

McKEAN & PARK LAWYERS

405 Little Bourke Street
Melbourne Australia
Postal Address –
GPO Box 38A
Melbourne Vic 3001



Tel (03) 9670 8822
ross.blair@mckeanpark.com.au
Fax (03) 9602 5037
DX 400 Melbourne
Ref Mr R Blair

ASSOCIATIONS INCORPORATION ACT 1981 (APPLIES TO VICTORIA ONLY)

The Committee

Constitution & Functions

The Committee of an Incorporated Association continues to have the management and control of the Association after Incorporation – restricted only by the statement of purposes and rules of the Association.

The first committee members of the Incorporated Association are the people who were the members of the committee before Incorporation. Subsequent committees are elected according to the rules.

Duties of the Committee

The Committee is responsible for the general administration of the Association, and subject to the rules is empowered to pursue the objects on behalf of the Association and its members.

The only obligations specifically imposed by the Act on members of the committee are:

to make a Statutory declaration that a special resolution to change the statement of purposes or rules was duly passed,

to certify that the statement of accounts was submitted to the members at the Annual General Meeting,

not to obstruct or hinder the Registrar whilst exercising any powers conferred by the Act.

General Obligations

There are other obligations imposed on the Association which are the responsibility of the committee:

To convene an Annual General Meeting at least once in each calendar year, except that the first Annual General Meeting may be held at any time within 18 months after Incorporation.

To present the statement of accounts to the Annual General Meeting.

To ensure that no documents required by or for the purposes of the Act contain any statement or omit any information causing them to be false or misleading in a material particular.

To lodge with the Registrar within 14 days after becoming trustee of a trust particulars of the trust and a copy of any documents relating to the trust.

To comply with the Act and the rules generally.

The Public Officer

Duties

The Public Officer is the formal contact between the Association and the Registrar of Incorporated Associations. The Public Officer's address is the contact point for the world at large.

An Incorporated Association has a registered office and is required to notify the Registrar of changes in the membership of the committee. The address of the Public Officer may be notified in writing to the Registrar as the registered address at which documents addressed to the Incorporated Association may be served.



The Act imposes on the Public Officer the obligation to notify the Registrar of all matters required to be notified (except new trusts which are the responsibility of the Association and therefore the committee).

Qualifications

The Public Officer:

Is not required to be a member of the Association.

May, if he is a member, also hold any other office in the Association.

Must be at least 18 years.

Must be a resident of Victoria.

Appointment

The first Public Officer of the Association is the person who was authorised to make the application, and if therefore nominated by the committee and appointed by the members in general meeting or by a referendum before Incorporation.

All subsequent Public Officers are appointed by the committee of the Incorporated Association which must fill in any vacancy in the office of Public Officer within 14 days of the vacancy arising.

Notification of Appointment

All subsequently appointed Public Officers must give to the Registrar notice of appointment within 14 days after appointment. The notification is given by completing and lodging the required form under the Associations Incorporation Rules.

The Public Officer must notify the Registrar if he changes his address within 14 days of the change. Such notice may be given by completing and lodging the required form under the Associations Incorporation Rules.

If the Public Officer's address changes to an address outside Victoria, he ceases to be a resident in the State and ceases to be the Public Officer.

Termination of Office

A Public Officer ceases to be Public Officer if he:

Ceases to be a resident of Victoria.

Resigns his office by notice in writing addressed to the committee of the Incorporated Association.

Is removed from office.

Dies.

Becomes bankrupt or applies to take advantage of any law relating to bankrupt or insolvent debtors.

Becomes of unsound mind.

Section 27 of the Act gives an Incorporated Association the power to remove a Public Officer.

Position in the Association

The Public Officer has no real role in the workings of the Association. He is not required to be a member of the Committee, nor is he required to be a member of the Association. He will not therefore necessarily receive notices of general meetings of the Association.

However, the Public Officer is personally responsible under the Act for the following matters over which he may not have any control:

Lodging notice of a special resolution altering the statement of purposes or the rules within one month of the passing of the resolution.

Lodging the statement concerning the Annual General Meeting within one month after the date of the meeting.



A person should not accept the job of Public Officer after Incorporation unless he is a member of the committee, or a paid officer, who will be aware of everything happening.

Obligations under the Act

Notify the Registrar within 14 days of appointment (except as a result of Incorporation of an unincorporated association).

Notify the Registrar of any change of address within 14 days of the change.

Lodge with the Registrar notice of a special resolution to change the statement of purposes or the rules within 1 month of the general meeting.

Make application for approval of change of name within 1 month of the General Meeting at which the change was resolved.

Lodge with the Registrar the documents required in respect of the annual general meeting within 1 month of the meeting.

Produce any books to the Registrar on being required to do so.

Tell the Registrar where, to the best of his knowledge and belief, any of the books are at the time of the request.

Not to hinder or obstruct the Registrar in the exercise of his powers.

Immediately bring to the attention of the committee any documents served on the Association at the registered address of the Incorporated Association.

