

Incorporated associations

A guide to starting and operating an incorporated association in Queensland



Disclaimer

This publication aims to provide incorporated association administrators with a general understanding of their responsibilities in running an incorporated association in Queensland. It is not a comprehensive statement of the law.

The laws referred to in this guide are complex and various qualifications may apply to the provisions in different circumstances. You are encouraged to obtain independent legal or financial advice if you are unsure of how these laws apply to your incorporated association's situation.

© The State of Queensland
Department of **Justice and Attorney-General**, June 2020

The State of Queensland is to be recognised as the owner of copyright but has no objection to this material being reproduced or made available online, or electronically. However, the material must remain unaltered and must not be used to endorse a product or service.

Contents

Introduction	4
What is incorporation?	5
Incorporating an association	6
Pass a resolution to incorporate	7
Choose a name	7
Adopt a set of rules	8
Elect a management committee	9
Lodge your application.....	10
After incorporation	11
Get a common seal.....	12
Open a financial institution account	12
Operating outside Queensland	12
Assess the need for public liability insurance	13
Transfer property	13
Running an incorporated association	14
Management committee	15
Membership.....	20
Meetings.....	20
Incorporated association rules and changes	27
Change of incorporated association name	27
Public liability insurance review and advice.....	28
Handling disputes	29
Amalgamation	29
Voluntary transfer of incorporation	30
Financial obligations	32
Financial reporting requirements	33
Auditors and persons able to verify financial affairs	35
Annual returns	37
Record keeping	38
Winding up your incorporated association.....	40
Search the incorporated associations register.....	43
Useful contacts	45
Interpreting services	47

Introduction



Incorporated associations are a vital part of Queensland's not-for-profit sector, with approximately 22,900 currently registered with the Office of Fair Trading (OFT).

Many important facets of our community are represented through incorporated associations including industry groups, sporting clubs, social or hobby-based activities and cause-related community groups.

If you are involved in operating an incorporated association in Queensland, this guide will help you understand your rights and responsibilities.

It will also assist in making sure your incorporated association's operations comply with both the *Associations Incorporation Act 1981* and Associations Incorporation Regulation 1999.

The information contained within this guide is also available at OFT's website at www.qld.gov.au/fairtrading

If a significant length of time has passed since the publication of this guide (June 2020), it is strongly recommended that you visit OFT's website for the most up-to-date information.

What is incorporation?

Incorporation is a method of registration that gives an association legal advantages, in return for accepting certain legal responsibilities.

When you incorporate your association, it becomes a legally separate entity with the same powers as an individual. An incorporated association can own land, sign a lease and appear in court.

An incorporated association and its members are legally separate. Under normal circumstances, it provides protection to the management committee from personal liability for the actions of the incorporated association, provided those actions are carried out in good faith and with due diligence.

However, with these benefits come obligations and responsibilities. Your incorporated association must comply with both the *Associations Incorporation Act 1981* and Associations Incorporation Regulation 1999. Your incorporated association's financial affairs will need to be audited or verified annually and financial statements lodged. Any member of the public can access copies of the documents that you are required to provide to OFT, including a copy of your association's rules, annual returns and financial statements.

Incorporating an association



To incorporate an association in Queensland, you must be a:

- group with at least seven members
- not-for-profit association
- have a physical address in Queensland.

To incorporate, an association needs to convene a general meeting. At this meeting, several decisions must be made. An association must:

- pass a motion to incorporate by resolution
- choose an appropriate name
- adopt a set of operating rules
- elect a president and treasurer (two different people must hold these positions)
- choose to elect a secretary and other officers (minimum of three management committee members)
- lodge an application with OFT and pay the fee for incorporation.

Pass a resolution to incorporate

To incorporate, an association must pass a resolution. The resolution needs to be passed at meeting by a three-quarters majority of members who are present and entitled to vote.

Choose a name

You will need to choose a desired incorporated association name and two alternatives. Incorporated association names must:

- contain only English characters
- not be easily mistaken for the name of another incorporated association, business name, cooperative name or identical to an Australian organisation name
- have the word 'Incorporated' or the abbreviation 'Inc.' at the end of the name.

Restrictions apply to certain names. You can't choose a name that:

- may be confused with government agencies, financial institutions or educational institutions
- has an affiliation with the Royal family, ex-servicepersons' organisations or major sporting events.

