

Incorporating as an incorporated association in South Australia

Legal information for South Australian community organisations

This fact sheet covers:

- nominating a secretary for your organisation
 - the committee and its obligations
 - deciding on a name for your organisation
 - drafting or adopting a set of 'rules' for your organisation
 - deciding on the purposes of your organisation
 - holding a pre-incorporation meeting
 - completing a Consumer and Business Services 'Application for Incorporation of an Association' form, a 'Statutory Declaration' and a checklist of rules for your organisation
 - sending the form, documents and fees to CBS
 - awaiting notice of incorporation of your organisation from CBS, and
 - ACNC registration.
-

In South Australia, the process of setting up an incorporated association is set out in the *Associations Incorporation Act 1985 (SA)*.

Consumer and Business Services (CBS), which is a division of the South Australian Government's Attorney-General's Department, regulates incorporated associations in South Australia. CBS administers the *Associations Incorporation Act 1985 (SA)* (**the Act**) on behalf of the Corporate Affairs Commission. To become an incorporated association you must apply to CBS.

While setting up an incorporated association is a relatively simple process, there are a few important decisions that your organisation will need to make and may need to get advice about. Set out below is a brief explanation of the main requirements and considerations for setting up an incorporated association, and links to CBS and other relevant websites.

After an incorporated association is set up, it should seek legal advice about ongoing obligations that may apply, such as those related to annual general meetings, financial reporting and record keeping.

RELATED RESOURCES



This fact sheet only summarises the process for setting up as an incorporated association in South Australia. If you are a large organisation that operates across several states and territories, you may wish to consider other organisation structures, such as incorporating as a company limited by guarantee under the *Corporations Act 2001* (Cth). For more information on choosing a legal structure go to the 'Choosing a legal structure' page on the Not-for-profit Law Information Hub at www.nfplaw.org.au/legalstructure.

Nominating a public officer

The Act requires an organisation incorporating in South Australia as an association to nominate a 'public officer' for the organisation. It must have a public officer at all times (note: the public officer role must be filled within 1 month of it becoming vacant).

The Act sets out a number of the duties and requirements for the role of public officer. The person nominated as public officer:

- is the 'contact person' for the organisation. They must agree to give their details (such as name and address) to CBS for this purpose
- has an ongoing administrative role in the organisation, particularly in relation to providing information to CBS
- must be over 18 years of age, live in South Australia and consent to be the organisation's public officer, and
- may also have other responsibilities in your association.

The public officer lodges the application to incorporate with CBS.

RELATED RESOURCES



Detailed guidance on the public officer's role in an incorporated association is available at CBS's [Public officer responsibilities](#).

Your association will also need to establish a committee, which will govern the association in accordance with the association's rules. The public officer can be, but does not have to be, a member of the committee.

Committee Obligations

One of the benefits of incorporating your association is that it separates the individual members from the organisation. This provides some legal and financial protection for committee members involved in the management of the association who otherwise might be liable for damages arising from the activities of the association.

However, committee members are required to comply with the requirements of the Act and may be liable to pay damages if these requirements are breached. For example, a committee member has a duty not to improperly use their position, or information gained by virtue of their position in the association, and must disclose any financial personal interest in a contract with the association.

If your association becomes a charity registered with the Australian Charities and Not-for-profits Commission (**ACNC**), committee members will, in some circumstances, need to satisfy the requirements of a 'responsible person' under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and must comply with the corresponding regulations (including the Governance Standards). Under the Governance Standards, responsible persons must:

- act with reasonable care and diligence
- act honestly and fairly in the best interests of the charity and for its charitable purposes
- not misuse their position or information they gain as a responsible person
- disclose actual or potential conflicts of interest
- ensure that the financial affairs of the charity are managed responsibly, and
- not allow the charity to operate while it is insolvent.

Committee members must also act in accordance with the rules of the organisation (discussed below).

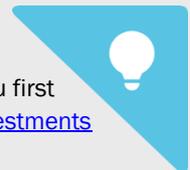
Decide on a name for your organisation

The Act requires an organisation to choose an appropriate name and CBS must approve that name.

Choosing a name is normally a simple task, but your organisation should make sure that the name chosen is not being used by (or too similar to) any other organisation, and that the name is consistent with the organisation's purpose. CBS will not approve the name if this is not the case.

TIP

Before settling on a name for your organisation to lodge for incorporation, we recommend you first check the national business name register administered by the [Australian Securities and Investments Commission](#) to see if another organisation has already registered that name.



When you decide on a name, your organisation may also wish to look into the laws that are available to protect the intellectual property rights in that name.

