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INTRODUCTION

PURPOSE OF THIS GUIDE
The purpose of this guide is to support the administration of the Associations Incorporation Act 1991 (the Act) by providing information for applicants and existing associations on their obligations.

This guide also includes some information for associations that have a charitable collections licence or are planning to obtain one, as well as information on exemptions for associations that are charities registered with the Australian Charities and Not-for-profit Commission (ACNC). If your association undertakes or is proposing to undertake charitable collections, and it is not registered with the ACNC, see the Guide to Charitable Collections in the ACT for all your obligations under the Charitable Collections Act 2003.

PURPOSE OF THE LEGISLATION
The purpose of the Associations Incorporation Act 1991 is to provide a simple and inexpensive method for a wide range of not-for-profit organisations to incorporate.

What is incorporation?
Incorporation provides certain benefits through providing a legal entity for an organisation, but it also places obligations on the organisation, particularly committee members.

As a legal entity an organisation is separate and distinct from individual members. This means it can:

• continue, even though its members may change;
• acquire, hold and dispose of property;
• sue or be sued;
• enter into and enforce contracts in its own name.

There is no requirement for an organisation or association to incorporate.

Access Canberra cannot advise on whether an organisation should incorporate. Fact sheets on incorporation are available on the Justice Connect website or organisations may wish to seek independent advice.

WHO TO GO TO – REGULATOR ROLES

Associations
Access Canberra is responsible for the administration of the Act, including incorporating associations, maintaining the public register and ensuring incorporated associations meet their reporting requirements.

Information in this guide distinguishes between two types of incorporated associations:
1. associations that DO NOT have a charitable purpose and DO NOT hold a charitable collection licence. Most of the information in this guide relates to these associations; and

2. associations that HAVE a charitable purpose and:

   a. **are registered with the ACNC.** These associations are exempt from certain requirements of the *Associations Incorporation Act 1991*. This guide provides further information on these exemptions. They are also exempt from requiring a charitable collection licence under the *Charitable Collections Act 2003*.

   b. **are not registered with the ACNC and HOLD a charitable collection licence.** In addition to the requirements in this guide, they also need to meet the requirements of the *Charitable Collections Act 2003*. For further information on these requirements, see the *Charitable Collections Guide*.

**Associations that are registered charities**

As of July 2017, associations that are charities registered with the ACNC are exempt from some parts of the Act, including significantly lessened reporting requirement to Access Canberra.

Under this arrangement, Access Canberra continues to be the regulator responsible for incorporating or winding up an association, while the ACNC is responsible for regulatory oversight of the charity’s operations, including its financial management and governance.

If you are an incorporated association that is also registered as a charity with the ACNC, see Table 1 for further information for when to contact Access Canberra and when to contact the ACNC.
### TABLE 1: REGULATOR ROLES FOR INCORPORATED ASSOCIATIONS AND ACNC CHARITIES

<table>
<thead>
<tr>
<th>I want to:</th>
<th>ACNC</th>
<th>Access Canberra</th>
<th>Additional information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incorporate an association</td>
<td>No</td>
<td>Yes</td>
<td>An entity needs to be incorporated before it can apply to the ACNC to be a registered charity</td>
</tr>
<tr>
<td>Register as a charity for tax purposes</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Change the association’s rules</td>
<td>No</td>
<td>Yes</td>
<td>Change in rules will only be reported to Access Canberra</td>
</tr>
<tr>
<td>Change the association’s name</td>
<td>No</td>
<td>Yes</td>
<td>Access Canberra will advise ACNC of the change in name</td>
</tr>
<tr>
<td>Update the association’s address or contact details</td>
<td>Yes</td>
<td>No</td>
<td>ACNC will tell Access Canberra the charity’s details when they need to know</td>
</tr>
<tr>
<td>Update the association’s responsible persons (committee members)</td>
<td>Yes</td>
<td>No</td>
<td>ACNC will tell Access Canberra the charity’s committee details when they need to know</td>
</tr>
<tr>
<td>Update the association’s public officer</td>
<td>No</td>
<td>Yes</td>
<td>Associations need to notify Access Canberra as the ACNC does not collect information on the Public Officer</td>
</tr>
<tr>
<td>Submit the annual information statement</td>
<td>Yes</td>
<td>No</td>
<td>Associations registered with the ACNC only need to report to the ACNC</td>
</tr>
<tr>
<td>Submit a financial report</td>
<td>Yes</td>
<td>No</td>
<td>Associations registered with the ACNC only need to</td>
</tr>
</tbody>
</table>
**INCORPORATED ASSOCIATIONS IN THE ACT: A GUIDE**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Yes</th>
<th>No*</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revoke a charity registration</td>
<td>Yes</td>
<td>No*</td>
<td>*If the association is no longer running, it will also be cancelled from the Register of Associations with Access Canberra</td>
</tr>
<tr>
<td>Wind up an association</td>
<td>No</td>
<td>Yes</td>
<td>ACNC to revoke the charity’s registration with the ACNC when it winds up</td>
</tr>
<tr>
<td>To amalgamate two ACT associations</td>
<td>No</td>
<td>Yes</td>
<td>After two or more associations have merged, notify the ACNC if the address, responsible persons, rules or name have changed, or if one association was wound up</td>
</tr>
</tbody>
</table>
## I WANT TO:

