

Administration of affairs

Under the Associations Incorporation Act 1985

This information is intended to assist committee members and other persons involved in administering the affairs of their incorporated associations. It explains in general terms, some requirements of the *Associations Incorporation Act 1985* (the Act). It also provides suggestions on how common problems might be avoided. It is not intended to be a document offering legal advice and no person should rely on its contents without first obtaining advice from a qualified professional. References to section numbers in this factsheet correspond to sections of the Act.

MANAGEMENT

Committee of management

The way in which an association operates is largely governed by its rules, sometimes known as the constitution.

Generally the rules will describe how members of the association elect a committee of management and how the committee manages the affairs of the association. The rules should describe the position of the Chairperson, and any other executive positions. Sometimes these positions are given different titles, e.g. President rather than Chairperson.

The Chairperson presides at meetings of members of the association and meetings of the committee.

The Secretary is normally responsible for all general correspondence. He or she should maintain adequate files and bring relevant correspondence before the committee for consideration.

The Treasurer normally banks the income of the association and records transactions in the association's books and records. He or she should provide regular financial reports to the committee. The Treasurer should also prepare the association's financial reports and statements for consideration and adoption by the committee before they are presented to members.

The public officer (section 56)

Every incorporated association is required to have a public officer. A factsheet dealing with the responsibilities of a public officer and document lodgement requirements is available from the Consumer and Business Services (CBS) website www.cbs.sa.gov.au

Suggestions for avoiding problems

There are various books available that describe good management and administrative practice and explain procedures for the conduct of meetings. This factsheet does not cover these subjects in any detail.

However, based on enquiries received by CBS the following matters are brought to your notice:

1. Associations should be administered in a democratic manner, and the rights of members should be preserved at all times, in accordance with the rules of the association and in the spirit of natural justice.
2. You may find that the rules of your association don't cover every situation. Whether you are interpreting an existing rule or needing to make a decision on a matter where there is no rule in your rules, you should be guided by the objectives of your association and the general context of your rules.
3. You may wish to seek a legal opinion, particularly on an important issue that may affect your members. Nevertheless, how a decision is made should be transparent and clearly documented in your minutes. You may also consider altering your rules to include this matter, for which you will need to seek your members' approval.
4. Meetings should be conducted in a manner that ensures all eligible members present are able to speak and vote on a motion, and that they are not prevented from expressing their points of view whether in favour of or against a proposal.
5. Adequate minutes of meetings of the committee and meetings of the members of the association must be prepared. Once adopted by the participants (the committee or members of the association, as the case may be) and signed by the Chairperson, the minutes must not later be destroyed or altered because they form a historical record of the association's activities.
6. The Chairperson signs the minutes on behalf of the relevant participants (the committee or the members of the association) once the participants have adopted the minutes as a sufficiently accurate record of proceedings. The Chairperson should avoid signing the minutes in private. He or she should be able to sign them at the meeting when they are adopted. If changes need to be made to the draft minutes it is preferable if the Chairperson initials the changes before signing the minutes.
7. The affairs of an incorporated association should not be conducted as if it were a secret society, with restricted flow of information to members.
8. Where a dispute arises between members or between the association committee and a member or members, the parties to the dispute may consider meeting to resolve the dispute. If it can't be resolved at a meeting, the parties may choose to meet and discuss the dispute before an independent third person agreed to by the parties.

Please note:

It is not the role of the CBS to mediate or advise on disputes. Section 61 of the Act gives rights to members or former members to seek orders from the Supreme Court or the Magistrates Court in cases of oppressive or unreasonable acts.

ACCOUNTS REQUIREMENTS

Meaning of 'prescribed association'

The Act uses the term 'incorporated association' to refer to all associations incorporated under the Act. It also uses the term 'prescribed association'.

As a general description a prescribed association is one with gross receipts, excluding members' subscriptions, in excess of \$500,000 per annum (as revised January 2008). The definitions of the terms 'prescribed association' and 'gross receipts' are contained in Section 3 of the Act.

There are more requirements and obligations imposed on prescribed associations than on other incorporated associations.

Gross receipts (section 3)

'Gross receipts' are the total receipts including any government grants or subsidies received from local, State or Commonwealth governments. The following may be excluded from the calculation of gross receipts:

- subscriptions, membership fees, levies or other fees paid by a member
- money received as a devise or bequest, i.e. by operation of a will
- proceeds from the sale of assets which were not originally purchased for resale.

An example of 'other fees' which may be excluded from the calculation of gross receipts are those fees paid by a member which are wholly related to the full benefits of membership.

