later than 31 October.

An application for an extension of time to hold the Annual General Meeting can be made by:

- Lodging the application using [Associations Online](#).
  - Please note in order to apply using this method, the Association must have registered for MyAssociation. Click [here](#) to access the MyAssociation registration form.
  - If your Association is already registered go to MyAssociation, login and follow the prompts to lodge the changes.
- Completing and posting a [Form 3 – Application for Extension of time to hold AGM](#).

Notice of an AGM should be sent to **all** members, irrespective of voting rights, in accordance with the association's rules. Invitations to AGMs may be extended to special guests and/or the public as a way of promoting the association and its achievements.

The business of the AGM generally covers financial reports and the election of the management committee and office bearers. The Act requires the annual financial accounts for the preceding financial year to be presented to members at each AGM.

This is an important obligatory provision – for further information see [Members rights to the financial accounts](#).

Whilst it is not mandatory under the Act to have the financial accounts audited every financial year, and to appoint an auditor at the AGM, it is frequently a stated

requirement in the rules of the association. Where the rules stipulate an annual audit, the appointment of the auditor is usually decided at an AGM.

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.

An example of an agenda/notice of meeting for an AGM is shown below. Note that some rules of association set out the order of business to be followed. If so, the sequence shown in the rules should be followed exactly.

**HARMONY COMMUNITY  
DEVELOPMENT ASSOCIATION INC**

The Annual General Meeting will be held at the **Council Meeting Room on 15 February 2013 at 7pm.**

**Business**

- Chairperson's opening
- Apologies
- Minutes of previous meeting
- Business arising from the minutes
- Correspondence [sometimes omitted]
- Chairperson's report
- Treasurer's report
- Election of committee members
- Guest speaker
- Motion on notice:  
Mrs Smith to move: 'That the Association organise a fundraising event to raise money to donate to the local youth groups.'
- Questions and discussion
- Notice of motions for the next meeting
- Next meeting
- Close

## Special (or extraordinary) general meetings

A general meeting, other than an AGM, is usually referred to as a special general meeting. These meetings are held to deal with specific motions or business. For example, to change the rules of the association, question the legality of a management committee decision, or deal with a particular issue.

The rules of association generally set out the grounds for a special meeting being called (eg by petition of a certain number of members) and the notice period and procedures required.

For an example, view Consumer Protection's [Model Rules](#) and refer to section 16.

## 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. The management committee is also responsible for convening the AGM within four months after the end of the association's financial year.

## Meeting procedures

### General requirements for a meeting

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

- a) what type of meeting is being held;
- b) the place, date and time of the meeting; and
- c) the business to be considered at the meeting, including the full text of all motions that will be put to members at the meeting.

When the meeting has commenced, it is important to firstly establish that there is a quorum. If there are not enough members present at the meeting to satisfy the quorum requirements in the association's rules, the meeting will be invalid and any motions passed at the meeting may not be valid. 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.

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

The following suggestions can assist in this regard:

- Correspondence to and from the association should be tabled at the meeting. Members in attendance should be given the opportunity to read the documents, or, if agreed, to obtain copies;
- Make sure that everyone at the meeting gets a say. This can mean that some people who tend to dominate should be stopped and quieter people should be encouraged to say what they think;
- At the same time, no one wants to spend hours and hours at meetings. If there are a lot of people who want to speak in relation to the matters under discussion, it might be useful to limit the amount of time each member can have to speak on a matter; and
- Make sure that there are clear decisions on the matters being discussed, which everyone understands. It is especially important that the person taking the minutes has the opportunity to write down what is agreed and it can sometimes be a good idea to stop and check that everyone is happy with what has been recorded as the resolution passed. (For further information, see **Minutes**).

Implementing these suggestions is properly the role of the **chairperson**.

## Notice and agenda of meeting

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

- whether or not they want to attend the meeting; and
- if proxy or postal voting is allowed and they do not propose to attend in person, how to cast their proxy or postal vote.

Usually, the agenda is attached to, or combined with, the notice so that the members are informed of all the necessary details at once. Agendas, along with confirmation of meeting details and any reports for consideration, should be sent out far enough in advance for people to read the documents. Where proxy or postal voting is allowed, proxy forms or voting slips should also be sent at this time.

The minimum time that a notice may be sent before the meeting is set out in the rules of the association, and must be strictly adhered to. Inadequate notice of meetings may result in a meeting being invalid.

Notice periods usually vary in accordance with the type of meeting to be held. For example, a committee meeting may require only five days' notice, whereas the notice period for the AGM could be as long as three weeks.

It is particularly important to make sure that all of the members who are entitled to attend a meeting are given proper notice in accordance with the rules.

In particular, note that all members are entitled to be invited to attend a special general meeting.

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. The chairperson needs to ensure that any new agenda items raised during the meeting are put on the agenda for the next meeting and are not discussed at the current meeting. This allows members time to consider matters properly, and avoids disadvantaging members who have already voted by proxy or postal vote (where these methods of voting are allowed).

An example of a simple agenda:

### **HARMONY COMMUNITY DEVELOPMENT ASSOCIATION INC -**

Notice of meeting

A committee meeting will be held at the **Council Meeting Room on 12 February 2013 from 6.00pm to 8.00pm.**

#### **Agenda**

- Welcome
- Apologies
- Declarations of interest (Refer to [The Management Committee](#) for a discussion of this item under 'Conflicts of Interest').
- Minutes of previous meeting
- Matters arising
- Correspondence
- Reports
- Fundraising projects
- General business
- Next meeting
- Close

## 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:

- making sure proper notice is given and that there is an agenda, listing all items that need to be covered;
- checking (and, usually, signing) the minutes of previous meetings;
- keeping time (this is important, to ensure the meeting gets through its business in the allocated time);
- dealing with the order of business;
- facilitating discussion;
- keeping order;
- ensuring everyone has an opportunity to speak;
- receiving motions and putting them to the vote;
- declaring the result of any motions (ie what has been resolved);
- making sure that decisions are reached on issues that are discussed and that everyone understands what the decisions are; and
- declaring the meeting closed.

The chairperson does not usually vote on a motion, but is normally entitled to so long as he or she is a member with voting rights. This 'deliberative' vote must be made at the same time as all other members vote. 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. In the case of sub-committees, the management committee may set the quorum. The quorum may be set as a percentage of the membership rather than a set number, to allow for changing membership numbers.

If a quorum is not present, the meeting may:

- be reconvened to another date; or
- continue, but the chairperson declares (and the minutes show) that a quorum is not present. The decisions made at the meeting then carry the weight of recommendations to be ratified:
  - i. later during the course of the meeting (e.g. if another member arrives and a quorum is achieved); or
  - ii. at the next convened meeting where a quorum is present.

Please note that the second option may not be allowed by some rules of association.

## 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.

An association's rules will often provide details about how motions should be dealt with and these should be observed.

It is best practice for motions to be placed on the agenda so that members have adequate time to consider them before the meeting.

### Putting forward and voting on a motion

- A member of the meeting puts forward a clear and concise proposal for a decision or action to the meeting via the chairperson. This is called a motion.

For example, 'I move that the Association donate \$500.00 to Harmony Frail Care Centre for additional winter blankets'.

- A second person agrees to 'second' the motion. This person is referred to as the seconder. This is not a vote in favour of the motion, but a vote to have the motion put before the meeting. If a motion is not seconded, it lapses.
- The Chairperson then opens up debate on the motion, often by saying 'does anyone wish to support/speak against the motion?' The mover of the motion can speak to the motion – outlining why he or she thinks the motion should be passed.

- Discussion follows, generally in the format of alternating speakers for and against the motion.
- After adequate debate, the person who originally moved the motion has a right of reply.
- 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 (ie more than half of the members who cast a vote) is known as an ordinary resolution. Most resolutions in the life of an association will be of this type. See also **Special Resolutions** described in the following pages.
- The resolution is formally documented in the minutes, along with the name of mover and seconder.

For example, 'The meeting resolved to allocate \$500.00 to Harmony Frail Care Centre. Moved: B White; seconded: C Green'

Resolutions become binding on the association that makes them, as long as the people who made 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 by which date.

Generally, the chairperson does not put forward motions, because he or she is primarily the facilitator of the meeting. However, they may put forward procedural motions that relate to the conduct, rather than content of a meeting. For example, moving acceptance of the minutes.

### **Amending a motion or resolution**

The mover, with the agreement of the meeting, can usually amend a motion. Alternatively, someone may wish to 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 – the original motion, the amended motion, a motion to amend, or a motion to amend an amendment. It is important that the chairperson keeps proceedings as simple as possible. If a motion does not fully express the view of the meeting, it is sometimes easier to simply vote on it and let it be defeated.

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

### **Special resolutions**

There are two occasions when the Act requires something more than a simple majority vote to pass a resolution. These occasions are a vote to amend the rules (or to change the name or objects) of the association, and a vote to wind it up. Any of these require what is termed a special resolution, which needs a majority of 75% to pass.

To clarify, this means 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.

There are several important requirements that need to be addressed in order for a special resolution to be lawfully binding on the association, and these are discussed in detail in [Altering the Rules](#).

In the context of the present topic, it should be noted that it is generally not advisable to seek to amend a special resolution, unless the amendment is so minor that it does not change the nature of the original. The motion proposing a special resolution is subject to specific notice requirements, and 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, and who therefore have no opportunity to consider the amendment. According to some authorities, the law at present in Australia as to whether special resolutions may be amended is confused, and it may be best to exercise caution and not allow any amendments.

In that case, if new motions or amendments can't 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.

### **Points of order**

Generally, the rules of debate are that someone should not be interrupted while they are speaking for or against a motion, unless:

- there is a procedural motion passed to stop debate or 'that the speaker no longer be heard'; or
- the chairperson interrupts in the interest of orderly conduct; or
- there is a point of order.

A point of order is addressed to the chairperson by someone standing up and saying 'point of order' or 'I wish to raise a point of order'. This means that the person making the challenge is saying the speaker should stop because he or she has breached a principle of ordered debate. The chairperson takes the point of order, listens to the reasons why the point of order has been raised and can ask for discussion on the order (for and against). Previous debate is stopped while the point of order is discussed. It is the task of the chairperson to rule on the point of order and his or her decision is final.

Examples where a point of order may be called are where:

- 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.

## Voting methods

When a meeting wants to decide on a matter, it does so by voting. Each member is usually entitled to one vote to indicate whether they are in favour of, or against, a motion. There are various voting methods that can be used:

- **Show of hands:** members vote by raising their hand. The chairperson calls for those in favour of the motion to raise their hand and a count is taken. The process is repeated for those voting against. The method is suitable for small meetings, as counting can become difficult with large groups;
- **Voice vote:** this is a simple method by which members indicate their vote by saying 'yes' or 'no' (historically, 'aye' or 'nay'.) The decision is based on the volume of sound. A disadvantage of this method is that there is no clear count of those in favour and those against;
- **Rising method:** members exercise their vote by standing up. The chairperson calls for those in favour of the motion to stand and a count is taken. The process is repeated for those voting against. For large groups, this method can make counting easier than a show of hands;
- **Ballot:** members indicate their vote in writing. This is generally used for very important matters (eg it is commonly used for the election of committee members), and when secrecy or confidentiality is required. [The ballot is of course, familiar to us as the means of electing our parliamentarians to office; the process of distributing parliamentary ballot papers is

indicative of the care required to ensure that only eligible members get to cast a vote];

Once the vote has been taken, the chairperson or returning officer (an independent person) collects and counts the papers. The meeting may be adjourned while the counting is taking place;

- **Poll:** similar to a ballot in that the vote is written, but is technically the only form of voting that allows all proxy votes to be counted. Under common law, a poll is usually "demanded". Many rules of association don't deal with polls, but the Act provides that in the case of a special resolution, a poll may be demanded by at least 3 members, present either in person or by proxy;
- **Proxy and/or postal votes:** the rules of association may make provision for proxy and/or postal votes. A proxy vote is where someone else votes on behalf of another member who is unable to attend the meeting; or
- **Chairperson's casting vote:** if the votes are equal or tied the chairperson may often be able to exercise a second or casting vote to decide on a motion, but the rules need to provide for this. Although the chairperson may use the vote to decide either for or against a motion, it is generally regarded as preferable to give it against the motion.

The above comments apply primarily to general meetings of members.

Management committee decisions will often be made by consensus, but where voting is required, it will usually be by voices or show of hands.

## Proxy and postal voting

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

An association should carefully consider whether to allow proxy or postal voting in its rules. These are convenient methods of voting at general meetings for members who cannot attend, but they change the decision-making process because they mean that members cannot participate in the discussion and exchange of views at the meeting. Effectively, members voting by directed proxy or postal vote must make their voting decision in advance of the meeting, based on the material that has been circulated rather than the arguments put forward in debate.

There is also no doubt that these voting methods involve additional work to implement, but this has to be weighed against extending the democratic process of the association to as many members as possible. There are many associations with members living all over the State for whom attending meetings on even an irregular basis is very difficult.

If proxy votes are allowed by the rules of the association, a written proxy form must be completed giving the proxy authority to vote. Proxy voting can essentially take two forms; the member can give the proxy authority to vote as he or she (ie the proxy) sees fit, or can provide specific authority for the proxy to vote only in a certain way.

An example of a simple proxy format:

I, Sally Smith, being a member of the Harmony Community Development Association Inc., hereby appoint Peter Piper to vote as my proxy at the general meeting to be held on 4 July 2008.

Consumer Protection's [model rules](#) include (as an appendix) an example of a proxy form that allows for both a general authority to vote, as well as a directed (or specific) authority to vote. The proxy form has also been included in this guide for ease of access.

Proxy forms are usually sent out with the notice of meeting and agenda papers, and ideally with the requirement to be returned to the secretary well before the start of the meeting. Proxies have enough potential to complicate the voting process without the need to check their legitimacy during the course of the meeting.

Proxy votes can start to become problematic if one member holds proxies from two or more other members. As a general rule, proxy votes should only be used with a poll since this method allows all of the proxies to be tabled and accounted for in the vote. [If you've ever received meeting papers for a listed company you'll note that the Chairperson is often given a huge number of proxy votes. The only way that these proxies can be used to influence the outcome of a vote is through a poll. And frequently, it will be a proxy holder who will call for (or demand) a poll in order to ensure that those proxy votes can take part.

A way to simplify proxy voting may be to provide in the rules that a member can only hold one proxy vote at any particular meeting. It shouldn't then be too difficult to include proxies in the vote (e.g. on a show of hands) without the complication of holding a poll. But this won't satisfactorily handle the situation of a vote by ballot, which is where postal voting can be useful.

**Postal voting** is different to proxy voting because the member is actually casting his or her own vote, rather than relying on a proxy. It also means that the vote must generally be directed to one or more specific resolutions, such as a proposed change of the rules. It is frequently used to good effect in the election of committee members and office bearers. In this context, it has the advantage of potentially enticing more members to cast their vote than might be the case if the vote were restricted to those who actually attend the AGM.

If postal votes or votes via email are allowed, the process for casting such a vote needs to be considered. For example, use of a formal ballot paper or simply a clear written indication of the voter's intent. It is also important to set a clear deadline for when these votes must be received. You should also consider safeguards to prevent fraud, e.g. one person casting more than one postal vote.

## Example: Appointment of proxy form

### APPOINTMENT OF PROXY

I,

.....  
 .....

*(Insert MEMBER'S name)*

.....  
 .....

*(Insert MEMBER'S address)*

being a member of

.....  
 .....

*(Insert name of INCORPORATED ASSOCIATION)*

#### APPOINT

.....  
 .....

*(Insert PROXY'S name)*

who also is a member of the Association,  
 as my proxy.

My proxy is authorised to vote on my behalf: (Tick  only **ONE** of the following)

At the general meeting/s (and any adjournments of the meeting/s)  
 on ..... *(Insert relevant date/s)*

#### OR

in relation to the following resolutions and/or nominations

**In favour:**

**Against:**

.....  
 .....  
 .....  
 .....

*(Insert resolution Nos, brief description or nominees' name/s)*

**Signature:**.....

..... **Date:**.....

*(of Member appointing Proxy)*

## Minutes

Although not a specific requirement under the Act, it is generally considered essential to keep accurate minutes of all association meetings, whether general, committee or sub-committee meetings. Apart from providing a record of what transpired, these minutes can provide protection for individuals who act on the decisions of the association by providing evidence that they acted on the association's directions.

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

- Make sure that someone is nominated to take the minutes. Generally, this will be the association's secretary and that responsibility will be allocated in the association's rules.
- Keep a record of proceedings during the meeting. It is important that the minutes record any resolutions or decisions made at a meeting. Minutes should be as brief as possible without jeopardising accuracy and credibility of the record. It is up to the association whether it also wants minutes kept of any discussion. Some associations like to have detailed minutes that show the main points of discussion before a decision is made, while others prefer brief minutes that record only the decisions and actions.
- Make sure that attendances and any apologies are noted. This is usually done at the beginning of a meeting, although if people leave early or arrive late it is a good idea to also keep a note of this in the minutes.
- Present previous minutes for approval. Often, draft minutes for the previous meeting will be circulated in advance of the next meeting, giving people time to consider whether the minutes accurately reflect their recollection of the meeting. The minutes should be presented for approval at the next meeting of a similar kind, for example, minutes of a special general meeting should not be approved by the committee, but at the next general meeting. AGM minutes are usually tabled at the next AGM for approval. Members should be given the opportunity to propose corrections to the minutes or to seek to have additional details of what occurred recorded, and these can be allowed or disallowed on the vote of people who attended the previous meeting. Minutes should be approved on the basis that they are a correct record of the meeting.
- Identifying the approved minutes. After any approved changes to the minutes have been noted, it is a good idea to have an office-bearer for the association sign that the minutes are the approved minutes of the meeting. If the rules of the association don't allocate this responsibility, it is generally the chairperson of the meeting at which the minutes are approved who would sign and date the minutes. The chairperson should also initial any amendments and state that the minutes have been approved as a correct record of the meeting.

- Keeping the approved minutes. It is useful to keep the approved minutes in one place so that they can be easily accessed. Some associations keep the original copy pasted into a numbered ledger (book). Others use a ring binder. This may be dealt with in the association's rules. It might be useful for your records if originals or copies of any correspondence or other documents tabled at the meeting also are kept as attachments to the official minutes.

## Reports

Tabling reports at a meeting can be an effective and efficient way to facilitate discussion and decision-making. Even the smallest of associations can effectively make use of reports. For example, as a minimum, most will usually want a Chairperson's and Treasurer's Report to be presented at each AGM.

Reports will probably be more frequently submitted to management committee meetings by sub-committees or individuals to provide, for example:

- Information (e.g. demographical composition of local area);
- Research (e.g. legal needs of newly arrived migrants);
- Analysis (e.g. cost benefits of contracting out bookkeeping); or
- Recommendations (e.g. recommendation on insurance cover).

Reports should:

- be clearly addressed, for example, "To: From: Date: Title";
- provide an introduction to the report (e.g. who wrote it, what the terms of reference were, membership of the sub-committee);
- be written in clear, simple language;
- have a logical sequence to make it easy to follow;
- use bullet/numbered points where possible to assist with quick comprehension and reference; and
- have clear and unambiguous recommendations, if recommendations are being made.

If at all possible, the written reports should be circulated in advance of the meeting. This will usually shorten the meeting and permit more informed discussion.

When there is no universal support in a committee meeting for the majority position, it is possible to produce a minority report, which states the different or opposing views of the minority. This ensures that the minority voice is not silenced by the majority and allows the association to hear different perspectives.

Reports from committees and individuals that are tabled at a meeting can be either **adopted** or **received**. A meeting adopts the report when it accepts the report's findings or recommendations.

A motion as such should be moved, for example, 'That the report of the fundraising committee be adopted'.

If the management committee does not agree with the report or needs more information or time for further decision-making at a later point, the meeting can receive the report; again via a formal motion (e.g. 'That the report be received') and motions dealing with specific recommendations can be dealt with at a later meeting.

## Committees and sub-committees

Some management committees set up permanent or occasional sub-committees to assist them with their work. Permanent (standing) committees are set up for the long term. Examples might include finance, fundraising, or public relations committees. Occasional committees are set up for short-term purposes and might include a strategic plan development committee, remuneration review committee, or a policy specific committee.

The management committee may choose to have a report back from sub-committees as a permanent item on the agenda for their management committee meetings.

The general meeting procedures governing sub-committees would normally be the same as those governing the management committee.

Please note that, while subcommittees can be given delegated authority by management committees, ultimate responsibility lies with the management committee.

# Altering the Rules

*Over the life of an association, it is very likely that it will need to change its rules at some point, even if only to keep step with changes in society. For example, changes in social attitudes (and laws) to discrimination or technological advances, such as email, could mean that some rules either need to be amended or could be improved through an amendment. Consumer Protection recommends that, as a matter of best practice, associations should review their rules every three to five years, and amend them as needed.*

*The legal process for altering the rules of an association is relatively straight forward, but for some associations in the past, the devil has been in the detail! This chapter describes the requirements for altering the rules of association and for ensuring that those alterations are legally effective.*

## Key Points

- An association can only change its name, objects or the rules of association at a general meeting by means of a special resolution.
- Notice of each special resolution to be considered at the meeting must be provided to members in accordance with the existing rules.
- The special resolution(s) must be passed by a majority of 75% of members voting and be lodged with Consumer Protection within one month after being passed.
- The Commissioner must approve all changes that are made to the rules of an association that result in a change in its name or objects or purposes.

## A step-by-step guide

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

The main steps to changing the rules of an association are to:

- determine what amendments are going to be made;
- draft a new copy of the rules and ensure the amendments comply with the Act;
- send notice to all members stating in full all proposed special resolutions to be voted on at a general meeting;
- convene general meeting of members to consider the amendments;
- pass the amendments by one or more special resolutions; and
- notify Consumer Protection of the changes within one month of the meeting.

## What changes are needed?

There are various reasons why associations need to make changes to their rules. Usually, it is because the rules have become inadequate to serve the changing needs of the association, or they are ineffective in dealing with issues faced by the association, or they are simply out of date.

Committee members most commonly have the task of planning changes to the rules of association and there are some useful resources available to assist them in this task.

- The rules of every association incorporated in Western Australia are a public record available from Consumer Protection for either inspection or purchase for a fee. The rules of associations with similar objects or purposes to your own may provide helpful examples of new provisions or improved wording.

An application for a copy of any association's rules can be made using [AssociationsOnline](#).

Simply search for the Association name and follow the prompts to submit the document request. Alternatively a document request can be made by completing and posting in a [Form 9 – Application for a copy of documents](#).

- Consumer Protection has produced a set of [model rules](#) for associations that may be adopted outright or used to provide examples of new rules or improved wording.

These model rules are particularly useful because they comply with every requirement of the Act. Associations are free to alter any of the provisions as they see fit, but take care that the important elements of the rules are not lost.

- Schedule 1 of the Act lists all of the matters that must be provided for in the rules of any association incorporated after July 1988. These matters are set out in instruction sheets attached to Consumer Protection's model rules, and can also be viewed in the Act itself.

These matters will also be of use to older associations that were incorporated before July 1988. A table detailing all 14 of the Schedule 1 requirements are listed at this end of this chapter.

## NEW BILL

**The Bill will allow an association to either adopt the Model Rules or adapt them to best suit their situation. Work is underway to update the Model Rules and the new version is expected to be finalised while the Bill is progressing through Parliament.**

**A significant transition period of 3 years has been included in the Bill to ensure associations have enough time to update their rules to reflect any necessary changes.**

## Do the rules comply?

All incorporated associations are expected to comply with the provisions of the Act and their rules must not be inconsistent with those provisions. When the association lodges changes, Consumer Protection will formally assess the rules to ensure they are consistent with the requirements of the Act.

Consumer Protection will not typically complete pre-assessments of association rules to ensure that they meet the requirements of the Act.

To check that your association's rules are consistent with the Act and in particular Schedule 1 refer to the checklist included with the [model rules](#).