<table>
<thead>
<tr>
<th>INCORPORATE</th>
<th>OPERATE</th>
<th>CLOSE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Who can incorporate</strong></td>
<td><strong>Documentation</strong></td>
<td><strong>Amalgamation</strong></td>
</tr>
<tr>
<td>• Name and seal</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Member register</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>National incorporation</strong></td>
<td><strong>Financial reports</strong></td>
<td><strong>Winding up</strong></td>
</tr>
<tr>
<td></td>
<td>• Audit</td>
<td>• Cancellation – Voluntary</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Cancellation – Involuntary</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Voluntary wind up – Special resolution</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Voluntary wind up – Court</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Distribution of property</td>
</tr>
<tr>
<td><strong>Applying for ACT incorporation</strong></td>
<td><strong>Responsibilities of Committee members</strong></td>
<td></td>
</tr>
<tr>
<td>• The form</td>
<td>• Compliance</td>
<td></td>
</tr>
<tr>
<td>• What you need to have ready</td>
<td>• Disclosure and conflicts</td>
<td></td>
</tr>
</tbody>
</table>

## APPLICATION PROCESS

### 1. WHO CAN INCORPORATE

Any not for profit group may apply for incorporation in the ACT, if they have at least five members and are formed for a legal purpose.

To be considered non-profit, an organisation cannot:

- trade or obtain financial benefit, or hold capital in the form of shares, for its members;
- hold property where members have an interest that can be sold or transferred;
- be capable of applying for registration under the *Workplace Relations Act 1996 (C’th)*.

### 2. NATIONAL INCORPORATION

Each State and Territory has its own legislation for incorporation of associations.
If an association wants to operate in more than one State or Territory it must register as an Australian Registrable Body and obtain an ARBN (Australian Registrable Body Number) under the Corporations Act 2001 (C’th).

Alternatively, organisations that want to operate in more than one state or territory can incorporate as a company under the Corporations Act (C’th), which is regulated by the Australian Securities and Investments Commission (ASIC).

If an association intends to affiliate with an association incorporated in another jurisdiction, the rules of both associations need to formally indicate that affiliation (see below for discussion of rules). Affiliation does not exempt an association from its reporting requirements in the ACT.

3. APPLICATION PROCESS FOR ACT INCORPORATION

APPLICATION FORM
You can apply and submit everything online.

The following information is to assist with your application.

4. BEFORE YOU APPLY – WHAT YOU NEED TO DO

You will need to:

- reserve a name (optional)
- set out objects and purpose of the organisation
- have rules (or a constitution) for how it will operate
- know the people responsible for the organisation – the applicant, a public officer and a committee.

Reserve a name
An organisation has the option to apply to reserve a name while the association is being formed. There is an application form and a fee. Access Canberra can reserve a name for up to 4 months.

Access Canberra may not accept the name for reservation or incorporation if it is unavailable, offensive, or restricted. Access Canberra can provide further advice on any restrictions.

Objects and purpose
Your application must include the objects and purposes of your organisation and a summary of how you will achieve this (for example: through meetings, social events, fundraising).

The objects and purposes must be consistent with the name chosen for the association. An association will not be incorporated if it has an object that is unlawful.
Rules and constitution

In your application, you need to say whether you are using the model rules. If you are not using the model rules, you will need to attach a copy of your association’s rules to your application.

