

Incorporating as an incorporated association in Western Australia

Legal information for Western Australian community organisations

This fact sheet covers:

- holding an initial meeting
- deciding on a name for your organisation
- appointing or electing a management committee 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 and submitting an 'Application for Incorporation' form, and
- awaiting notice of incorporation of your organisation from Consumer Protection.

In Western Australia, the process of setting up an incorporated association is set out in the *Associations Incorporation Act 2015 (WA)*.

The Consumer Protection Division of the Department of Commerce (**Consumer Protection**), regulates incorporated associations in Western Australia. To become an incorporated association you must lodge an application with Consumer Protection. 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 Consumer Protection and other relevant websites.

NEW LAWS FOR INCORPORATED ASSOCIATIONS

The *Associations Incorporation Act 2015 (WA)* (**new Act**) replaced the former *Associations Incorporation Act 1987 (WA)* (**previous Act**) on 1 July 2016.

All associations need to update their rules to comply with the requirements under the new Act (set out in Schedule 1 of the new Act) and will have three years to do so, until 1 July 2019.

Other requirements under the new Act apply from 1 July 2016 to all associations, including changes in relation to:

- financial reporting
- governance
- privacy
- becoming incorporated, and
- membership of incorporated associations.

More information about the application of the new Act, including a [Transition Pack](#) for organisations, is available on the Consumer Protection website at: www.commerce.wa.gov.au/consumer-protection/associations-new-law

RELATED RESOURCES

This fact sheet only summarises the process for setting up as an incorporated association in Western 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.



Hold an initial meeting

Before you can proceed with an application for incorporation you should determine whether or not the group wants to become incorporated and decide who will be responsible for making the application. This person is usually the "contact person" on the application form submitted to Consumer Protection.

Decide on a name for your organisation

The Act requires an organisation to choose a name and submit the name to the Commissioner for Consumer Protection (**Commissioner**) for his or her approval. The Commissioner has the discretion to reject a proposed name if the name is:

- offensive or undersirable
- likely to mislead the public as to the object or purpose of the association
- identical to the name of another incorporated association or is likely to be confused with the name of another incorporated association, or
- prescribed as a name which is not allowed by the Act.

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, as the Commissioner will not approve the name if this is the case.

TIP

Before settling on a name for your organisation to lodge for incorporation, we recommend you first check the availability of the proposed name by completing a free "Availability of an Associations Name Enquiry" on Consumer Protection's online portal [AssociationsOnline](#).



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. The organisation does not need to register a

business name if it intends to operate any business activities under its incorporated name. However, if the organisation 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**).

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. An association may have a common seal (stamp) and if so, a list of officers entitled to use the common seal should be maintained.

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 by amending its rules. Within one month of passing the special resolution the organisation must lodge the notice of the special resolution with the Commissioner. This is done by lodging (through [AssociationsOnline](#)) a notice of the special resolution (in the form provided by Consumer Protection), a certificate that the resolution was passed as a special resolution (in the form provided by Consumer Protection) and a copy of the new rules (unless the association uses the model rules). The name change is not official until you receive an approval notice from the Commissioner and the Commissioner will issue a new certificate of incorporation showing the new name.

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

Appointing or electing a management committee

The Act requires an organisation incorporating in Western Australia as an association to appoint or elect a 'management committee' for the organisation. The management committee is a group of people that has authority to exercise the powers and functions of the association and to manage its affairs. The management committee attends to the day-to-day administration and activities of the organisation.

The management committee members have responsibilities to:

- act in good faith and in the best interests of the association
- ensure the activities of the association are conducted with reasonable care, skill and diligence, and
- comply with the rules of the association.

In addition, each member of the committee individually has a personal obligation under the Act to ensure that the association complies with its obligations.

Draft a set of 'rules' for the association or adopt the 'model 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. Schedule 1 of the Act (found near the end of the Act) sets out the list of matters that an association's rules **must** cover. You can include additional rules if you wish, provided that they are consistent with the requirements of the Act. The rules must also include the purposes of the association (discussed further below).

CAUTION

The new Act contains additional compulsory matters that must be included in an association's rules (set out in Schedule 1 of the new Act). The list in the previous Act has been expanded to include the following compulsory matters:

- the circumstances (if any) in which payments can be made to a member of the management committee out of the funds of the association
- the process for notifying members or classes of members about general meetings and their rights to attend and vote at those meetings
- the number of members, expressed as a percentage, who may at any time require that a general meeting of the incorporated association be convened
- the day in each year on which the association's financial year commences
- a procedure for dealing with any dispute under or relating to the rules between members, or between members and the association, and
- the manner in which the surplus property of the association must be distributed or dealt with if the association is wound up or its incorporation is cancelled.

Consumer Protection has published a '[Rules Checklist](#)' that outlines **all** matters that must be addressed in your organisation's rules and highlights the new requirements under the new Act.

To help organisations wishing to become incorporated associations, there are model rules that associations can choose to adopt which are set out in the *Associations Incorporation Regulations 2016 (WA) (Regulations)*. Where the organisation chooses to adopt the model rules, it will also be regarded as having adopted any amendments to these model rules made in the future – this can be helpful as it means an association will not need to go through the processes to update its rules. Associations who choose to register with their own rules cannot include provisions that are inconsistent with the requirements of the Act and their rules must cover all the matters set out in Schedule 1 of the Act. Your organisation can also choose to use a combination of the model rules and its own rules, by choosing those that suit the organisation (but these will still be described as 'own rules').