Once your organisation is incorporated, you will need to use the word 'Incorporated' or 'Inc.' after your name. This indicates to people and other organisations that your organisation is incorporated and has limited liability. The Act requires that you use the full organisation name on all business documents (for example, business letters, invoices, notices), and it is advisable to also include your incorporation number. Your organisation must have a common seal (stamp), which must also include the full name of the organisation. An association can still make oral or written contracts, depending on the type of contract. The association's common seal must be used in accordance with the association's rules for

FURTHER READING

For more information on intellectual property, go to Not-for-profit Law's Intellectual Property page on the Information Hub at www.nfplaw.org.au/ip

certain types of contracts (such as land transfers and contracts that need to be executed by an individual).

If, after incorporation, your organisation wants to change its name, your organisation must pass a special resolution at a meeting resolving to change the name, and then the public officer must apply to CBS within 1 month after making the change after the date of the meeting. The name change is not official until it is approved.

Draft a set of 'rules' for the association or adopt the 'example rules'

The Act requires associations to incorporate with a set of 'rules' (sometimes called a 'constitution'). The rules govern the internal affairs of the association and must set out minimum requirements, for example about membership, meetings and powers of the association committee. Section 23A of the Act sets out matters that an association's rules must cover. You can include additional rules if you wish. The rules must also include the objects of the association (discussed further below).

To help organisations wishing to become incorporated associations, CBS offers a set of 'Example Rules' to assist organisations meet the requirements of the Act. Your organisation can choose to adopt the 'example rules' or register its own rules. The example rules are published by CBS and can be accessed from the CBS website (see link in the Resources section below).

While the Example Rules are an easy option for newly forming incorporated associations to use for their rules, your organisation should be cautious and carefully consider (and possibly get legal advice) on whether the Example Rules are suitable for your organisation.

CAUTION

Although called 'model' rules, the rules may not have all of the wording that many organisations need in certain circumstances, for example, to apply for tax concessions or a grant in the future.



The model rules came into force August 2012. Many organisations will require 'not-for-profit' and 'winding up' clauses to access tax concessions available to charities and not-for-profit entities, such as tax exemption and deductible gift recipient (**DGR**) endorsement. The model rules in their current form do not contain clauses that would satisfy the requirements of the Australian Tax Office (**ATO**). If your group hopes to get tax exemption and DGR status, you should get specific advice on the amendments to the model rules which are required by the ATO and are suitable for your organisation. Not-for-profit Law has drafted examples of some of the ATO approved rules that organisations can consider adopting; see www.nfplaw.org.au/tax. If your organisation intends to apply for DGR and charitable status you should seek legal and tax advice about the most suitable wording of your organisation's purposes and rules.

If your organisation has decided to use the CBS example rules, you can insert your name and purposes into the rules. The example rules fix the organisation's financial year to end on June 30. An association may alter this date by nominating a different day in the rules. However, if your association

is a registered charity, its financial year will need to be to June 30 in each year unless the ACNC has approved a substituted reporting period.

When organisations submit rules that they have drafted themselves, CBS scrutinises the 'rules' and may communicate with your organisation if the rules do not meet all requirements. A copy of the rules must be submitted with the 'Application for Incorporation'.

Your organisation should note that the rules of an incorporated association form a contract between the association and its members, and once registered, the rules can only be changed by special resolution of the members.

Decide on the purposes of the association

The Act requires that an incorporated association has its purposes incorporated in its rules.

The Act does not say what must be included. In general, the purpose of an organisation is the key reason for its existence – its 'why'.

While writing the purposes sounds like a simple task, your organisation should be aware that the wording of your organisation's purposes may have significant legal implications in the future. Importantly, your organisation cannot legally act beyond its purposes, and committee members need to consider the purposes when making decisions.

Another important consideration when drafting purposes is whether your organisation will apply for tax concessions or seek registration as a charity. Certain eligible, not-for-profit organisations can access quite significant tax concessions (such as exemptions from income tax and deductible gift recipient status). Access to these concessions will depend on your purposes, and the ATO will look at your organisation statement of purposes (and its rules). Purposes are also relevant when seeking to be registered with the ACNC.

FURTHER READING

For more information about tax concessions, go to the Tax page on the Not-for-profit Law Information Hub at www.nfplaw.org.au/tax.

If your organisation intends to apply for tax concessions or register as a charity, you should seek legal and tax advice about the most suitable wording of your organisation's purposes. Advice at an early stage will save your organisation from having to amend its purposes in the future.