## Calling the meeting

In order for an alteration of the rules to be valid, the association must make sure that it follows the correct procedure in calling the meeting.

Please note that the meeting must be a **general meeting**. It could be either a special general meeting or the annual general meeting, it doesn't matter. The important point about a general meeting is that all members of the association, whether they have voting rights or not, must be given notice of the meeting and be invited to attend. This requirement of the Act is so that the rules of an association cannot be changed without all its members having the opportunity to know about it.

The association must, therefore, in accordance with the existing rules, give notice to all members of the time, date, venue and purpose of the general meeting. Note that sometimes the rules of association provide for a longer notice period for a meeting where a special resolution is to be considered. Check your rules carefully – the last thing you want is a meeting that is invalid because of insufficient notice!

The Act requires that notice must also be given of the actual special resolution(s) that are being proposed. The notice should state in full the proposed special resolution(s) to be voted on at the meeting. Where space permits, these can be included on the meeting notice paper itself.

Alternatively, a list of the proposed alterations to the rules can be attached to the notice. It is good practice to also include an explanation for members of

why the changes to the rules are being proposed.

Please note that it is important that the words “**special resolution**” appear as part of the notice. A notice to change the rules has previously been ruled invalid because these words were omitted.

Consumer Protection’s [model rules](#) provide an example of an appropriate notice of meeting to change the rules. The notice appears in the appendices at the end of the model rules.

An example of the notice of meeting to change the rules appearing in the model rules is provided.

On occasions, an association may want to make so many changes to its rules that it could be inefficient or confusing to list every change individually. In this case, it would be appropriate to simply provide each member with a copy of the complete new rules, as they will appear after approval. The notice of special resolution might then read: “It is proposed to adopt the attached rules in place of all of the existing rules of XYZ Association (Inc)”.

If your association’s rules provide for proxy or postal voting, the relevant forms will also need to be forwarded to members with the meeting notice. [Meetings](#) provide more information on this topic

## NOTICE OF GENERAL MEETING TO ALTER THE RULES (AKA CONSTITUTION)

\_\_\_\_\_  
*(Insert name of INCORPORATED ASSOCIATION)*

is convening a general meeting at which the following resolution/s will be proposed as special resolutions to alter the rules of the association.

The meeting will be held at \_\_\_\_\_ a.m./p.m.  
on \_\_\_\_\_ the \_\_\_\_\_ 200\_\_\_\_\_

The meeting will take place at \_\_\_\_\_

### SPECIAL RESOLUTION/S:

Currently rule.....states:

.....  
.....

It is proposed to alter this rule so that it states as follows:

.....  
.....

Currently rule.....states:

.....  
.....

It is proposed to alter this rule so that it states as follows:

.....  
.....

### OR

A list of alterations to the rules which will be proposed as special resolutions at the meeting is attached.

### INFORMATION for MEMBERS

- Rule 20 allows for proxy votes. A proxy form is enclosed for you to nominate another member to vote on your behalf if you cannot attend the meeting.
- Alterations to the rules can only be made if supported by 75% of members voting at the meeting or by proxy.
- Alterations to the rules only take effect when lodged with the Department of Commerce.

## A special resolution

Firstly, the committee needs to ensure a quorum is present at the meeting. The special resolution(s) will need to be moved in the same way as any other resolution.

For example:

'I move that rule 5 be changed to read .....

Moved: John Robertson

Seconded: Vicky Nichols

In order for the alteration of the rules to be valid, the association must make sure that the resolution(s) to adopt the altered rules is passed by the required majority. A special resolution needs at least 75% of members voting in person, or (if permitted) by proxy or postal vote, to vote in favour of the rules being altered in the manner proposed. This larger than usual majority is why it is called a special resolution.

**Note:** this does not mean 75% of all the members of the association, only 75% of those members present at the meeting and eligible to vote.

**Caution:** If your association was incorporated before July 1988, the rules may state that a two-thirds majority is all that is necessary to pass a special resolution. In such cases, the provisions of the Act override the rules of association. Regardless of what the rules may say, the Act requires 75% and nothing less is acceptable.

**A special resolution to alter the rules must be lodged with Consumer Protection to have effect.**

## Lodging the changes

Any special resolution altering the rules of an association will not have legal effect unless, within one month of passing the resolution, the association lodges with the Commissioner for Consumer Protection:

- the notice of special resolution setting out the particulars of the alterations; and
- a certificate from a member of the association certifying that the resolution had been duly passed and that the altered rules conform with the Act.

To submit the change of rules the association may lodge the application online or submit a [Form 5 - Notice of Special Resolution](#) by post with the applicable [fee](#).

### Making the application using AssociationsOnline

- Please note in order to apply using this method, the Association must have registered for [MyAssociation](#).
- If your Association is already registered go to [MyAssociation](#), login and follow the prompts to lodge the changes.

Associations that do not submit the notice on time may request that the Commissioner allow the changes to be lodged outside this time limit by outlining the reasons for the delay.

The Commissioner may agree to accept the request. Please note, however, that even with very good reasons, extensions are generally allowed for a maximum of three months only. If the Commissioner does not agree to an extension, it will be necessary to start the process all over again by calling another general meeting.

**When sending amendments to Consumer Protection remember to:**

- Submit the documents within one month of the date of the meeting.
- Complete the Form 5 in full and sign the declaration.
- Pay the correct fee.
- Write your association's name on the Form 5 in full as it appears on your certificate of incorporation (including Inc or Incorporated).
- Attach a complete copy of the amended rules with the signed annexure statement

***“This is the annexure of [insert number of pages] pages marked “A” referred to in the Form 5 signed by me and dated [insert date] [insert signature].”***

- Keep a copy of all the documents submitted, including the proposed alterations to the rules. Consumer Protection does not provide a final copy to the association.

**It is important to note that the new rules do not take effect until the notice is lodged with and confirmed by Consumer Protection.**

Consumer Protection will send a letter to the association, confirming lodgement and the date when the altered rules will take effect. At the risk of stating the obvious, this means that the new rules cannot be used until this notification is received. In the past, more than one association has altered its rules in one part of a meeting, and then used the altered rules later on in the meeting, for example, in an election of office bearers. It doesn't work that way.

## Altering the objects of the association

An association can alter its objects or purposes provided that the association complies with the legal requirements for passing the changes. These requirements are the same as those discussed above for changing the rules. An association's objects form part of its rules, so a change of objects is effectively a change of rules.

A special resolution must be passed by at least 75% of members voting at a general meeting of the association, held in accordance with the rules.

Remember, this does not mean 75% of all members of the association, only of those present and eligible to vote.

If the special resolution is passed, the following documents must be lodged with the Commissioner of Consumer Protection within one month of the special resolution in order for the resolution to have legal effect.

If the Association is an enrolled user, the application can be lodged using [AssociationsOnline](#). Alternatively a [Form 5 – Notice of Special Resolution](#) can be used to advise Consumer Protection of any change to the objects or purpose of an association. The application must be submitted with payment for the relevant [fee](#).

The Commissioner is also required by the Act to approve the change to the objects or purpose. The Commissioner may instruct the association to publish a notice of the proposed change of the objects or purposes of the incorporated association before approving the change.

If the Commissioner refuses to approve an alteration of the objects and purposes of an incorporated association, the incorporated association may, within 28 days of receiving notice of the refusal:

- apply to the State Administrative Tribunal (SAT), requesting a review of the decision of the Commissioner; and
- make submissions in writing to SAT to support the application.

The SAT decision may be appealed in certain circumstances, usually on a point of law. Further information is available on the [SAT's website](#).

## Changing the association's name

Sometimes associations decide that they need to change the name of the association. Perhaps the name no longer reflects the nature of the group or there is a desire to change direction and marketing.

This decision should not be taken lightly, as it can have long-term effects on public perceptions. For some members, a name change is insignificant and may merely reflect a change in the way the association has moved. It may be considered a strategic, business or public relations decision. However, for an association with a long history, the name is part of that history. Some members may no longer feel that the association has a connection with them if the name is changed.

Associations may confirm the availability of their proposed name by completing an online **Enquiry as to the Availability of Association Name** using [AssociationsOnline](#). There is no fee for this service and Consumer Protection will notify you in writing (post or email) whether or not the name is available.

Alternatively you may fax or post [Form 8 – Enquiry as to the Availability of Association Name](#) to Consumer Protection.

## Requirements for changing the name

- 1 The association should check to see that the name is available and if any other organisation is using a similar name to the new proposal. The new name could be rejected if it is the same or very similar to another name. Consumer Protection holds a register of names and can conduct a name search. The Commissioner will only approve a name change if he or she is of the opinion that the name is appropriate.

Please be aware that while a name may be available for use at the time of your enquiry it cannot be reserved or protected in any way. Final approval of the name will be subject to a formal assessment of the application for incorporation.

- 2 To change the name of the association will require a special resolution by the members passed at a general meeting. An association's name actually forms part of its rules, so a change of name effectively requires a change of rules. The procedure is the same as that as previously discussed.
- 3 Within one month of passing the special resolution, the association must lodge the notice of the special resolution with the Commissioner.

Once again, associations can submit the notice to Consumer Protection using [AssociationsOnline](#) (if enrolled) or a [Form 5 – Notice of special resolution](#)

- 4 A copy of the association's rules with the new name should accompany the Form 5.
- 5 Legally, the association has not formally altered its rules and changed its name until the notice of the special resolution is lodged with the Commissioner and he or she approves the name change. The Commissioner may instruct the association to publish a notice of the proposed name change before approving the change.

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 (do you need a new ABN? - check);
- notify essential services;
- notify creditors; or
- notify members, clients, customers, etc.

- 6 The Commissioner will issue a new certificate to show the new name and date of registration.
- 7 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 will not approve a name, unless he or she is of the opinion that the proposed name is an appropriate name under which an association might be incorporated under the Act.

As with the original approval of the name, the Commissioner for Consumer Protection 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](#). If seeking a review, you will need to give sound reasons why you want to change the name of your association.

The association must make the review application within 28 days of receiving notice of the refusal.

# Grievances and Disputes

*During the life of an association, there are bound to be grievances and disputes from inside and outside the association. Managing internal grievances and disputes, as well as complaints from the public in general, is an important task of the management committee. Grievances and disputes may stem from very minor issues to more complex, serious matters that could lead to the dismissal of an employee or expulsion of a member. This chapter outlines some internal and external processes for dealing with individual grievances and disputes between people.*

## Key Points

- Grievances and disputes are bound to occur inside and outside an association. It is advisable for associations to have a simple grievance policy that lays down the procedures for settling grievances and disputes.
- Grievances and disputes are most commonly resolved through informal processes, but formal processes may be required for more serious, complex matters.
- The aim of a grievance procedure is to reduce disharmony in an association and to provide a fair, consistent and timely approach to dealing with grievances and disputes.

## Sources of grievances and disputes

The potential for grievances and disputes lies across many layers of an association. The larger or more complex an association is, the more potential there is for grievances and disputes to arise.

Grievances and disputes most commonly arise between:

- an association member and another member (or members);
- a member and the association itself, or the committee;
- non-members (or clients) and the association, if the association provides services to non-members; and
- employees and the association, if the association is an employer.

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 forms of internal grievance, employees, volunteers or members may initiate complaints against the association under specific Acts of Parliament governing such areas as industrial law and discrimination law. For example, a discrimination complaint can be made 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.

## Why adopt a grievance policy?

In many cases, the association can resolve grievances and disputes internally. Resolutions are usually the simplest when the association has a well-publicised and transparent procedure, or grievance policy, to deal internally with a grievance or dispute. When this procedure is used as soon as the association becomes aware of the issue, it can often avoid having to resort to more complex processes, such as calling general meetings or expelling a member.

Occasionally, however, even these processes fail and a dispute can only be resolved externally, usually by the Courts or an external mediator. Sometimes this is simply unavoidable, but 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 grievance policy that encourages people to use it as a first step.

The primary purpose of a grievance policy is to set out the steps to be followed in dealing with a grievance or dispute internally, and to ensure a fair and speedy response. The policy need not be complex or technical. It can and, perhaps, should also be contained in the rules of association. See for example, Rule 24 of Consumer Protection's [model rules](#).

Some disputes may be subject to procedures set out in existing awards, employment agreements or contracts, and which may apply to internal disputes

either in conjunction with, or instead of, a grievance policy.

A grievance policy usually attempts to provide for both informal and formal processes for dealing with grievances and disputes. These might include, for example, informal meetings with the party or parties involved, mediation, a meeting with a committee member or a formal hearing before a committee.

## **NEW BILL**

**The Bill will include a provision that requires an internal dispute resolution process to be included in the rules. Standard dispute resolution procedures will also be included in the model rules.**

## **Internal grievance procedures**

Internal grievances and disputes may be resolved through informal and formal procedures. Informal procedures are the most common avenue for managing individual grievances and disputes between people. However, if informal discussions fail, then a formal procedure is followed that usually involves a more thorough investigation by a committee. Both informal and formal procedures must be fair and non-discriminatory, and deal with grievances promptly.

### **Steps involved in an informal procedure**

- The person making the complaint approaches the chairperson or a person designated to deal with grievances and disputes, such as a complaints officer, to discuss the matter.
- The person receiving the complaint needs to obtain as much information as possible, evaluate the grievance/dispute and explore options for resolution.
- The person making the complaint should be advised of his or her right to submit a formal grievance if he or she is not satisfied with the decision and outcome of the informal process.

## Steps involved in a formal procedure

- If informal discussions fail to resolve a grievance/dispute, a formal complaint is made in writing to the chairperson, complaints officer or other appropriate person designated to deal with formal grievances.
- The complainant must set out all the details of the grievance or dispute.
- The complaints officer, or person designated to deal with the complaint, attempts to resolve the matter with the complainant.
- If the complaint involves another person or persons, it is necessary to discuss the matter with the other person or persons concerned to get their side of the story.
- If there is a dispute between two or more people, mediation may be recommended at this stage, where an impartial third party attempts to assist the parties to resolve their dispute. The mediator may be a member of the association or an external person. The mediator must be acceptable to the parties, and should not have any stake in the outcome. The mediator facilitates the discussion between the parties and guides them towards a solution. Each party is given a fair opportunity to state their case. The mediator does not decide the dispute or impose a solution on the parties. The role of the mediator is to assist the parties find their solution.
- If mediation fails, or it is not considered appropriate in the circumstances, the matter is referred to an impartial grievance committee.
- The grievance committee invites the parties to attend a hearing, and gathers all the necessary information needed to make a decision.
- At the hearing, the parties have an opportunity to outline the basis of the grievance or dispute, to present documentation and call persons. Where the grievance/dispute involves complex issues, the parties may be entitled to legal representation.
- The committee sums up the issues and, after considering all the information presented to them, the committee makes a decision. The committee informs the parties of their decision or recommendations.
- After the hearing and after a decision has been reached, the parties may appeal against a decision or recommendation made by the committee. The parties must be given a reasonable time in which to submit an appeal in writing.
- The committee should keep detailed and accurate notes of the hearing and the outcome.
- A notice of a grievance or dispute may be withdrawn at any time.

## Calling a special general meeting

The rules of an association may provide for members to call a special general meeting of the association to address matters over which there is a dispute or grievance. For example, one or more members may have a grievance about the way in which the association is being run, membership fees or a breach of association rules.

The rules of association would normally set out the minimum number of members that need to sign a request for a special meeting, for example, not less than 10 members. The request must state the purpose of the special meeting.

If there is a collective grievance or dispute, the group should nominate a representative to present the grievance and represent the group at the meeting.

The special general meeting must be convened within a reasonable period of time, for example within 21 days of the secretary receiving the request from the members. Check the rules of your association to see if there are any specific timeframes to be followed. 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 in a general meeting or a special general meeting, and appoint another member. If a member is to be removed, the chairperson (unless the chairperson is the one being removed, then the deputy chairperson), must inform the member of the motion to have the member removed and the reasons for the removal.

The committee member must be given the opportunity to submit a written response, giving reasons why he or she should not be removed. The response is sent to all the members of the association or is read at the general meeting. The resolution is put to the meeting and voted on. The process for removing a committee member should be set out in the rules of the association.

## **Suspension and expulsion**

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

The process for suspension and expulsion would normally be set out in the rules of association and must be followed precisely. Courts have ruled expulsions invalid where the process is not followed. As a matter of natural justice, the member being suspended or expelled must be given a fair opportunity to be heard (to state their case) and to appeal against a decision.

## **External grievance procedures**

Most grievances and disputes can be resolved using internal informal and formal procedures. In some cases, however, it might be necessary to use a process outside the association to resolve a matter.

### **Courts**

An application can be made to a court to settle certain disputes, for example, where a committee member has mismanaged association funds. However, 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.

### **NEW BILL**

**The Bill will provide for unresolved disputes between members of an incorporated association and their members to be heard by the State Administrative Tribunal (SAT).**

## Consumer Protection

Consumer Protection's role is to ensure compliance with the Act. Associations, or more correctly, committee members, not complying with the Act can be investigated and prosecuted. Under certain circumstances, Consumer Protection can also initiate proceedings to have an association wound up or cancel an association's incorporation.

If there has been a breach of the Act, a formal complaint can be made to Consumer Protection. For example, if a committee member refuses to make the members' register available for inspection

### Lodging a complaint

Consumer Protection will only investigate where it appears a possible breach of the Act or the Regulations has occurred.

A [Complaint Form for Incorporated Associations](#) has been developed for your convenience. Information about what the Department will investigate is also included in the attachment to the form.

It is **highly recommended** that anyone thinking of lodging a complaint against an association read the 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 membership disputes concerning the application of the rules of association that are outside the requirements of the Act. The Association must deal with such matters using the internal or external grievance procedures.

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).

- **Provide interpretation of 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.** Consumer Protection cannot adjudicate on disputes concerning individual grievances.

## 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. Consumer Protection will send acknowledgment of the complaint and may request further information and documentation from the person raising the concerns.

An association will always be given an opportunity to comment on any allegations made in a complaint.

Consumer Protection has considerable investigative powers and provided that the circumstances indicate that there has been a failure to comply with the Act, can:

- order the production of association's records;
- require an association to be audited;
- direct the association to comply with the Act;
- cancel an association in certain circumstances; and
- in the most extreme case can apply to the Supreme Court to have an association wound up.

Consumer Protection can also prosecute individual committee members if they have:

- failed to take reasonable steps to ensure the association complies with its obligations under the Act; or
- failed to declare when they have a pecuniary interest and abstain from deliberating or voting.

Consumer Protection can also prosecute anyone who knowingly presents false or

misleading documents in any material respect to Consumer Protection or to a meeting of members.

Be aware that even in cases where it appears after investigation that 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.

## NEW BILL

**There may be a limited number of circumstances where there may be a need to temporarily replace the management committee of an association if the committee has become dysfunctional and/or has a significant negative working relationship with its members.**

**As an option of last resort the Bill will allow the Commissioner to apply to the SAT for the appointment of a statutory manager to administer the affairs of an incorporated association.**

## 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.

# Accounts and Auditing

*Some associations might operate on a small budget, while others manage budgets of millions of dollars. An association may derive its funds from a number of sources, including government subsidies, sponsorships, donations, fundraising activities and membership fees. This chapter outlines what the Act requires in terms of accounting and auditing procedures.*

## Key Points

- An incorporated association must keep accurate and up-to-date financial records.
- An incorporated association must present the financial statements to the members at each AGM.
- Financial statements do not have to be audited. However, this is advisable as it makes for responsible financial management. Moreover, some funding bodies may require financial statements to be audited.
- The auditor is appointed by the members at the AGM.

There are only two things incorporated associations must do to comply with the accounting requirements of the Act:

- keep true and accurate accounting records that explain the financial transactions and the financial position of the association in a manner that can be conveniently and properly audited;
- submit accounts at each AGM, showing the financial position of the association at the end of the immediately preceding financial year.

Taxation and industrial legislation may also require financial records to be kept. In addition to these legal obligations, an association's management committee would usually need clear, accurate and up-to-date financial information to ensure the association is viable and operating efficiently.

## Accounting requirements

Unlike incorporated association's legislation in most other Australian states, there is no requirement in Western Australia for associations to lodge accounts and financial statements on a regular basis. The Commissioner for Consumer Protection can require accounts to be lodged in individual cases, but this is only done in extraordinary circumstances.

## Procedures for keeping accurate accounts

How an association organises its accounts, payments and record keeping is up to the members (or more probably, the committee) and can vary depending upon the size and complexity of the association's financial situation. If your association is small, you may only wish to have a voluntary treasurer who 'keeps the books'. Alternatively, if the association requires more on-going, skilled accounting services, the association could employ its own in-house finance staff, or out-source the tasks to an accountant or book-keeper.

Written records will generally involve the use of cash payment books to record amounts the association pays, cash receipt books to record amounts received, GST tax invoices and tax records, salary records, bank reconciliation statements and other relevant financial documents.

## Good financial practices

As a minimum, associations wanting to embrace good financial practices should give attention to developing policies and procedures in the following areas:

- preparing an annual budget of expected income and allocated expenditure;
- recording income received, including source, date and amount. Examples include grants, membership, donations, fundraising, sales of goods and interest;
- developing a system to accurately, but speedily, record and pay necessary bills, including authorisation clearances and issuing invoices;

- recording and authorising petty cash transactions;
- where necessary, recording Australian 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);
- recording expenditure against key area items. These areas are usually aligned to budget items (e.g. \$200 for a newsletter against an annual association budget of \$5000);
- 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.

If the association has a significant turnover, an essential tool for the management committee is the monthly or quarterly cash flow statement. This will enable the management committee to ensure that the association is solvent – that is, it is able to pay its debts as and when they fall due.

## Members' right to the financial accounts

The Act requires that the association's annual financial statements (or annual accounts) be presented to the members at each AGM.

The annual accounts should show:

- a statement of receipts and payments of the Association, recording its total receipts and payments based on the cash method of accounting, as well as a statement of the assets and liabilities of the Association; or
- a statement of the income and expenditure of the Association, recording its total income and expenditure based on the accrual method of accounting, as well as a balance sheet.

Members should have the opportunity to examine these accounts if they wish. Ideally, each member would receive a copy of the accounts, which might be included in the association's annual report (if applicable). Where this is not feasible, then time must be allocated for the treasurer or other committee member to present a summary of the accounts and explain the major items.

This requirement of the Act does not give members any rights to view the various financial records of the association, nor any of the accounts or statements that might be prepared for the committee during the year. However, it is open to the association to make provision in the rules for access to these records or accounts, if that is the wish of the members.

If, for any reason, the annual accounts are to be audited, then the audit report must form part of the statements presented to the members. Some associations will invite the auditor to attend the AGM so that he or she can respond to enquiries from members.

## Auditing accounts

The Act does not require accounts to be audited, but the association itself may require an audit to be carried out. This requirement would normally be specified in the rules of the association. It would be within the power of the members to pass a resolution that the accounts for a particular financial year be audited, especially if they had any reason to be concerned. Funding body agreements might also require the association's accounts to be audited to ensure that the funds provided are used according to the funding agreement and for the purpose stated in the agreement.

### NEW BILL

Consideration is being given to requiring certain associations to have their annual financial statements audited or examined by a bookkeeper. The extent of the audit requirement would probably depend upon the extent of the association's financial transactions and assets. There would also be some flexibility given in regard to the qualifications required of an auditor.

## Reasons for auditing:

It may seem like additional time, effort and expense to have an annual audit, but there are a number of reasons why an association (or a funding body) would require records to be audited:

- an audit of the financial records of the association ensures greater accountability to the members (and for some associations, the public);
- the audit gives assurance that all funds received by the organisation have been correctly collected, documented and banked. It shows that all monies spent by the organisation were for the purpose of the association, approved by the management committee, and documented. Apart from anything else, this helps to protect management committee members against unfounded allegations of misconduct;
- the audit provides an account of the assets of the association and verifies that records and registers are properly maintained;
- the audit functions as a check and balance. It requires that the financial statements of the association be kept to a standard in order for the audit to occur and will indicate areas that may require improvement;
- audited financial statements are required if the association has charitable status; and
- funding bodies often require audited financial statements.

