

Example of Rules for an Incorporated Association

Under the Associations Incorporation Act 1985

This factsheet outlines an example set of rules for an incorporated association in accordance with section 23A of the [Associations Incorporation Act 1985](#) (*the Act*) and are provided for guidance only.

Disclaimer of Liability

The information contained in this document has been prepared to provide guidance in developing rules for an incorporated association. Consumer and Business Services (CBS) is not providing legal advice and disclaims any liability arising from the use of this document. Members of the committee and other officers should familiarise themselves with the Act and Regulations and seek professional advice when applying it to their own situation.

Rules

The rules of an incorporated association are sometimes called the constitution of the association. Under the Act the correct term is 'Rules' and the legislative requirements are set out in section 23A of the Act, which outlines the content that must be included in the rules of an 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.

Each rule needs to be considered as to its appropriateness and regard should be given to the nature and objects of your particular association. Subject to complying with the requirements of section 23A of the Act, the members of an incorporated association have a wide discretion in determining how the rules of the association are laid out and what they contain.

Once completed, the agreed version of the rules must be submitted to CBS for registration. A copy of the rules must be kept for the association's records.

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). Please remember to reference the checklist for the proposed rules of the association to ensure your association complies with the Act. Once incorporated, should the association wish to alter their rules, an additional application to vary the rules is required.

The following pages will cover each element of an incorporated association's rules and are provided as guidance only. You should seek independent legal advice if you believe that the example rules do not fit the structure or operation of your proposed association. Please note that CBS does not provide legal advice in relation to incorporated associations.

Example Rules

An example is provided in the shaded areas below.

1 Name

State the name of your association in full.

The name of the incorporated association is, referred to herein as 'the association'.

Section 20(1)(c) of the Act imposes restrictions on the use of names. As a general guide the name should not be misleading, confusing or undesirable. For example: If the association is a sub-branch, they will require approval from the parent body. The name of the association cannot be the same as a registered business name or registered body corporate.

2 Definitions

List terms or phrases used in your rules and state a meaning for each. This rule is optional but is recommended to ensure accurate interpretation of the incorporated association rules.

'Committee' means the committee of management of the association

'General meeting' means a general meeting of members of the association convened in accordance with these rules

'Member' means a member of the association

'Month' shall mean a calendar month

'Special Resolution' means a special resolution defined in the Act

'the Act' means the *Associations Incorporation Act 1985*

'the Regulations' means *Associations Incorporation Regulations 2008*

3 Objects or purposes of the association

Specify the objects or purposes of your association. They must conform to section 18(1) of the Act.

The objects of the association are...

...to promote and encourage members to play cricket

...to promote the sport of cricket throughout the general community

4 Powers of the association

For the purposes of carrying out the objects of the association, your association may wish to add further powers to those contained in section 25 of the Act or limit the powers in relation to your objects. The limit to the powers could be the way the association's money can be invested or limit the amount of borrowings by the association. If additional powers are needed, these could be listed for example: The powers of the association are subject to section 25 of the Act and in addition, the committee may employ or dismiss a person engaged by the association.

The powers of the association are subject to section 25 of the Act and... (list the details under this rule).

or

The association may choose to include the powers as per the Act in full without additional text by using the following sentence.

The association shall have all the powers conferred by section 25 of the Act to further the objects of the association.

Please be mindful that no rule may be contrary to the Act.

5 Membership

5.1 Types

Your association may have more than one type of membership e.g. ordinary member or a social member. If so, insert a separate sub-clause describing each class of membership and how an applicant becomes eligible for each class.

Ordinary Member

Any person who, (specify any qualification for membership e.g. any person who supports the objects of the association and agrees to be bound by its rules) and who applies for membership of the association shall be proposed by one member and seconded by another member. The application for membership shall be made in writing, signed by the applicant and the proposer and seconder. Upon the acceptance of the application by the committee and upon payment of the first annual subscription, the applicant shall be a member of the association.

