

How to incorporate

Under the Associations Incorporation Act 1985

Welcome to the guide to incorporating your association

You can form an association for many reasons, but, if you want it to continue to develop and grow after your involvement with it has finished, how can you achieve that? The *Associations Incorporation Act 1985* provides for a wide range of 'purpose' categories which would make your association eligible for incorporation (and includes for example, sporting clubs, religious or other community groups). For a full list of eligibility purposes please refer to the 'Can we incorporate?' section on page two. An incorporated association offers a number of advantages. Perhaps, most importantly, it has an independent existence at law, and it can continue to do what it was set up for long after its original members have gone. So, how do you incorporate an association?

This booklet is designed to provide you with guidance and direction through the basic steps when you are considering incorporating. It explains the more significant benefits of incorporation, outlines the responsibilities that go with incorporation, and gives pointers on where to get more information if you need it.

Consumer and Business Services (CBS) sincerely wishes to thank the South Australian Council of Social Services (SACOSS), the Australian Charities and Not-for-profits Commission (ACNC) and the Office for Recreation, Sport and Racing (ORSR), for their support and input in the development of this factsheet. We hope that, in the following pages, you will find the answers to some of your questions about incorporation. If you need further assistance, please visit the CBS website at www.cbs.sa.gov.au or call us on [131 882](tel:131882).

What is incorporation?

Groups of people come together in an organised way for many purposes. Incorporating separates the individual person (member) from the entity. Incorporation makes the group of people (body), a single legal entity with certain rights and legal protections as well as some additional obligations.

Those that do not incorporate are known as unincorporated associations and their status under the law is quite ambiguous. Incorporation does have some major benefits for the larger groups that are active in our community.

For most not-for-profit organisations in South Australia, incorporation under the [Associations Incorporation Act 1985](#) (the Act) is the best option and is the focus of this factsheet. The Act is regulated by CBS which incorporates and administers the Corporate Affairs Commission.

Forms of incorporation include legislation covering very specific activities such as the Community Housing Providers (National Law) (South Australia) Act 2013 to the *Commonwealth Corporations Act* that regulates the activities of the entire commercial sector as well as a small number of not-for-profit organisations. If you think your group may be better served by registering for corporate structure under another act, you should seek independent legal advice.



Can we incorporate?

Wide ranges of associations are eligible for incorporation. Section 18(1) of the Act sets out the eligible purpose criteria and the association must fall into one of the following 'purpose' categories:

- for a religious, educational, charitable or benevolent purpose; or
- for the purpose of promoting or encouraging literature, science or the arts; or
- for the purpose of providing medical treatment or attention or promoting the interests of persons who suffer from a physical, mental or intellectual disability; or
- for the purpose of sport, recreation or amusement; or
- for the purpose of establishing, carrying on or improving a community centre or promoting the interests of a local community or section of the local community; or
- for conserving resources or preserving any part of the environmental, historical or cultural heritage of the State; or
- for the promoting the interests of students or staff of an educational institution; or
- for political purposes; or
- the purpose of administering any scheme or fund for the payment of superannuation or retiring benefits to the members of an organisation or employees of any body corporate, firm or person; or
- for the purpose of promoting the common interests of persons who are engaged in, or interested in, a particular business, trade or industry; or
- for any purpose approved by the Minister of Corporate Affairs.

If your organization does not fit into one of the criteria above, you may wish to seek independent legal advice as to the best corporate structure that would suit the way you operate. Unless approved otherwise, an association will not be incorporated if its purpose is to make profit for its members or to engage in trade or commerce.

Should we incorporate?

Generally, once the group starts to accumulate money and assets and starts to become active in the community, it should seriously consider the structure of the group in a way that separates the individual person (member) from the legal entity of a body corporate (the incorporated association).