A full list of restrictions are set out in the *Associations Incorporation Act 1981* and *Associations Incorporation Regulation 1999*.

You can search to see if your proposed name is already taken by searching the Australian Securities and Investments Commission's National Names Index at **www.asic.gov.au**. All Queensland legislation is available from the Office of the Queensland Parliamentary Counsel's website at **www.legislation.qld.gov.au**

Adopt a set of rules

All incorporated associations must have a set of operating rules. These rules are sometimes known as the incorporated association's constitution. This written set of rules outlines the incorporated association's operations, its members' rights, how the management committee works and how meetings will be run.

OFT provides a standard set of rules that any incorporated association may adopt. These are known as the 'model rules' and are available from **www.qld.gov.au/fairtrading**. You may use either the model rules or you can write your own rules. If you use the model rules, the only details you can change are:

- the name of the incorporated association
- the name of the unincorporated association
- the objects of the incorporated association
- the financial year of the incorporated association
- the classes of membership.

Any other changes mean the rules are no longer the model rules but become the association's own rules.

Your association may adopt the model rules exclusively, adopt them in part or make them more specific to your needs. If your association wishes to make changes to the model rules (other than those allowed), the rules with the changes, no matter how minor, are considered your own rules.

A model rule referred to in this guide only applies to an incorporated association which has adopted that model rule as part of its rules. Members should check the rules to determine how a particular matter can be dealt with.

The rules become effective once your association is incorporated. After incorporation, if you want to, your association can amend its rules, to adopt the model rules, or you can completely replace them with the model rules. You must pass a special resolution at a general meeting to do so and within three months you must apply to the OFT for registration.

Elect a management committee

Your rules must set out provisions for electing the management committee including:

- how committee members are elected
- terms of office of committee members
- grounds or reasons for which a committee position may become vacant
- filling casual vacancies occurring on the committee.

In accordance with the rules, your association should elect its committee members. The management committee will usually consist of, at a minimum, the president, the treasurer and another person who may be the secretary.

A person is ineligible for election to the management committee if they have been convicted in the last five years on indictment, imprisoned or are bankrupt.

Lodge your application

Your association's application to incorporate must be completed on an *Associations Incorporation Form 1—Application for incorporation of an association*. This form and fees are available at **www.qld.gov.au/fairtrading**

If your association plans to use the model rules, you must complete Appendix B on the application for incorporation. If your association writes its own rules, you must complete Appendix A, identifying matters to be provided for in your own rules and attach a full copy of the rules.

The normal processing time for an application to incorporate an association is three to four weeks. You will receive a certificate of incorporation from OFT.

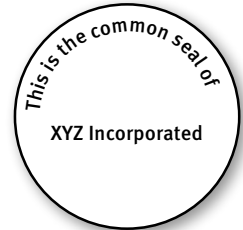
After incorporation



There are several things that your newly incorporated association must do as soon as it becomes incorporated.

Get a common seal

Your incorporated association needs to have a common seal produced. The common seal is a rubber stamp used to legally identify the incorporated association. The seal is usually used to provide proof of the incorporated association's name on legal documents.



The seal must include the words 'Common Seal' and feature your incorporated association's full name as it appears on your certificate of incorporation, including the word 'Incorporated' or 'Inc.'.

Open a financial institution account

You will need to open an account with a financial institution in the name of your incorporated association. As a separate legal entity, your incorporated association's finances must be operated under its own name. The account must be kept at a Queensland branch of the financial institution. The financial institution may ask for a copy of your rules and wish to sight the original certificate of incorporation.

You will need to appoint signatories to the account. All incorporated association cheques must feature two signatures, with at least one being the president, secretary or treasurer. Make sure you appoint enough signatories to administer the account conveniently.

Operating outside Queensland

If your incorporated association wishes to set up an office or do business outside Queensland, you must also register as a registered Australian body. To do this, contact the Australian Securities and Investments Commission (ASIC) at www.asic.gov.au

Assess the need for public liability insurance

Public liability insurance protects your incorporated association if a person is injured, or their property is damaged, due to an incident on your incorporated association's property or due to your incorporated association's actions.

Public liability insurance is compulsory if your incorporated association owns or leases land, or holds land in trust.

The management committee must assess your incorporated association's situation and decide how much insurance it needs, if any.

Transfer property

Any assets, liabilities, rights or legal proceedings of the unincorporated association are transferred to the newly incorporated association.