Associations are not required to use the model rules, but must address all rules in schedule 1 of the Act – see checklist. The rules of an incorporated association must specify the name and powers of the committee. These rules should specify the method of election of committee members and their terms of office, the filling of casual vacancies and the procedures to be followed at committee meetings.

Amended model rules become the association’s own rules and must be lodged with the completed checklist.

Where the rules of an association do not address a situation covered by the model rules, the model rules are taken to apply to that situation. If the rules are amended after incorporation, the new rules must be passed by special resolution and lodged as the constitution of the association with Access Canberra.

Liquor licence

Associations may apply for a liquor licence (usually as a Club liquor licence) or for a liquor permit for an event. However, if a proposed permit-holder is to be a club they must be an eligible club. The definition of an eligible club can be found in section 70 of the Liquor Act 2010. If a Club already holds a licence, a non-commercial permit may only be granted where it can be shown that the event will comply with the constitution, that is, liquor will only be sold to members and invited guests. If a non-commercial permit is unable to be applied for in the club’s name, a commercial permit may be applied for in an individual’s name for the event.

Club licence

If you intend to hold a club licence, your association’s rules must include a clause that enables the club rules to be amended, without vote by members, where the club has been directed by the ACT Gaming and Racing Commission to address an inconsistency with a gaming law. See model clause below:

*The Committee/Board of Directors shall have the power to amend the constitution if directed to do so by the ACT Gambling and Racing Commission under section 148B of the Gaming Machine Act 2004, without the formal consideration of the voting members of the club. Members must be advised of any change to the constitution made under this provision within one month of the change being made.*
RESPONSIBLE PERSONS

Public officer

All incorporated associations must have a public officer, who acts as the contact between the association and Access Canberra.

The application must include the name and address of the inaugural public officer.

The public officer may request that their personal address is kept confidential, but they need to have at least one public address. This could be the association’s address, a post office box or other address.

The public officer must be at least 18 years of age and reside in the ACT. Under the Act, a person who has been convicted of certain offences or is insolvent is restricted from being a public officer – see section 63 for specific restrictions.

Inaugural committee members

All incorporated associations must have a committee of at least three persons.

The application must include the name and address of each committee member. Committee members can request that their address on the public record be kept confidential.

If the association adopts the model rules, the committee consists of three ordinary committee members and four office-bearers of the association: president, the vice-president, the treasurer and the secretary.

Under the Act, a person who has been convicted of certain offences or is insolvent is restricted from being a committee member – see section 63 of the Act for specific restrictions.

AFTER INCORPORATION

DOCUMENTATION

After an association has been incorporated:

- The **name of the association** must appear on all official documents and publications issued by the association or on its behalf and include ‘Incorporated’ or ‘Inc’ at the end.

- The association must have a **common seal** that contains the name of the association and that it is incorporated (as above). It is used as the legal signature as authorised by the committee and the association’s rules. This can be a rubber stamp or adhesive sticker – there are no specific requirements under the Act.

- The application and all **supporting** documents go on the public record. [Upon request, Access Canberra can make this information available to anyone for a fee.]
REGISTER OF MEMBERS
An association must maintain a register of members and make it available for inspection for members at reasonable times or as stated in the rules of the association.

As of 1 July 2017, an association no longer needs to include the place of where members can inspect it in the annual return.

FINANCIAL REPORTS
All committees are accountable to their members for the association’s operations and financial management.

All associations must keep and maintain financial records that explain the association's transactions and its financial position. These records must be maintained in a way that shows the true and fair accounts of the association’s financial affairs and status.

Part V of the Act outlines the specific requirements for associations in relation to financial accounts, audit and annual reports to Access Canberra.

As of July 2017, associations that are charities registered with the ACNC are exempt from all the requirements outlined in Part V and reporting to Access Canberra. Instead, they are required to meet the requirements under the Commonwealth legislation and report to the ACNC.

Audit Requirements
The requirements for the independent review of financial statements will depend on the size of the association – see Table 2.

While the Act may not require a qualified auditor to review the financial statements, associations may still wish to consider having an independent review of their financial statements and appointing a person from outside its membership.