The benefits of incorporating your association include:

- Simplifies and clarifies the management and ownership of the money and other assets of the incorporated association. Bank accounts are held in the name of the association. Assets are purchased and owned by the association. The association can enter into contracts.
- Provides some legal and financial protection for the management committee of the association who otherwise might be liable for damages arising from the activities of the association. If your group doesn't incorporate, it has no separate legal existence. If you incur legal liabilities under a contract, such as for rent or for an employee, or any other way, such as an accident not covered by insurance then the members of the committee could be personally responsible for the debts. Incorporation protects committee members from most personal liability but leaves them with the responsibility to act honestly and prudently.

- Clarifies and formalises the objectives of the association. To become incorporated, the association must state clearly the purposes for which it is being formed. The purposes, frequently known as the objects of the association, are fixed in the rules of the association (also known as the constitution). The regulating body (CBS) must be advised of any changes eg to the rules or a change of public officer etc.
- Regulates how the association shall operate. The association's rules should be designed to ensure that the association operates fairly, responsibly and accountably to its members.
- Protects against dishonesty and conflict of interest decision making processes which must be in the best interests of the association and its members
- Allows an organisation to apply for a much wider range of public and private funding. Many government and philanthropic organisations make it a basic requirement that applicants for funding are incorporated.
- Allows some incorporated bodies to gain state-based tax advantages.
- Please note that this factsheet focuses on South Australian incorporated associations; for Commonwealth purposes, the Australian Charities and Not-for-profits Commission (ACNC) is the responsible body for regulating charities. Not all incorporated associations are entitled to registration as a charity; however, your organisation must be registered with the ACNC to apply for charity tax concessions. Further information is available at www.acnc.gov.au.
- As mentioned earlier an incorporated association is a separate legal entity for tax purposes and is required to pay any relevant taxes and abide by all relevant laws. Some associations may be entitled to tax concessions and exemptions (particularly if they are "charitable" bodies). Advice from the Australian Taxation Office, ACNC or independent legal advice may be needed for this.

Considering the benefits incorporation provides within the Act, the cost for incorporation is a worthwhile investment.

The process of incorporation involves some work for the association in drafting a set of rules, completing the necessary application form and meeting other requirements. This factsheet is designed to provide you with guidance and direction through the basic steps when you are considering incorporating your association.

Once incorporated, there are some regular compliance tasks required such as the keeping of records, holding of elections, submitting of periodic returns and any other requirements as set out in the rules of the association. Submission of periodic returns are only required by prescribed associations.

A 'prescribed association' is defined in section 3 of the Act as an incorporated association that has had gross receipts, in the previous financial year, which are in excess of \$500,000.

'Gross receipts' of an incorporated association means the total amount of the receipts of the association including any grant or subsidy paid to or on behalf of the association but does not include:

- any money received by way of a membership fee; or
- subscription, levy or other fee, if any, paid by a member; or
- a payment as a devise or bequest; or
- a payment from the sale of any of the association's assets that had not been originally purchased by the association for the purpose of resale.



Formation meeting

To commence the path to incorporation the group of interested people must first hold a meeting to authorise a person to act on their behalf to apply for incorporation.

This person may be appointed as the association's first Public Officer. Their initial duties could be to develop the name of the association, complete the application form and develop the association rules in consultation with the association's members.

Your association's public officer

An incorporated association must appoint a public officer in accordance with the Act. The public officer must be a person (not a company, trust or partnership) of or above the age of 18 years and be a resident of South Australia. Ideally the person will be closely associated with the association. The public officer performs an important role within an incorporated association, acting as the central contact person for the association. Any notice or other document can be served on an incorporated association by serving it on its public officer. The public officer must sign all forms and periodic returns (periodic returns are for prescribed associations only) lodged with CBS.

Failure to have a public officer is a breach of the Act and can mean penalties being imposed against the association. In most cases, the public officer is a member of the association; however this is not a requirement. It is common for a public officer to have other responsibilities within the association, such as being a member of the committee of management. An information factsheet outlining the role of a public officer, 'Public officer responsibilities', is available via the CBS website at www.cbs.sa.gov.au

Your association's name

The name of your association should reflect the association's nature, object and purpose.