You can arrange with the Department of Natural Resources and Mines' Registrar of Titles to transfer any property held by the unincorporated association (usually held by trustees) to the incorporated association. For more information, visit www.dnrm.qld.gov.au

Running an incorporated association



Management committee

The management committee is ultimately responsible to the members for the operation of the incorporated association.

This includes following, interpreting and enforcing the rules and making sure the incorporated association complies with the law. The rules of your incorporated association must set out the membership and powers of the committee. The rules of your incorporated association must also set out provisions for the management committee including:

- who can be on your committee
- what functions and powers the committee has
- how committee members are elected
- terms of office of committee members
- grounds or reasons for which a committee position may become vacant
- filling casual vacancies occurring on the committee
- the quorum (minimum number of committee members who must be present to conduct a committee meeting)
- the procedures to follow at a committee and general meetings.

Management committee members

The management committee must have at least three members. The committee must include the offices of president and treasurer (one person cannot be both president and treasurer). All incorporated associations must have a secretary and many choose to include this position on the management committee.

You must notify OFT of any changes to the positions of president, secretary and treasurer within one month of the vacancy occurring using *Associations Incorporation form 10a—Change of details relating to an incorporated association*. This form is available from **www.qld.gov.au/fairtrading**. Lodgement details are included on the form.

All members of the management committee must be 18 years of age or older. The secretary must be a resident of Queensland or be living within 65km of the Queensland border, however there is no such requirement for other committee members.

Eligibility of management committee members

A person cannot sit on your committee if they have been convicted of certain offences.

Where a conviction applies, the person is ineligible to sit on the committee for a period of five years which begins on the later of the following dates:

- the day the conviction is recorded
- the day the person is released from prison (if applicable)
- the day any other court order relating to the conviction or term of imprisonment is satisfied.

A person also cannot sit on your committee if they are bankrupt.

Number of management committee members

Under the model rules, the management committee will consist of the president, treasurer and any number of elected members.

Under the model rules, if a casual vacancy occurs on the management committee, the continuing members of the committee may appoint another member of the association to fill the vacancy until the next Annual General Meeting (AGM).

Accountability of the management committee

One of the advantages of being incorporated is that personal liability is limited. However, management committee members still have a duty of care to the incorporated association. This means they may be held accountable and a penalty may apply if they:

- deliberately fail to act in the best interests of the incorporated association
- abuse their powers as committee members
- fail to avoid conflict of interests
- fail to exercise due care, skill and diligence.

If a management committee does not fulfil its reporting requirements, OFT may issue a show cause notice asking the incorporated association to provide reasons why its registration should not be cancelled.

Electing the management committee

The committee must be elected at a general meeting (usually the AGM) and in accordance with your incorporated association's rules.

Members may nominate candidates. Election may be by show of hands or by written ballot. Ballot papers should be collected and counted by two members who are appointed by the meeting for that purpose, and the results announced to the meeting.

Responsibilities of management committee members

The management committee is responsible for managing the affairs of an incorporated association and has several responsibilities under law.

An incorporated association management committee must:

- control the business and operations of the incorporated association
- ensure the incorporated association complies with its rules on calling and holding meetings
- ensure minutes of all committee and general meetings are kept
- ensure an appropriate secretary is elected or appointed
- ensure a copy of the incorporated association's rules is available to all members
- keep public liability insurance current, if the incorporated association is required to hold any
- have a nominated address for documents to be served (this must be a physical address, not a Post Office Box)
- register land or interests in land gained by the association because of its incorporation
- ensure the incorporated association's name appears on the common seal
- ensure the incorporated association's full name appears on all official documents such as advertising, business letters, accounts, official notices, publications, cheques and receipts
- notify OFT within one month of changes of office bearers (president, treasurer or secretary), the incorporated association's postal address or the secretary's residential address

- ensure proper accounting records are kept which correctly record and explain the transactions of the incorporated association and its financial position
- ensure the association's financial affairs are audited or verified annually
- ensure an AGM is held each year within six months of the end of the incorporated association's financial year
- ensure the audited or verified financial statements of the accounts of the incorporated association are submitted to members at the AGM
- lodge an annual return using the form your incorporated association is sent by OFT.