5.2 Subscriptions

If your association has different types of membership listed in the above membership section, then you must state the subscriptions due for each type.

- a) The subscription fees for membership shall be such sum (if any) as the members shall determine from time to time in the annual general meeting.
- b) The subscription fees shall be payable annually on 1 July or at a time that the committee determines.
- c) Any member whose subscription is outstanding for more than three months after the due date for payment shall cease to be a member of the association, provided that the committee may reinstate such a person's membership on such terms as it thinks fit.

5.3 Resignations

Outline the procedure to be followed should a member wish to resign from your association.

A member may resign from membership of the association by giving written notice to the secretary or public officer of the association. Any resigning member shall be liable for any outstanding subscriptions which may be recovered as a debt due to the association.

5.4 Register of members

A register of members must be kept and contain:

- a) the name and address of each member
- b) the email address of each member
- c) the phone number of each member
- d) the date on which each member was admitted to, or resigned from, the association
- e) the date of and reason(s) for termination of membership (if applicable).

5.5 Expulsion of a member

- a) Subject to giving a member an opportunity to be heard or to make a written submission, the committee may resolve to expel a member upon a charge of misconduct detrimental to the interests of the association.
- b) Particulars of the charge shall be communicated to the member at least one month before the meeting of the committee at which the matter will be determined.
- c) The determination of the committee shall be communicated to the member, and in the event of an adverse determination the member shall, (subject to 5.5d below), cease to be a member 14 days after the committee has communicated its determination to the member.
- d) It shall be open to a member to appeal the expulsion to the association at a general meeting. The intention to appeal shall be communicated to the secretary or public officer of the association within 14 days after the determination of the committee has been communicated to the member.
- e) In the event of an appeal under 5.5d above, the appellant's membership of the association shall not be terminated unless the determination of the committee to expel the member is upheld by the members of the association in general meeting after the appellant has been heard by the members of the association, and in such event membership will be terminated at the date of the general meeting at which the determination of the committee is upheld.

6 The committee

6.1 Powers and duties

- a) The affairs of the association shall be managed and controlled by a committee which, in addition to any powers and authorities conferred by these rules, may exercise all such powers and do all such things as are within the objects of the association, and are not by the Act or by these rules required to be done by the association in general meeting.
- b) The committee has the management and control of the funds and other property of the association.
- c) The committee shall have authority to interpret the meaning of these rules and any other matter relating to the affairs of the association on which these rules are silent.
- d) The committee shall appoint a public officer as required by the Act

Notice of appointment and any change in the identity or address of the public officer must be lodged within one month after the change (with CBS).

6.2 Appointment

- a) The committee shall be comprised of a chairperson, secretary, treasurer and five committee members.

The association should settle on a workable number of office holders, and various titles may be used to describe them.

- b) A committee member shall be a natural person.

- c) The first committee of the association shall be appointed from the promoters of the association, or be comprised of such persons as hold office prior to incorporation. The first committee shall hold office until the first annual general meeting after incorporation. At this time, one half of the members of the committee, who shall be chosen by ballot, shall retire from the committee. At each subsequent annual general meeting one half of the members of the committee, being the longest serving members, shall retire.

The association may wish to provide for a different procedure, e.g. that all committee positions shall be subject to re-election at each AGM.

- d) A retiring committee member shall be eligible to stand for re-election without nomination. No other person shall be eligible to stand for election unless a member of the association has nominated that person at least 28 days before the meeting by delivering the nomination of that person to the secretary of the association. The nomination shall be signed by the proposer and by the nominee.
- e) Notice of all persons seeking election to the committee shall be given to all members of the association with the notice calling the meeting at which the election is to take place.
- f) The committee may appoint a person to fill a casual vacancy, and such a committee member shall hold office until the next annual general meeting of the association and shall be eligible for election to the committee without nomination.

6.3 Proceedings of committee

- a) The committee shall meet together for the dispatch of business at least monthly.

The association should settle on how often meetings are to be held.