It would be considered unsuitable if the chosen name:

- is misleading as to the nature, objectives or purpose of the association
- is a name that may be confused with the name of another incorporated association or other body corporate
- is a registered business name or may be confused for a registered business name
- is a name that is identical to a name reserved or registered under the Corporations Act
- does not contain the word 'Incorporated' or the abbreviation 'Inc.' at the end of its name
- contains a restricted word or is an undesirable name or does not conform with any direction of the Minister relating to incorporated associations. A factsheet regarding the current '[Restricted and undesirable names](#)' is available from the CBS Website.

To apply for Ministerial Consent to register a name that contains a restricted word, an application must be lodged together with a written submission by the association outlining the reasons why it believes the Minister should approve the proposed name. An additional fee (see Associations Fee Schedule) must accompany the application and submission and must be forwarded to CBS.

To check the possible availability of an intended name, first search the Australian Securities and Investments Commission (ASIC) website at: [Organisation and Business Names search](#) .



Rules for your incorporated association

An incorporated association must have its own set of rules that govern the day-to-day management or governance of the association. A copy of the rules (also known as a constitution) must be lodged with CBS. The association's rules should be accessible to all its members free of charge. Many associations as a matter of policy provide their members with a personal copy of the rules and have found that this helps with the effective management of the association.

The association's rules are also available to members of the public from CBS via the ['Request a document'](#) portal and the payment of a fee.

Being incorporated also requires that some information is regularly made available to the CBS and to the public about the affairs and operations of the association.

An association may develop its own rules and there are specific matters that must be provided for in the rules in accordance with the Act. The association's rules must cover the following matters:

- the name of the association
- the objects or purpose of the association
- membership (if there are members) including types of:
 - membership
 - subscriptions
 - resignations
 - register of members
 - expulsions
- the powers, duties and manner of appointment of the committee, including the:
 - composition of the committee
 - terms of office of members of the committee
 - notice of proposed appointments/elections to the committee
 - filling of casual vacancies occurring on the committee
 - proceedings of committee
 - disqualification of committee members
- appointment of an auditor of a 'prescribed association'
- the calling of and procedure at meetings, including:
 - annual general meetings
 - special general meetings
 - notice of meetings
 - proceedings at meetings
 - voting at meetings
 - poll at meetings
 - special and ordinary resolutions
 - whether members are entitled to vote by proxy
- who has the management and control of the funds and other property of the association
- the powers of the association and by whom and in what manner they are exercised
- the manner in which the rules of the association may be altered
- the dissolution/ winding up of the incorporated association

The rules include the association's by-laws or ordinances other than those dealing only with "...personal dress or behaviour, practices, procedures or other matters that are of a religious, ceremonial or doctrinal nature..." and must be lodged with CBS. ALL rules (including those by-laws re dress etc that don't need to be lodged) are binding on the association and members.

The rules must not contain any provision that is contrary to or inconsistent with the Act.

Once completed, the agreed version of the rules must be submitted to CBS with an 'Application for Incorporation' via the '[How to incorporate an association](#)' application portal. A copy of the rules must be kept for the association's records.

To assist associations to develop a sound and effective set of rules, CBS has produced an 'Example of rules for an incorporated association' factsheet and an application checklist which are both available from www.cbs.sa.gov.au. Associations should read the example rules carefully and include them where required with additional information to suit the needs of the particular association and to ensure they comply with their obligations under the Act.

As there are a number of sporting clubs that are incorporated associations, CBS and the Office for Recreation, Sport and Racing have produced a template set of rules which comply with the Act while supporting clubs with the 'sport element'. Please refer to the additional resources section at the end of this factsheet for a link to their template.

Committee of management

The way in which an association operates is largely governed by its rules.

Generally the rules will provide for members of the association to elect a committee of management. The management of the affairs of the association rests with the committee. In addition to providing for a Chairperson, the rules often provide for the committee to include a Secretary, Treasurer and the Public Officer. Sometimes these positions are given different titles e.g. President instead of Chairperson, and the roles and responsibilities of these officers are usually set out in the association's rules.

The Chairperson usually presides at meetings of members of the association and of the committee (unless the association rules state otherwise).