In addition, members of the committee should:

- be aware of the duties of the secretary and ensure they are properly carried out
- use reasonable care and skill in the performance of their duties
- act in good faith
- advise the committee of any conflict that may arise between their own interests and the interests of the incorporated association (e.g. advise if any incorporated association activities might result in a financial gain to themselves)
- ensure any documents addressed to the incorporated association are brought to the attention of the committee as soon as practicable after receipt
- ensure documents provided to OFT or submitted to members do not contain or omit anything that make them false or misleading.

The rules of the incorporated association may set out additional obligations and specific restrictions on the power of the committee. As a result, each member of the committee should be familiar with the incorporated association's rules and any obligations under those rules.

Office bearers

The president usually chairs the management committee and will also play a major role in the incorporated association's meetings. Under the model rules, the president is required to chair all meetings he/she attends.

If the president cannot attend a meeting for any given reason, another member of the management committee can be nominated as chair.

The secretary is primarily responsible for managing the records of the incorporated association.

The secretary will also:

- take and keep minutes for the incorporated association's meetings
- keep the register of members
- take nominations for the management committee
- provide appropriate notice to members for meetings
- call and convene special general meetings
- arrange the meeting venue and prepare the agenda
- coordinate any correspondence or reports to be presented at meetings
- circulate the minutes of meetings to members
- complete any actions arising from meetings that require correspondence
- receive all incorporated association correspondence and bring urgent matters to the attention of the president or treasurer if necessary.

The treasurer is primarily responsible for the financial management of the incorporated association. The treasurer will:

- keep and maintain an asset register for the incorporated association
- manage the petty cash balance and ensure the petty cash book is kept up-to-date
- keep all documentation for payments made including receipts, invoices and statements
- keep and maintain the incorporated association's deposit and cheque books
- ensure all payments are approved or ratified by the management committee and are recorded in the minutes
- keep all financial records in Queensland
- keep either a receipt book of consecutively numbered receipts, or computer system records of them.

Membership

The rules of your incorporated association should specify the qualifications for membership (if any). The rules should also set out the circumstances in which a member ceases to be a member. For example, if failure to pay an annual membership fee will result in the termination of a membership, this must be specified in the rules.

Register of members

Your incorporated association is required to keep a register of members. It is also recommended you keep a register of committee members as part of your records. The model rules require that the register of members be open to inspection by members at all reasonable times. If disclosure of your membership details would put you at risk of harm, you can apply to the management committee for details (other than the member's full name) to be withheld from the register under the model rules.

Meetings

The purpose of your incorporated association and the nature and amount of business it conducts will determine how frequently meetings should be held and who should attend. Your incorporated association is required to meet at least once a year (AGM) and the management committee must meet at least once in every four months (management committee meetings). The management committee should meet as often as necessary to properly manage the affairs of the incorporated association. Other meetings might include special general meetings and sub-committee meetings.

Management committee meetings

Management committee meetings must be held according to the rules. Usually the rules provide that the committee determines the time and place.

The rules usually provide that notice of a management committee meeting is given in the way determined by the committee.

In the case of a special management committee meeting, under the model rules 14 days notice must be given.

For a committee meeting to take place, a quorum must be present. The rules of your incorporated association should specify the number of committee members that constitutes a quorum. Under the model rules, more than half the total number of committee members comprise a quorum for a committee meeting.

The format of meetings is at the discretion of your incorporated association, however the president should chair any committee meeting he/she attends. If the president cannot attend, any other member can be nominated to chair.

The management committee may permit a committee member to take part in a committee meeting by using any technology that reasonably allows the member to hear and take part in discussions as they happen. Use of such technology in meetings does not need to be addressed in the rules.

Minutes must be kept of all management committee meetings.

General meetings

General meetings can be held at any time and the frequency will depend on the activities of your incorporated association. General meetings can be called at any time in accordance with the association's rules.

The model rules allow the secretary to call a general meeting by giving each member notice of the meeting in accordance with the rules. The secretary may also call a general meeting after:

- being directed to call the meeting by the management committee
- being given a written request signed by at least a third of management committee members
- being given a written request signed by twice as many ordinary members as the number of members on the management committee, plus one.

The rules of your incorporated association must specify:

- the manner of calling general meetings
- the quorum for general meetings
- the procedure at general meetings
- whether members are entitled to vote by proxy at general meetings and, if so, by what method
- the time and the manner in which notices of general meetings are to be given
- the time and the manner in which notices of motions are to be given, published or circulated.

For a general meeting to take place, a quorum must be present. A quorum for a general meeting of an incorporated association is at least the number of management committee members, plus one. However, if all members of your incorporated association are members of the management committee, a quorum is the total number of members, less one.