Members

Generally

Most of the provisions relating to members are found in the rules rather than in the Act. The rules should therefore be considered carefully.

Obligations under the Act

Matters affecting members include:

A member of the Association is not liable to contribute towards the payment of the debts and liabilities of the Incorporation Association or the cost, charges and expenses of winding up just because he is a member.

A member may become personally liable to any creditor:

If he is by act or omission in any way directly or indirectly knowingly concerned in or party to the Association trading, securing pecuniary profit for its members, or as trustee trading or securing pecuniary profit for persons who are members of the Incorporated Association.

For all debts and liabilities incurred by the Association in or in consequence of the trading or securing of pecuniary profit for its members.

A member may be guilty of an offence if the Association does not hold an Annual General Meeting as required by the Act or does not present the required Statement to that meeting.

A member may be guilty of an offence if at a meeting of the Association he votes in favour of a resolution approving (or otherwise approves) a document required for the purposes of the Act, and that document contains a statement or omits any information that to the member's knowledge is false or misleading.

Unless the rules provide otherwise a member has no rights of any kind in the property of the Association.

A member is a person who may apply to the Supreme Court for the winding up of the Incorporated Association.



General Meetings

Nature & Type

A General Meeting is a meeting at which all members are entitled to vote as members. General Meetings are of two types:

The Annual General Meeting referred to in the Act must consider the financial statement for the previous financial year.

Any other General Meeting which is called a Special General Meeting.

Annual General Meeting

The Annual General Meeting must consider the financial statement in respect of the last financial year of the Association, and any other matters set out in the rules as being matters for the Annual General Meeting and, if the rules permit, consider any other matters subject to the requirements as to notice.

Special General Meeting

A special general meeting may, subject to the rules, consider any matter not required by the rules to be dealt with by the Annual General Meeting.

Resolutions

Resolutions at General Meetings are of two types:

Special Resolutions

A resolution is a special resolution if:
Notice of the meeting at which it is to be proposed:

- sets out the proposed resolution;
- states that it is intended to propose it as a special resolution.

The resolution is agreed to by 75% of the members:

- who are entitled to vote (the rules set out those persons disentitled to vote);
- do in fact vote in person or by proxy.

Ordinary Resolutions

An ordinary resolution will be carried if it is approved by 50% of the members who are entitled to vote and who do in fact vote.

The requirements as to time, notice of and procedure to be followed at general meetings are set out in the rules.

Requirements under Act

Matters referred to in the Act which have to be dealt with by a general meeting of the Association include:

Change of Name.

Alteration of the state of purposes and rules.

Consideration of the financial statements of the Association for its last financial year.

A decision to amalgamate with one or more other Incorporated Associations.

A decision to voluntarily wind up the Association.

A decision as to the distribution of assets on a voluntarily winding up.

The Association is not required to notify the Registrar that any meeting, except the Annual General Meeting, has been held.



The Nature & Requirements of the Annual General Meeting

The first Annual General Meeting can be held at any time within 18 months after the date of Incorporation. An Annual General Meeting must then be held in each calendar year after the year in which the first Annual General Meeting is held.

The Registrar has no power to extend the period within which an Annual General Meeting must be held. It is therefore important that Annual General Meetings be held on a regular annual basis.

Accounts for the last financial year of the Association are required to be presented to the Annual General Meeting. The financial year is set out in the rules.

The following documents in respect of the previous financial year are required to be prepared for the Annual General Meeting:

1. A statement of income and expenditure.
2. Statement of assets and liabilities.
3. A Statement setting out all mortgages, charges and securities affecting the property of the Association at the end of the last financial year.
4. The same statements in respect of any trust of which the Incorporated Association is trustee.

The prepared statement should be presented to the committee for checking. This will ensure that no false or misleading statements are made. Prescribed Incorporated Associations are required to have the financial statements audited by a qualified auditor.

The statements and accounts should then be audited as set out in the rules. A proper audit will reduce the risk of unconsciously making a false or misleading statement, and thus committing an offence under the Act.

The Act requires that a statement of the Annual general Meeting must be lodged with the Registrar within one month of the meeting. The statement of the Annual General Meeting should adopt the form required by the Associations Incorporation Rules.

Failure to hold the Annual General Meeting, present to the meeting the financial statement, lodge the statement of Annual General Meeting with the Registrar and specify on the statement the terms of any resolution passed at the Annual General Meeting concerning the financial statement is deemed an offence for the Association and every member.

The Registrar may extend the time for presenting the statement to him on written application.

Summary

This summary has been prepared as a brief outline of the provisions contained in the Associations Incorporation Act 1981. In the interest of brevity it is necessarily general in its scope. It is designed as a guide to the most relevant provisions of the Act. However, all committee members of the Association should familiarise themselves with the provisions of the Associations Incorporation Act 1981 and the rules adopted by the Association.

Breach of some of the obligations outlined above are offences under the Act and a penalty may be imposed for failing to comply with the statutory requirements.

If you require any further information or advice concerning the continued activities of the Association we invite you to contact McKean & Park.