- b) Questions arising at any meeting of the committee shall be decided by a majority of votes, and in the event of equality of votes the chairperson shall have a casting vote in addition to a deliberative vote.

Please note a casting vote is optional

- c) A quorum for a meeting of the committee shall be one half of the members of the committee.
- d) A member of the committee having a direct or indirect pecuniary interest in a contract or proposed contract with the association must disclose the nature and extent of that interest to the committee as required by the Act, and shall not vote with respect to that contract or proposed contract. The member of the committee must disclose the nature and extent of his or her interest in the contract at the next annual general meeting of the association.

6.4 Disqualification of committee members

The office of a committee member shall become vacant if a committee member is:

- disqualified from being a committee member by the Act
- expelled as a member under these rules
- permanently incapacitated by ill health
- absent without apology from more than four meetings in a financial year
- no longer the duly appointed representative of a corporate member

7 The seal

You can obtain a common seal from a rubber stamp maker. Section 26(1)(a) deals with contracts made under common seal. Section 63(5) deals with documents bearing the common seal.

The association shall have a common seal upon which its corporate name shall appear in legible characters.

The seal shall not be used without the express authorisation of the committee, and every use of the seal shall be recorded in the minute book of the Association. The affixing of the seal shall be witnessed by

...witnessed by e.g. the chairperson and the secretary.

8 Meetings

8.1 Annual general meetings

- a) The committee shall call an annual general meeting in accordance with the Act and these rules.
- b) The first annual general meeting shall be held within 18 months after the incorporation of the association, and thereafter within five months after the end of its financial year.
- c) The order of the business at the meeting shall be:
 - the confirmation of the minutes of the previous annual general meeting and of any special general meeting held since that meeting
 - the election of committee members
 - the appointment of auditors (if required - see rule 11.5)
 - the consideration of the accounts and reports of the committee and the auditor's report (if auditor's report is required)
 - any other business requiring consideration by the association in a general meeting

8.2 Special general meeting

- a) The committee may call a special general meeting of the association at any time.
- b) Upon a requisition in writing of not less than 5% of the total number of members of the association, the committee shall, within one month of the receipt of the requisition, convene a special general meeting for the purpose specified in the requisition.

In some cases a lesser or greater percent may be appropriate or it may be on requisition of a specific number of members.

- c) Every requisition for a special general meeting shall be signed by the relevant members and shall state the purpose of the meeting.
- d) If a special general meeting is not convened within one month, as required by 8.2b above, the requisitionists, or at least 50% of their number, may convene a special general meeting. Such a meeting shall be convened in the same manner as nearly as practical as a meeting convened by the committee, and for this purpose the committee shall ensure that the requisitionists are supplied free of charge with particulars of the members entitled to receive a notice of meeting. The reasonable expenses of convening and conducting such a meeting shall be borne by the association.

8.3 Notice of general meetings

- a) Subject to 8.3b, at least 14 days notice of any general meeting shall be given to members. The notice shall set out where and when the meeting will be held, and particulars of the nature and order of the business to be transacted at the meeting.
- b) Notice of a meeting at which a special resolution is to be proposed shall be given at least 21 days prior to the date of the meeting.
- c) A notice may be given by the association to any member by serving the member with the notice personally, or by sending it by email or post to the address appearing in the register of members. (See rule 5.4).
- d) Where a notice is sent by post:
 - the service is effected by properly addressing, prepaying and posting a letter or packet containing the notice, and
 - unless the contrary is proved, service will be taken to have been effected at the time at which the letter or packet would be delivered in the ordinary course of post.

8.4 Proceedings at general meetings

- a) Ten members present personally or by proxy shall constitute a quorum for the transaction of business at any general meeting.

A lesser or greater number may be appropriate depending upon the size of the membership.