No business is to be transacted at any meeting unless a quorum is present. The rules of your incorporated association should specify the procedure if a quorum is not present at a meeting.

The format of your incorporated association's general meetings will vary depending on the type of business that needs to be addressed.

Minutes must be kept of all general meetings.

Example of a general meeting agenda

XYZ Association Inc

General meeting agenda

(Date, time, location)

Welcome

The president opens the meeting and welcomes members and invited guests.

Present

The secretary notes members who are present at the meeting.

Apologies

The secretary notes members who have submitted their apologies for not attending the meeting.

Minutes of previous meeting

Members should consider whether the minutes of the previous meeting are accurate. The president should sign and date the previous minutes verifying their accuracy.

Business from previous minutes

Members report on the status of actions required of them as listed in the previous minutes.

Correspondence

The secretary provides a report on any relevant incoming and outgoing correspondence since the last meeting.

President's report

The president addresses the members regarding any matters that the management committee has dealt with since the previous meeting.

Treasurer's report

The treasurer provides members with a financial report. The treasurer moves for the report to be received, another member must second the motion, and then the report can be discussed.

Special business

This part of the meeting addresses any issues placed on the agenda by the management committee or secretary in consultation with the president. This is also where special resolution matters can be discussed—see page 25.

General business

This provides members with the opportunity to raise a question or move a motion. Members raising complex issues need to advise the committee of these intentions before the meeting takes place.

Close

The president closes the meeting.

Annual General Meeting

The AGM is attended by the management committee, members and invited guests. This meeting is a statement to members about your incorporated association's financial position and the activities and achievements of the previous year. The AGM is an opportunity for your incorporated association to officially elect office bearers and to present audited or verified financial statements to your members.

AGMs must be held within six months after the end of the incorporated association's financial year.

The rules of your incorporated association must specify the way the meeting is called and the way the notice of the AGM is to be given. Under the model rules, the secretary must give notice to each member specifying the place, date and time of the meeting and the nature of the business, including the fact that it is the AGM. The notice must be given at least 14 days before the meeting.

Written notice of any proposed special resolution must also be given to members as required under the rules. The model rules require at least 14 days notice of a general meeting. For convenience, the notice of meeting and any notice of special resolutions can be given to members together.

The rules of your incorporated association must include what business is to be covered at the AGM. Under the model rules, the following business must be conducted:

- receiving the statement of income and expenditure, assets, liabilities and mortgages, charges and securities affecting the property of your incorporated association for the last financial year
- receiving the auditor's or verifier's report on the financial affairs of the incorporated association for the last financial year
- presenting the audited or verified financial statements to the meeting for adoption
- electing members of the management committee
- appointing an auditor or verifier.

The format of the meeting will be similar to that of a general meeting, however the previous minutes will be from the previous AGM, not the previous general meeting. The minutes kept must state specifically that they are minutes of the AGM.

Minutes must be kept of all Annual General Meetings.

Voting

The chairperson of any meeting is responsible for supervising and administering the voting. It is recommended voting be carried out by show of hands or balloting.

Voting may be carried out in person, by proxy, by attorney or by using any technology that allows the member to hear and take part in discussions as they happen.

The format and process for postal voting is at the discretion of your incorporated association and should be set out in the rules.

Special resolutions

A 'special resolution' is a resolution that is passed at a general meeting (including the AGM) of an incorporated association by the votes of 75 per cent of the members who are present and entitled to vote.

Matters that must be decided by special resolution are:

- a change of name for the incorporated association
- a change to the incorporated association's rules
- a decision to transfer incorporation
- a decision to amalgamate with another incorporated association
- the decision to wind up the incorporated association.

Postal voting is not allowed for special resolutions.

Motions

The rules of your incorporated association should set out the manner in which notice of motions is to be given. A member who wishes to bring any business before a general meeting should give notice to the incorporated association as per the rules. Members should ensure that they raise their agenda item in sufficient time for it to be included in the notice calling the next general meeting.

Minutes

Your incorporated association must record minutes at all meetings, including management committee meetings, general meetings and the AGM.

If asked by a member of your incorporated association, the secretary must, within 28 days, make the minute book for a particular general meeting available for inspection by the member at a mutually agreed time and place. The secretary must also give the member copies of the meeting minutes if requested. Your incorporated association can ask the member to pay the reasonable costs of providing copies of the minutes.