The following receipts should be included in the calculation of gross receipts:

- those of a commercial nature such as receipts from bar sales
- gifts and donations from activities such as appeals to the public from door knocks etc
- government grants

Accounting records

The Act distinguishes between the accounting records which must be kept by prescribed associations and those kept by other incorporated associations. It imposes additional requirements upon prescribed associations.

All incorporated associations are required by the Act to record and explain the transactions of the association and the financial position of the association (Section 39C).

The nature and form of books and records that an association might require depends largely on the nature, size and membership of the association.

A prescribed association is required to adhere to a standard of accounting and financial reporting. It must keep its accounting records in such a manner as will enable the preparation from time to time of accounts that represent fairly the results of the association's operations and the accounts prepared can be conveniently and properly audited. Part 4 of Division 2 of the Act covers the requirements in more detail.

A prescribed association is required by Section 36 to lodge a periodic return each year, containing accounts and other reports required by Part 4 of Division 2 of the Act.

The accounts and audit requirements of Part 4 of Division 2 apply to a prescribed association in relation to a financial year (the financial year can be a 12 month period specified in the Associations rules).

Checklist

The procedure for a prescribed association to enable its accounting obligations to be fulfilled are as follows:

- Accounts are prepared.
- Committee's statement is prepared - two signatures required.
- Committee's report is prepared - two signatures required. Accounts with the committee's statement attached are submitted to the auditor.
- Auditor's report is furnished to the committee.
- All of the above documents are laid before members at the AGM within five months after the end of the financial year.
- Annual (periodic) return, accompanied by all of the documents referred to above, is lodged with CBS within six months after the end of the financial year.

* Each of these requirements are discussed in more detail in the following pages

a) Preparation of accounts (section 35)

After the end of a financial year (as defined in section 3 of the Act), a prescribed association must arrange for accounts for the year to be prepared that present fairly the operations of the association.

The accounting records must be kept in such a manner to enable this to occur (section 35(1)). The accounts (and the committee's statement) must be submitted to the auditor in sufficient time to enable the auditor to audit and furnish a report on the accounts (section 35(3)).

Accounts are defined in section 3 as either:

- cash accounts - an account of receipts and payments and a statement of assets and liabilities; or
- accrual accounts - an account of income and expenditure and a balance sheet.

together with such statements, reports and notes, other than auditors' reports, as are attached to and intended to be read with the accounts. A combination of cash and accrual accounts is not acceptable.

A profit and loss account should be prepared in accordance with the current accounting standards, in order to comply with the Act. All major items of income and expenditure should be recorded in, for example, the notes of the auditor. The accounting records must be kept for seven years after the completion of the transactions to which they relate (regulation 6).

b) Committee's statement (section 35(2)(c))

(An incorporated association that is not a prescribed association is not required by the Act to have its accounts audited.)

Before the accounts are submitted for audit, they must have a statement by the committee attached to them. It must be made in accordance with a resolution of the committee and signed by two or more members of the committee and state:

- whether or not the accounts present fairly the results of the operations of the association for the financial year and the state of affairs of the association as at the end of the financial year;
- whether or not the committee has reasonable grounds to believe that the association will be able to pay its debts as and when they fall due;
- particulars of any subsidiaries of the association and of any trust of which the association is a trustee.

The committee should make sufficient enquiries before signing the report to satisfy itself that the association has sufficient funds to pay all its debts. If a positive statement cannot be made, the situation should be clearly explained and the committee members should carefully consider whether trading should continue in the context of incurring possible liabilities in relation to the insolvent trading offence (section 49AD).

In relation to an association acting as trustee, it is recommended by CBS that the rules of the association refer to the establishment of the relevant trust and that the functions of the association in its capacity as trustee are enshrined in a deed of trust for that purpose.

The periodic return provides for brief particulars of any alterations to any trusts affecting the rules of the association which have not yet been lodged for registration. The periodic return also provides for the names of subsidiary bodies corporate to be disclosed.

c) Committee's report (section 35(5))

The committee must prepare a separate report on any benefits received directly or indirectly by officers. It must be made out in accordance with a resolution of the committee and signed by two or more members of the committee. Where no benefits exist a report to that effect must still be prepared referring to the provisions of section 35(5) of the Act.

'Officer' includes a person who is a committee member, or the secretary, treasurer or public officer, or a person who acts in such positions, or a person who participates in management. This applies whatever title the person holds and even if the person is not validly appointed or authorised to act in the position. If the committee is accustomed to act in accordance with the directions or instructions of any person, that person is deemed to be an officer of the association.