FURTHER READING

The model rules (set out in Schedule 2 of the Regulations) and the rules checklist can be found on the Consumer Protection website at: <https://www.commerce.wa.gov.au/publications/model-rules-associations-2016>.

CAUTION

Although called 'model' rules, the rules may not have all of the wording that many organisations need in certain circumstances. For example, your association may require specific provisions and wording if it intends to register for minor gaming licences or to apply for tax concessions in the future.

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

Many organisations will require 'not-for-profit' and 'winding up' clauses to access tax concessions available to charities, such as income tax exemption and deductible gift recipient (DGR) endorsement.

The model rules (both new and old) contain not-for-profit and winding up clauses, however, they may not meet the ACNC's or ATO's requirements for these endorsements. If your group hopes to access charitable tax concessions, you should get specific advice on whether the model rules are suitable for your organisation.

When organisations submit rules that they have drafted themselves, Consumer Protection scrutinises them and may communicate with your organisation if the rules do not meet all requirements. A list of matters which must be addressed in the rules is set out in 'INC. A Guide for Incorporated Associations in Western Australia', which can be accessed at www.commerce.wa.gov.au/associationsguide.

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.

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.

Decide on the purposes of the association

The Act requires that an incorporated association has its purposes incorporated in its rules. The new Act contains an expanded list of purposes for which an incorporated association may be formed and includes:

- 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
- providing medical treatment or attention, or promoting the interests of persons who suffer from a particular physical, mental or intellectual disability or condition
- conserving resources or preserving any part of the environmental, historical or cultural heritage of the State
- promoting the interests of students or staff of an educational institution, and

- promoting the common interests of persons who are engaged in, or interested in, a particular business, trade or industry, or
- any other purposes approved by the Commissioner.

NOTE

Under the previous Act, incorporated associations were not allowed to engage in trading activities unless those activities were ancillary to the association's principal purpose and not substantial in volume. The new Act recognises that not-for-profits often need to engage in trade in order to be financially sustainable. Therefore, it is now acceptable for an association to engage in trading activities. However, an organisation that engages in trading activities must still demonstrate that it is a not-for-profit association, through its purpose (which should be a community purpose) and by ensuring that any property or income received from trading (or any other activity) is applied solely towards this purpose.

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 directors need to consider the organisation's purposes when making decisions about its operations.

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 tax concessions (such as exemptions from income tax and deductible gift recipient status). Access to these concessions will depend on your purposes and activities and the ATO will look at your organisation's statement of purposes (and its rules). Purposes are also relevant when seeking to be registered with the Australian Charities and Not-for-profits Commission (**ACNC**).

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.

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.

Hold a pre-incorporation meeting

The Act requires that before applying for incorporation, the members of the unincorporated group (being at least 6) must hold a meeting.

The requirements for the meeting are set out in the Act. At that meeting, the members should approve the proposed rules of the association (either the model rules, or 'own rules') and then authorise the nominated person to apply for incorporation.

Complete and submit the application

After the pre-incorporation meeting is held and the proposed rules have been approved by the members, you can proceed to lodge the application for incorporation with Consumer Protection. In the

application, you must indicate whether your association is using the model rules or its own rules. If the association is adopting its own rules, you must attach a certified copy of the rules. If the association has decided to adopt the model rules, you must attach a statement to that effect together with the following information:

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

The application can be made either online, using [AssociationsOnline](#) or by completing a [Form 1 - Application for Incorporation of an Association](#).

The cost for incorporation of a new association listed on the Consumer Protection website is \$180.00 if the association adopts its own rules or \$145.00 if the model rules are adopted. An extra fee of \$67.00 is payable if you select "Other" as one of the organisation's purposes on Form 1 (fees are current as of September 2016).

Await notice from Consumer Protection

If the Commissioner approves the application a Certificate of Incorporation will be issued.

If the Commissioner does not approve the incorporation you will receive a notice of refusal. Within 28 days of receiving the notice of refusal, you can apply to the State Administrative Tribunal (**SAT**) to review the decision of the Commissioner.

You should keep the Certificate of Incorporation and an up-to-date copy of your organisation's rules in a secure place.

On becoming an incorporated association, your organisation will need to comply with the requirements of the Act, the Regulations 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 at www.nfplaw.org.au/runningtheorg.



Resources

Not-for-profit Law Resources

- ▶ Running the organisation – www.nfplaw.org.au/runningtheorg

This page contains resources to assist those running not-for-profit organisations to understand and comply with legal requirements.

- ▶ Secretary's Satchel – Guide for Secretaries – www.nfplaw.org.au/secretaryguide

This is a comprehensive guide for secretaries of incorporated associations. It goes through the responsibilities of secretaries and provides tools and resources to assist secretaries in their role.

Consumer Protection WA resources

[Inc: A Guide for Incorporated Associations](#)

Consumer Protections website has a comprehensive guide about setting up an incorporated association in Western Australia.

- ▶ [Application form to become an Incorporated Association](#)

On this page there are links to the relevant forms and the AssociationsOnline portal.

Legislation

- ▶ [Associations Incorporation Act 2015 \(WA\)](#)

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

- ▶ [Associations Incorporation Regulations 2016 \(WA\)](#)

This is a link to the regulations which govern the setting up and running of an incorporated association in Western Australia. The 'model rules' are set out in Schedule 2 to the Regulations.

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

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