

Public officer responsibilities

Under the Associations Incorporation Act 1985

This information is intended to assist the association to understand the role of the public officer. It explains, in general terms, requirements of the Associations Incorporation Act 1985 (the Act). It also provides suggestions on how common problems might be avoided. It is not intended to be a document offering legal advice and no person should rely on its contents without first obtaining advice from a qualified professional. References to section numbers in this pamphlet correspond to sections of the Act.

The public officer

The *Associations Incorporation Act 1985* (the Act) requires that an incorporated association have a public officer. The public officer must be a natural person of or above the age of 18 years who is a resident in South Australia. It is not necessary for the public officer to be a member of the association. On the other hand he or she may have other responsibilities within the association such as being a member of the committee of management.

To not have a public officer is a breach of the Act and it is the responsibility of the association to ensure that it is compliant. Non-compliance can result in penalties against the association. There have been cases where associations have been declared defunct and removed from the association's register because their public officer could not be contacted. In most cases this could be the result of failing to keep up to date information about their public officer.

The Act provides that any process, notice or other document can be served on an incorporated association by serving it on its public officer. Most of the forms and returns lodged under the Act must be signed by the public officer. These provisions and requirements mean that the public officer performs an important role as the central contact person for the general public and Consumer and Business Services (CBS).

All associations should have a copy of the Act, the Regulations made under the Act, and any amendments. Up-to-date legislation can be found at the South Australian Parliament site at www.legislation.sa.gov.au Public officers should familiarise themselves with the requirements of the Act.

Document lodgement

Changes to rules/constitution or name of an association

In some cases associations update their rules/constitution by amending their existing rules. In other cases they may adopt a completely new set of rules. It is recommended that a complete set of the new rules/constitution be lodged with CBS for the association's future references and complete records.



The rules/constitution of many incorporated associations set out the procedures and requirements for making changes. When the rules/ constitution do not contain the procedures and requirements, the Act enables an incorporated association to change its rules by a special resolution.

A special resolution means a resolution passed at a duly convened meeting of the members of the association where:

- at least **21 days** written notice specifying the intention to propose the resolution has been given to all members of the association, and
- it is passed at the meeting by a majority of not less than **three-quarters** of such members of the association as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at the meeting.

If the rules of an association do not provide for it to have members then there are different requirements for a special resolution. They are set out in Section 3 of the Act.

Although changes to the rules/constitution of an association are effective immediately after the resolution has been accepted and passed at a duly convened meeting of members, an application for registration of alteration to rules must be lodged with CBS within one month of the resolution of the association.

Where a change to the rules consists of or includes a change of the association's name, the new name is subject to approval. Upon approval, a Certificate of Incorporation showing the new name will be issued and sent to the association.

An application for registration of alteration to rules must be made to CBS and must be accompanied by the appropriate application fee (late fees apply if the forms are not lodged within one month of the resolution of the association being passed).

The application must be completed and lodged by the public officer. A copy of the alterations made to the rules, or the new set of rules must also accompany the application. Please remember to reference the checklist for the proposed rules of the association (the checklist) rules to ensure your association continues to comply with the Act.

Amalgamation of associations

Two or more incorporated associations may, by special resolution of their respective members, resolve to amalgamate to form a new association. For the meaning of special resolution refer to the text under the heading 'Document lodgement' in this fact sheet.

An application for amalgamation must be made to CBS and must be accompanied with the proposed rules and the appropriate application fee. Please remember to use the checklist to ensure the proposed rules of the new association are compliant with the Act.

In addition to the application form, the Certificates of Incorporation of the amalgamating associations must accompany the application. If lost, an appropriate statement should be provided which gives an explanation to your circumstances.

The public officers of all the amalgamating associations are required to lodge the application.

Lodgement of periodic returns

'Prescribed associations' with gross receipts in excess of \$500,000 per financial year are required to lodge with CBS a Periodic Return, Financial Accounts, Committee Statement, Committee Report and a copy of the Auditor's Report. These documents, together with the appropriate fee, should be lodged within six months of the end of the association's financial year. (Late fees will apply if lodged after that prescribed time). The Periodic Return must be signed by the public officer.

If you consider that there is reason your association may be obliged to lodge a Periodic Return, please refer to the definitions of 'gross receipts' and 'prescribed association' contained in Section 3 of the Act, and the requirements of Sections 35 to 39 inclusive. A prescribed association must retain its accounting records for seven years after completion of the transaction to which it relates.

Change of public officer or change of address of public officer

It is a breach of the Act for an association to be without a public officer for longer than a one month period. The public officer's name and current residential and postal address must, at all times, be registered with CBS.

If the public officer changes his or her residential address, or if the association changes its nominated public officer, CBS must be notified by application within one month (the prescribed time) of the change. No fee is payable if the application is lodged within the prescribed time, however late fees apply if the application is lodged after that time.

Generally the appointment of a public officer is made by the association's committee of management. The rules of an association can provide for particular procedures to be followed. Where the rules are silent, the appointment is made at a meeting of the committee.

Where the public officer is notifying CBS of a change of residential or postal address only, there is no need for the committee to authorize the change. The form is simply completed giving particulars of the change of address and signed by the public officer. Where the change being notified is a change of public officer, the application must acknowledge consent by the new (incoming) public officer.

Completing documents and using the association's name

All documents lodged must be clearly printed or typed so they are capable of reproduction by electronic and digital means.

All documents lodged must contain the full and correct name of the association as printed on the Certificate of Incorporation (or they will be returned for correction).



Fees

Particulars of the fees referred to in this fact sheet are set out in the association fee schedule.

Additional Resources

How to incorporate: guidance and direction through the basic steps when considering incorporating.

Example of Rules: for an Incorporated Association.

Administration of affairs: Information to assist in the running of an incorporated association and to explain some of the account keeping and audit requirements of the Associations Incorporation Act 1985. It also includes information about required qualifications of an auditor.

Dealing with suspected breaches: Provides guidance in relation to suspected breaches of the *Associations Incorporation Act 1985*.

If you require any additional information or copies of the above fact sheets please refer to the CBS website www.cbs.sa.gov.au

How to contact Consumer and Business Services

| | |
|------------------|--|
| Online | www.cbs.sa.gov.au/contact |
| Email | associations@sa.gov.au |
| Post | Registration Unit GPO Box 1719 ADELAIDE SA 5001 |
| Phone | 131 882 |
| In person | Customer Service Centre 91 Grenfell Street Adelaide SA 5000 |

Translating & Interpreting Service Phone: 131 450