TABLE 2: AUDIT REQUIREMENTS

<table>
<thead>
<tr>
<th>Size of association</th>
<th>Definition</th>
<th>Audit required</th>
<th>Qualifications</th>
</tr>
</thead>
</table>
| Small               | Less than $400,000  
Less than 1000 members  
No liquor licence | No – Provision of financial statements showing income, expenditure, assets and liabilities | Any person who is not an officer* of the association and has not prepared or helped to prepare the accounts |
| Medium              | $400,000 - $1million | Yes | Auditor must be a registered company auditor under the Corporations Act 2001 (C'th) or a current |
**Annual General Meeting**

The annual general meeting (AGM) is to be held within **five months** from the end of the association’s financial year.

Associations that are charities registered with the ACNC are still required to hold the AGM five months from the end of their financial year and will be asked for the date of the AGM in their annual return to the ACNC. They no longer have to meet the following requirements for presenting documents. Instead, they are required to comply with ACNC requirements for accountability to members and financial reporting.

The committee of the association not registered with the ACNC must present the following to members at the annual general meeting:

1. The statement of the association's accounts for the most recently ended financial year
2. A copy of the report for the accounts, if required
3. An annual report signed by two current committee members that includes:
   a. name of each committee member during the financial year
   b. the principal activities of the association
   c. the association’s net profit and loss during that year.

The committee must ensure that the annual statement of accounts is available at least 14 days before the association's AGM to allow members to access the information in the statements.
Annual Return to Access Canberra

An incorporated association must lodge an annual return with Access Canberra within six months of the end of the financial year for that association. This requirement does NOT apply to associations that are registered charities with the ACNC.

The annual return, which can be emailed to accesscanberra.bil@act.gov.au, includes:

- the reviewed or audited statement of the association’s accounts
- a copy of the report for those accounts, and
- the annual return signed by two current members of the committee and the public officer that the association has complied with the Act.

From July 2017, there is no fee for the lodgement of the annual return if it is provided to Access Canberra within six months. Late fees apply for returns lodged with Access Canberra after six months.

If annual returns are not lodged for two years, Access Canberra may cancel the association’s incorporation and seize the assets of the association.

When lodging the annual return, you do not need to lodge separate forms advising of changes to the committee or public officer that occurred at the AGM as these are already included in the annual return.

RESPONSIBILITIES OF COMMITTEE MEMBERS

Compliance with the Act

The committee of the association is responsible for ensuring that annual returns are lodged. Committee members may be prosecuted if they do not take all reasonable steps to ensure the association complies with the Act.

Members Interests – Disclosure and Conflict of Interest

Committee members must disclose to the committee any direct or indirect pecuniary interest that they have in a contract (or proposed contract) that the association is or may be a party to. They should not take part in any decision-making by the committee where they have such an interest.

Conflict of interests may also arise if a relative, friend or associate of the committee member stands to make a financial or other gain or loss from any decision or action taken by the committee.

Failure to discuss a pecuniary interest in a contract may mean the member is liable to the association for any direct or indirect profit, or any damage or loss by the association incurred as a result of the failure to disclose.
REQUIREMENTS TO NOTIFY ACCESS CANBERRA

Associations must notify Access Canberra within one month whenever the committee or public officer changes. This includes changes to committee members or to a committee member’s name and/or residential address.

Note: As of 1 July 2017, associations that are charities registered with the ACNC do not need to notify Access Canberra of changes in committee members (responsible persons). They still need to notify Access Canberra of changes to public officer.

All associations must seek written approval of Access Canberra if it is proposing to invite a person, other than a member of the association or an applicant for membership, to invest money with the association; or receive money from such a person for investment with the association.

SPECIAL RESOLUTION

Under the Act, a special resolution is required to:

- alter the association's rules, objects or purposes;
- change the association's name;
- amalgamate with another association; or
- wind up the association.

Where the Act requires a special resolution, the change won’t be considered valid unless all the requirements for a special resolution are met.

These include:

- A special resolution must be passed at a general meeting of the association.
- At least twenty-one days’ notice of the meeting must be given to the members of the association together with a notice of intention to propose the resolution as a special resolution.
- At the meeting the special resolution must be passed by at least three-quarters of association members who are entitled to vote, either in person or by proxy (if proxy voting is allowed under the rules of the association). It is not required that three quarters of the total membership pass the resolution, only those that attend the meeting or vote by proxy.