## The role of the auditor

The purpose of an audit is to enable an auditor to express a professional and independent opinion on the financial statements of the association. It is the responsibility of the management committee to provide the financial statements.

It is not the task of the auditor to find all errors or fraud, therefore the management committee cannot rely on the auditor's work as a substitute for the performance of their own duties. Every member of the committee must pay close attention to the association's financial statements at all times.

The auditor will, on the basis of the financial statements, take reasonable steps to ensure that:

- the accounting records of the association are adequate to prepare the financial statements;
- the financial statements are reliable;
- the results for the period are demonstrated in the financial statements; and
- the association's state of affairs for the period are disclosed.

The auditor's task is to provide a professional opinion on the state of the financial affairs of the association, and auditors have a legal responsibility for their opinion. They 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.

## Appointing an auditor

When appointing an auditor, a good place to start is by word of mouth by simply asking other associations whom they use. If using a professional auditor, check their registration status. Accountants who are members of the Institute of Chartered Accountants, the National Institute of Accountants or the Australian Society of Certified Practising Accountants are required to meet the auditing standards set out by these professional bodies.

Ask for a letter of engagement from the person selected as auditor setting out:

- what their responsibilities are;
- what they will require to undertake the task (i.e. ask them to list what they require);
- what it will cost; and
- what the expected time frame is for completion.

This ensures that there is a clear understanding of the duties and responsibilities of the auditor.

To deal with any problem, ensure that the auditor has the contact details of the treasurer and at least one other committee member so that, if the treasurer can't be contacted, someone else can.

Although the treasurer usually has responsibility for overseeing the financial statements, this is not his or her responsibility alone. Whilst the treasurer should be able to provide the auditor with additional financial information if required, the responsibility can be shared among other members.

The manner of appointment of an auditor may depend on the association's rules. It is common for the auditor to be appointed for the following year at the AGM. This appointment is most commonly made on the strength of a recommendation from the management committee.

To ensure that the auditor does not have the potential for conflict of interest, appoint an auditor who is independent of the association. Do not appoint an auditor for the association who is:

- 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.

## Disclosure

The association is required to provide all the financial records of the association to the auditor. All records should be complete.

Auditing practice identifies any material that is omitted or not disclosed as a misstatement if it would have influenced the auditor's judgement.

## What if the audit report is unsatisfactory?

There is always the possibility that the auditor may present an unfavourable report, identifying areas that the association needs to address.

If the association is not clear about what the auditor is saying, it should ask for further written clarification. In presenting the audit report and findings to the AGM, the management committee should report on the auditor's recommendations and what action has been undertaken to address areas of concern. To ignore an auditor's report is likely to place the association at risk and increase the exposure of individuals (particularly, the committee) to personal liability.

It may be that there are irregularities in the financial statements of the association, due to a number of factors, such as:

- 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, like any other organisation or corporation, are subject to taxation. However, not-for-profit organisations, such as incorporated associations may be eligible for certain taxation concessions. Taxation is highly complex and, therefore, this chapter will provide only a very basic overview of taxation obligations and concessions. The types of tax and exemptions that may be applicable to an association will also be discussed.*

*It is important to seek expert advice and help when dealing with taxation because it is so specialised and constantly changing.*

## Key Points

- Incorporated associations are subject to taxation unless a relevant tax exemption applies.
- Incorporated associations may be eligible for certain taxation concessions that apply to not-for-profit organisations. The availability of such concessions may require that the association satisfies certain criteria and be endorsed by the ATO.
- 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.

For detailed information on taxation for not-for-profit organisations, visit the: **Australian Taxation Office (ATO)** website at [www.ato.gov.au/nonprofit](http://www.ato.gov.au/nonprofit).

The website contains most, if not all, of the information that you will ever need regarding your association's tax obligations. If you prefer using hardcopy publications, the following are highly recommended as starters:

- [Tax basics for non-profit organisations \(NAT 7966\)](#)
- [Income tax guide for non-profit organisations \(NAT 7967\)](#)

You can obtain these through the website, from your local tax office, or by telephoning **1300 720 092** (quote the NAT numbers shown above).

The ATO also operates a non-profit infoline: **1300 130 248**.

## Taxation concessions available for some associations

Tax concessions are available from the ATO 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) payable, 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. A not-for-profit organisation is one that does not operate for the financial gain of its members. (See [Incorporated Associations](#) for more information on being a not-for-profit association.) Incorporated associations are by legal definition not-for-profit organisations, and therefore many will be eligible for one or more tax concessions.

To benefit from any tax concessions, an organisation must be able to show that it is a not-for-profit organisation. One of the distinguishing features of a not-for-profit association is that its rules contain a not-for-profit clause.

For example, the Act requires an incorporated association to include in its rules a provision along the following lines:

*The property and income of the association shall be applied solely towards the promotion of the objects or purposes of the association. No part of that property or income may be paid or otherwise distributed, directly or indirectly, to members of the association, except in good faith in the promotion of those objects or purposes.*

Associations that do not have an equivalent clause in their rules may not be eligible to remain incorporated, and will not be able to demonstrate their not-for-profit status to the ATO.

Access to some ATO tax concessions also requires an association to have an appropriate dissolution clause in its rules. The association must be able to demonstrate that it is a not-for-profit organisation, both while operating and when winding up.

An example of a dissolution clause that is acceptable to the ATO, and that is also lawful under the Western Australian association's legislation, is:

*In the event that the association is dissolved, any surplus property that remains after the dissolution and the satisfaction of all debts and liabilities shall be transferred to another association, incorporated under the Act, that has similar objects and that is not carried on for the profit or gain of its individual members.*

Please note that it is important that the dissolution clause will only allow for a transfer to another association incorporated in Western Australia. The words "incorporated under the Act" provide for this requirement.

## Charities

Many incorporated associations are also charities. In broad terms, a charity is a fund or an institution that pursues one or more charitable purposes that are of public benefit. According to the ATO, for an organisation to be a charity, it must:

- be an entity that is also a (charitable) trust fund or institution (simply being incorporated does not necessarily make an association an institution as far as the ATO is concerned);
- be not-for-profit;
- exist for the benefit of the public or the relief of poverty; and
- have a sole purpose that is a charitable purpose under the law.

Clearly, not all associations fit the ATO requirements to be recognised as charities.

### Examples of Charities

Alzheimer's association  
Women's shelters  
Crisis accommodation services  
Disability resource services  
Public libraries, museums and art galleries  
Alcohol and drug education bodies  
Citizens advice bureaus  
Parents and citizens groups  
Refugee relief bodies  
Conservation groups - not for political aims  
Guide dog associations  
Animal rights groups

### Examples of Non-charities

Political organisations  
Lobbying groups  
Social, sport and recreational clubs (with some exceptions)  
Playgroups  
For-profit child care centres  
Professional associations  
Educational trusts  
Resident action groups  
Cultural organisations (with some exceptions regarding Indigenous associations)

## Charitable purpose

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

- the relief of poverty. Associations formed for relieving poverty will be charitable, as long as the benefit is provided to persons in a particular class and not for the benefit of a particular poor person.
- the advancement of education. Associations that are formed to advance knowledge and provide for greater educational opportunities will be charitable;
- the advancement of religion. Not all religious institutions are charitable. To qualify for a charitable status, an association must have a religious purpose that is for the benefit of the community. For instance, religious associations formed to convert people will not be charitable;

- the provision of child care services on a not-for-profit basis. (This is a relatively recent addition by the ATO to the meaning of charitable purposes); and
- other purposes that are beneficial to the community. An association may be charitable if it is formed for purposes that are beneficial to the community. Examples include the protection of animals, promotion of health and welfare, caring for the aged, and the preservation of cultural sites and historical buildings. While a group's objectives may be 'beneficial to the community', this does not necessarily make it a charity. Sporting, recreational, cultural, social, political or promotional purposes are not considered charitable. Associations that are primarily for the benefit of their members are not charitable.

Please note that the meaning of charitable purposes as outlined above is not the same as the meaning of charitable purposes under the charities legislation of Western Australia (the *Charitable Collections Act 1946*). The ATO meaning is much broader, which means that an association could be considered a charity for tax purposes, but might not require a charitable collections licence under Western Australian laws (see [Fundraising](#)).

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

The Australian Charities and Not-for-profits Commission (ACNC) is the independent national regulator of charities. The ACNC has been set up to achieve the following objects:

- maintain, protect and enhance public trust and confidence in the sector through increased accountability and transparency;
- support and sustain a robust, vibrant, independent and innovative not-for-profit sector; and
- promote the reduction of unnecessary regulatory obligations on the sector.

### The role of the ACNC

The ACNC:

- registers organisations as charities;
- helps charities understand and meet their obligations through information, guidance, advice and other support;
- maintains a free and searchable public register so that anyone can look up information about registered charities; and
- is working with state and territory governments (as well as individual federal, state and territory government agencies) to develop a 'report-once, use-often' reporting framework for charities.

The ACNC is responsible for determining charity status for all federal tax purposes. As part of its status 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 ACNC's relationship with other government agencies**

The Australian Taxation Office (ATO) remains responsible for deciding eligibility for charity tax concessions and other Commonwealth exemptions and benefits.

There are also many other government agencies that regulate charities and other not-for-profits. For example, government agencies may provide grants and other funding. They may also regulate particular services provided by charities, such as aged care or education.

In Western Australia the Department of Commerce regulates Incorporated Associations and Charitable Collections Licences.

**Important:** It is relevant to note that charities or organisations that solicit charitable donations in Western Australia are still required to obtain a Charitable Collections Licence from the Department of Commerce.

Registration with the ACNC **DOES NOT** preclude this requirement. See [Fundraising](#) for more information.

## Is your Association or Charity Registered with the ACNC?

If your organisation was recognised (endorsed) by the Australian Taxation Office (ATO) as a charity able to receive charity tax concessions before 3 December 2012, it was automatically registered with the Australian Charities and Not-for-profits Commission (ACNC). This means you don't need to re-register.

The ACNC now registers organisations as charities while the ATO remains responsible for deciding your organisation's eligibility for tax concessions. You can check if your organisation has been automatically registered by searching the ACNC Register.

You can also check whether your organisation is registered as a charity and which tax concessions your organisation currently receives from the ATO on ABN Lookup.

As part of the automatic registration process, your charity's information has been transferred from the ATO and the Australian Business Register to form its initial entry on the ACNC Register.

## Applying for tax concessions from the ATO

Registration with the ACNC is voluntary. **However**, ACNC registration is now a prerequisite for charities to access charity tax concessions.

A charity must be registered with the ACNC before it can receive any charity tax concessions from the ATO. Many charities may also be eligible to apply for deductible gift recipient (DGR) status. Some DGR categories are only available to registered charities.

You can apply for charity tax benefits including DGR status with the ATO when applying to register with the ACNC.

After the ACNC has decided your charity status, they will pass on your application for tax benefits including DGR status to the ATO. The ATO will decide whether your organisation is eligible.

On 3 December 2012, the independent regulator for charities, the Australian Charities and Not-for-profits Commission (ACNC) commenced operations.

The ACNC offers a number of key services, including charity registration, a searchable charity register listing registered Australian charities, education and guidance materials. You can keep up-to-date with changes to the ACNC by subscribing to the ACNC Commissioner's weekly column.

For more information concerning Charities and Taxation, visit the ACNC website at: [www.acnc.gov.au](http://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. All charities registered with the ACNC may apply for income tax exemption, which means your charity may not have to pay income tax.

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. As already noted, both charities and PBIs are required to apply to the ATO for endorsement as a tax concession charity. Endorsement as a tax concession charity provides exemption from income tax, as well as several other tax concessions (referred to in the following pages).

Your association needs an Australian Business Number (ABN) to apply for endorsement. If it already has an ABN, then you can request an endorsement application pack from the ATO on **1300 130 248**, or visit the [ATO website](#).

If your association does not have an ABN, you will need to apply for one – details are provided at ***Registering with the ATO***. On the ABN application, you can advise the ATO that your organisation wants to be endorsed and the Tax Office will forward the endorsement application pack.

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 assessment (ie self-assess) to determine whether or not it is eligible for tax exemption.

For an exemption to apply, the association would need to fall within one of the following categories, each with its own further requirements:

- community service organisations;
- cultural organisations;
- educational organisations;
- employment organisations;
- health organisations;
- religious organisations;
- resource development organisations;
- scientific organisations; and
- sporting organisations.

In addition, the association may also have to pass at least one of these three tests:

- have a physical presence in Australia and conduct its activities "principally" in Australia;
- qualify to be endorsed as a deductible gift recipient; or
- be prescribed by law in the income tax regulations.

If an association is exempt under one of these categories, 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. However, even taxable not-for-profit associations may be entitled to special rules for calculating taxable income, lodging their tax returns and special rates of tax.

An explanation of self-assessment and a useful worksheet are set out in the ATO publication [Income tax guide for non-profit organisations](#).

The [ATO website](#) also has useful information about self-assessment.

## Registering with the ATO

To be able to comply with taxation obligations and to apply for taxation concessions, an association may need to register for an ABN.

An ABN is an identifier that an incorporated association would use 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 other taxes.

An association must have an ABN in order to be endorsed as a tax concession charity and/or a deductible gift recipient (DGR). (DGRs are explained in [Fundraising](#).)

When applying for an ABN, an association is able to register for GST, PAYG and FBT all on the same application form. A Tax File Number will also be issued with the ABN.

## How to apply for an ABN

Registration with the ATO is conducted through the Australian Business Register (ABR). You can apply:

- electronically through the Australian Business Register ([abr.gov.au](http://abr.gov.au));
- by downloading the application form from the ATO website;
- in paper form through the Tax Office **1300 130 248**; or
- through a tax agent.

## Goods and Services Tax (GST)

Goods and Services Tax (GST) is a tax on transactions. Where goods and services are sold, the amount received for the sale may be subject to GST. Similarly, where goods and services are purchased, the purchaser may be able to claim a GST credit for the GST included in the amount paid. Charities that are registered with the ACNC may apply to access a number of GST concessions if they are also registered for GST.

The 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 a tax on transactions that is paid at each step in the supply chain. GST-registered businesses (or those required to be registered) are liable for GST on the goods and services they supply, which they generally aim to recover from the buyer or recipient by 'grossing up' the sale price of their goods and services. These businesses can also generally claim back the GST they paid on business purchases or supplies as input tax credits. An input tax credit is what you claim to get back the GST you pay on the price of goods and services you purchase for the business or association. 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, so while the liability for paying the GST rests with GST-registered businesses and organisations, the economic cost is intended to be borne by the end consumer.

The most obvious GST concession for not-for-profit associations is a higher GST registration threshold. Associations must register for GST only if their annual

turnover is \$100,000 or more, but can choose to register if their annual turnover is lower. Other organisations or businesses must register for GST if their annual turnover is \$50,000 or more.

Associations that are also charities can access a broader range of GST concessions including:

- GST-free status for non-commercial activities;
- GST-free sales of donated second-hand goods;
- GST-free status for raffles and bingo tickets;
- Sales in connection with certain fund-raising events may be input taxed (that is, no GST liability is imposed, however no input tax credits will be available for purchases made in respect of those sales); and
- GST credits for volunteer expenses.

Remember that an association that is a charity must be endorsed by the ATO as a tax concession charity in order to access any of these additional concessions.

More information on GST concessions and how to register for GST may be found in the ATO publication [Tax basics for non-profit organisations](#).

The [ATO website](#) also has more detailed information.

## Fringe Benefits Tax (FBT)

Fringe Benefits Tax (FBT) is a tax 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, phone or any other benefit.

If your organisation is a registered charity (other than a registered charity that is an institution established by a law of the Commonwealth Government, a state or a territory) it may apply for the FBT rebate (capped at \$30 000).

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 as a 'grossed-up' amount. Grossing-up means increasing the value of the benefit to reflect the gross salary that the employee would have to earn to buy the benefit using after-tax dollars. These amounts must also be reported to the ATO.

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.

Associations that are public benevolent institutions or health promotion charities may be eligible for an exemption from FBT. The exemption is subject to a cap on the annual fringe benefit amount that can effectively be paid to an employee. For the latest threshold cap that applies to your association, consult the ATO. If the cap is exceeded for any employee, the association would be liable for FBT on the excess.

Associations that are 'rebtable employers' may be entitled to a rebate on the gross FBT payable. Rebtable employers are certain non-government, non-profit organisations. Organisations that qualify for the FBT rebate include:

- certain religious, educational, charitable, scientific or public educational institutions;
- trade unions and employer associations;
- not-for-profit organisations established to encourage music, art, literature or science;
- not-for-profit organisations established to encourage or promote a game, sport or animal races;
- not-for-profit organisations established for community service purposes
- not-for-profit organisations established to promote the development of aviation or tourism
- not-for-profit organisations established to promote the development of Australian information and communications technology resources, and

- not-for-profit organisations established to promote the development of the agricultural, pastoral, horticultural, viticultural, aquacultural, fishing, manufacturing or industrial resources of Australia.

Remember, an association that is also a charity (including a PBI) 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 for FBT may be found in the ATO publication [Tax basics for non-profit organisations](#). The [ATO website](#) also has more detailed information.

## **Deductible gift recipient (DGR) status**

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

The benefit of being a deductible gift recipient is that donations made to your organisation may be tax deductible. If a donation is tax deductible, donors can deduct the amount of their donation from their taxable income when they lodge their tax return.

Donors can find out more about making tax deductible gifts and contributions on the ATO's website.

If your organisation is a charity that wants to apply for DGR status, you will need to be registered with the ACNC first.

If your charity is already a DGR, check the ACNC Register to see if it has automatically been registered with the ACNC. If it is not registered, you will need to apply to register with them so you can continue to receive tax deductible donations. You must do this by 2 December 2013.

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 factsheet on DGR's.

## **Public benevolent institutions (PBI)**

Some incorporated associations that are charities will also qualify for public benevolent institution (PBI) status. This is different from being classified as a charity. Only some charities will be classified as PBIs. A PBI has to be a not-for-profit institution set up for the relief of poverty, sickness, suffering, distress, misfortune, disability or helplessness. 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. Examples of public benevolent institutions are: women's refuges, 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. Examples of associations that are generally not regarded as public benevolent institutions are: social groups, associations that charge a fee, self-help groups, Boy Scouts and Girl Guides, cultural groups, hobby clubs and conservation groups.

More detailed information can be accessed about PBIs 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. Your organisation does not need to be registered with the ACNC to receive state or local government tax concessions.

Concessions may be available on taxes like 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.

Local governments may also give concessions to charities (for example, on rates).

## Western Australian tax concessions

For information about payroll and land taxes, stamp duty and compliance:

### Department of Finance (WA)

Physical address:  
Office of State Revenue  
Plaza Level 200 St George's Terrace  
Perth WA 6000

Postal Address:  
GPO Box T1600, Perth WA 6845

General Enquiries: (08) 9262 1400  
Country Callers: 1300 368 364  
Facsimile: (08) 9226 0842

Website: [www.finance.wa.gov.au](http://www.finance.wa.gov.au)  
Online contact form: [Make an enquiry](#)

## Exemptions from State Taxes

Exemptions from State taxes apply to range of eligible bodies, including certain incorporated associations.

For example, under section 40(2) of the *Western Australian Pay-roll Tax Assessment Act (2002)*, most of the salaries and wages paid by a range of bodies may be exempt from pay-roll tax. These bodies include:

- religious or public benevolent institutions;
- private hospitals run by not-for-profit organisations; and
- schools and colleges (at or below secondary level) run by not-for-profit organisations.

Charitable organisations may apply to the Commissioner of State Revenue for an exemption from pay-roll tax (under section 41).

## Pay As You Go (PAYG)

All organisations, including incorporated associations that employ staff are subject to PAYG withholding obligations from salaries and wages paid to employees. Associations that are exempt from income tax are not exempt from PAYG. Associations are required to withhold an amount from an employee's pay and send this to the ATO. 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.

# Fundraising

**Associations are set up to achieve a range of objectives, which can include a wide diversity of activities. As long as the association meets the requirements of being not-for-profit, does not primarily conduct trading and only undertakes activities in its state of incorporation, the members and management committee are generally free to determine what type of activities are undertaken.**

**Associations do not have an unrestricted right to fundraise, even if it is for not-for-profit purposes. This chapter provides information on the legal requirements that associations must take into consideration when planning and carrying out their fundraising activities.**

## Key Points

- Incorporated associations that wish to raise funds from the public for a charitable purpose must have a licence.
- Permission for raising funds in shopping centres must be obtained from the shopping centre management.
- Fundraising in streets and public places in the metropolitan area requires a street appeal permit.
- An association must obtain a licence from the local council for a food stall and a licence from the DRGL for a licence to sell alcohol.
- Additional insurance may be required for fundraising events.
- Obtaining endorsement from the ATO as a DGR could assist eligible associations with fundraising.

Many associations undertake some form of fundraising in order to help finance their not-for-profit activities, for example, running a raffle, conducting a door-knock, selling food or collecting clothes.

Examples:

- The Harmony Community Development Association Inc. holds an annual street collection, organises charity sports events and runs a bingo evening for senior citizens.
- Kick-it Inc. runs soccer coaching and competitions for under 12 year olds. The group also undertakes fundraising and runs education sessions in local schools.
- Sam Point Neighbourhood House Inc. runs educational programmes, school holiday activity programmes, single parent camps and an unemployed workers co-operative.
- Friends of Lake Boro Inc. publishes a local newsletter, conducts busy bees and collects donations at shopping centres.
- Care-in-Care Inc. is a large organisation with over 60 staff, delivering services for low-income earners across Perth. Services include counselling, education, legal advice and emergency relief. The centre also has two op shops, a refuge and an inner city canteen for homeless people.

## Regulation of fundraising activities

Fundraising activities in Western Australia are potentially restricted by one or more pieces of legislation and regulations, including:

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

The Acts that might regulate your association's fundraising depends on what purpose the funds will be used for. For instance, if the fundraising is for a charitable purpose, then your association will need to hold a licence under the *Charitable Collections Act*.

What constitutes a charitable purpose can be a bit confusing, as there are significant differences between its common law meaning, its meaning under Commonwealth tax legislation, and its meaning under the *Charitable Collections Act 1946*.

The definition in the *Charitable Collections Act 1946* is wide and includes providing assistance to the ill, infirm, poor, or unemployed persons, and to hospitals, kindergartens and infant health care centres. It also embraces various other social welfare and benevolent activities.

However, what is not covered by the definition is just as important. For example, the support of schools or sporting activities is generally not a charitable purpose. So fundraising by a Parents and Citizens Association wanting to buy new computers for its primary school is not regulated by the *Charitable Collections Act 1946* and the association would not need to be licensed. But, if your association is raising funds to assist homeless 'street kids', then this is fundraising for a charitable purpose and the association would need to apply for a licence.

**If you are unsure if your fundraising is for a charitable purpose, you can contact the Charities Area at Consumer Protection on (08) 9282 4373.**

## The Australian Charities and Not for Profit Commission

The Australian Charities and Not for Profit Commission (ACNC) is the independent 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 at [www.acnc.gov.au](http://www.acnc.gov.au) 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 WA for charitable purposes a licence must be obtained under the Charitable Collections Act 1946.

## Fundraising for charitable purposes

Fundraising for charitable purposes in Western Australia is regulated by the *Charitable Collections Act 1946*. If the charitable fundraising involves a street appeal, then the *Street Collections (Regulation) Act (1940)* also applies. The Minister for Commerce administers these Acts through the Charitable Collections Advisory Committee, which in turn operates in conjunction with Consumer Protection.

## What are the requirements for fundraising?

Your association will need a charitable collections licence if:

- the purpose of its fundraising falls within the definition of charitable purpose under the *Charitable Collections Act (1946)*;
- it intends to collect or obtain money or goods (such as aluminium cans or used furniture or clothing); or
- conducts fundraising for that charitable purpose.
- The following activities are considered to be a collection under the Charitable Collections Act 1946 and require a licence:
  - the sale of items such as badges, flowers, tokens or any other device for any charitable purpose;
  - charging an entrance fee for functions (such as sports events, fêtes, and concerts) 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.