Hold a formation meeting

The Act requires that before applying for incorporation, the members of the group of interested people must hold a meeting to authorise a person to apply for the incorporation. This person is the public officer (discussed further above) and must give their consent in the form set out in the Act.

The members of the group need to be given notice about the meeting. If the Example Rules are adopted, the notice period is 21 days. At that meeting the members should also approve the name of the association and the proposed rules of the association (either the Example Rules, or its 'own rules') and then authorise the public officer to apply for incorporation.

Complete the CBS Application for Association Incorporation

Your organisation will need to complete CBS 'Application for Incorporation of an Association' (**Form 1**) and 'Statutory Declaration' (**Form 2**) and the 'Checklist of Rules'. These documents are available from the CBS website (and are accessible from the 'Resources' page below).

Send the forms, documents and fee to CBS

You will need to complete Form 1, Form 2 and attach your organisation's proposed rules.

You will also need to pay the fee which is set out in Schedule 2 of the *Associations Incorporation Reform Regulations 2008* (SA). As at July 2015, the charge for incorporation of a new association listed on the CBS website is \$185.00.

Await notice from CBS

Once you submit your completed forms and the rules you can lodge the documents with CBS by post or in person (further details of how to do this are below). If all of the requirements have been met, CBS will approve the incorporation and you will receive a Certificate of Incorporation. CBS has indicated that it normally takes around 14 days to process the application.

If CBS does not approve rules that you have drafted, you may wish to seek independent advice about whether they comply with the requirements in the Act or ask for a second review. In some cases, CBS will ask you for further clarification or about areas of deficiency in the draft rules in which you may wish to seek advice on how to respond.

You should keep the Certificate of Incorporation and an up-to-date copy of your organisation's rules in a secure place. The Certificate of Incorporation is evidence of the association's corporate status and is required for certain activities, such as opening bank accounts or accessing certain grants.

On becoming an incorporated association, your organisation will need to comply with the requirements of the Act, the *Associations Incorporation Reform Regulations 2008* (SA) and your organisation's rules. If your association becomes a charity registered with the ACNC it will also need to comply with the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the corresponding regulations (including the Governance Standards). You should become familiar with all of these requirements to make sure your organisation and its committee is complying with the law.

FURTHER READING

For more information about obligations for charities, Not-for-profit Law has many resources to assist groups to understand the requirements of running a not-for-profit organisation. Go to the [Running the Organisation page](#) on the Not-for-profit Law Information Hub.



ACNC Registration

If your association has been set up for a charitable purpose, is a not-for-profit and has obtained an ABN, then you may be able to register as a charity with the ACNC. Further information on registering as a charity is on the Information Hub's Charity page at www.nfplaw.org.au/charity.

Resources

Not-for-profit Law Resources

- ✔ Before you start - www.nfplaw.org.au/beforeyoustart
- ✔ Legal structure - www.nfplaw.org.au/legalstructure
- ✔ Registering as a charity - www.nfplaw.org.au/charity

Consumer and Business Services (CBS) resources

- ✔ [Consumer and Business Services – Incorporated associations](#)

The CBS website has information about setting up an incorporated association in South Australia.

- ✔ [An example of Rules for an Incorporated Association](#)
- ✔ [Associations checklist](#)

These are links to information to assist associations to comply with their obligations under the Act. Your organisation should read the Example Rules carefully and complete them where required with information to suit the needs of your particular organisation.

- ✔ [Associations form 1 and 2](#)
- ✔ [Fee Schedule](#)

Your organisation will need to complete and provide to CBS with 'Associations forms 1 and 2' along with a copy of the association's proposed rules and the fee by post to GPO Box 1719, Adelaide, South Australia 5001, or in person at 91 Grenfell Street, Adelaide 5000, open 9AM to 5PM Monday to Friday.

Legislation

- ✔ [Associations Incorporation Act 1985 \(SA\)](#)

This is the legislation that governs the setting up and running of an incorporated association in South Australia.

- ✔ [Associations Incorporation Regulations 2008 \(SA\)](#)

This is a link to the regulations which govern the setting up and running of an incorporated association in South Australia.

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

© 2015 Justice Connect. You may download, display, print and reproduce this material for your personal use, or non-commercial use within your not-for-profit organisation, so long as you attribute Justice Connect as author and retain this and other copyright notices. You may not modify this resource. Apart from any use permitted under the *Copyright Act 1968* (Cth), all other rights are reserved.

To request permission from Justice Connect to use this material, contact Justice Connect at PO Box 16013, Collins Street West, Melbourne 8007, or email nfplaw@justiceconnect.org.au.