- b) If within 30 minutes after the time appointed for the meeting a quorum of members is not present, a meeting convened upon the requisition of members shall lapse. In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place and if at such adjourned meeting a quorum is not present within 30 minutes of the time appointed for the meeting the members present shall form a quorum.
- c) Subject to 8.4d, the chairperson shall preside as chairperson at a general meeting of the association.
- d) If the chairperson is not present within five minutes after the time appointed for holding the meeting, or he or she is present but declines to take or retires from the chair, the members may choose a committee member or one of their own number to be the chairperson of that meeting.

8.5 Voting at general meetings

- a) Subject to these rules, every member of the association has only one vote at a meeting of the association.
- b) Subject to these rules, a question for decision at a general meeting, other than a special resolution, must be determined by a majority of members who vote in person or, where proxies are allowed, by proxy, at that meeting.
- c) Unless a poll is demanded by at least five members, a question for decision at a general meeting must be determined by a show of hands.
- d) A member being a body corporate shall be entitled to appoint one person, who shall not be a member of the association, to represent it at a particular general meeting or at all general meetings of the association. That person shall be appointed by the corporate member by a resolution of its board, which may be authenticated under its seal. Such a person shall be deemed to be a member of the association for all purposes until the authority to represent the corporate member is revoked.

8.6 Poll at general meetings

- a) If a poll is demanded by at least five members, it must be conducted in a manner specified by the person presiding and the result of the poll is the resolution of the meeting on that question.
- b) A poll demanded for the election of a person presiding or on a question of adjournment must be taken immediately, but any other poll may be conducted at any time before the close of the meeting.

8.7 Special and ordinary resolutions

- a) A special resolution as defined in the Act.
A clause can be included repeating the definition in section 3 of the Act.
- b) An ordinary resolution is a resolution passed by a simple majority at a general meeting.

8.8 Proxies

A member shall be entitled to appoint in writing a natural person who is also a member of the association to be their proxy, and attend and vote at any general meeting of the association.

Only include this clause if members are allowed to vote by proxy.

9 Minutes

- a) Proper minutes of all proceedings of general meetings of the association and of meetings of the committee, shall be entered within one month after the relevant meeting in minute books kept for the purpose.
- b) The minutes kept pursuant to this rule must be confirmed by the members of the association or the members of the committee (as relevant) at a subsequent meeting.
- c) The minutes kept pursuant to this rule shall be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting at which the minutes are confirmed.
- d) Where minutes are entered and signed they shall, until the contrary is proved, be evidence that the meeting was convened and duly held, that all proceedings held at the meeting shall be deemed to have been duly held, and that all appointments made at a meeting shall be deemed to be valid.

10 Dispute resolution

This rule provides for a procedure to settle disputes. It is not a requirement of the Act however it is prudent to include a process for dispute resolution. The association should determine the relevance of the rule to the operations of the association. This should include what type of disputes to which the rule applies.

- a) The dispute resolution procedure set out in this rule applies to disputes under these Rules between -
 - a member and another member
 - a member and the association

- b) The parties to the dispute must meet and discuss the matter in dispute and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties
- c) If the parties are unable to resolve the dispute at the meeting the parties may choose to meet and discuss the dispute before an independent third person agreed to by the parties.

Section 40 of the Act provides that where the committee exercises any power of adjudication in relation to a dispute between the members, or a dispute between itself and members of the association, the rules of natural justice must be observed.

Section 61 of the Act provides that an application to the Court for an order under this section may be made by a member of an incorporated association or by a former member expelled from the association (provided that the application is made within six months of the expulsion), who believes that the affairs of the association are being conducted in a manner that is oppressive or unreasonable.

11 Financial reporting

11.1 Financial year

This rule applies to all associations.

The first financial year of the association shall be the period ending on the next 30 June following incorporation, and thereafter a period of 12 months commencing on 1 July and ending on 30 June of each year.

If the association wants a different financial year the relevant dates should be inserted. Refer to section 3 of the Act for definition of 'financial year'.

11.2 Accounts to be kept

This rule applies to all associations.

The association shall keep and retain such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the association in accordance with the Act.

Refer to regulation 8 of the *Associations Incorporation Regulations 2008*.