The Secretary is usually responsible for all general correspondence. He or she should maintain adequate correspondence files and bring relevant correspondence before the committee for consideration and may do other duties as defined in the association's rules such as maintaining the minutes of meetings or maintaining the register of association members.

The Treasurer attends to the banking of the association's income and recording transactions in the association's books and records. He or she should provide regular financial reports to the committee. The Treasurer should also prepare the association's financial reports and statements for consideration and adoption by the committee before they are presented to members.

In bigger organisations with professional staff, some of the duties of these office bearers may be done by staff. This may be set out in the rules (e.g. “the Executive Officer shall ...”), or by formal delegation (e.g. through a job description or decision of the committee – provided it does not contradict the Act or the rules of the association) or informally with the Secretary or Treasurer retaining formal oversight but with day-to-day tasks done by staff.

The Public Officer is the nominated point of contact for the incorporated association and by serving a notice or correspondence on the Public Officer it is deemed to be served on the association. The Public Officer is approved under the Act and their responsibilities may not be delegated to another person.

Complete and lodge the form

Complete the ‘Application for Incorporation of an Association’ application form which includes a checklist for the association rules. Use the checklist as a guide to draft your own association’s rules. The final rules agreed by the membership must accompany the application for incorporation.

What the application form must include:

- the name and objects of the association
- the purpose of the proposed association
- the eligibility of the association (section 18 of the Act)
- the declared financial year
- the place at which the books of the association are kept (including the Minute books and financial records)
- the proposed rules of the association
- a completed rules checklist
- the details and consent of the first Public Officer
- Contact details which include the best email address and phone number to contact the association.

Lodge the application

Lodgement of the online application form together with the proposed rules must be made to CBS. If the application is deemed to be deficient it will be returned to the lodging party for amendment. The fee must be paid at the time of lodgement. The fees are indexed each year from 1 July.

Assessment and certificate of incorporation

If all requirements have been met in line with the Act, CBS will approve the incorporation.

A certificate of incorporation will be issued once the application is approved. You can generally expect the certificate to be issued in about 14 days. The certificate is evidence of the association’s body corporate status and should be kept secure. It will be needed to open bank accounts or to access grants from certain funding agencies.



Statutory obligations

The *Associations Incorporation Act 1985* stipulates many different obligations upon an incorporated association. For example, an incorporated association must hold an annual general meeting at least once in each calendar year.

Annual general meeting

A prescribed association must have its first annual general meeting within 18 months of the date of incorporation and within six months after the expiration of the first financial year of the association. The second and any subsequent annual general meeting must be held within five months after the end of the incorporated association's financial year. All other registered non-prescribed associations would have their annual general meeting as determined by their rules.

Financial obligations

Associations with gross receipts in excess of \$500,000 are required to lodge with CBS a Periodic Return, financial accounts, a committee statement, a committee report and a copy of the auditor's report. These documents and the appropriate fee should be lodged within six months of the end of the association's financial year (Late fees apply if lodged after that time.). The public officer must submit the Periodic Return as part of the online lodgement.

Please note: From January 2017, if your prescribed association is registered with the [Australian Charities and Not-for-profits Commission](#) (ACNC) and you meet your financial reporting obligations to them; you are not required to lodge an additional periodic return with CBS. Associations will still be regulated under the *Associations Incorporation Act 1985* and as such will still be required to notify CBS of changes such as public officer details and the registration of an alteration to the association's rules. If you do not register with the ACNC then you will need to submit separate reports to CBS as a prescribed association and charity (if applicable) in the future.