For more information about conducting charitable collections refer to the information sheet [Charitable Collections – Getting Started](#).

## How does an association obtain a licence?

Technically, an association applies to the Minister for Commerce for permission to fundraise, and the Minister refers the application to the Charitable Collections Advisory Committee. In practice, however, the application is lodged with the Charitable Collections Licensing section at Consumer Protection and the Committee then makes its recommendations with regard to licensing.

An application may take up to eight weeks to be processed. A licence is normally issued for three years and may be renewed. More information about licensing requirements is available from [www.commerce.wa.gov.au/charities](http://www.commerce.wa.gov.au/charities) or by reading [Charitable Collections- A guide to licensing](#).

## 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.

The requirements of the *Charitable Collections Act 1946* will still apply but it may not be practical to apply for a licence. It may be better to obtain authority from an existing licence holder to collect under their licence.

For more information visit [www.commerce.wa.gov.au/charities](http://www.commerce.wa.gov.au/charities).

## Reporting requirements

Licensees are required to submit audited financial reports to the Committee at the end of their financial year. The reports must contain detailed information about the money or goods collected and the way they were distributed.

## Code of Conduct

A [Voluntary Code of Practice](#) for public fundraising has been developed by Consumer Protection. It provides helpful guidelines to fundraisers on how to conduct fundraising in a responsible and accountable manner.

## Other requirements relating to selected fundraising activities

### Street collections

The *Street Collections (Regulation) Act (1940)* applies to any organisation conducting a street collection. However, it only regulates street collections in the metropolitan area. Associations in regional areas should check with their local council.

A permit is required for any street collection in the Perth metropolitan area, regardless of whether or not the proceeds are to be used for a charitable purpose.

For example, a T-Ball club wanting to hold a street collection to raise funds for equipment would need a permit, even though the purpose of the fundraising is not considered charitable.

Please note that the definition of 'public street' includes private land that is 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.

An application for a permit can be made to Consumer Protection. The application must set out details on the purpose and locality of the street collection, and any other relevant information. Consumer Protection requires at least six weeks' notice to allow time for the permit to be prepared and signed.

A report on the amounts received and expenses incurred must be sent to the Department within 30 days of the street collection.

Guidelines for street collections:

- Submit an application form to Consumer Protection.
- Allow six weeks for the application to be processed.
- There is no fee.
- Only one street appeal is allowed for each applicant per year.
- The permit does not cover collections on private property, such as inside shopping centres.
- Collectors must wear an identification badge.
- Collectors may not be paid.
- Only children over the age of 16 are allowed to collect during a street appeal.
- If an association wants to set up stalls, it must obtain a separate permit from the relevant local council.

For more information contact:

#### **Charities Area**

#### **Department of Commerce**

Unit 4, 321 Selby Street North

OSBORNE PARK WA 6017

Telephone: (08) 9282 4373

Facsimile: (08) 9282 4337

Access the Consumer Protection website about [Street Collections](#) or download the application - [Form 2](#).

## Door-to-door collections

Associations that are licensed to raise funds from the public for charitable purposes may carry out door-to-door collecting from households. Collectors are allowed to collect between the hours of 9am and 6pm on Mondays to Saturdays only and must wear an identity badge. Children under the age of 16 may not act as door-to-door collectors.

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

An association that does not hold a charitable collections licence may also collect door-to-door, provided that it does not collect for a charitable purpose. For example, P&C and sporting associations would typically not need a licence. As such, the requirements of the *Charitable Collections Act* do not apply to these groups when collecting door-to-door. It is worth remembering, however, that the best donors are happy donors, and following the Consumer Protection guidelines will help to ensure that your collectors will be welcomed next time they knock on the door!

## Fundraising in shopping centres

Shopping centres are good places for raising funds because of the large numbers of people passing through. Associations that wish to fundraise in a shopping centre must obtain permission from the shopping centre management office, but at the moment no other permits are required.

Shopping centres have their own policies on providing space for fundraising. As shopping centres are so popular and space is limited, it is essential to plan well in advance. It can take 12 months to obtain a space. Shopping centres will generally require public indemnity insurance (refer to [Insurance and Risk Management](#)).

A voluntary Code of Conduct has been developed by Consumer Protection that provides [guidelines](#) to fundraisers and shopping centre managers to deal with requests for space in shopping centres for fundraising.

## Lotteries and games

Lotteries (raffles) and games, such as bingo, are popular fundraising activities. *The Gaming and Wagering Commission Act 1987* provides permits to charitable groups, community based organisations and sporting bodies for the purpose of raising funds from gaming related activities.

The gaming activities covered by the *Gaming and Wagering Commission Act 1987* include:

- standard lotteries;
- continuing lotteries;
- trade promotion lotteries (e.g. a colouring in competition or entries drawn randomly from a barrel);
- video lottery terminals;
- bingo;
- two-up;
- sweepstakes;
- 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 Racing, Gaming and Liquor (DRGL). Funds raised must be for charitable purposes, or for a purpose that is not for private gain or a commercial undertaking. In making an application for a permit, your association will be required to provide a copy of the rules of association or certificate of incorporation to show that they are a genuine group.

There are different application forms, conditions and fees for each lottery and gaming activity. It is important to complete the correct form/s, which can be obtained from the DRGL or downloaded from its website.

Minor fundraising activities, which include football tipping competitions where the total prize money is less than \$10,000 and raffles under 24 hours' duration, do not usually require a permit.

However, check with the DRGL if you are not sure whether or not you require a permit for your activity or you could be liable for a fine.

### Department of Racing, Gaming and Liquor

Address:

Level 1, 87 Adelaide Terrace,  
East Perth, WA 6004

Postal Address:

PO Box 6119,  
East Perth, WA 6892

Main switch board: (08) 9425 1888

Country callers: 1800 634 541

Facsimile: (08) 9325 1041

Email: [rgl@rgl.wa.gov.au](mailto:rgl@rgl.wa.gov.au)

Website: [www.rgl.wa.gov.au](http://www.rgl.wa.gov.au)

## 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, an occasional food stall or a large food and wine festival. However, preparing and selling food requires very careful handling and preparation for reasons of hygiene and safety.

The following laws regulate fundraising activities, involving the preparation and supply of food in Western Australia:

- the *Health Act 1911*;
- the *Health (Food Hygiene) Regulations 1993*; and
- the Australia New Zealand Food Standards Code.

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

The following aspects need to be considered when planning a food stall and submitting an application for a permit:

- the type of food products to be sold;
- the people who will be preparing and selling the food;
- equipment required;
- purchasing and transporting the food;
- the nature of the facilities to be used;
- procedures and equipment for handling food;
- temperature control of hot and cold food;
- presentation and storage of food;
- labelling food;
- cleaning requirements and equipment; and
- rubbish and waste water disposal.

[Food Standards Australia New Zealand](#) have produced a number of 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 the fundraising activity or event also includes selling and supplying alcohol, it will be necessary to obtain a liquor licence. The DRGL grants licences under the *Liquor Control Act 1988* which regulates the:

- sale, supply and consumption of liquor;
- use of premises on which liquor is sold; and
- services and facilities provided in conjunction with the sale of liquor.

Incorporated 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.

## Applying for an occasional licence to sell alcohol:

- You can download an application kit from the [occasional licence](#) section of the DRGL website or complete the application [online](#).
- The form must be completed and submitted with the prescribed application fee.
- Written consent must be obtained from the owner or person having control over the premises where the liquor will be sold.
- If the function is to be held outdoors, a map of the licensed area must be submitted.
- Local council consent is required for the use of public land.
- The local police must be informed of the proposed function if more than 100 people are expected.

## Other matters for consideration

### Commercial fundraisers

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.

These guidelines are available on Consumer Protection's [website](#).

## 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 challenged, courts will look very closely at gifts and bequests received by associations to ensure that they were given freely and with the person's full knowledge and intention. It will be more difficult for associations to claim gifts and bequests that are given by elderly people, people with intellectual disabilities and people with limited experience and education.

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. It may also be beneficial to apply to the Australian Taxation Office for endorsement as a Deductible Gift Recipient (DGR).

And remember, if the request for gifts and bequests indicates that the funds will be used for a charitable purpose, the association will need a charitable collections licence before it commences mailing out any material.

## 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.

To be a DGR, an association must either be:

- listed in income tax law as a deductible gift recipient; or
- endorsed by the ATO as a deductible gift recipient.

ATO endorsement requires the association to:

- be covered by one of the eligible categories (e.g. an animal welfare charity);
- have an Australian Business Number (ABN);
- maintain a gift fund into which all gifts are deposited;
- make provision in the rules that, upon dissolution, all property (including the gift fund) be given to another deductible gift recipient;
- provide in the rules that the Tax Commissioner will be informed of material changes to the rules and winding-up;
- be located in Australia; and
- make application to the ACNC for deductible gift recipient status, as this is not automatic.

Some associations may not have deductible gift recipient status as a whole, but its smaller units may be eligible.

More information concerning [Deductible Gift Recipients](#) can be found on the ATO website.

You can also download an [application form](#) to apply for endorsement as a Deductible Gift Recipient.

You can also obtain this application by telephoning **1300 720 092** (quote the publication code NAT 2948).

Information on how to apply for an ABN is provided in [Taxation](#).

## Insurance

A fundraising activity may involve the need to take out specific, one-off insurance, if the event is not going to be covered by existing policies. Before you go ahead with an event, find out what your association's insurance policy covers and what additional cover is required.

Personal injury, product liability and cover for volunteers are particular areas to consider.

If using sub-contractors, check what insurance they have. If an association contracts a local church group to make lamingtons for sale and a disgruntled member of the public sues because the lamingtons made him/her sick, the association may be as liable as the church group, which may or may not have insurance.

Insurance topics are covered in more detail in [Insurance and Risk Management](#).

## 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.

### A case study in Harmony

The Harmony Community Development Association Inc has planned the following fundraising events for 2008:

- a children's colouring-in competition for International Environment Day;
- a raffle to raise funds for the annual camp for children with disabilities, with tickets to be sold in local shopping centres; and
- a Harvest Festival to celebrate harvest time. The Festival will have food and wine stalls, games and craft stalls.

The association will need to:

- obtain a licence for charitable fundraising;
- apply for a trade promotions lottery licence for the colouring-in competition;
- apply for a standard lottery licence for the raffle and apply to the shopping centres for space and permission to sell tickets;
- apply for an occasional liquor licence to sell alcohol at the festival; and
- apply for a temporary food stall licence to sell food.

# Grants

***Funding is important to support industry and provide active opportunities for the Western Australian community. 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. Many government departments and private sector organisations offer funding to not-for-profit and community groups to assist these groups achieve their aims and purposes.***

## Key Points

- 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 provides a variety of grants to not-for-profit organisations in Western Australia. These grants support initiatives that are for charitable or benevolent purposes.
- Grant programs are available from both State and Commonwealth agencies and there are a variety of search programs and guides that will assist associations finding the right grant.

## Lotterywest Grants

Lotterywest is one of the primary providers of grants to community groups and incorporated associations in Western Australia. Lotterywest uses the profits derived from the sale of games such as Lotto and Scratch'n'Win to provide a variety of grants to assist not-for-profit community based proposals in Western Australia.

## Who are Lotterywest grants available to?

The *Lotteries Commission Act 1990* determines what types of organisations are eligible for Lotterywest grants and the what purposes these grants can be used for.

Grants are available to not-for-profit organisations and local government authorities however, these grants are only available to support initiatives that are for charitable or benevolent purposes.

To be eligible for a Lotterywest grant the applying organisation needs to demonstrate that:

- the funds will be used in Western Australia;
- the funds will be used to benefit the Western Australian community; and
- the proposed initiative or project will involve members from Western Australia.

Visit the [Lotterywest website](#) to view the steps involved in apply for grants and after approval.

## Types of Grants that are available

There are many types of grants that are available from Lotterywest. For full details about the grants available including when specific grant applications are open visit the Lotterywest [Grants page](#).

<b>Information Technology and Web</b>	Support computers, standard office applications, web, system and software development.
<b>Organisational Development</b>	Plan for the future, explore options, provide for feasibility studies or volunteer and leadership training to deliver better services.
<b>Projects</b>	Support all kinds of projects to explore opportunities, address community issues or raise awareness.
<b>Regional Performing Arts</b>	Support people in remote and regional areas to access performing arts events.
<b>Research</b>	For the identification, exploration and analysis of issues.
<b>Trails</b>	Provide for trail planning, construction and upgrades to natural and cultural environments.
<b>Vehicles</b>	For vehicles which best meet your needs, from cars and buses to boats and caravans.
<b>Work Places</b>	Buildings for service delivery, renovations for office and activity spaces and the fit out of your work areas.

<b>Big Ideas</b>	Large scale ideas that have great public reach, benefit future generations or provide for significant change are encouraged.
<b>Community Events</b>	Community gatherings, awareness days, fairs, festivals and other occasions.
<b>Community Spaces</b>	For the building or fit-out, for example, of community centres, playgrounds and skateboard parks.
<b>Emergency Relief</b>	Support organisations providing people in need with food, clothing, shelter, transport and other essentials.
<b>Furniture and Equipment</b>	For the office items, whitegoods, tools or toys to support your activities.
<b>Heritage and Conservation</b>	To conserve, protect, explain and share various aspects of our heritage.
<b>Conserving Natural Heritage</b>	For activities that aid the conservation of natural habitats such as planting, protecting and publicity.
<b>Conserving Cultural Heritage</b>	For urgent works and treatment plans to protect objects, buildings or places of significance.
<b>Interpreting Cultural Heritage</b>	Funding to explain cultural heritage by providing for research, documentation, displays etc
<b>Community Histories</b>	Provided to help people record and share their history.

## Applying for Lotterywest grants

### When can the association apply

Lotterywest uses a submission based approach to grant-making. Applications can be submitted for most grants at anytime and are considered in the order they are received. Associations should check the [closing dates](#) as some grant areas are only available at certain times and submissions must be received by a closing date.

### Grant enquiries

#### Contact the Lotterywest Grants Team

Telephone: (08) 9340 5270

Toll free: 1800 655 270

TTY: (08) 9340 5236

Website: [www.lotterywest.wa.gov.au](http://www.lotterywest.wa.gov.au)

Email: [grants@lotterywest.wa.gov.au](mailto:grants@lotterywest.wa.gov.au)

Facsimile: (08) 9340 5274

Monday to Friday 8.30am – 5pm

## Application Requirements

It is recommended that any association applying for a grant makes allowances for the assessment process which can several months to complete. To ensure that the submission can be assessed and processed in a timely manner the association should ensure that all information required for the application is provided at the time of making the application.

Refer to the [What we need](#) section of the Lotterywest website for information when submitting grant applications.

## Funding Limits and Organisation Structures

If an association is not legally incorporated or not registered for GST, the association can apply for single or multiple grants with a combined total value of up to \$15,000 in one financial year. It is recommended that the association applies for the amount they think they will need for their initiative or project. There is an expectation that the association will also provide a contribution to their initiative according to their capacity to do so.

## 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.

Organisations such as the Western Australian Council of Social Services Inc (WACOSS) provide training courses specifically designed to teach groups how to write successful submissions, develop project proposals and package a submission that positively represents the organisation.

## Finding the right grant for your association

Any association seeking grant funding will need to find out what programs are available and which will be best suited to the needs of the group. Grant programs are available from both State and Commonwealth agencies and there are a variety of search programs and guides that will assist associations finding the right grant.

### Commonwealth Grants

A guide to grants available from Commonwealth Government agencies can be found through the [Grants and Assistance Finder](#) which is a comprehensive website maintained by the Departments of Infrastructure and Regional Development that draws together details of Commonwealth Government grant programs. Grants can be searched by subject, agency, grant name or keyword and the website also offers information regarding finding a suitable grant and writing submissions.

## State Grants

The Department of Local Government and Communities have compiled a [grants directory](#) for communities and local government in regional and metropolitan Western Australia.

The Directory provides a valuable tool for local governments and community members seeking additional funding for worthwhile activities, projects and events. The Department of Local Government and Communities update the publication on an annual basis.

The directory provides comprehensive information on who is eligible for assistance, how much funding is available and how to apply for funding for over 110 programs. The directory also includes links to the relevant websites, where available, to help users obtain the necessary information to make their application. Some websites also give users the ability to download grant application forms and submit completed forms online.

## Department of Sport and Recreation

The Department of Sport and Recreation, through grants and scholarships, 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](#) of the Department of Sport and Recreation's [website](#) for full details of opportunities available.

## Department of Local Government and Communities

The Community Participation unit at the Department for Local Government and Communities provides information to volunteer organisations about grants and policy initiatives being undertaken by the WA State Government. The Volunteer section of the department's website includes some useful links to organisations offering grants for community based groups.

Click [here](#) to go to the Department for Local Government and Communities Volunteers website.

## Department of Culture and the Arts

The Department distributes funding to organisations including small businesses, Local Government authorities and not-for-profit organisations through five Peer Assessment Panels in grant programs such as:

- Arts Development
- Contemporary Music
- Indigenous Arts
- Young People and the Arts
- Community Cultural and Arts Facilities Fund

Contact the department or visit [www.dca.wa.gov.au/funding](http://www.dca.wa.gov.au/funding) for more information regarding the grant programs offered, eligibility requirements and application processes.

# Employment

*Incorporated associations, regardless of their size, need people to carry out the business and activities of the association. Those associations that have the funds often employ staff to undertake specific tasks, while others without the financial resources may have to rely entirely on volunteer workers. Many associations rely on both employees and volunteers.*

*When employing people, incorporated associations generally need to be aware of employment law and any relevant industrial agreement or instrument with which they are required to comply. This chapter provides some general information on recruitment and appointment of employees, employment contracts and employment law.*

## Key Points

- Incorporated associations that engage employees should have clearly formulated selection criteria and job descriptions.
- When engaging employees, it is important to understand what industrial awards and agreements (if any) apply and which employment laws are relevant to that employment.
- In relation to the above point, an incorporated association may be a 'constitutional corporation' subject to Commonwealth, rather than State, industrial relations jurisdiction.
- If the management committee is required to terminate an employee's contract of employment, it is essential to understand how to terminate the employment in accordance with the contract and in accordance with fair procedures to ensure the termination is lawful and fair.
- Incorporated associations must keep records relating to employment, including payment of wages, leave, tax records and superannuation records.

## Recruiting and appointing employees

Employees may be employed by incorporated associations to undertake a range of duties, including:

- **service delivery** to undertake those activities to which the association has committed as a means of furthering its objectives. For example, community educator, advocacy caseworker, policy worker, recreation coordinator, personal care worker, youth worker, counsellor, crisis worker, refuge worker, information provider (including over the telephone);
- **administration and support** to assess, develop and maintain the administrative infrastructure required for the association to conduct its business. For example, reception, financial reporting, accounts, corporate documentation, media and public relations, records, data systems, office management;

- **management** to manage the day-to-day operation of the association. This may include one or more levels of management or coordination. For example, manager, coordinator, supervisor, team leader, executive officer.

Sometimes, employees will be given responsibilities across different areas. For example, a manager may also have service delivery responsibilities, a senior caseworker may be given the task of supervising junior workers or all employees may have joint responsibility to share administrative duties.

## Types of employment

There are a number of different working arrangements that employers can apply when engaging workers. Incorporated associations should consider what type of employment they wish to offer as it may affect the terms and conditions of employment.

- **Full time:** employees generally work between 38 and 40 hours per week on a regular, ongoing basis. Benefits such as paid sick leave, annual leave, holiday pay, long service leave and carers usually apply.
- **Part time:** employees generally work regular hours each week but fewer than full time employees. Part time employees are usually given the same basic entitlements as full-timers, based on hours worked (this is called pro-rata).
- **Casual:** employees are usually employed on an hourly, daily or weekly basis and don't usually get paid sick leave or annual leave.
- **Fixed term:** employees are employed to do a job for an agreed length of time. Many employers hire fixed term employees to do work on a specific project or fill in for employees who may be 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.

## Start at the beginning

When an incorporated association is considering employing a person, it is essential to take into account some fundamental concerns, including:

- what the association wants the employee to do;
- the selection process that will be followed;
- the employment conditions (full/part time, short/long term contract etc); and
- the legal obligations of the association as the employer.

In considering these matters, incorporated associations should take into account their own objectives and needs, legal and regulatory requirements, potential employee needs and resource availability.

## Job descriptions

Job Description Profiles are useful tools in ensuring that any new position fits with the association's objectives, vision and strategic plan.

The document should include details such as:

- the position title;
- the essential tasks or duties of the position;
- the hours that the employee will be required to work;
- the remuneration the employee will receive in return for work performed;
- the reporting structure (who the employee reports to and who, if anyone, reports to the employee); and
- other conditions of employment.

A job description can be sent to prospective employees so that they know what the job requires, and allows them to decide if they think they are suitable for the position.

## Selection criteria

The association should set out in writing the matters that will be taken into account in selecting applicants for employment. These are called selection criteria. The use of selection criteria ensures that the selection process is transparent, fair, consistent and accountable.

The selection criteria should include matters such as the qualities, skills, knowledge and experience that the incorporated association requires of a successful applicant. For example, 'well developed written communication skills' or 'ability to develop Excel spreadsheets'. It is helpful to limit the number of selection criteria to, six to ten as having too many often makes the selection task more difficult.

It is fair and normal practice to let applicants know what criteria will be used to assess applications, and any special weight that will be given to each criterion. The selection criteria are usually forwarded to potential applicants along with the job description.

When preparing selection criteria (and later, selecting people for employment through the interview) associations need to be mindful of anti-discrimination legislation (See [Discrimination and Harassment](#)).

## Advertising the position

An association may need to advertise for applicants for a position (although this is not a requirement of the law). The Association should use the best means available (newspaper, recruitment agent, websites) to attract suitable applicants.

The advertisement should provide details about the job and contact details for obtaining further information on the job description and selection criteria. When preparing advertisements, consideration should be given to requirements under anti-discrimination legislation, and any information provided should not be misleading or deceptive.

## The employment interview

The employment interview provides the employer with an opportunity to meet face-to-face with an applicant, learn more about the person and see if he or she is suitable for the association, persons or committee interviewing the applicant (the interview panel) should prepare a basic set of interview questions relevant to the particular job description and the selection criteria. For example, questions about a person's previous employment experience, qualifications and reasons for applying for the job will generally be relevant.

As noted above, all aspects of the employment selection process are subject to anti-discrimination legislation and the interview panel should keep this in mind when developing questions. For example, questions about a person's religion, marital status or sexual orientation are not likely to be relevant and may give rise to discrimination issues.

## The employment contract

Generally, a contract of employment forms the foundation of the relationship between an employer and an employee. The employment contract contains the terms and conditions of employment, including matters such as pay, leave and hours of work. A contract of employment may be in writing or verbal. However, it is preferable to have a written contract, as this generally minimises any confusion, uncertainty or doubt about the terms and conditions of employment and in particular, key terms and conditions like remuneration, duties and notice of termination of employment.

For the majority of incorporated associations, an employment contract could be:

- a contract that supplements entitlements in:
  - an existing industrial award,
  - a collective agreement made between an employer and either employees or a union/s; or
- an individual agreement made between an employer and one employee;
- a 'common law' contract of employment, particularly where the association is not covered by any award or agreement and only legislated minimum entitlements apply.

## Industrial Relations Systems

Industrial relations and employment in Australia is governed at two separate levels – the State level and the Commonwealth level. Each level has its own system of regulation. The terms and conditions of an employee's contract may be subject to a State or Commonwealth industrial award or agreement. In addition, there are State and Commonwealth workplace laws, such as minimum conditions, which may apply to that employment.

As a result of the previous Commonwealth 'Work Choices' legislation the *Workplace Relations Amendment (Work Choices) Act (2005)*, incorporated associations fall under the Commonwealth system by virtue of them being 'constitutional corporations'. To be a constitutional corporation, a body must firstly be incorporated, and secondly, have 'significant' or 'substantial' trading or financial activities. This can include charitable organisations, clubs, educational institutions and health providers.