The definition of officer in section 3 of the Act should be referred to before commencing the report which must state, in relation to each officer of the association, the:

- general nature of any benefits received by the officer, as a result of a contract between the officer and the association;
- general nature of any benefits received by a firm of which the officer is a member, or a body corporate in which the officer has a substantial financial interest, as a result of a contract between any of those 'related parties' and the association;

- general nature and extent of any payments or other benefits of a pecuniary value received directly or indirectly by the officer from the association.

Some examples of benefits or payments to be reported are:

- Any transactions between the association and an officer, or between the association and a related party, for particular services or facilities provided to the association. An example is legal advice provided to the association by a firm of solicitors of which a committee member or other officer is a partner. Disclosure should include whether the service is provided on commercial terms or not.
- Any fees paid to committee members in relation to managing the affairs of the association. This may be reported by disclosure in a note to the accounts of the amount received, in a similar manner to disclosure of income of company directors, i.e. in bands of \$10,000, and by including in the committee's report a cross reference to the particular note. Insubstantial fees paid to committee members as an honorarium need not be reported.
- Any remuneration received by officers who are also employees of the association as a result of individual employment contracts with the association. It is not intended that confidentiality should be breached and the specific amount of remuneration received need not be reported. The fixed salary of officers employed under general awards and conditions need not be reported.
- Any premiums paid by the association in respect of a contract of insurance with the association, indemnifying an officer against liability for neglect, default, or breach of duty or of trust. These payments constitute an indirect benefit received by an officer.
- Any payments made by an insurance company as a result of successful claims in respect of a contract of insurance with the association indemnifying an officer against liability for neglect, default, or breach of duty or of trust, or any payments made by the association in relation to defending any proceedings against an officer.
- Any other payments or monetary benefits received by officers, even though not relating to managing the affairs of the association, e.g. any fees of a private nature paid by the association to an officer for entry to sporting events. Amounts in payment or reimbursement of out-of-pocket expenses incurred for the benefit of the association need not be reported.

d) Auditor's report (section 37(3))

The auditor must furnish a report to the committee in sufficient time for the association to lay the accounts before members within five months after the end of the financial year of the association (clause 6).

The report must state:

- whether or not the auditor is satisfied that the accounts present fairly the results of the association's activities for the financial year and the financial state of the association at the end of the financial year. This requirement applies even if the accounts have been prepared on a cash basis of accounting as determined by the committee of management;
- whether the auditor has examined the accounts and auditors' reports of each subsidiary of the association and each trust of which the association is a trustee. In addition, the conclusions drawn from these examinations must be reported;
- whether the auditor has obtained all of the information and explanations required from the association.

e) Accounts and reports to be laid before members at annual general meeting (section 35(6))

Unless the rules do not provide for membership, a prescribed association must hold an annual general meeting within five months after the end of the financial year (section 39(1)). However the first annual general meeting may be held within 18 months after incorporation (section 39(2)).

The accounts of a prescribed association that has members, together with the auditor's report on the accounts, the committee's statement and the committee's report, must be laid before members at the annual general meeting. If the first annual general meeting is not to be held within this period by operation of section 39(2), the accounts and other documents must still be laid before members within five months after the end of the financial year.

f) Periodic return (section 36(1))

A periodic (annual) return of a prescribed association (Regulation 7), must be lodged with the prescribed fee with CBS within six months after the end of each financial year of the association. 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 the last page for CBS address and lodgement options.

Please note:

Since January 2017, if your prescribed association is registered with the Australian Charities and Not-for-profits Commission (ACNC) and you meet your financial reporting obligations to them; you are not required to lodge an additional periodic return with CBS.

Associations will still be regulated under the *Associations Incorporation Act 1985* and as such will still be required to notify CBS of changes such as public officer details and the registration of an alteration to the association's rules. If you do not register with the ACNC then you will need to submit separate reports to CBS as a charity and as a prescribed association in the future.

AUDIT REQUIREMENTS**Qualifications of auditor (sections 35(2)(b) and 35 (4))**

The auditor of a prescribed association must be either a:

- registered company auditor; or
- firm of registered company auditors; or
- member of the ASCPA (Australian Society of Certified Practicing Accountants) or the ICA (Institute of Chartered Accountants); or
- person approved by the Corporate Affairs Commission which is administered by Consumer and Business Services (CBS).

In January 2008, the threshold for a prescribed association increased from \$200,000 to \$500,000. Accordingly, the requirement for an association to engage a person specified under section 35 of the Act is now deemed essential.