An incorporated association also has a number of other obligations, they include the requirement to:

- ensure that the association's full name appears in legible characters on all official documents, including business letters, accounts, official notices, publications (including the association's website or a social media platform), cheques and receipts. The word 'Incorporated' may be abbreviated to 'Inc.'
- have a common seal (i.e. a rubber stamp with the full name of the association on it) that serves as a signature of the association ensures that the association acts in accordance with its objects and rules
- notify CBS if the position of public officer becomes vacant, and appoint a new public officer within one month (late fees apply after one month)
- ensure that proper accounting records are kept which correctly record and explain the transactions of the association and its financial position
- ensure that minutes of all committee and general meetings are kept
- ensure that the association must not incur debts if there are reasonable grounds to expect that the association will not be able to pay all its debts as and when they fall due
- ensure that the association does not do any act with intent to defraud creditors or any other person

Fundraising

Many incorporated associations will fundraise to enable them to operate and achieve their objectives as set out in the association's rules. Your association must be aware of other legislation that may affect your fundraising capacity and include:

- *Collections for Charitable Purposes Act 1939* (CCP Act) and the associated Charities Code of Practice.

Incorporated associations that collect as a charity must have a CCP Act section 6 licence from CBS if they meet one of the charitable purposes as set out in the CCP Act.

You are automatically licensed to collect for a charitable purpose in South Australia if you are registered with the ACNC and you have notified Consumer and Business Services (CBS) of this.

For example an association that is a charity could also appeal for donations from the general public or from businesses. Donations don't need to be confined to money; they can include goods and services, such as perishable and non-perishable items, blankets, and computers or specialised labour skills. Cash donations to volunteer organisations are generally tax-deductible, which adds further incentive for a person or group to make a contribution. Incorporated associations must register for deductible gift recipient status through the Australian Taxation Office (ATO) for this benefit to apply.

For Local Government requirements regarding street fundraising you must also check with your local council. For Commonwealth requirements the ACNC is a valuable resource.

- *Lottery and Gaming Act 1936*

Funds raised for the incorporated association through any lottery can only be used for the objects of the registered association in line with their rules and not contrary to the *Associations Incorporation Act 1985*.

A major lottery licence from CBS is needed where a fundraiser, conducted by an association, has a total value of all prizes more than \$5,000. Under this amount a licence is not required, although if you wish to run a bingo fundraiser you would require an appropriate bingo licence. Please note the funds raised can't be used to benefit a member of the association.

- All fundraising must be recorded in the association's financial records and must be reported on in line with the association's rules and their obligations under the Act.

Investigations

CBS has powers to investigate some complaints made about organisations or possible wrong-doing. CBS gives priority to complaints according to the seriousness of the conduct identified and will assess matters and take enforcement action in line with the [Compliance and Enforcement Policy 2018-2020](#). The factsheet '[Dealing with suspected breaches](#)' provides more detail into what CBS does or does not investigate.

CBS does not investigate matters such as association's rules as these are an internal document used for the administration and governance of the association. Similarly, internal disputes between members, matters that occurred more than 3 years ago or any theft-related incidents that don't relate specifically to a breach of the Act must be dealt with by the association itself.

CBS has a responsibility to the public to ensure an incorporated association acts in an honest and diligent manner and that they are maintaining accurate accounting records. CBS also recommends proper minute taking at meetings which assists in the proper management of the association, providing clear records of the actions taken. These may also be used should an investigation be required.



Additional Resources

All associations should have a copy of the *Associations Incorporation Act 1985*, the *Associations Incorporation Regulations 2008*, 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.

The following factsheets are available from the CBS website: www.cbs.sa.gov.au

- **Example of Rules: For an incorporated association.**
- **Public officer responsibilities:** Information that outlines the role of the public officer and required duties.
- **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 Act and includes information about required qualifications of an auditor.
- **Dealing with suspected breaches:** Provides guidance in relation to suspected breaches of the Act.

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

Australian Charities and Not-for-profits Commission (ACNC)

The ACNC is a useful resource for national obligations in relation to charities and their information is located here: www.acnc.gov.au

Office for Recreation, Sport and Racing (ORSR) templates:

ORSR have developed constitution templates (proposed rule templates) for sporting clubs in conjunction with CBS which may be useful in developing rules for your organization. ORSR template rules for incorporate sporting associations are available here: [ORSR template rules](#) and should you require further sporting governance support additional information is located here: www.orsr.sa.gov.au

South Australian Council of Social Service (SACOSS)

SACOSS is a non-government organization that provides valuable support in relation to health and community services and their information is located here: www.sacoss.org.au