Clearly, all incorporated associations meet the incorporation test, but many will need clarification on whether they are engaged in sufficient financial or trading activities to be considered constitutional corporations. Associations that are not constitutional corporations will generally fall under the Western Australian labour relations system.

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 incorporated association, you can contact the **Labour Relations** Division of the Department of Commerce for advice.

**Wageline** is a service provided by **Labour Relations** that can provide assistance in determining which State or Commonwealth award, agreement and legislation may apply.

Wageline can be contacted on telephone **1300 655 266**. You can also visit the [Labour Relations](#) website for more information.

## Western Australian industrial relations system

The Western Australian industrial relations system is generally governed by the *Industrial Relations Act 1979*. It is also underpinned by minimum conditions of employment provided by the *Minimum Conditions of Employment Act 1993*.

This latter Act contains a minimum set of conditions that are taken to be implied into every contract of employment, award or industrial agreement entered into in Western Australia. These minimum conditions cover areas such as:

- minimum rates of pay;
- annual leave;
- sick leave;
- public holidays;
- bereavement leave;
- parental leave; and
- consultation in the event of significant change (including redundancy).

In addition, the *Long Service Leave Act 1958* sets out minimum entitlements to long service leave for all employees in Western Australia (generally, 8 and 2/3 weeks' leave after 10 years' continuous service). The *Long Service Leave Act 1958* generally applies to all employees in Western Australia, unless a federal award or agreement deals with, or excludes, long service leave entitlements.

The relevant State Government authority is the Labour Relations Division of the Department of Commerce, which can provide a wealth of information on all aspects of the Western Australian industrial relations system (including those that apply to constitutional corporations) and how it interfaces with the Commonwealth's laws.

Contact Wageline on **1300 655 266** or visit the [website](#).

## Commonwealth industrial relations system

In 2009, the Commonwealth Government introduced a new national workplace relations system under the *Fair Work Act 2009*. Some key elements of the system under the *Fair Work Act* include:

- A legislated set a 10 minimum National Employment Standards
- The creation of modern awards designed to establish one set of minimum conditions and wage entitlements for employers and employees across Australia who work in particular industries and occupations.
- Streamlined protections dealing with workplace rights (including protection against discrimination), industrial activities and unfair dismissal.

The 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 the:

### Fair Work Commission

Telephone: 1300 799 675

### Perth Office contact details

Telephone: 9464 5172

Address:

Floor 16, 111 St Georges Tce

PERTH WA 6000

Website: [www.fwc.gov.au](http://www.fwc.gov.au)

Email: [perth@fwc.gov.au](mailto:perth@fwc.gov.au)

### Fair Work Ombudsman

Infoline: 13 13 94

Address: GPO Box 9887

In your capital city

Website: [www.fairwork.gov.au](http://www.fairwork.gov.au)

## **Establishing the terms and conditions of employment**

### **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. They may provide conditions that are more favourable than the award conditions or enter into arrangements with employees in relation to matters that are not dealt with by the award.

Western Australian awards are made by the Western Australian Industrial Relations Commission. Traditionally, Commonwealth awards were made by the Australian Industrial Relations Commission.

State awards covering employers that are not constitutional corporations continue to apply in the State industrial relations system. Western Australian awards can only apply to employers that are in the State industrial relations system (that is, employers that are not constitutional corporations).

As indicated above, Labour Relations will be able to assist incorporated associations that are not constitutional corporations to determine whether they are required to apply a State award in their particular circumstances.

Incorporated associations that are constitutional corporations can seek advice about award coverage from the Fair Work Infoline on **13 13 94**.

An employment contract based on an award might simply be a letter which acknowledges that the position is subject to the provisions of a particular award.

## Employer-employee agreements

If your association is not a constitutional corporation, it may be eligible to make use of a form of individual agreement known as an 'Employer-Employee Agreement' (EEA).

An EEA is a voluntary written agreement between an employer and employee, which generally replaces the provisions of an award and forms the basis of the contract between the two parties. (Note that an EEA cannot be made while an industrial agreement, i.e. a collective agreement, applies to an employee's employment).

An EEA cannot be offered as a condition of employment. In offering EEAs, the employer must give a new employee the choice of an EEA or the applicable award, or, if there is no applicable award, a 'common law' contract of employment containing the same terms as an EEA. The maximum term of an EEA is three years.

EEAs must be registered by the Registrar of the Western Australian Industrial Relations Commission within 21 days of signing, and must pass a no-disadvantage test to ensure that employees are not worse off than they would be under a relevant award.

There are also a number of other substantive and procedural requirements that must be met before an EEA can be registered.

For more information about EEAs is available from the [Western Australian Industrial Relations Commission](#).

## Common law contract of employment

Common law contracts are individual agreements between an employer and an employee. Unlike statutory agreements, it is not possible to negotiate out of any applicable award or collective agreement provisions or conditions in a common law contract. Whether they are included in the contract or not, the terms of the award or collective agreement still apply.

Common law contracts may therefore be most useful to incorporated associations where there is no award that applies to its employees. However, any contract would still need to comply with the minimum conditions imposed by the applicable State and Commonwealth legislation.

Labour Relations can provide assistance with [developing a common law contract](#).

## **Should the contract be in writing?**

As noted earlier, it is not essential that a contract of employment be in writing, but it is certainly desirable. It is good practice to confirm any offer of employment in writing, and for the employee to accept the offer by returning a signed copy of the letter, accepting its conditions, before starting work.

A letter of employment could cover:

- details of the duties required by the position;
- whether the position is full-time or part-time, casual or permanent;
- the award or agreement (if any) applying to the position; and
- any special or additional conditions that apply in the association's workplace.

## Termination of employment

A contract of employment may be lawfully terminated in a number of ways. If your incorporated association needs to terminate an employee's employment, it is important to find out how the employment can be terminated and what procedures the association must follow in effecting that termination. It is advisable to obtain legal advice before terminating an employee's employment.

Some of the ways in which employment may come to an end are set out below.

- **Termination by operation of law:** for example if an employee dies.
- **Completion of the contract:** an employment contract for a fixed-term, or for the completion of a certain task/project, ends automatically at the end of the period, or on completion of the task/project.
- **Termination by notice:** Either party may terminate a contract of employment by giving the proper period of notice of termination. The period of notice may be set out in the employee's contract of employment or an applicable award or agreement. In the absence of a right to terminate by giving a specified period of notice, an employee is entitled to 'reasonable notice'. This can often be a relatively long period of time, and will vary depending on the circumstances, including the employee's age, seniority and length of service.
- **Termination by breach of contract:** A party may terminate a contract of employment in some circumstances if the other party breaches the contract of employment. Not every breach of contract will justify the termination of that contract. Whether a particular breach justifies termination will depend on the nature of the breach and the particular circumstances of the case.

## Redundancy

If an incorporated association in the Commonwealth industrial relations system has genuine operational reasons for terminating the employment of an employee (i.e. reasons of an economic, technological, structural or similar nature relating to the employer's business), an employee is not able to claim for unfair dismissal.

It is advisable for employers to meet other requirements concerning notice and fairness, including procedural requirements to consult with employees and, in some circumstances, their representative.

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, possible redeployment opportunities (providing the employee with another position), redundancy payments and benefits. There are provisions contained in the *Western Australian Minimum Conditions of Employment Act*, which generally require employers to consult with an employee as soon as reasonably practicable after a decision has been made to terminate the employee's employment due to redundancy.

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.

### Example:

An association tells its receptionist that he has been made redundant because it no longer needs a receptionist. A week after leaving, the ex-employee notices that the Association is advertising for a 'customer service officer', whose job description is virtually identical to his receptionist's job description. Depending on the circumstances, the termination of the receptionist's employment may give rise 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. To justify summary dismissal, an employee's conduct generally has to be serious enough to strike at the heart of the employment relationship, such as conduct that destroys the employer-employee relationship of mutual trust and confidence. Examples of serious misconduct that may justify summary dismissal include:

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

It is important that any allegation of serious misconduct is investigated thoroughly and fairly, and that any allegations are substantiated by reference to clear evidence before an association terminates an employee's employment summarily for serious misconduct.

Employees whose employment is terminated summarily will usually still be entitled to payment in relation to their outstanding annual and long service leave entitlements.

## Unlawful termination

Termination of a contract of employment is unlawful if it is terminated for a prohibited reason, or if proper notice is not given. Regardless of whether they fall under the Commonwealth or State jurisdictions, associations must not breach these provisions.

Prohibited reasons include:

- union membership, reasonable participation in union activities, or non-membership;
- prohibited grounds of discrimination;
- temporary absence from work because of illness or injury;
- absence from work 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. In Western Australia, the term 'unfair dismissal' refers to a termination of employment in circumstances that are 'harsh, oppressive or unfair'. Under the Commonwealth law, an unfair dismissal occurs when an employee's termination is 'harsh, unjust or unreasonable'.

Under both systems, the focus is on both the substantive 'fairness' of the decision to terminate the employment, and the process by which the decision to terminate employment was reached and communicated to the employee (procedural fairness).

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 (eg. by way of warnings, counselling).

Employees are generally entitled to be told if their work performance is not satisfactory, given a chance to implement change and be warned if their performance is still unsatisfactory.

When discussing performance issues with an employee, it is important that each party is clear on:

- the status of the discussions;
- the mutual expectations of each party; and
- agreed outcomes and consequences of the discussion.

Written records of discussions that are clear and simple and signed by both parties act as ongoing documentation of the process for both the employer and employee. It is essential for employers to keep well-documented and up-to-date records that may later be used to support decisions about an employee's ongoing employment.

Certain employees are excluded from access to unfair dismissal legislation.

For information regarding exclusions under the national workplace relations system associations should contact the Fair Work Commission on **1300 799 675** or click [here](#) to be directed to the website.

Under the Western Australian system, a non-award employee whose contract of employment provides for a salary exceeding \$145,800 per annum is excluded from bringing an application of unfair dismissal.

This figure is subject to change annually. For the current prescribed amount, click [here](#).

## Exit interviews

An exiting employee has valuable knowledge on the role in which they have been employed. Exit interviews invite the employee to provide information and feedback about:

- their role within the organisation;
- the resources required to adequately fulfil the role;
- issues the organisation should be aware of as an employer; and
- arrangements that have been made for existing workloads and changeover or transition periods.

## Other employer obligations

### Superannuation

The Commonwealth's superannuation guarantee scheme generally requires all employers to make superannuation contributions on behalf of their employees. There are limited exemptions for certain employees.

The required minimum level of employer contribution is 9.5% of an employee's notional earnings base.

Under both Commonwealth and State industrial relations systems, 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

Regardless of which industrial relations system applies to their operation, all incorporated associations that employ staff should arrange appropriate workers' compensation insurance.

For more information on worker's compensation insurance, refer to [Insurance and Risk Management](#) and/or [Occupational Safety and Health and Workers' Compensation](#). An employee's legal entitlement to compensation for injury in a workplace cannot be nullified through any employment contract or individual agreement.

## Records

Under both Commonwealth and State industrial relations systems, employers are required to keep time and wage records for each employee. The records must accurately document the employee's wages and entitlements. Penalties apply if these records are not kept.

The specifics of employee record keeping will vary depending on the relevant industrial system, award, agreement, industry standard, or the association's policy. However, as a general guide, there should be a separate record for each employee detailing basic personal information that includes, where applicable:

- 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; and
- overtime, flexitime or time-in-lieu.

Employees (and, in some cases, their representatives) are generally entitled to access and inspect their records.

## Employment of children

In Western Australia, children under 15 years of age (including the year in which the child turns 15) cannot generally be employed during school hours.

Children under 12 years of age cannot generally engage in street trading. Children between the ages of 12 and 15 cannot engage in street trading during school hours or before 6am or after 9.30pm. Street trading includes any form of selling or offering an item or service in a public place.

Where the welfare of a child is at risk, the Director General of Education can impose conditions or prohibit employment.

# Discrimination and Harassment

There are State and Commonwealth laws prohibiting discrimination on various grounds in certain areas of public life. In many circumstances, as they go about their day-to-day business, incorporated associations will be required to comply with relevant anti-discrimination legislation and the related harassment laws. This chapter provides an overview of anti-discrimination legislation and its implications for incorporated associations.

## Key Points

- There is extensive Commonwealth and Western Australian legislation that prohibits unlawful discrimination and harassment on various grounds in certain areas of public life. Incorporated associations will generally be subject to anti-discrimination legislation, and need to be particularly mindful of discrimination in the areas of employment, the provision of goods, services and facilities, and membership of the incorporated association.
- Incorporated associations need 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 of unlawful discrimination or harassment can be made to the Equal Opportunity Commission (in relation to complaints of non-compliance with Western Australian legislation) or the Human Rights and Equal Opportunity Commission (in relation to complaints of non-compliance with Commonwealth legislation).

## What is discrimination?

Discrimination is defined in terms of direct or indirect discrimination.

**Direct** discrimination is generally established when a person is treated less favourably than another person in the same or similar circumstances. For it to be discrimination, the less favourable treatment must be on grounds prohibited by legislation. For example, unlawful sex discrimination may arise if a person is refused a job interview because she is a woman.

**Indirect** discrimination is generally established when a condition or requirement is imposed on a person that, on its face, appears neutral, but in practice adversely impacts on a particular person with an attribute covered by anti-discrimination legislation (e.g. sex, race, marital status, etc). The condition or requirement will be unlawful if it is not reasonable and there is no applicable exception or other defence. There may be no intention to discriminate, but the conduct or decision leads to a discriminatory effect. For example, imposing a height requirement for job applicants may be indirectly discriminatory against women and people of certain races (depending on whether the requirement is reasonable).

## Grounds 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 one of these stated grounds, or on a characteristic that generally relates to a person on these grounds. For example, the capacity to bear children is a characteristic attributed to women.

In relation to some grounds, it is unlawful to discriminate against a person on the ground that a relative or associate of that person has that attribute (e.g. race, impairment).

## Commonwealth legislation

The main laws that cover discrimination at the Commonwealth level are:

- the *Racial Discrimination Act 1975*, which makes it unlawful to discriminate against a person on the ground of race, colour, descent, national or ethnic origin. Racial harassment is also unlawful under this Act;
- the *Disability Discrimination Act 1992*, which makes it unlawful to discriminate against a person on the ground of disability. Disability harassment is also unlawful;
- the *Sex Discrimination Act 1984*, which makes it unlawful to discriminate against a person on the ground of sex, marital status, pregnancy, potential pregnancy, breastfeeding or family responsibilities (in some circumstances). Sexual harassment is also unlawful;
- the *Age Discrimination Act 2004*, which makes it unlawful to discriminate against a person on the ground of age; and
- the *Human Rights and Equal Opportunity Commission Act 1986*. Although this Act does not make discrimination unlawful, it nevertheless sets out a range of grounds on which complaints of discrimination in employment can be made to the Human Rights and Equal Opportunity Commission.

These grounds are:

age	mental, intellectual or psychiatric disability
medical record	nationality
criminal record	physical disability
impairment	sexual orientation
marital status	trade union activity

Please also note that it is also unlawful under the *Fair Work Act 2009* to prejudice an employee in his or her employment on the ground that he or she is or is not a member of a trade union. Under the *Crimes Act 1914* (Commonwealth), it is unnecessary for a person to disclose a spent conviction.

### Areas where Commonwealth legislation applies

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.

Generally, under the Commonwealth's laws, discrimination is unlawful in the areas of:

- 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 programmes; and
- advertisements.

Discrimination in relation to superannuation and insurance is unlawful on some grounds.

## Western Australian legislation

The *Equal Opportunity Act 1984* (EOA) is the relevant piece of State anti-discrimination legislation.

The EOA makes it unlawful to discriminate against a person on a number of grounds,

race	marital status
sex	gender history
age	Sexual orientation
pregnancy	religious or political conviction
impairment	family responsibility or family status

including:

Sexual harassment and racial harassment are also unlawful.

Under the *Industrial Relations Act 1979*, it is unlawful to discriminate against a person on the ground of trade union membership or non-membership. The *Spent Convictions Act 1988* makes it unlawful to discriminate against a person with a spent conviction.

## Areas where Western Australian legislation applies

As with 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.

Discrimination is unlawful in the following areas:

1. employment;
2. provision of accommodation;
3. education;
4. provision of goods, services and facilities;
5. access to places and vehicles;
6. Clubs (See below for the meaning of 'clubs' under the EOA. Incorporated associations are not necessarily clubs.); and
7. sport.

Discrimination in relation to membership of incorporated associations, application forms, superannuation and insurance, and disposal of land is also unlawful on some grounds.

## Issues for incorporated associations

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 that are employers are prohibited under Commonwealth and Western Australian laws from discriminating against employees (both current and prospective, and whether full-time, part-time or casual) in the area of employment. 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).

It is also unlawful for a principal to discriminate against a contract worker in relation to the terms and conditions of contract work, not allowing the contract worker to work or continue work, access to benefits, or any other detriment.

Discrimination may not be unlawful in certain circumstances because of certain exceptions set out in the legislation. 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.

It is also not unlawful to discriminate against a person on the ground of disability or impairment if that person is not able to carry out the inherent requirements of their job, or is only able to carry out those requirements with the assistance of services or facilities which, if provided, would impose an unjustifiable hardship on the employer.

#### Example of lawful discrimination:

An employee is told that she cannot be promoted because she has dyed her hair pink. This might be considered unfair, but it is not illegal to discriminate against someone on the basis of hair colour – so the conduct is not unlawful discrimination.

However, if the employee is told that she cannot be promoted because she is too old, this is likely to be unlawful discrimination on the ground of age.

## Goods, services and facilities

It is generally unlawful under both Commonwealth and Western Australian legislation to discriminate against a person on a prohibited ground in the provision of goods or services, whether for payment or not. Goods would include things such as clothing, books, food and equipment. The term 'services' includes services relating to the provision of finance, entertainment or recreation, transport or travel, and services of the kind provided by members of any trade or profession.

Exceptions may also apply in this area. For example, 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, there are only limited grounds for discrimination that are applicable. Discrimination on the ground of impairment or age (under Western Australian legislation) and on the ground of impairment (under Commonwealth legislation) is unlawful 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.

There are also specific exceptions where discrimination is not unlawful. These include:

- where the principal object of the associated incorporation 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

Although most clubs in Western Australia are incorporated associations, there are certain anti-discrimination provisions that refer specifically to clubs, but not necessarily to incorporated associations. The specific provisions relating to clubs, however, may apply to those incorporated associations that fall within the definition of a 'club'.

Under the EOA, a club is generally defined to include an incorporated association of not less than 30 persons associated together for a purpose including social, cultural, sporting or political purposes, and

- 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 than those that apply to an association that is not also a club. It is generally unlawful for a club, the management committee of a club or a member of the management committee of a club, 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.

There are also specific exceptions/exemptions where discrimination will not be unlawful in this area.

For example, refusing membership to a club on the ground of a person's sex is generally not unlawful if membership of the club is available to persons of a particular sex only. Please note that the Commissioner for Equal Opportunity has publicly flagged this particular exemption for review and a possible legislative change.

Note also that the specific exceptions listed above as applying to incorporated associations apply to clubs as well.

## Temporary Exemptions

There are circumstances in which an incorporated association may apply for a temporary exemption from the operation of part/s of Commonwealth anti-discrimination legislation and the Western Australian EOA. A temporary exemption may be granted where circumstances exist which might constitute unlawful discrimination, but which can be shown to fit within the objects and scheme of the legislation. For example, a temporary exemption might allow an organisation to offer a research award to women to increase the number of women in research positions within that organisation.

The effect of a temporary exemption is that discrimination covered by the exemption is not unlawful under the legislation while the exemption is in force.

The circumstances in which exemptions will be granted tend to be limited because of the permanent exceptions contained in the legislation, referred to above. Consequently, exemptions at both Commonwealth and Western Australian level are not frequently granted.

To obtain an exemption, an incorporated association must apply in writing to the relevant body; that is,

- the [Australian Human Rights Commission](#) (in relation to an exemption from the operation of Commonwealth legislation) or
- the [State Administrative Tribunal](#) (in relation to an exemption from the operation of Western Australian legislation).

## Harassment

Harassment refers to a wide spectrum of offensive behaviour, not all of which may have been captured by appropriate legislation. In Australia, unlawful harassment is dealt with under the anti-discrimination laws, rather than through specific harassment legislation, like in the United Kingdom.

Harassment includes any unwelcome behaviour that offends, humiliates or intimidates a person.

Generally, unlawful harassment occurs when someone is subjected to such behaviour for a reason that is prohibited under anti-discrimination legislation. Put another way, unlawful harassment is a form of discrimination. For example, intimidating a person because he or she belongs to a particular ethnic group is unlawful because racial discrimination is outlawed by both Commonwealth and State 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. It is the most common form of harassment. Generally, sexual harassment is 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.

Sexual harassment can result from a one-off incident. It does not have to be repeated or continuous to be against the law. Under the EOA, sexual harassment is unlawful in the areas of employment, education, and accommodation. However, under criminal law or Commonwealth anti-discrimination legislation, sexual harassment in other areas of public life may be unlawful sex discrimination.

The Commonwealth *Sex Discrimination Act 1984* makes sexual harassment unlawful in a wide range of areas that could apply to incorporated associations.

For example, in the areas of clubs and sport and in the provision of goods, services and facilities.

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. Racial harassment could include, for example, racist jokes, racist graffiti and name-calling.

The EOA only deals with racial harassment in the areas of work, education and accommodation. However in some circumstances, racial harassment could be unlawful racial discrimination, or unlawful under criminal law or Commonwealth anti-discrimination legislation.

Under the Commonwealth *Racial Discrimination Act 1975*, racial harassment extends to other areas that could apply to incorporated associations (for example, in the provision of goods, services or facilities). Under this Commonwealth Act, it is unlawful to perform an act (other than in private) if the act is reasonably likely in all the circumstances to offend, insult, humiliate or intimidate another person or group of people because of race.

In terms of the workplace, sending racially sensitive or offensive emails to colleagues, even if they are meant to be funny, may be considered unlawful racial harassment.

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.

## Victimisation

It is unlawful to subject, or threaten to subject, someone to a detriment because they assert their rights under anti-discrimination legislation. This is known as victimisation.

## Liability

An employer is generally liable for acts of discrimination and/or harassment committed by employees or agents in connection with their employment or duties, unless the employer can establish that it took all reasonable steps to prevent the discrimination or harassment.

A lack of knowledge of discrimination or harassment taking place is not an automatic defence.

An individual may also be personally liable for acts of discrimination or harassment, depending on the circumstances.

## 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.

## Policy, grievance procedure and training

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. (For suggestions about developing a grievance policy, refer to [Grievances and Disputes](#)). Training for employees and members about discrimination and harassment may also be necessary.

## Complaints to external bodies

Complaints of discrimination or harassment under the EOA can be made to the Equal Opportunity Commission, which is administered by the Commissioner for Equal Opportunity. The Commissioner has the power to investigate and attempt to conciliate complaints of unlawful discrimination lodged under the EOA. If conciliation is not successful, the Commissioner may refer the matter to the SAT.

The SAT is independent of the Commission, and is a statutory body that makes and reviews a range of administrative decisions. The SAT holds formal inquiries into complaints, where witnesses may be called to give evidence. A decision and orders are made which are enforceable.

Complaints of discrimination or harassment under Commonwealth anti-discrimination legislation can be made to the Human Rights and Equal Opportunity Commission. 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.

In both jurisdictions, complaints should generally be made within 12 months of the alleged act/s of discrimination or harassment.

