

The Incorporated Association

What is an Incorporated Association?

- Incorporation is a voluntary, inexpensive way of creating a legal entity.
- It is suitable for community based groups and gives the Association a legal identity that continues despite any changes to its membership.
- Incorporated Associations are not-for-profit organisations, registered by the Office of Consumer Affairs and Fair Trading under the [Associations Incorporation Act 1964](#).

Advantages of Incorporation

An Incorporated Association:

- can operate regardless of changes to its membership.
- can accept gifts and donations.
- can enter into contracts.
- can apply for government grants.
- have the automatic approval to solicit for charitable donations in the state of Tasmania.

Applying for Incorporation

- Call a meeting of the members to decide who will fill the roles of the Committee (Secretary, Public Officer, President, Treasurer).
- Vote upon and approve the associations name.
- Approve the constitution/rules - associations are governed by a set of rules. They can create their own or adopt the [Model Rules](#).
- Complete and lodge the [Application for Incorporation](#).
- Lodge the form together with the constitution/rules and the [fee](#).
- Forms can be lodged:
 - [electronically](#); or
 - by post to GPO Box 1244, Hobart TAS 7001;
 - or in persons at any [Service Tasmania](#) outlet.

The Constitution, Model Rules, Amendments and Non Compliance

- The Constitution is a set of rules or guidelines outlining how the association and its members should operate.
- Consumer Affairs and Fair Trading provides a template constitution, known as the [Model Rules](#). Associations can either adopt or amend the Model Rules.
- Amending an association's constitution is done through the passing of a Special Resolution.
- This is where the association advertises its intent to make changes to its constitution and then holds a Special General Meeting to vote on the changes. If three quarters of the members present at the meeting vote in favour, the changes are passed.

- The Public Officer is required to notify Consumer Affairs and Fair Trading of the amendments within one month by lodging a [Notice of Special Resolution](#), and attaching a copy of the changes.
- Members are expected to abide by the association's constitution.
- Consumer Affairs and Fair Trading does not have the authority to investigate a breach of an association's constitution, or any dispute that may arise between members.
- Any dispute or issues should be dealt with internally or by seeking independent legal advice.

Annual Return

- Associations must lodge an [Annual Return](#) with Consumer Affairs and Fair Trading.
- The Annual Return must contain:
 - an income and expenditure statement;
 - a list of names and residential addresses of the committee members; and
 - an Auditor's Report confirming the accuracy of the income and expenditure statement.
- The Annual Returns can be lodged:
 - [electronically](#); or
 - by post to GPO Box 1244 Hobart TAS 7001; or
 - in person at any [Service Tasmania](#) outlet.
- Some associations are eligible for an [exemption from auditing requirements](#).

Deregistration

- Cancellation of an incorporated association can be requested through a special resolution. The resolution must be approved by the Commissioner for Corporate Affairs and is only available in the following circumstances:
 - The resolution is passed at an annual general meeting or special general meeting.
 - The association is not carrying on operations.
 - The association's assets are worth less than \$1000
 - The association has paid all fees and lodged all the required documents with the Office of Consumer Affairs and Fair Trading up until the date of cancellation.
- Once the motion for deregistration has been passed, the association needs to lodge the following documents to approve the deregistration:
 - [Notice of Special Resolution for Deregistration of an Association](#)
 - Final Annual Return covering the period up to the date of cancellation (no fee if less than 12 months).
- The Notice of Special Resolution must indicate where the remaining assets of the association have been distributed.
- Under no circumstances can the assets, property or cash reserves of an incorporated association be distributed to members or former members.

Search the Register

- An [Association Extract Search](#) provides a snapshot of the Association, showing information relating to the Committee Members and a list of all documents lodged by the Association.
- A [Request to Search an Association Files](#) provides actual copies of documentation lodged with Consumer Affairs and Fair Trading, such as Annual Returns of amendments to constitution.

Disputes

- Who is responsible for handling disputes between an association and a member?
 - The management of an association is in the hands of an executive committee, which is responsible for the administration of the affairs of the association in accordance with the Act and the rules of the association.
 - It is not a function of the Office of Consumer Affairs and Fair Trading to offer legal advice or to intervene in the internal affairs of incorporated associations that involve members' disputes.
- Does Consumer Affairs have the authority to investigate or intervene in a dispute?
 - The Office of Consumer Affairs and Fair Trading does not have the authority under the Act to investigate or to intervene in any of the following matters:
 - Disputes relating to a breach of the association's rules.
 - Disputes between a member and another member or a member and the association.
 - Disputes relating to the mishandling of funds. Such issues should be reported to Tasmania Police.
 - Disputes involving the conduct of a general meeting or the process by which members of the committee are elected.
 - The validity of the appointment or of the removal of a public officer.
- In what matters can Consumer Affairs intervene?
 - Complaints that relate to a breach of the provision of the Act. These may include:
 - Failure to ensure proper accounting and other records are kept by the association (section 23a)
 - Failure to appoint a public officer or to change details of a public officer (section 14)
 - Failure to lodge rule changes (section 28)
- Reports of suspected breaches
 - Written reports of suspected breaches of the Act should be made to Consumer Affairs and should include:
 - The name of the association and its incorporation number.
 - The names of the persons suspected of wrongdoing.
 - Full details of the misconduct including the actions, dates and places in sequential order.
 - If known, the provisions of the Act that is relevant.
 - Any relevant documentation that may be used as evidence, such as letters or minutes.

- The names and addresses of the persons who may have witnessed or have information concerning the suspected breach or activity.
 - Reference to any other authority that has been approached, eg, the Tasmanian Police. If the person has been convicted of an offence in relation to the matter as a result of police intervention, include any relevant documentary material.
- What should I do if I have a dispute?
 - If a dispute arises between a member and an association, attempts should be made to resolve the dispute directly between the parties. The dispute resolution mechanism within the rules adopted by the association should be used.
 - If the association's rules do not include a dispute resolution, section 34 of the model rule provides for disputes.
 - If the matter remains unresolved, members may wish to seek independent legal advice or to use a professional mediation service.
 - Free legal advice can be attained through the Legal Aid Commissioner on **1300 366 611**.