



INCORPORATION OF A CLUB OR ASSOCIATION (APPLIES TO VICTORIA ONLY)

1. Introduction

The Associations Incorporation Act 1981 provides a simple inexpensive system allowing Unincorporated Associations to incorporate. The choice of whether to incorporate will remain with the Members. This summary is designed to provide a brief outline of the steps involved.

2. Who can Incorporate?

The Act applies to any club, including a society, institution or body that is formed or carried on for any lawful object or purpose other than for pecuniary gain to its Members, including organizations for sporting, charitable, community, religious, educational, patriotic and pastime purposes. An Incorporated Association may make a pecuniary profit incidentally to its prime objects as long as that profit is not divided amongst any of its Members.

3. What is an Incorporated Association?

An Incorporated Association:

1. has not less than five Members;
2. has corporate status and must have a Common Seal;
3. has perpetual succession;
4. is capable of suing or being sued;
5. has the power to acquire or hold property;

and no Member or Officer of the Incorporated Association is liable to contribute towards the payment of the debts and liabilities, or the costs charges and expenses of winding up the Association. The liability of members will therefore generally be limited to outstanding subscriptions and other charges.

An Incorporated Association has power to invest and deal with moneys not immediately required, raise or borrow money as it thinks fit, and secure the repayment of any moneys raised or borrowed or the payment of a debt or liability by giving mortgages, charges or securities over all or any of the property of the Association.

4. How does an Association become Incorporated?

1. A majority of the members present at a Special Meeting to approve the motion must authorise a person to incorporate the Association.
2. The person authorised to apply for Incorporation ("the Applicant") must lodge –
 - 2.1 an Application for Incorporation;
 - 2.2 a copy of the Proposed Rules;
 - 2.3 a copy of the Proposed Statement of Purposes;
 - 2.4 a Declaration in Support of the Application;
 - 2.5 an Incorporation Fee.
3. When the Application and attachments are approved the Registrar will grant a Certificate of Incorporation.
4. On incorporation the Applicant becomes the First Public Officer of the Association and the Members of the Committee become the Committee of the Incorporated Association.

McKean & Park can prepare the required Statement of Purposes and Rules, prepare and lodge all necessary documents with the Associations Incorporation Office on behalf of the Association.



5. Name of Association

Certain restrictions are placed on names which an Incorporated Association may use. A name must not be one which is likely to be confused with or mistaken for an existing company or business name or a name that is misleading. The Attorney-General has given a direction as to the types of names which may not be registered except with the consent of the Minister. McKean & Park can confirm the availability of the proposed name of the Association.

On incorporation the Association shall have the word "Incorporated" or the abbreviation "Inc." as part of and at the end of its name. The name in legible characters must be inscribed on the Incorporated Association's common seal and appear in all documents used by the Association.

6. The Rules

The Rules of the Incorporated Association must make provision for -

1. The qualifications (if any) for membership of the Association.
2. The Register of Members of the Association.
3. The Entrance Fees, Subscriptions and other amounts (if any) to be paid by Members.
4. The name, constitution, membership and powers of the Committee and -
 - 4.1 the election of Members of the Committee;
 - 4.2 the terms of office of Members of the Committee;
 - 4.3 the grounds on which the office of a Member of the Committee shall become vacant;
 - 4.4 the filling of casual vacancies occurring in the Committee;
 - 4.5 the quorum and procedure at meetings of the Committee.
5. The quorum and procedure at General Meetings of Members of the Association.
6. The time within which, and manner in which, Notices of General Meetings and Notices of Motion are to be given, published or circulated.
7. The sources from which the funds of the Association are to be or may be derived.
8. The manner in which the funds of the Association are to be managed and the mode of drawing and signing cheques on behalf of the Association.
9. The intervals between General Meetings of Members and the manner of calling General Meetings.
10. The manner of altering the Statement of Purposes.
11. The manner of altering the Rules.
12. Provisions for the custody and use of the Common Seal.
13. The custody of Books, Documents and Securities of the Association.
14. The inspection by Members of the Books and Documents of the Association.
15. The disposition of any surplus assets on the winding up or dissolution of the Association.
7. Continuing Obligations

In addition to observing the requirements in its Rules, an Incorporated Association:

1. must not trade either for its Members or as trustee on behalf of Beneficiaries or secure pecuniary profit for its Members or for its Beneficiaries.
2. may not alter its Statement of Purposes or Rules except by special resolution.
3. must fill a vacancy in the office of Public Officer within fourteen days of its arising.



4. must hold its first Annual General Meeting within 18 months of incorporation.
5. must hold subsequent Annual General Meetings within 5 months after the end of the financial year.
6. may have to have its accounts audited by a qualified auditor.
7. must submit to the Members at the Annual General Meeting a statement outlining the financial affairs of the Association during the previous Financial Year.
8. must notify the Registrar after becoming a trustee of any trust.
8. Obligations of the Public Officer
 1. To notify the Registrar of his appointment.
 2. To notify his change of address.
 3. To notify alterations to the Statement of Purposes or Rules.
 4. To make application for approval of a change of name.
 5. To lodge with the Registrar the documents in respect of the Annual General Meeting.
 6. To produce any Books to the Registrar on being required to do so.
 7. To tell the Registrar or his Authorised Officer where a Book is at the time a request is made.
 8. Must not hinder or obstruct the Registrar or his Authorised Officer whilst exercising powers of inspection.
9. Powers Contracts & Property

Subject to the Rules adopted by the Association, an Incorporated Association has power to -

1. enter into valid contracts.
2. act as a trustee and hold trust property.
3. operate bank accounts.
4. invest its funds in trustee securities.
5. borrow money.
6. purchase lease mortgage and otherwise deal with land and property.
10. Summary

An Incorporated Association can own land and other property in its own name; it can sue and be sued in its own name; it can enter enforceable contracts, and is liable for its own debts and for any other occurrences for which an individual would be liable while its members are not liable.

Unless the Association is not expected to continue for a number of years or cannot foresee any situation in which it may incur any liability, it is suggested that any eligible association should incorporate.

11. Our Advice & Assistance

McKean & Park can provide assistance, answer any further queries, prepare, provide and complete –

1. Application for Incorporation.
2. Rules for the Association.
3. Statement of Purposes.
4. Declaration in Support of Application.
5. Notice of Meeting.
6. Resolutions for Meeting.



7. Advice Letter to Members.
8. Guidance Notes for Incorporated Associations.
9. Common Seal.
10. Minutes for First Committee Meeting of Incorporated Association.
11. Minute relating to Bank Account.
12. Letter to Australian Taxation Office.
13. Statement of Accounting Requirements & Procedures.
14. Insurance Advice.

If any further information is required, or you have any queries arising from the above matters, please do not hesitate to contact McKean & Park.

This summary is necessarily brief, and should not be relied on as a comprehensive statement of the current law. As with all legal matters there is no substitute for professional detailed advice and assistance. If you have any queries concerning the impact of the Associations Incorporations Act on an unincorporated association club or society in respect of any arrangement or dealing, any recent developments or proposed changes to the law or seek any general commercial or other legal advice, please contact McKean & Park.

We have prepared this outline as a service to our clients. If you find it helpful or useful we invite you to tell everyone about the service provided to you by McKean & Park. Please contact any of our partners immediately if you have any suggestions or concerns.