### **Commissioner for Equal Opportunity**

Address: Level 2, Westralia Square  
141 St George's Terrace Perth WA 6000

Postal Address:  
PO Box 7370  
Cloisters Square Perth WA 6850

Website: [www.eoc.wa.gov.au](http://www.eoc.wa.gov.au)

Email: [eoc@eoc.wa.gov.au](mailto:eoc@eoc.wa.gov.au)

Telephone: (08) 9216 3900

Facsimile: (08) 9216 3960

Country Callers: 1800 198 149

TTY: 9216 3936

### **Australian Human Rights Commission**

Address: Level 3, 175 Pitt Street  
Sydney NSW 2000

Postal Address:  
GPO Box 5218  
Sydney NSW 2001

Website: [www.humanrights.gov.au](http://www.humanrights.gov.au)

Email:  
[complaintsinfo@humanrights.gov.au](mailto:complaintsinfo@humanrights.gov.au)

Telephone: (02) 9284 9600

Facsimile: (02) 9284 9611

TTY: 1800 620 241

Complaints Infoline: 1300 656 419

# Insurance and Risk Management

***Insurance assists an incorporated association to manage its risks by providing cover against a range of unexpected events that may otherwise leave the association in difficult circumstances. An incorporated association should give careful consideration to its insurance needs and obtain professional assistance to ensure that it has appropriate insurance that suits its size, activities and resources. This chapter provides an overview of the kinds of insurance products that an incorporated association may wish to consider, and some tips on obtaining insurance.***

## Key Points

- There are various types of insurance cover that an incorporated association may require.
- Some insurance is compulsory for incorporated associations (eg workers' compensation for employees).
- A financial institution providing financial assistance to an incorporated association may insist on the association maintaining certain minimum levels of insurance cover.
- An incorporated association should have a proper risk management program.
- If in doubt, get professional advice from an insurance broker or lawyer.

## Reasons for obtaining insurance

There are various reasons why an incorporated association may wish to obtain insurance. For instance:

- becoming incorporated does not mean that an association is protected from being exposed to risk;
- there are certain compulsory insurance requirements imposed by law that may apply to an incorporated association. In addition, a financial institution providing financial assistance to an incorporated association may insist on minimum insurance coverage;
- an incorporated association may acquire property or other assets that require or justify insurance protection;
- an association may organise or participate in activities that require or justify suitable insurance (e.g. sporting activities); or

An incorporated association's 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

It is theoretically possible to obtain insurance for almost any event or occurrence if there is an insurer willing to provide cover and the incorporated association is prepared to pay the premium. It can become confusing when considering all the different types of insurance products available and the assistance of a qualified adviser is advisable.

The following table sets out some of the common types of insurance that may be relevant to incorporated associations.

- **Professional indemnity** -to cover claims in respect of a breach of duty in the course of carrying out the organisation's usual activity or functions.
- **Portable/ valuable items** - to cover loss of specified items.
- **Goods in transit** - to cover loss of or damage to goods during transit.
- **Theft** - to cover theft of contents, cash and stock.
- **Fire and defined events** - to cover loss or damage to property at premises caused by a defined insured event; e.g. fire, explosion, earthquake.
- **Glass and signs** - to cover damage to glass or signs, e.g. fractures and breakages.
- **Events insurance** - to cover an event, such as a fête, against loss (e.g. cancellation due to bad weather).
- **Workers' compensation** - to cover injury to employees for accidents associated with work.
- **Public liability insurance** - to cover claims brought by third parties for general legal liability; e.g. negligence
- **Personal and property insurance** - to cover injury or damage caused to people or property
- **Directors' and officers' liability**- to cover directors and officers against legal liability which may arise out of their role.
- **Volunteer insurance** - to cover volunteers for personal injury and public liability while carrying out work.
- **Building insurance** - to cover the owner of the physical premises against events such as fire, storm and vandalism.
- **Legal expenses** - to cover the cost of defending legal rights in relation to disputes.
- **Fidelity guarantee** - to cover against misappropriation of funds by employees or committee members.
- **Commercial vehicles** - to cover commercial vehicles for theft, fire, accident.

## Compulsory insurance

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

In addition, in some cases, a financial institution providing financial assistance to an incorporated association will insist that the association has certain minimum levels of insurance cover, such as public liability cover and professional indemnity cover.

## Public liability insurance

Public liability insurance generally covers claims brought by third parties against an incorporated association in respect of personal injury or property damage that may arise out of the activities of the association. This is particularly important for associations that interact with the public (eg at premises open to the public or at public events, such as sporting activities).

## Deciding on insurance

Insurance may become an increasingly large component of an incorporated association's expenses. Although it may be tempting for an incorporated association to decide that certain non-compulsory insurance is unnecessary, therefore reducing insurance expenditure, some non-compulsory insurance may be essential to the future viability of the association.

An incorporated association should consider the cost of non-compulsory insurance against the risks covered by that insurance in the context of the activities carried out by the association.

An incorporated association may wish to engage a qualified insurance broker to assist it to put in place an insurance programme that suits its requirements. Whether using a broker, obtaining insurance directly or obtaining insurance by any other means, it is important for an incorporated association to discharge its duty of disclosure to the insurer prior to obtaining insurance. The insured (i.e. the incorporated association) is under a legal duty to disclose to the insurer any matter known to it – or that a reasonable person in the circumstances of the insured could be expected to know – relevant to the decision of the insurer whether to accept the risk and if so on what terms. (This is the same duty of disclosure that is required by any person arranging his or her home or motor vehicle insurance.)

A failure by an incorporated association to discharge its duty of disclosure to an insurer could enable the insurer to reduce the amount paid in respect of a claim or even decline to pay the claim altogether.

As a word of caution, an incorporated association should note that an insurance policy might not entirely cover the risk that is being insured for. Often, a policy will be subject to exclusions (eg for fraud), be limited to a maximum aggregate claim amount or a maximum amount per claim, and will often require excess payments to be made on claims.

An incorporated association should conduct, on a regular basis, a thorough review of its activities and risks in order 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.

Exclusions can vary from one insurance policy to another. An incorporated association should pay special attention to any exclusions when considering the type and extent of cover.

Some examples of common exclusions are:

- 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.

## Risk Management

'Risk management' is a term used to describe a formal and structured process of identifying and managing risk. Generally speaking, it involves assessing, and then actively managing, an organisation's potential exposure to loss, damage or litigation.

Buying insurance is one part, but not the only part, of a risk management programme. By paying the premium, the insured transfers some of its risk to a third party insurer. In many cases, effective practical strategies for reducing risk, such as safety protocols and security devices, can work together with insurance to reduce risk exposure. Indeed, some risk management strategies may result in reduced insurance costs by reducing the likelihood of claims.

The Government of Western Australia has published a booklet called *Can you risk it?* which encourages active risk management for the following reasons (among others):

- to help with strategic planning;
  - to reduce unexpected and costly surprises;
  - to more effectively and efficiently allocate resources;
  - to achieve better results from projects and programmes;
  - to assist in clearly defining insurance needs;
  - to obtain better information for decision-making;
  - to comply with regulatory requirements;
  - to assist in preparation for auditing;
- to lessen risk, which will encourage more people to participate in your activity;
  - to balance opportunity and risk; and
  - to assist in obtaining insurance cover.

***Can you risk it?*** is an introduction to risk management for community organisations. It provides a step-by-step guide on how to assess risks and will be useful for all types of incorporated associations.

### **The publication may be obtained from the:**

Insurance Commission of Western Australia  
13<sup>th</sup> Floor, 221 St George's Terrace  
Perth WA 6000  
or download [Can you risk it?](#) from their website.

## Basic risk management steps

There are a number of basic steps involved in the process of managing an incorporated association's risks. It is essentially a process of identifying each risk, evaluating each risk, deciding what actions need to be taken to address or reduce each risk and constantly monitoring and reviewing the process.

1. **Identify each risk.** This requires a thorough analysis of the association's operations, activities and business. The aim is to identify what goes on in the association, what risks it is exposed to, what kinds of events occur that may present risks, and so on.
2. **Assess risks and consequences.** Assessment requires balancing the likelihood of a risk occurring against the potential consequences. The association needs to decide which risks it will act upon and which risks it will ignore. For example, an association may choose to avoid a risk by not continuing with a particular activity, or determine that the risk is so unlikely to occur that it does not require any action.
3. **Treat risks.** The association then needs to decide how it will deal with and manage each relevant risk. This involves considering any existing risk control measures (eg insurance, security alarm), deciding whether the existing measures are adequate, considering any additional measures that may be required and so on. This is also an exercise in balancing cost with consequences.

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.

The Insurance Commission of Western Australia has produced a useful spreadsheet called 'Community RiskBase' that can be used to capture an organisation's risks and control measures. Click [here](#) to go to the relevant part of its website.

## Potential areas of risk

It is almost impossible to produce an exhaustive list of all potential risks that may apply to an incorporated association, as there are so many variables. However, common examples of categories of risk include:

- individual and public health and safety;
- security considerations (eg premises, records, computers);
- financial and administrative risks;
- reporting and legal requirements;
- professional liability;
- general liability;
- potential for error or accident;
- potential for damage; and
- potential for litigation.

## Some hints when considering insurance and risks

- Obtain professional advice and assistance from a qualified insurance broker.
- Investigate group insurance schemes (e.g. National Professional Indemnity Scheme for Community Legal Centres). Group coverage policies may reduce premium costs.
- Check if group insurance coverage is part of a funding source that already covers the association.
- 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 all officers, management and staff receive ongoing training on professional standards of conduct and occupational safety and health.
- Ensure that relevant policies and procedures concerning risks (e.g. professional standards and health and safety) are developed, implemented and maintained.
- Enhance security and fire safety mechanisms (e.g. locks, fire extinguishers, fire safes, sprinklers).

# Occupational Safety and Health and Workers' Compensation

***Occupational safety and health is a key area of ethical and legal responsibility for incorporated associations. Incorporated associations generally owe an obligation under both common law (duty of care) and the Western Australian occupational safety and health law to any volunteers, employees, contractors and visitors to their workplaces, under both common law (duty of care) and the Western Australian occupational safety and health law, to provide and maintain a safe and healthy working environment. Safety and health includes addressing potential safety and health risks from the physical working environment, as well as potential psychological and emotional harm from, for example, exposure to workplace bullying or workplace violence.***

***Associations are also required to comply with relevant local government planning, and safety and health by-laws, and any State or Commonwealth legislation or regulations that may apply in relation to specific industries or activities such as childcare, residential care and aged care. This chapter provides a general summary of the duties of care under Western Australian legislation, the role of WorkSafe, and matters relating to workers' compensation that may be relevant for incorporated associations.***

## Key Points

- Incorporated associations are required to provide a safe and healthy working environment for employees, contractors, volunteers and visitors.
- There are a range of specific obligations for all parties under the *Occupational Safety and Health Act 1984* and Regulations (the OSH Laws).
- WorkSafe is a division of the Department of Commerce that administers the OSH Laws.
- Inspectors appointed by WorkSafe have broad powers, including entering and inspecting workplaces.
- The WorkSafe Western Australia Commissioner must be notified of all work related injuries involving fatal and some serious injuries, and certain diseases.
- Incorporated associations that engage workers must have workers' compensation insurance.
- Workers' compensation is regulated by legislation and administered by WorkCover, a State Government statutory authority.
- Volunteers are not covered by workers' compensation insurance.
- If a worker is injured while at work, the employer and worker are required to complete and submit prescribed documentation.

## Occupational Safety and Health

The applicable Western Australian legislation is the *Occupational Safety and Health Act 1984* and its associated Regulations (collectively referred to as the OSH Laws).

The objects of the Occupational Safety and Health Act 1984 include to:

- promote and secure the safety and health of persons at work;
- protect persons at work against hazards;
- assist in securing safe and hygienic work environments;
- reduce, eliminate and control hazards to which people are exposed at work; and
- foster co-operation and consultation between employers and employees in the formulation and implementation of safety and health standards;

An incorporated association is required to comply with OSH Laws by providing a safe and healthy work environment. It is important for incorporated associations to take note of the rights and duties in the OSH Laws, and to 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 also have specific obligations. In summary, those obligations include, so far as is practicable, to:

- provide and maintain workplaces, plant and systems of work so that employees are not exposed to hazards;
- provide such necessary information, instruction and training to, and supervision of, employees so that 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 it is not practicable to avoid the presence of hazards at the workplace;
- ensure the safe use, cleaning, maintenance, transportation and disposal of plant in the workplace;
- ensure that the use, handling, processing, storage, transportation and disposal of substances in the workplace is carried out, such that employees are not exposed to hazards; and

- immediately notify the WorkSafe Western Australia Commissioner if an employee at a workplace suffers an injury that results in death, or an injury of a kind prescribed in the Regulations (e.g. 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). Access the [Worksafe website](#) to obtain information about the process involved.

Incorporated associations that engage contractors owe these obligations to contractors.

Under the OSH Laws, associations may also have obligations to people who are not employees or contractors at the workplace (e.g. volunteers, visitors), including ensuring that these people are not exposed to hazards.

Further obligations under the OSH Laws may apply depending on the nature of the incorporated association's activities.

## **Rights and duties of employees and contractors**

Employees and self-employed people (contractors) have a responsibility under the OSH Laws to take reasonable care to ensure his/her own safety and health at work, and to avoid adversely affecting the safety and health of others.

Employees also have specific obligations under the OSH Laws. In summary, these obligations include to:

- cooperate with their employer to ensure that the workplace is safe and healthy (eg by complying with the safety procedures and guidelines);
- comply with safety and health instructions provided by their employer;
- use the personal protective equipment provided in the manner instructed by the employer; and
- report hazards and injuries to their employer.

Employees also have some important rights under the OSH Laws. In particular, they have:

- the ability to request that their employer have an election to establish safety and health representatives at the workplace. (Refer to the guidance note, [Formal Consultative Processes at the Workplace](#), available at the Worksafe website for more details);
- the ability to request that their employer establish a safety and health committee at the workplace. (Refer to the above mentioned guidance note for more details);
- the right to receive adequate information, instruction, training and supervision so as to be able to work safely, under their employer's general duty of care;
- the right to be consulted about safety and health at the workplace, under their employer's general duty of care; and
- the right to refuse to undertake work if they have reasonable grounds to believe that working would expose them, or any other person, to a risk of imminent and serious injury or harm to health, and receive the normal pay and benefits they would be entitled to if working. However, their employer may give them alternative work and it is an offence to leave the workplace without the employer's authorisation.

## WorkSafe

WorkSafe is the division of the Department of Commerce that administers the OSH Laws. It can provide further information on occupational safety and health matters, including educational materials.

WorkSafe has both an educative and compliance role. As part of its educative role, WorkSafe has various initiatives to promote understanding of occupational safety and health. One initiative is the ThinkSafe Small Business Assistance Program which provides independent OSH assistance to small business free of charge. See the [WorkSafe website](#) for details.

As part of the compliance activities, WorkSafe investigates and prosecutes breaches under the OSH Laws and conducts compliance campaigns. Inspectors, who are appointed officers of WorkSafe, have broad powers to visit and inspect workplaces. It is an offence to interfere in the performance of an inspector's functions.

Generally, where an inspector is of the opinion that there has been, or may be, a breach of the OSH Laws, or there is activity which may occur, or is occurring, at a workplace which involves, or may involve, the risk of injury or harm to health, he or she may do a number of things. An inspector's powers include issuing verbal directions, improvement and prohibition notices, and initiating a prosecution under the OSH Laws. Any notices issued by a WorkSafe inspector, including copies, must be displayed in a prominent place at, or near, workplaces affected by each notice.

## Reporting accidents

In the first instance, all accidents and incidents (near misses) should be reported to the association (the employer) as soon as possible, via the relevant supervisor or manager. As a matter of best practice, a written report should be made, setting out all the relevant details of the accident.

The WorkSafe Western Australia Commissioner must be notified of all work related injuries that result in a death or fracture of the skull, spine, pelvis, any bone in the arm (other than in the wrists or hand) or the leg (other than a bone in the ankle or foot), 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. Certain infectious and occupational diseases must also be notified, including viral hepatitis. Access the [WorkSafe website](#) to obtain information of the process involved.

The OSH Laws deal with the notification requirements for work related injuries and these are clearly set out on the [WorkSafe website](#).

## Workers' Compensation

All workers must be covered by workers' compensation insurance.

Incorporated associations that employ staff without taking out workers' compensation insurance may be liable for the cost of any successful claim made against them.

Workers' compensation, like all types of insurance, is negotiated with an approved insurance company and will involve the agreement of premiums, coverage and exclusions (see [Insurance and Risk Management](#)).

The definition of "worker" in the *Workers Compensation and Injury Management Act 1981* is very broad. It includes full-time, part-time, seasonal and casual workers.

It is important to note that volunteers are not covered by the definition of workers.

It may include contractors and sub-contractors where the contractor/sub-contractor:

- is engaged to do work that is for the purpose of his or her trade or business; and
- is paid in substance for his or her personal manual labour or services.

[WorkCover WA](#) is the statutory authority responsible for regulating and administering this legislation on behalf of the Western Australian Government.

An important general requirement under the legislation is for employers to establish an injury management system. The requirements for the establishment, content and implementation of an injury management system are set out in a Code of Practice (Injury Management) 2005 issued by WorkCover, and available through its [website](#). There is also a template injury management system available that should be of assistance to associations with limited expertise and resources.

### For more information contact:

#### WorkCover WA

2 Bedbrook Place  
Shenton Park WA 6008

Advisory Service: 1300 794 744

Website: [www.workcover.wa.gov.au](http://www.workcover.wa.gov.au)

Email: [postmaster@workcover.wa.gov.au](mailto:postmaster@workcover.wa.gov.au)

## **Making a claim**

If a worker is injured and wishes to make a claim for compensation, the claim must be made on a [Workers' Compensation claim form](#). Both the worker and employer must complete the form according to the requirements. The form contains detailed information on how to complete the form.

## **Worker's declaration**

A worker is required to provide two signatures on the claim form. The first signature declares that the information that has been provided is correct. The second signature authorises the insurer to obtain information about the worker's work related injury from any doctor treating the worker concerned. The claim may be delayed or rejected if the worker does not sign the declaration and the consent authority.

## **Worker's entitlements**

If the claim is accepted, the employer is obliged to provide payments, including the following:

- weekly payments that are paid on the worker's normal payday;
- medical expenses, including reasonable hospital expenses;
- vocational rehabilitation expenses, if a specialised service is required to assist with the injured worker's return to work (for example, an occupational therapist); and
- reasonable travelling and accommodation expenses incurred for travel to obtain medical treatment.

# Volunteers

*People volunteer for a variety of reasons, ranging from people wishing to develop skills and gain work experience, to those who want to meet people and socialise.*

*This chapter briefly outlines some of the key issues relating to engaging volunteers in the activities of incorporated associations.*

## Key Points

- Volunteers (either as members or non-members) can do and participate in a wide variety of roles within an incorporated association.
- Incorporated associations should be aware of their rights and responsibilities when engaging volunteers.
- Generally an incorporated association will be liable for anything a volunteer does in good faith when working for the association.

In 2010, the Voluntary Work Survey Report, released by the Australian Bureau of Statistics, revealed that 36% of Western Australian adults had undertaken voluntary work for organisations, including incorporated associations, in the previous 12 months. Many associations would not be able to function without the assistance of their volunteers.

## Volunteering Western Australia

Volunteering Western Australia is the group that acts as the peak body for volunteering in this State. It supports and promotes the role of volunteers in organisations, and through its website and publications, provides both volunteers and organisations with a range of useful information on volunteering in general, volunteering opportunities, and the rights and responsibilities of both parties.

The content of this chapter draws heavily from the Volunteering Western Australia website.

Volunteer agencies will also find the Code of Practice a useful document. This can be downloaded from the Volunteering Western Australia.

### Volunteering Western Australia

City West Lotteries House  
2 Delhi Street  
West Perth WA 6005

Telephone: (08) 9482 4333  
Facsimile: (08) 9482 4334

Website: [www.volunteeringwa.org.au](http://www.volunteeringwa.org.au)

## Principles of volunteering

Volunteering Western Australia describes a number of principles of volunteering, including:

- volunteer work is unpaid;
- volunteering is always a matter of choice;
- volunteering is an activity performed in the not-for-profit sector only;
- volunteers do not replace paid workers or constitute a threat to job security of paid workers; and
- volunteering is a legitimate way in which citizens can participate in the activities of their community.

## Role of volunteers

Volunteers (either as members or non-members of the incorporated association) can and do participate in a wide variety of roles within incorporated associations.

Examples include voluntary:

- bookkeeping;
- 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;
- maintenance services;
- organisational advice;
- direct service delivery;
- fundraising; and
- lobbying.

## Rights and responsibilities of volunteers

Volunteering Western Australia has developed a list of volunteer rights and responsibilities which include:

### Volunteers have a right to:

- choose the types of activity in which they wish to be involved;
- be adequately covered by insurance;
- receive orientation, training and ongoing support;
- receive reimbursement of authorised out-of-pocket expenses; and
- say 'no' when they cannot commit to a task.

### Volunteers have a responsibility to:

- work in accordance with health and safety laws;
- work in accordance with instructions and rules (of the association);
- notify the association if they are unable to attend work;
- be willing to undertake training and supervision;
- maintain confidentiality and be non-judgemental; and
- say 'no' when they cannot commit to a task.

## Rights and responsibilities of incorporated associations

Volunteering Western Australia also sets out a list of rights of agencies (in this case, incorporated associations) engaging volunteers, which include the right to:

- assess the volunteer's capabilities and allocate suitable tasks for them;
- plan and facilitate volunteer training;
- reassign volunteers to appropriate work;
- supervise volunteers and give feedback; and
- decline to use volunteers in certain capacities.

Similarly, a list of responsibilities of agencies/associations engaging volunteers includes the responsibility to:

- empower volunteers to meet their own, as well as the association's, needs;
- offer volunteers work opportunities that are appropriate to their skills, experience and aspirations;
- provide volunteers with clear duty statements;
- provide volunteers with orientation training;
- offer volunteers training and support to meet their goals;
- implement procedures to ensure volunteer safety and well-being;
- offer reimbursement for out-of-pocket expenses; and
- recognise the value of contributions made by volunteers.

## Recruiting volunteers

Many incorporated associations are run entirely by volunteers. Although volunteers are not paid and are not normally classified as employees for the purpose of employment and taxation laws, incorporated 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* ([Occupational Safety and Health and Workers' Compensation](#)).

It is important for incorporated associations that intend engaging volunteers to:

- determine the association's volunteering needs;
- determine how volunteers will fit within the association's structure;
- determine appropriate selection criteria and procedures in relation to the engagement and management of volunteers; and
- provide a safe work environment, including the provision of appropriate support, training and supervision.

Some questions for incorporated associations to consider when deciding to engage volunteers:

- What different roles will volunteers play in the association? How will the roles be documented?
- What risk management and/or insurance issues need to be considered?

- What expectations does the association have of volunteers?
- How will volunteers be recruited and selected?
- How will the volunteer arrangement between the association and its volunteers be documented, if at all?
- How will volunteers be orientated and inducted into the association?
- What will this induction include?
- What policies and obligations do volunteers need to be aware of? (For example: anti-discrimination policies, conflict of interest policies, and occupational health and safety policies).
- What resources will volunteers require?
- How will tasks be assigned to volunteers? Who will supervise and direct their work?
- What grievance procedures apply to volunteers?
- What volunteer expenses will be reimbursed? How?
- How (and when) will the association review its responsibilities in relation to volunteers?

## 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. Generally speaking, the incorporated association will be liable for anything a volunteer does in good faith when doing work organised by the association.

An association will generally not be liable for acts of volunteers where 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.

The potential liability of an incorporated association under this legislation highlights how important it is for associations to have, and implement, policies in relation to volunteer work and to provide volunteers with adequate training and supervision.