DISPUTE RESOLUTION

Internal Disputes

The Act specifically entitles any member to resolve their own disputes either by calling a special/general meeting or through the courts system. The rights and liabilities of members of associations in relation to dispute resolution are set out in the Act.
Association members are encouraged to seek independent legal advice if they have concerns about the management of their association. Alternatively, issues may be resolved with the help of an independent mediator.

Access Canberra does not have any role in the resolution of internal disputes within incorporated associations under the Act.

**Formal Investigation by Access Canberra**

Access Canberra can conduct investigations into the affairs of an association if there are reasonable grounds for believing that an offence under the Act has been committed.

Generally, complaints will not be investigated if:

- they are frivolous or vexatious
- there is insufficient information to investigate the complaint
- it would be more appropriately investigated by another body such as the police
- there is no evidence of any breach of legislation, or
- there is no way of resolving the complaint.

**CLOSING AN ASSOCIATION**

**AMALGAMATION**

Two or more associations that are already incorporated in the ACT can amalgamate as a single association.

Each association must approve the terms of the amalgamation and the objects and rules of the new association by a special resolution.

Once a special resolution has been passed, a joint application should be lodged with Access Canberra to incorporate as a single entity within one month.

**WINDING UP AN ASSOCIATION**

**Cancellation – Voluntary**

An incorporated association may voluntarily cancel its incorporation upon agreement of its members and may be done by special resolution.

Once the association has agreed to cancel its incorporation, it should dispose of any assets to a like-minded organisation. The association cannot distribute its assets, including any money held in bank accounts or elsewhere, among its members. If the constitution provides for distributing assets on cancellation, this should be followed where possible. If not, then a special resolution is needed to nominate an organisation that has similar objects to its own (see Distribution of Property below).
Once the assets are distributed the association can then write to the Registrar-General advising that the association has agreed by special resolution to cancel its incorporation (provide the date of the special resolution) and that it has no assets, liabilities or interest in land. This letter should be signed by at least two committee members or one committee member and the public officer.

Cancellation – Involuntary

Access Canberra can cancel the incorporation of an association if it believes that the association:

- is not in operation
- has fewer than five members
- was incorporated as a result of fraud or mistake
- has not convened an annual general meeting for three years or has not lodged an annual return for two years.

Access Canberra will serve a notice of intended cancellation on the association and publish that notice on the ACT Government public notices website.

An association has two months from the date of notice to show cause why the incorporation of should not be cancelled.

Voluntary Winding Up

An incorporated association may wind up voluntarily following a special resolution of its members.

Voluntary winding up is a more formal and complex process than voluntary cancellation but may be appropriate in certain situations. As winding up is subject to the Corporations Act 2001 (Cwlth), associations considering this option may wish to seek independent legal advice. Access Canberra cannot advise on procedures for winding up an association. Once the winding up process has been completed, the association must advise Access Canberra which will cancel the association’s incorporation.

Voluntary Winding Up – Court

An association may resolve to wind up through the Supreme Court.

The Supreme Court may also wind up an incorporated association if the association:

- does not begin its operations within one year from its date of incorporation, or suspends its operations for more than one year;
- is unable to pay its debts;
- trades or secures pecuniary gain for its members, or does not comply with any other prescribed condition of its association;
- engages in activities outside the scope of its objects; or
- through its committee (or any committee member) has acted in ways that are contrary to the association’s objects or that are unjust or inequitable to association members.
Distribution of property

Any surplus property of an association that remains following the winding up may be vested in another organisation if the recipient association:

- has objects that are substantially similar to the former association;
- does not operate for the purpose of trading or securing pecuniary gain for its members; and
- has provision in its rules requiring its surplus property to be passed to a similar organisation on dissolution or winding up.

The recipient organisation is not required to be an incorporated association. If no fund, authority or institution is nominated, the property is deemed to be vested in the Registrar-General.

Once the winding up process has been completed, the association must advise Access Canberra.

Further information and resources

The ACNC and Justice Connect have further information for non-profit organisations:

- For further information on associations that are charities registered with the ACNC, see www.acnc.gov.au
- Justice Connect’s Ending an organisation, includes information on the legal aspects of winding up.