For CBS to consider an approval under (d), the association would be required to provide, in writing, an explanation of the special circumstances which prevent them from engaging someone qualified as specified in (a) to (c) above. In addition, the proposed auditor would need to have significant experience in auditing, in particular entities that have had gross revenue in excess of \$500,000 in a financial year. Please be aware that CBS will only approve an auditor under very special circumstances.

Because an auditor must be in a position to perform his or her duties independently, the following persons are precluded from being appointed as an auditor:

- an officer; or
- a partner, employer or employee of an officer; or
- an employee; or
- a partner or employee of an employee, of a prescribed association (section 35(3)).

Access and explanations (section 37(1))

An auditor has a right of access at all reasonable times to the accounting and other records of the association and is entitled to require from any officer such information and explanations as he or she thinks are necessary for the purpose of the audit.

Obstruction of auditor (section 37(2))

An officer must not, without lawful excuse, refuse or fail to allow an auditor access to accounting or other records, or refuse or fail to give any information or explanation required by the auditor, or hinder, obstruct or delay an auditor in the performance of his or her duties.

Duties of auditor (sections 37(4) and (5))

An auditor must immediately report certain matters in writing to the Corporate Affairs Commission (CBS) as follows:

- If an auditor thinks it is likely that there has been a contravention of, or failure to comply with, a provision of the Act or a rule of the association. This duty to report will arise, where for example there has been a failure to keep proper accounts (section 39C), or if the auditor becomes aware that the committee has not held an AGM or that the audited accounts and committee's statement and report have not been laid before members (section 35(6)), or a prohibited distribution of any profits or assets has been made to a member or an associate of a member (section 55);
- If an auditor thinks there is a deficiency in the accounts or activities of the association. This does not apply if the auditor is of the opinion that the matter will be dealt with adequately by bringing it to the notice of the committee of the association;
- If an auditor is removed or dismissed as auditor they must immediately report their dismissal or removal and the circumstances to CBS. The outgoing auditor retains a duty to comply with the requirement, even after the removal or dismissal takes effect.

Qualified privilege (section 37(6))

As the Act imposes an obligation to report any defaults an auditor (including a person who has been removed or dismissed as auditor) is provided with statutory protection, where there is no malice on his or her part, in relation to any action for defamation concerning any statements made in the course of performing duties under the Act.

Payment of auditor (section 37A)

The reasonable fees and expenses of an auditor are payable by the association.

RELIEF FROM REQUIREMENTS**Power of exemption (sections 38 and 39)**

An objective of the statute is to have financial disclosure which accompanies incorporation. That is, there should be disclosure of the financial affairs to members at the annual general meeting, and to creditors and to any persons with an interest in seeing them. The legislation covers associations formed for a wide variety of purposes. In recognition of the nature and spectrum of activities of associations, the legislation permits exemptions from the accounts and audit provisions to be granted by the Corporate Affairs Commission (CBS).

An association wanting relief from strict compliance must make application in writing to CBS. The application must address in full the reasons for the exemption being sought, and must be accompanied by the prescribed fee. Particularly where exemptions are sought for more than one financial year, CBS would consider:

- extent of relief sought,
- any unique reasons or special circumstances that apply,
- whether and how full compliance with the Act would place an unreasonable burden on the association; an applicant must demonstrate not only that there is a burden, but also that the burden is unreasonable,
- the extent of the impact on the interests of members and creditors of the association and how determined,
- the size, activities and structure of the association,
- the number and location of the association's members,
- the extent of any public interest,
- what alternative financial reporting methods are proposed,
- reasons why the association should be given a preferment in relation to other incorporated associations that include purposes that are similar to the association,
- whether compliance would be inappropriate to the circumstances because an external administrator has taken over all, or a significant part of, the day to day operations of the association,
- if relief is sought in respect of particular activities, the nature and size of the activities and their relationship to the association as a whole, and the extent of any government grants utilised in respect of those activities.

ADDITIONAL RESOURCES

All associations should have a copy of the Act, the Regulations made under the Act, and any amendments. Up-to-date legislation can be found at the South Australian Parliament site at www.legislation.sa.gov.au

Public officers should familiarise themselves with the requirements of the Act.

Example of Rules:

For an incorporated association

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 Act and includes information about required qualifications of an auditor.

Dealing with suspected breaches:

Provides guidance in relation to suspected breaches of the Act.

Restricted and undesirable names:

Provides guidance to names that cannot be used for an incorporated association without ministerial consent.

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
Appointment	Book a time to speak with the Associations Team
In person	Customer Service Centre 95 Grenfell Street Adelaide SA 5000

Translating & Interpreting Service Phone: 131 450