# Sporting and Recreational Clubs

***As a group, sport and recreational clubs represent the largest number of associations incorporated in Western Australia. They vary in size and complexity, and offer a diverse range of competitive, recreational, professional and amateur activities. This chapter provides an overview of some of the issues that concern sport and recreational associations.***

## Key Points

- Sport and recreational associations form the largest group (by number) of incorporated associations in Western Australia.
- Incorporated associations are required to have a set of rules that comply with the *Associations Incorporation Act 1987*. These Rules are often referred to as the Constitution. Additional rules can be included in a set of by-laws.
- It is compulsory for an incorporated association to keep an up-to-date register of all its members, including children. The register must be made available to association members for inspection upon request.
- A priority for sport and recreational associations is to ensure that safety rules and procedures are implemented, and to be protected against liability. It is very important to ensure that all members and participants are fully informed of the safety rules and requirements.
- Parents must give their consent, preferably in writing, to children participating in sports and recreational activities.
- Sport and recreational associations must ensure that they have adequate insurance.

## Eligibility for incorporation

Sport and recreational groups that intend to operate as not-for-profit associations are generally eligible for incorporation under the *Associations Incorporation Act 1987*.

However, some large, professional sports associations that engage in substantial trading and commercial activities may not be eligible for incorporation under this Act. This does not mean that sports clubs cannot sell club merchandise, charge admission fees for sporting fixtures, or make a profit from their activities. However, the Act specifically limits the permissible extent of trading that applies to all incorporated associations.

Trading with members, or with the public, is permissible, provided that:

- the trading is secondary to the main purpose of the association; and
- any trading with the public is not substantial in relation to the association's other activities.

Clubs that operate outside of these parameters may no longer be eligible to remain incorporated under the Act. Other options for incorporation are set out in [The End of the Road](#). Consumer Protection can also provide information.

## Rules of association and by-laws

All groups that apply to become an incorporated association are required to adopt and submit a set of rules of association (also known as the 'constitution') to Consumer Protection. These rules of association regulate the overall management of the incorporated association, providing for important matters such as management committee elections, meetings, and financial records, amongst others. The minimum matters that need to be dealt with in the rules are prescribed by the Act.

Significantly, these rules can be amended only by means of a special resolution of the members.

However, an association will often have additional needs and requirements that are specific to its organisation and day-to-day management, and that might also be included in its rules. In order to keep the rules of association simple and manageable, sporting associations, in particular, often find it easier and more efficient to set up these additional rules as by-laws.

By-laws are secondary rules that expand on the rules of association and that cover non-administrative matters that do not need to be included in the rules of association.

Typically, by-laws might deal with matters, such as the following:

club colours	coaching regulations
uniforms and dress codes	awards
competition rules	supply of liquor
sporting fixtures	a code of conduct
player eligibility	tribunals
selection of players	

In order for by-laws to be lawfully effective, the rules of association should include a simple clause, referring to the addition and amendment of by-laws. For example:

The Management Committee shall have the power to make, alter and rescind any by-laws that it considers necessary for the effective administration of the association, provided that no by-law may be inconsistent with the rules of association.

Authorising the committee to make and change by-laws means that they can be kept relevant and current without the need for a general meeting to have them approved by the membership at large. It is important, however, that members are kept informed of any amendments, and no less frequently than at each Annual General Meeting. Of course, there is no legal reason why changes to by-laws should not be under the control of the members, if that is desired. The by-law clause in the rules would obviously need to reflect that.

**Important!** Apart from the clause that authorises them, the by-laws themselves are not intended to form a part of the rules of association that are subject to the Act. The point about by-laws is that they are separate from the rules and can be easily amended within the association.

Don't attach your by-laws to the rules that are submitted to Consumer Protection. If you do, it is possible that they will legally become part of the rules and can only be amended by a special resolution of members and then lodged with Consumer Protection before they become effective. This undermines one of the primary reasons for establishing by-laws in the first place.

The Department of Sport and Recreation has a useful website that provides an example of a constitution (rules) specifically designed for sporting groups.

Department of Sport and Recreation  
Street address: 246 Vincent Street  
Leederville WA 6007  
Postal address: PO Box 329  
Leederville WA 6903

Telephone: (08) 9492 9700

Facsimile: (08) 9492 9711

Email: [www.dsr.wa.gov.au/contact](http://www.dsr.wa.gov.au/contact)

Website: [www.dsr.wa.gov.au](http://www.dsr.wa.gov.au)

## Membership and members' register

It is compulsory for an incorporated association to keep an up-to-date register of all its members, including children where they are members. The members' register must list each member's name and postal or residential address. The register must be made available to members for inspection upon request, and a member may also make a copy of all, or part of, the register. The register does not need to be available to non-members, unless the non-member has legal authority, such as a warrant.

Apart from the members' names and addresses, no other information is required for the register and associations cannot insist on members providing other personal information for the purpose of the register.

If an association has a genuine need for keeping additional information about members, it is recommended that the association keep a separate list of the information needed. This additional list is not made available to members or any other person for inspection and is treated with the utmost confidentiality.

More detail on the members' register may be found in [Record Keeping](#).

## Children as members

Parents are often genuinely concerned about the names and addresses of their children being included on the members' register. One way to avoid these concerns is to have the parents (or at least one parent) join as the member(s) while the children are signed up as players or participants. Only the names and addresses of the parents would then be kept on the members' register. A separate 'players' register' would also need to be maintained so that the club could effectively run its sporting activity, but this register would not be accessible to the general membership.

This strategy may require the rules of association to be amended to provide for a 'players' category and for maintenance of the players list or register.

A different concern about having children as members is that some clubs may not have any adult members who can legally form a management committee.

Consumer Protection has encountered several sporting clubs where under their rules only children are signed up as members. Although parents actually run the club as a committee, they are not members of the club and therefore not entitled to form a management committee.

All sporting and recreational clubs are advised to review their rules of association to make sure that those rules appropriately distinguish between under-age players or members, and adults who can realistically and lawfully form management committees.

## Child Protection

An association is responsible for providing a safe environment for members and associates, such as players. Protecting young members and associates (children under the age of 18 years) against any form of abuse, harassment, maltreatment and intimidation is a priority. Child abuse is a criminal offence and must be taken seriously.

It is important, therefore, for associations that have young members and associates and/or that provide activities for children, to have a clear policy statement on child protection and procedures for reporting child abuse. A child protection policy conveys the message to all members that they have a legal duty to ensure the safety of children and that child abuse is unlawful. As child abuse is a serious offence, this would inevitably lead to the expulsion of a member from the association.

## Safety in sport

Many sports and recreational activities have inherent risks and dangers and it is inevitable that injuries amongst participants will occur. Negligence in sport accounts for a large number of legal cases. Sports participants, officials, members and the association itself can be held legally liable, that is, responsible, for negligent conduct that causes harm to another person. In some cases, a person may also be liable for the negligent act of another person, even though the first person did not know about the negligent act.

To establish liability in negligence for sports related injuries, the general principles of the law of negligence apply.

Legally, a person's (the defendant's) conduct is only negligent if it is found that the person owed the injured person (the plaintiff) a **duty of care**, that the defendant **breached that duty of care**, that **damage** (injury) was caused by that breach and that it was reasonably foreseeable to the ordinary person that the damage was a potential result of the breach.

Each of these four elements must be present for liability to be established.

## Participants

It is established law that participants, such as players, have a duty of care to other participants. The standard of care is measured in terms of the 'reasonable person' test. Participants are expected to behave in a reasonable and careful manner, with the knowledge and skills of a participant in that situation. If the person's behaviour falls below the required standard, the person may be said to be negligent. This objective standard of care may be modified because of the inherent risks of a sport that participants are aware of and accept. The standard is modified to suit the sport. For instance, lawn bowls and tennis carry few risks compared with sports such as rugby, hockey and soccer.

A number of factors may be taken into account when determining whether a person acted as a reasonable participant. These include the age of the participant, the nature of the sport, the level at which the sport is played, the sporting rules, the circumstances in which the sport is played, the likelihood of an injury occurring and the likely seriousness of potential injuries.

Participants are generally taken to have voluntarily accepted and consented to the risks inherent in a particular sport.

This includes, in many instances, the risk of injury that might arise from minor or expected breaches of the rules of that sport.

However, they do not consent to unacceptable and non-inherent risks, and unnecessary dangerous play.

Participants are expected to play within the rules of the sport and any safety requirements.

Where participants infringe safety rules and regulations to a significant degree, their behaviour may amount to negligence. Whether an act is negligent or not is determined by the facts.

In contact sports, participants consent to physical contact by voluntarily playing the sport. If a player is injured as a result of physical contact that occurs within the rules of the game, or as a result of minor or expected breaches of the rules, then the conduct is not negligent.

However, if the physical contact is dangerous, reckless or outside the type of physical contact associated with the sport, the conduct may amount to negligence. For example, punching is an inherent part of boxing but is unlawful in a game of soccer. Unlawful physical contact in a sport can also give rise to a conviction for criminal assault and battery. Again, whether an act is negligent will be determined on the facts of each case.

## **Coaches and referees**

Coaches and referees owe a duty of care to participants in sports activities. The reasonable person standard of care applies to both coaches and referees. They are expected to do what a reasonably competent coach or referee would do in that position. Some of the coach's duties may extend to the activities they teach and to the safety of participants. They are expected to provide reasonable supervision, and ensure that participants are properly instructed in the rules of the activity and safety requirements. Likewise, some of the referee's duties may extend to ensuring that games are played within the rules and enforcing safety regulations.

## Spectators

Spectators and bystanders are also exposed to risks at sporting events. A sports association, officials and participants have a duty to take reasonable care not to injure or cause spectators or bystanders to be injured. Spectators and bystanders could be injured in a variety of ways, e.g. by stray golf balls and cricket balls, racing cars leaving the track and crashing into the spectator area, errant horses, faulty equipment, grandstands collapsing and unruly behaviour.

A sporting association may be held liable for injuries to spectators if they have failed to take reasonable steps to ensure the safety of spectators or bystanders. For a spectator or bystander to succeed in a negligence claim against the association, the four elements mentioned above must be proved. The injured person will need to prove that the risk was reasonably foreseeable and that reasonable steps were not taken to protect spectators or bystanders. In most cases involving sports events, the risks are reasonably foreseeable and the association and organisers must ensure that they take the necessary steps to protect spectators and bystanders. However, the law has also taken a pragmatic view in some matters. For example, a spectator who is standing on the sideline at a football match and is hit by the football is unlikely to succeed in a negligence claim because they are taken to have accepted the risk inherent in standing on the sideline.

It is also important for these sorts of associations to have public liability insurance.

## Effect of the *Civil Liability Act 2002*

In Western Australia, the *Civil Liability Act 2002* (CLA) limits liability for injury resulting from a recreational activity. A recreational activity includes any sport, whether organised or not, as well as activities that are pursued for enjoyment, relaxation and leisure. Therefore, the CLA will apply to many of the activities of sporting and recreational associations.

The CLA provides that a person accused of causing harm (the defendant) will not be held liable for harm caused to another person if the injured person was involved in a **dangerous** recreational activity and the harm is a result of an **obvious** risk of that activity.

A dangerous recreational activity is one that involves a **significant** risk of harm (for example, rugby and abseiling). An obvious risk includes risks that are commonly associated with an activity, even if the risk is not very observable.

If a risk is obvious, there is no duty to warn a person of the obvious risk. However, a person will not avoid liability if the injured person had specifically asked for advice about the risk, or the person conducting the activity is required by law to warn the person of the risk.

A person is also not liable for harm that occurs as a result of an inherent risk, in other words, from something that cannot be avoided by the exercise of reasonable care and skill. For example, tackling is part of the game of rugby that can cause injury, however, the tackle must still be within the rules to avoid any liability.

Boxers can also expect to get hurt from punches to the body, as punching is inherent to the activity.

The CLA also provides that a person (the defendant) does not owe a duty of care to a person who engages in a recreational activity if the person was **warned of the risks**.

If a child is injured, the person who is accused of causing the harm may rely on a risk warning that was made to a parent or another person, if that parent or person is not an incompetent person and the child was accompanied by the parent or other person (e.g. a guardian). A risk warning is a warning that reasonably warns the person about the risks involved in the activity. A risk warning can be oral or in writing and can be a general warning.

A person may not avoid liability by relying on a risk warning if the injured person was required to engage in the activity by the defendant (e.g. a compulsory school activity).

## Waivers and participation agreements

It is not uncommon for sporting associations to require members to sign a waiver that indemnifies the association and its officials from any liability.

However, waivers have limited value and, in the case of children, parents may not sign away children's rights to safety and protection against negligent acts.

Parental consent, however, is essential for allowing children to engage in organised sports and recreational activities.

Parental consent forms can be extended to serve as a 'participant agreement' that does not merely require parents to give permission for participation, but clearly states that they and their children are aware of the dangers or risks of the activity, that they will abide by the rules of the activity and that they understand the safety requirements. A participant agreement can also set out the parents' responsibilities in terms of medical costs and insurance.

## Insurance

The [Insurance and Risk Management](#) section of this guide deals with insurance matters. Sporting groups can obtain insurance that is specifically designed to cover sports injuries, liabilities and events. The following are examples of some insurance policies for sports groups:

- **Accident and injury insurance** covers players and officials (e.g. a coach) for injuries that occur during officially sanctioned activities;
- **Public liability insurance** provides insurance cover for the association for their legal liability to participants, members, spectators and the general public during events;
- **Professional indemnity** provides cover for administrators, coaches and referees while performing official duties;
- **Directors and officials insurance** provides cover for directors, officers of the association and management committee members who may be sued for negligence in the performance of their official duties. People who are involved in the management of an association are responsible for implementing legislation and policy and may be exposed to legal actions arising out of matters relating to employment, safety and health, discrimination and the financial affairs of the association. There is no cover for intentional acts of dishonesty;

- **Contingency insurance** provides cover for prize money, the cancellation of events, adverse weather conditions and the non-appearance of people;
- **Special events insurance** is obtainable for a particular event, such as a tournament or festival;
- **Property insurance** provides cover for items such as office and sports equipment, and facilities; and
- **Voluntary workers insurance** provides cover for volunteers working for the association. For example, fundraising, organising activities and assisting at events.

Sporting groups are advised to consult a specialist sports insurance broker to obtain the most suitable sports cover for the group.

Although sports groups may have a basic insurance policy, participants, members and officials should be informed of the nature and extent of the insurance cover, and participants in particular should be advised to have their own private health insurance.

## Example of participation agreement

HARMONY COMMUNITY DEVELOPMENT ASSOCIATION INC

A MODEL SPORT AND RECREATIONAL PARTICIPATION AGREEMENT

I/We.....[Insert full name of parent/s or legal guardian in block letters] hereby:

a) give consent that ..... [Insert name of child]

may participate in the following activities:

.....

b) confirm that the child named above does not have any medical condition that excludes him/her from taking part in the above activity/ies.

c) acknowledge that I/we have read and understood the rules of the activity/ies and that I/we are bound by these rules.

d) acknowledge that I/we have a responsibility and obligation to ensure that my/our child/children understands and abides by the rules of the activity.

e) I/we understand there are risks associated with my child's participation in the activities listed above that can result in injury.

f) acknowledge that I/we have read and will abide by the Association's sport and recreational by-laws.

g) acknowledge that I/we have read and will abide by the Association's Code of Conduct and Child Protection Policy.

h) consent to the child named above receiving medical treatment and that I/we agree to reimburse the Association for all medical costs.

i) agree that I/we have read and understood this Participation Agreement.

Signature:

Witness:

Date:

# Copyright

***Gathering, reproducing and distributing information is often an integral part of an association's business and activities. Associations pursuing not-for-profit purposes are not exempt from copyright obligations. Therefore, it is important for incorporated associations to be aware of copyright protection in order to protect their own material and to avoid infringing the copyright of others. This chapter deals with some basic aspects of copyright.***

## Key Points

- Copyright refers to the protection of property rights of a creator of a work. Copyright protection is provided under the *Copyright Act 1968*. Material that is produced and published by incorporated associations may also be protected by copyright.
- Copyright gives the copyright owner exclusive rights to control the copying and distribution of copyrighted work.
- Copyright is infringed when the exclusive rights of the owner are violated and a copyrighted work is copied, reproduced and used without the owner's permission.
- Consumer Protection allows reproduction of this manual.

The information and material used by an incorporated association may be gathered from many different sources, including the Internet, and the association may itself produce its own original material. This might be in the form of documents, records, pamphlets, posters, photographs, drawings, videos, newsletters, books and magazines, to mention just a few. The information both used and produced by an association is likely to be protected by copyright, which means that the material may not be freely copied, used or distributed.

## What is copyright?

Copyright is a type of legal protection for people who express ideas or information in certain forms, such as through writing, music and visual images. Copyright protection is provided under the *Commonwealth Copyright Act 1968*, which confers certain property rights on the creator of such a work. There are two basic categories of subject matter that are protected:

- artistic, literary (including computer programmes), musical and dramatic works; and
- broadcasts, films and sound recordings.

To be protected, a work must be both original and in some tangible or material form (for example, written down or saved to a computer disk). It can't just be an idea. Original means that the work comes from the author and that it is more than a mere copy of other material. Original does not mean it has to be a completely new invention or creation.

Even a compilation of pre-existing work may have copyright protection, if the author has combined the material in some new way (for example, a new collection of classic poetry).

When a piece of work is created, the person or organisation that owns copyright on the work can decide how the work will be reproduced and/or communicated. Copyright confers various rights allowing the copyright owner to assign, licence or even prohibit the use of their work by another party. Assigning rights gives the copyright to a new owner. Licensing allows a third party to use the material. Both can be undertaken with certain conditions or exemptions agreed to.

In Australia, copyright is automatic once an original work is written down or recorded. It does not have to be applied for, it is free, and in most cases, applies for 50 years after the creator's death.

A copyright notice such as:

© Harmony Community Development Association Inc., 2013

It is not necessary, although it can be useful to highlight the copyright of the owner to other people.

Areas protected by copyright include:	Areas not protected by copyright include:
<ul style="list-style-type: none"> <li>• written material</li> <li>• musical and artistic works</li> <li>• computer programs</li> <li>• compilations</li> <li>• film</li> <li>• recordings</li> <li>• broadcasts</li> <li>• publications</li> <li>• performances</li> </ul>	<ul style="list-style-type: none"> <li>• ideas</li> <li>• concepts</li> <li>• styles</li> <li>• techniques</li> <li>• information</li> </ul>

Please note that copyright protects the way or form in which an idea or information is expressed, not the idea or information itself

## Who has copyright?

The basic rule is that the author of the work is the first owner of copyright. For example, the author and first copyright owner is the person who wrote the material for the pamphlet or article, the person who took the photograph, or the person who made the video. However, there are instances when the author and owner of the copyright is not the same person. In these cases, the author is the person who creates the work and the copyright owner is the person who owns the rights in the work. For example, an employee who writes a series of information sheets is the author and the employer is the copyright owner.

Work created by freelancers under a commissioned agreement generally places copyright with the person creating the work (the freelancer). The organisation receiving the work has a licence to use it, unless, by agreement, copyright ownership is assigned to that organisation (i.e. commissioning agency). The agreement must be in writing and signed by all parties. The author of a photograph is the person who took the photograph. However, if the photograph was commissioned for a private or domestic purpose, the client is the copyright owner, unless agreed otherwise.

When an employee of an association completes work in the course of his or her employment, the association generally has the copyright. For example, if an employee writes a newsletter for the association, or an employee designs and produces a poster, the association owns the copyright.

Volunteers, however, usually keep copyright of any material that they create, and the association or organisation will normally have a licence or permission to use the relevant material. If an association is unsure or concerned about this, they should seek specific legal advice.

It is often worthwhile to deal with copyright issues at the time materials are being produced. Associations that receive funding to produce a work (for example, a research report) should check what the funding agreement says about copyright. It is possible for an association to produce some wonderful publications and resources, only to find out that the funding arrangement transfers copyright ownership to the funding body.

## Infringing copyright

Copyright gives the copyright owner exclusive right to control the copying and distribution of copyrighted work.

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

There are some exceptions to copyright infringement. In the education area, allowances are made to use copyright materials for research and study without permission, although there are still limits on how this can occur. Only a portion of the material may be used and it must be used for non-commercial purposes. Therefore, an association may use educational material within those limits for delivering community education programmes, without permission and without infringing copyright.

Community associations often share information with each other, and allow other associations to reproduce material, as long as proper acknowledgement is given. It is important to understand that the permission to use all or part of a work cannot be assumed, even if acknowledgement is made. This is particularly the case if the material is going to be part of a bigger work to be sold for profit. Permission granted for one purpose is not permission to use the material for other purposes.

Some materials will detail in the work itself how the work can and can't be reproduced, in which case permission can be implied as long as the conditions are followed.

Harmony Community Development Association Inc has received \$10,000 to set up a website to promote its projects and the community. The website consists of information sheets, a newsletter 'Progress', photographs and other promotional information. The Association includes the following notice on its website.

'All Harmony Community Development Association Inc's information and material including the newsletter, information sheets, photographs and graphics that appear on this website are protected by the *Copyright Act 1968*. The Copyright belongs to the Association. Apart from fair dealing for the purpose of research, private study, criticism and review as allowed by the *Copyright Act*, no material may be reproduced without the permission of the Management Council.'

## Copyright on the Internet

The Internet has become a vital source of information. However, material on the Internet is also protected by copyright. Downloading, copying, saving and printing material from the Internet are covered by copyright. Some websites will indicate implicit permission by showing 'print' or 'printer friendly version', but that does not necessarily allow unlimited copying, nor does it mean that the material can be distributed, especially for commercial gain. The Australian Copyright Council, for example, allows one printed copy to be made of information sheets from its website for personal and non-commercial use only. Multiple copies are required to be purchased through the Council.

Please note that, throughout this guide, you are referred to various websites to obtain additional information, forms and policies. In most cases, this information will be protected by copyright and, therefore, may not be used to reproduce multiple copies. At most, an association will be permitted to make one copy for its own use. The website will usually state if more copies can be made and distributed. If in doubt, contact the organisation concerned and ask for permission to use the material.

A further warning – a large amount of material placed on the internet is there without the permission of the copyright owner (for example, many scanned articles and photographs). Re-using that material without permission of the original copyright owner will breach copyright.

Copyright is an increasingly complex area as technology changes. Associations should seek legal advice when unclear on copyright rights or obligations.

### The Australian Copyright Council

provides information and training for the public. Contact details:

Australian Copyright Council  
PO Box 1986  
Strawberry Hills NSW 2012

Telephone: (02) 8815 9777

Facsimile: (02) 8815 8799

Email: [info@copyright.org.au](mailto:info@copyright.org.au)

Website: [www.copyright.org.au](http://www.copyright.org.au)

## Trademarks

Trademarks are pictures, words or symbols that identify goods or services. Examples could include logos, labels, marketing mascots, banners, catch lines or emblems. For example, a well-known trademark is the McDonald's sign.

Unlike copyright, a trademark must be registered for it to be protected. Trademarks are protected by the Commonwealth *Trade Marks Act 1995*. If an incorporated association has a particular sign or mark that identifies it and that is known to, and recognised by, the public, it is worthwhile protecting its use by registering it as a trademark. Copying a registered trademark can breach the trademark owner's rights and should be avoided.

IP Australia, a Commonwealth Government agency, can assist with further information about registering and protecting trademarks:

### IP Australia

PO Box 200  
Woden ACT 2606

Telephone: 1300 65 10 10

Translating and interpreting service:  
13 14 50

Facsimile: (02) 6283 7999

Email: [assist@ipaaustralia.gov.au](mailto:assist@ipaaustralia.gov.au)

Email is for general enquiries only. Please see IP Australia's [electronic business rules](#) for details of what can be sent electronically.

Website: [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au)

# The End of the Road

*This chapter sets out the procedure for winding up an incorporated association. It also discusses the alternative forms of incorporation and how associations could arrange to transfer their jurisdiction.*

## Key Points

- Winding up is the process by which the separate legal identity of an incorporated association is brought to an end.
- An incorporated association may be wound up (dissolved) voluntarily or by the Supreme Court.
- An incorporated association can only wind up on a voluntary basis if it is solvent and it resolves by special resolution to be wound up voluntarily.
- If an incorporated association has surplus property when it is wound up, it must prepare and submit a distribution plan to the Commissioner. The distribution plan describes how the surplus property is to be distributed.
- 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. The main distinctions are the purpose of the organisation and whether or not profit is to be distributed to members and if so, to what extent.