11.3 Accounts and reports to be laid before members

This rule applies to a prescribed association; however, it may be adopted for an association that is not prescribed.

The accounts, together with the auditor's report on the accounts, the committee's statement and the committee's report, shall be laid before members at the annual general meeting.

Refer to section 35(6) of the Act.

11.4 Periodic returns

This rule only applies to a prescribed association.

Refer to section 3 of the Act for the definition of a 'prescribed association'. As a general description, a prescribed association is one that had gross receipts, excluding member subscriptions, in excess of \$500,000 in the previous financial year.

The periodic (annual) return shall be lodged with the Consumer and Business Services within six months after the end of each financial year. It must be accompanied by a copy of the accounts, the auditor's report, the committee's statement, and the committee's report.

Refer to section 36(1) of the Act.

11.5 Appointment of auditor

This rule applies to a prescribed association; however, it may be adopted for an association that is not prescribed.

a) At each annual general meeting, the members shall appoint a person to be auditor of the association.

Refer to sections 35(2)(b) and 35(4) of the Act for qualifications of auditor.

b) The auditor shall hold office until the next annual general meeting and is eligible for re-appointment.

c) If an appointment is not made at an annual general meeting, the committee shall appoint an auditor for the current financial year.

12 Prohibition against securing profits for members

The income and capital of the association shall be applied exclusively to the promotion of its objects and no portion shall be paid or distributed directly or indirectly to members or their associates except as bona fide remuneration of a member for services rendered or expenses incurred on behalf of the association.

Section 55 of the Act provides a prohibition against securing profits for members.

13 Rules

The Act provides that an alteration to a rule may be made by special resolution of the association unless other provision is made in the rules. Subject to any provision in the rules or a resolution to the contrary, an alteration to the rules comes into force at the time that the resolution is passed. This does not apply to an alteration to the name of the association which does not come into force until registered by CBS.

a) These rules may be altered (including an alteration to the association's name) by special resolution of the members of the association. This includes rescission or replacement by substitute rules.

b) The alteration shall be registered with Consumer and Business Services which administers the Corporate Affairs Commission, as required by the Act.

c) The registered rules shall bind the association and every member to the same extent as if they have respectively signed and sealed them, and agreed to be bound by all of the provisions thereof.

14 Winding up

The association may be wound up in the manner provided for in the Act.

Winding up is normally by the passing of a special resolution by the members of the association and in accordance with the Act.

15 Application of surplus assets

Section 43 of the Act prohibits the distribution of surplus assets at the completion of winding up to members or former members of the association, or associates of those persons. The association may determine to distribute surplus assets to nominated charities.

- a) If after the winding up of the association there remains 'surplus assets' as defined in the Act, such surplus assets shall be distributed to any organisation which has similar objects and has rules which prohibit the distribution of its assets and income to its members.
- b) Such organisation or organisations shall be identified and determined by a resolution of members in general meeting.

Pursuant to section 23A(1) of the Act, the rules of an incorporated association must contain as a minimum the following:

23A —Contents of rules of an incorporated association

(1) The rules of an incorporated association—

- (a) must state the name of the association and set out its objects; and
- (b) must not contain any provision that is contrary to or inconsistent with this Act; and
- (c) must contain provisions that, in the opinion of the Commission, deal with the following matters with sufficient particularity and certainty having regard to the nature and objects of the association:
 - (i) membership in the case of an association that has members;
 - (ii) the powers, duties and manner of appointment of the committee of the association;
 - (iii) the appointment of an auditor in the case of an association that is a prescribed association;
 - (v) the calling of and procedure at general meetings;
 - (vi) who has the management and control of the funds and other property of the association;
 - (vii) the powers of the association and by whom and in what manner they may be exercised;
 - (viii) the manner in which the rules of the association may be altered;
 - (ix) any other matter prescribed by regulation.

...

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

How to incorporate:

Guidance and direction through the basic steps when considering incorporating.

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 *Associations Incorporation Act 1985*. It also includes information about the 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 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