For many associations, there comes a time when the members just want to call it quits and cease the activities of the association. Sometimes, they simply walk away, leaving the incorporated entity in place without any action to bring its life to an end.

A much better option is to take formal steps to wind up the association. Winding up is the process by which the incorporation of an association as a separate legal entity is ended. The process involves finalising any contracts, paying debts and distributing property.

However, winding up may not be the most suitable course for the association at the time. In some circumstances, it may be more appropriate for the members to consider a different form of incorporation; for example, as a company or, for Indigenous groups, an Aboriginal or Torres Strait Islander corporation.

## Ways of winding up an association

An incorporated association may be wound up in two ways:

- voluntarily; or
- by order of the Supreme Court.

### Voluntary winding up

An incorporated association can only wind up on a voluntary basis if:

- it is solvent, that is, it has sufficient assets to pay all of its debts and liabilities; and
- it resolves by special resolution that it should be wound up voluntarily.

More information on the requirements for a special resolution is provided in [Altering the Rules](#).

Once a special resolution is passed, a copy of this must be lodged with the Commissioner for Consumer Protection within 14 days from the date when the resolution was passed.

When the winding up takes effect will depend on whether, after the payment of all its debts and liabilities, the incorporated association has any surplus property. The meaning of surplus property covers cash assets, as well as physical property, such as furniture, equipment or real estate.

### No surplus property

Where there is no surplus property, then the process is straightforward and the winding up takes effect 14 days after the notice of the special resolution has been lodged with the Commissioner.

To notify Consumer Protection the association should submit a [Form 6 – Notice of Special Resolution to Voluntarily Wind Up an Incorporated Association](#).

## Surplus property

Surplus property on winding-up can only be distributed to another association incorporated in Western Australia, or for charitable purposes. Surplus property cannot be distributed to members or former members of the association.

In addition to Form 6 – Notice of Special Resolution to Voluntarily Wind Up an Incorporated Association, the association must prepare and lodge with the Commissioner a plan for the distribution of the surplus property. The plan must be drafted in accordance with the rules of the association and satisfy certain statutory requirements of the Act. If there are no provisions in the rules, the management committee is required to draw up a plan in accordance with any directions given by the members of the association by a resolution.

To lodge a distribution plan with Consumer Protection the association should submit a [Form 7 – Distribution Plan to Voluntarily Wind Up an Incorporated Association](#).

The Commissioner can:

- direct the association to amend the distribution plan;
- appoint a person on his/her behalf to implement a distribution plan in certain circumstances; or
- direct that surplus funds be paid into the Consolidated Account (ie the Western Australian State Treasury).

Anyone who is aggrieved by a declaration made by the Commissioner may apply to the Supreme Court for a review of the declaration.

An incorporated association must not implement a distribution plan until one month after the distribution plan has been lodged, unless the Commissioner states otherwise.

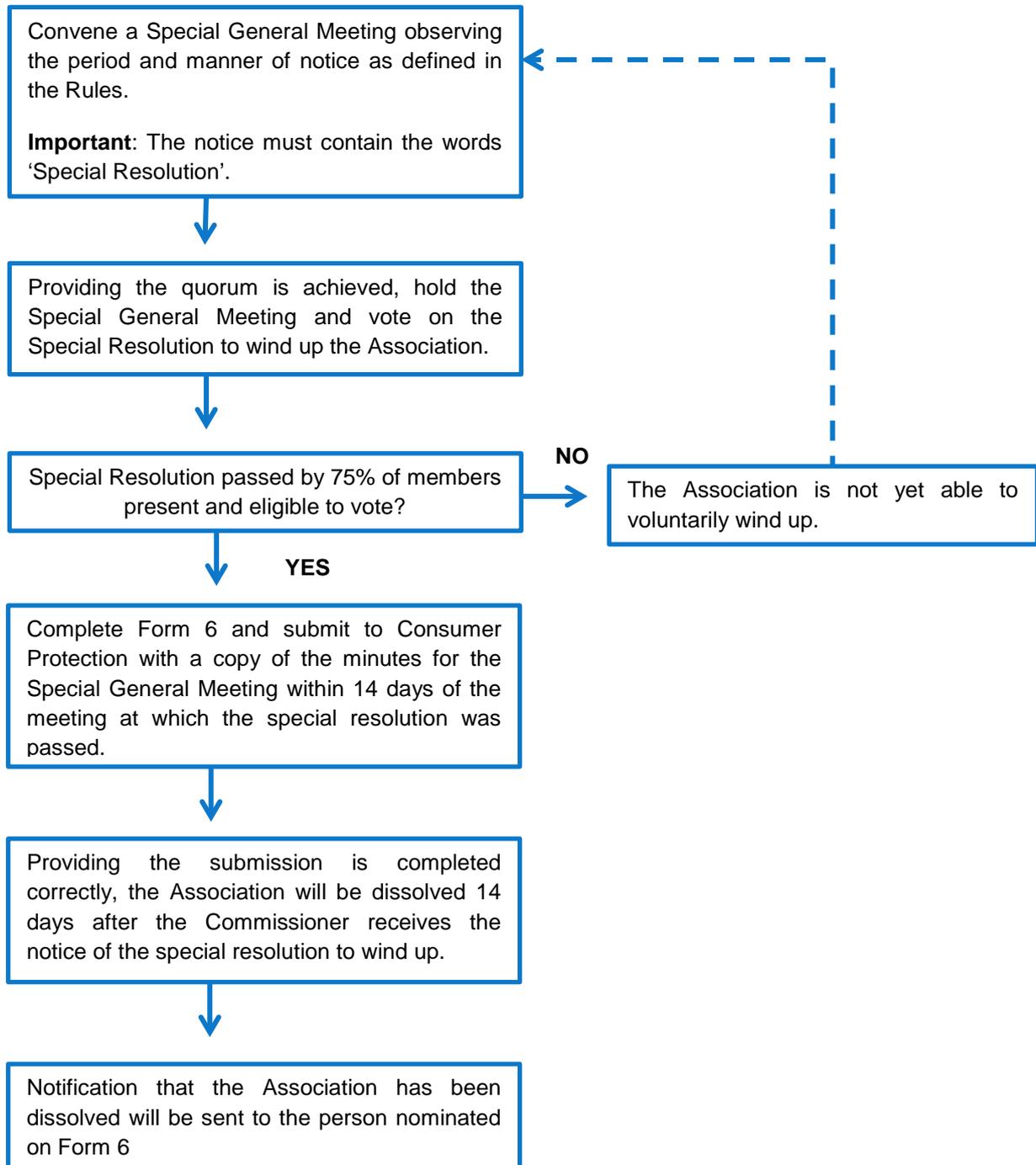
Once any surplus property is finally distributed, the winding up takes effect seven days after such distribution.

## NEW BILL

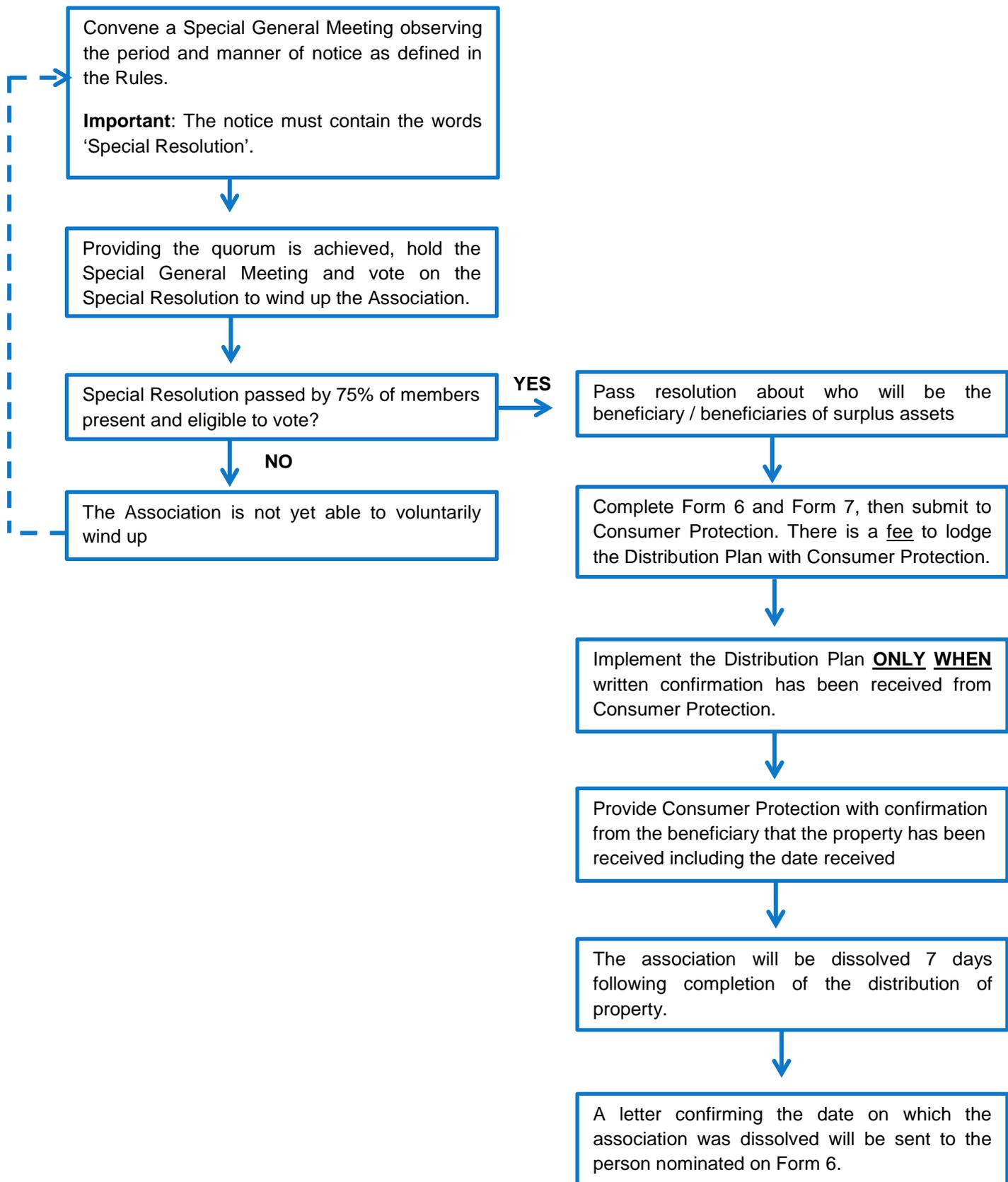
**The provisions in the current Act have been reviewed with the intention of simplifying and streamlining the process for associations who wish to resolve their affairs and cancel their incorporation.**

**The Bill will enable associations to choose the process for the resolution of their affairs which best suits their particular circumstances being either a winding up (formal process using a liquidator) or a cancellation of incorporation which is a simpler process without a liquidator.**

## Process to voluntarily wind a solvent association up without assets



## Process to Voluntarily Wind up a solvent Association with Assets



## **Winding up by the Supreme Court**

An incorporated association can be wound up by the Supreme Court if:

- the association was not eligible for incorporation at the time of incorporation;
- incorporation of the association was obtained by fraud or mistake;
- the association has fewer than six members;
- the association has been inoperative for not less than 12 months;
- the association is unable to pay its debts;
- the association has engaged in activities outside the scope of its purposes, as specified in its rules, or has ceased to pursue those purposes;
- the committee of the association has acted oppressively towards members;
- the association has refused or failed to remedy a breach of the Act or regulations within a reasonable period after notice of the contravention has been given to the association by the Commissioner;
- the association has, itself or as trustee, traded or secured pecuniary profit for its members;
- the association, by special resolution, resolved that it be wound up by the Supreme Court; or
- the Supreme Court is of the opinion that it is just and equitable that the association should be wound up.

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
- in certain circumstances, a creditor.

As always, an incorporated association that is facing proceedings or bringing proceedings in the Supreme Court should seek legal advice.

## Insolvent Associations

An insolvent association is one that is unable to pay its debts when they fall due for payment. If an association is insolvent it cannot be wound up voluntarily and will need to make an application to the Supreme Court to be wound up.

If there is a concern that your association may be insolvent it is recommended that no further debt is incurred until the financial position of the association has been established.

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 the proceeds of the realisation among its 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 that they 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 you can reach an agreement 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.

## Cancellation of an incorporated association

In those instances where members simply walk away from an association without winding it up, the Commissioner may direct that the incorporation of the association be cancelled. The Act provides this discretion where the Commissioner has reasonable cause to believe that the incorporated association, among other things, has been inoperative for the preceding 12 months or has fewer than six members.

Where the incorporation of an association has been cancelled, any property of the association vests with the Commissioner. The Commissioner then has an obligation to distribute this property in accordance with the Act, and this is usually a very time consuming process.

Depending on the circumstances, former members of the defunct association may have little say in how such property is distributed, although extensive efforts are made to find and consult them.

Properly winding up an association is the best way to ensure that its assets and property are distributed according to the wishes of the members.

## Types of incorporated structures

There may be circumstances in which members of an association want to carry on, but for one reason or another, they cannot carry on as an incorporated association, or there may be advantages in moving to another jurisdiction. For example, an agricultural supplies association may find that its business has grown to encompass trading with the public such that it is no longer eligible to remain an incorporated association. Or an association wanting to expand its activities into other States may prefer to be incorporated as a company, regulated by Commonwealth authorities.

The Act contains provisions that allow the Commissioner to facilitate a transfer to another jurisdiction.

There are a number of options for incorporation available, depending on the purpose, objectives, nature and structure of the group. The following are examples of incorporated structures:

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

Note! Incorporated associations and co-operatives are registered under State laws, while Aboriginal or Torres Strait Islander corporations and companies are registered under Commonwealth laws.

## Incorporation under the Corporations Act 2001

An organisation that wishes to operate for profit or wants to conduct its activities anywhere in Australia can incorporate as an Australian company under the *Corporations Act 2001*.

Organisations can incorporate as either a public or private company. Private companies (proprietary companies) cannot have more than 50 members and are not able to attract investment from the general public. On the other hand, public companies can raise capital by offering shares to the public and there is no restriction on the number of members (shareholders). For these reasons, public companies are subject to more stringent disclosure and reporting requirements under the Corporations Act 2001 than proprietary companies.

There are four types of companies:

- **Public no liability company.** No liability companies can only be used for mining purposes;
- **Unlimited company with share capital.** Unlimited companies with share capital can be public or proprietary. This type of company is often used for pooled investments because it is easier for members to withdraw their investment capital from this type of structure. The disadvantage is that members are personally liable for the debts of the company;

- **Company limited by shares.** A company limited by shares can be public or proprietary and is often used for business purposes. Members' personal liability is limited to any unpaid subscription price for their own shares in the company; and
- **Public company limited by guarantee.** A company limited by guarantee must be a public company and is therefore subject to the more stringent disclosure and reporting requirements for public companies under the *Corporations Act 2001*. Companies limited by guarantee cannot issue shares. This is an advantage for not-for-profit organisations with a fluctuating membership because members do not have to buy shares in the company.

Like a company limited by shares, this company structure limits liability of members, but instead of being limited to the amount payable for shares issued, liability is limited to the amount agreed to in a guarantee (e.g. the membership fee). However, members only need to contribute the guaranteed amount if the company is wound up. The company must include 'Limited' or 'Ltd' at the end of its name, but this requirement may be waived for a not-for-profit organisation.

Another requirement is that, as a public company, a company limited by guarantee must open its registered office for at least three hours each business day. If this requirement causes difficulty, arrangements could be made with a professional business (e.g. an accounting or law firm) to use their office as the company's registered office.

In general, companies have greater scope than incorporated associations in the activities that they can undertake.

The main issues with becoming a company are that companies are more highly regulated than other entities, and incorporation can also be expensive (at least \$1000) and involve higher ongoing costs.

## Registration as a co-operative company

A co-operative is a legal entity created, owned and controlled by its members. These 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 it cannot give any returns or profits to members (other than the nominal value of shares).

You may find that since your association became incorporated its circumstances have changed in one way or another. Is the association undertaking new activities?

Has the association started focusing more heavily on what was originally a secondary activity? Does the association wish to start distributing its profits in a different way?

If your association is evolving in a significant manner, the incorporated association structure may no longer be the most appropriate structure for your organisation. The good news is that there are options available for your incorporated association if this is the case. Your association may decide it is better suited to the structure of a co-operative, and would operate more effectively if it transferred from an incorporated association to a co-operative company.

The table on the following page highlights some of the similarities and differences between incorporated associations and co-operatives to help you decide if a co-operative structure would be more appropriate for your organisation.

For further information on any facet of the application process please contact Consumer Protection on:

Telephone: (08) 6251 2901

Facsimile: (08) 6251 2817

Email: [cooperatives@commerce.wa.gov.au](mailto:cooperatives@commerce.wa.gov.au)

Website: [www.commerce.wa.gov.au/co-ops](http://www.commerce.wa.gov.au/co-ops)

	<b>Incorporated Association</b> <b>Associations Incorporation Act 1987</b>	<b>Co-operative Company</b> <b>Co-operatives Act 2009</b>
<b>Trade for profit?</b>	Able to generate a profit but cannot distribute to members. Trading activities should not be significant.	Yes, may undertake trading activities to generate a profit. Trading activities may be significant.
<b>Legal capacity and powers of an individual?</b>	Yes	Yes
<b>Can acquire property in entity's own name?</b>	Yes	Yes
<b>Financial benefit to members?</b>	As a not-for-profit entity any profits must be used to further the objects of the association. No financial benefits can be distributed to members.	May share in the resources and assets of the co-operative. Members of distributing co-operatives may also receive direct financial benefits.
<b>Minimum # of members?</b>	6+ members.	For a co-operative group: 2+ members.  For a co-operative: 5+ active members.
<b>Minimum # of directors or office bearers?</b>	No set number. The rules must outline the structure of the management committee.	No set number. The rules must outline the structure of the board. However it is recommended that the number of directors is not less than 3.
<b>Financial reporting obligations?</b>	Required to present annual accounts to members at every AGM. There is no requirement to lodge financial statements with the Department.	Required to present annual accounts to members at every AGM. Annual report needs to be lodged with Department within 28 days after AGM.
<b>Audit requirements?</b>	The Act does not require accounts to be audited. May be required by rules, funding bodies or affiliated groups.	Small co-operatives with limited revenue, assets and employees do not need an audit, but all other co-operatives require one.
<b>The Rules / Constitution?</b>	Rules should include all matters in Schedule 1 of the Act. Associations can create their own rules or may wish to adopt the model rules.	Rules should include all matters in Schedule 1 of the Act. Co-operatives can create their own rules or may wish to adopt the model rules.

## **Incorporation under the Corporations (Aboriginal and Torres Strait Islander) Act (2006) – CATSI Act**

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 is limited to Aboriginal or Torres Strait Islander persons and their spouses if the spouses meet the membership requirements in the rules. Some Aboriginal or Torres Strait Islander corporations may make provision in their rules for associate membership. This allows those persons, who are not entitled to become full members under the membership rule, to become associate members. Associate members have the same rights and responsibilities as a member, but they are not entitled to vote at meetings of the corporation or stand for election to the governing committee.

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**

PO Box 2029 WODEN ACT 2606

Telephone: 1800 622 431

Email: [info@oric.gov.au](mailto:info@oric.gov.au)

Website: [www.oric.gov.au](http://www.oric.gov.au)

## Transferring to another jurisdiction

Recent changes to the Act give the Commissioner for Consumer Protection authority to approve an incorporated association's transfer into a company limited by guarantee.

### Steps for transfer of incorporation

1. Decide on the whether the change of corporate structure is suitable and obtain approvals, if any, from government funding agencies, affiliated bodies or accreditation bodies or any other entities where existing statutory or contractual obligations are currently held.
2. Send a notice in accordance with the current rules of the meeting to transfer incorporation by special resolution to ALL members, whether they have voting rights or not.
3. Convene the meeting and pass the changes by special resolution.
4. Submit the form [TRAND- Application for approval to transfer incorporation under another law](#) and a copy of the special resolution within one month of the meeting. The application should be accompanied by the prescribed [fee](#).
5. If approval to transfer is granted, make an application within the approved timeframe to the relevant regulatory body.
6. Once registered with ASIC submit to the Department copies of the certificate of registration.

## Before transfer have you considered?

A change in corporate structure from the *Associations Incorporation Act 1987* to the *Corporations Act 2001 (Corporations Act)* may affect any existing statutory or contractual obligations with government funding agencies, affiliated bodies or accreditation bodies.

Any existing property, rights or obligations may not be recognised despite section 101(2) of the *Associations Incorporation Act 1987* which provides that transfer of incorporation does not affect the identity of the association which is to be taken to be the same body before and after the transfer of incorporation.

Consequently associations should consider what approvals, if any, they should obtain before calling a general meeting of members to consider a change in corporate structure. Associations are responsible for making their own enquiries as the Department of Commerce cannot do so on their behalf. Associations should consider obtaining legal advice before embarking on this process.

Examples of arrangements which may be affected and notifications which should be made or approvals sought are:

- Associations that have been appointed as trustee of trust land or hold a lease should contact the relevant regulatory body to ensure their tenancy arrangements will not be affected by their proposed change of corporate structure.

- Associations that own land should make enquiries as to the process of updating the title to reflect the change of corporate structure.
- Associations that have gaming or liquor licences should contact the [Department of Racing, Gaming and Liquor](#) to ascertain if their licences will be affected by their proposed change of corporate structure.
- An association legislated under the *School Education Act 1999 (WA)* (for example, school councils, non-government schools, parents and citizens') may require prior approval from the Minister of Education prior to passing the special resolution to transfer.

### **Important Information about applying to transfer to a company limited by guarantee**

It is recommended that associations seeking to transfer to the *Corporations Act 2001* should first apply to Australian Securities and Investments Commission (ASIC) to reserve the name before submitting the application.

Once the application for approval to transfer incorporation under another law has been approved by Consumer Protection an application using the [ASIC Form 202-Application for registration of a body corporate as an Australian company](#) must be made.

You should ensure that the company limited by guarantee complies with the reporting and regulatory requirements of the Corporations Act. Detailed information on the requirements of setting up and running a company limited by guarantee can be found on [www.asic.gov.au](http://www.asic.gov.au). ASIC should be contacted for further information.

Although the transfer process is relatively straightforward, there are several steps required and it is recommended that associations first contact the Consumer Protection Associations Branch on **1300 30 40 74** to find out how best to proceed.

## **Becoming an unincorporated association**

Where it is decided to wind up an incorporated association (rather than transfer its operations to another corporate structure), there may be some members who wish to carry on some or all of the old association's activities. Despite the many benefits of being an incorporated entity, it is still possible to undertake a wide range of activities under the status of an unincorporated association. The major disadvantage to operating in this way is that the members become personally liable for any debts or liabilities that the group might incur.

If this course of action is being contemplated, it should be noted that the old association's assets or property could not, in general, be handed on to those running the unincorporated association. This could only occur if it could be established that the unincorporated association was formed for a charitable purpose, and even then, there may be legal objections to such a distribution.

Even if an association continues in an unincorporated form, the group should still seek advice about the organisation's compliance requirements in relation to matters such as taxation, occupational safety and health, and employment awards. Although this guide primarily addresses statutory requirements for incorporated associations in Western Australia, much of the information could be used as a guide for running an efficient unincorporated association.

***INC: A Guide for Incorporated Associations in Western Australia* is produced by the Consumer Protection Division of the Department of Commerce.**

**For more information contact the Associations Branch of Consumer Protection:**

Postal Address: Locked Bag 14 Cloisters Square WA 6850

Telephone: (08) 6251 2901 or 1300 304 074 (country callers)

Email: [associations@commerce.wa.gov.au](mailto:associations@commerce.wa.gov.au)

Website: [www.commerce.wa.gov.au/associations](http://www.commerce.wa.gov.au/associations)