The secretary is ultimately responsible for ensuring your incorporated association's minutes are maintained accurately. The minutes of meetings provide a permanent official record of the business transacted. They should form a clear and concise summary of the proceedings of the meeting.

The minutes would normally include:

- details of the day, date and place of the meeting and the time of commencement
- the names of those present and details of any apologies received
- that the chairperson announced a quorum was present and that the meeting was duly constituted
- a reference to minutes of the previous general meeting and the signing of them as a correct record
- details of every resolution put to members and whether they were passed with the required majority
- details of members voting against a motion or abstaining from voting, if those members request that this be recorded
- details of any appointments made, members elected to office and any leave of absence granted to a member
- details of election of committee members (if applicable)
- overview of discussions concerning decisions made at the meeting
- decisions made at management committee meetings
- the date and time for the next meeting, if this is determined during the meeting
- the time that the meeting closed.

Incorporated association rules and changes

Your incorporated association must have a constitution. This written set of rules outlines your incorporated association's operations, including members' rights, how the management committee works and how meetings are run.

Any incorporated association member can ask the secretary for a copy of the rules. The secretary may ask the member to cover any reasonable costs of providing them. Alternatively, OFT can provide a copy of the incorporated association's rules for a fee.

Model rules

OFT provides a standard set of rules, known as the model rules, that any incorporated association may adopt. These can be downloaded at **www.qld.gov.au/fairtrading**

Changes to rules

Your incorporated association can apply to register amendments to its rules, or adopt the latest version of the model rules, at any time after incorporation. To do so, a special resolution at a general meeting must be passed.

Within three months of passing the special resolution, the secretary must complete and lodge *Associations Incorporation form 8—Application to register an amendment of rules*. This form is available at **www.qld.gov.au/fairtrading**. Lodgement details and fees are available on the website.

Change of incorporated association name

Your incorporated association can apply to change its name at any time. A special resolution at a general meeting must be passed. You should select a preferred new name and two alternatives.

Within three months of passing the special resolution, the secretary must complete and lodge *Associations Incorporation form 4—Application for registration of a change of name*. This form is available at **www.qld.gov.au/fairtrading**. Lodgement details and fees are available on the website.

Your incorporated association also needs to return its original certificate of incorporation with the application.

Public liability insurance review and advice

Public liability insurance protects your incorporated association if a person is injured, or their property is damaged, due to an incident on the incorporated association's property or due to the incorporated association's actions.

Public liability insurance is compulsory if your incorporated association owns or leases land, or holds land in trust.

Your incorporated association's management committee must assess the need for insurance and decide how much insurance it needs, if any.

Your management committee is legally required to:

- review insurance requirements each year and report the results at the annual general meeting
- tell members the risks if no public liability insurance is taken out
- tell people applying to be members, and nominees for election to the management committee, whether your incorporated association has public liability insurance and how much coverage it has
- tell any person or entity who your incorporated association deals with if it does not have public liability insurance.

If your incorporated association decides not to take out adequate public liability insurance, you need to be aware of the risks, including that:

- businesses may refuse to deal with your incorporated association
- your incorporated association's assets may be at risk if someone makes a claim.

While the law does give some protection to an incorporated association's members for liability, this protection may not be absolute. You should seek professional advice about your incorporated association's individual situation and needs.

Handling disputes

The inclusion of a formal complaint process in your incorporated association's procedures may assist you to deal with any disputes that arise internally.

OFT recommends that you:

- appoint a member to be in charge of receiving and dealing with complaints
- set up a system to record, track and monitor complaints
- record the progress of all complaints, including their outcomes in mediation or court (if applicable) or if they are referred outside the incorporated association.

The Australian Standard for Complaints Handling may be useful in creating your incorporated association's procedure.

The Department of Justice and Attorney-General's Dispute Resolution Branch offers free mediation services. For more information, visit

www.justice.qld.gov.au

OFT is unable to assist in resolving internal disputes. The Supreme Court of Queensland is the only body that can intervene in the operation of an incorporated association.

Amalgamation

Your incorporated association can apply to amalgamate with one or more other incorporated associations to form a new incorporated association. A special resolution at a general meeting must be passed.

Within three months of passing the special resolution, the appointed person must complete and lodge *Associations Incorporation form 5—Application for incorporation upon amalgamation of associations*. Each of the original incorporated associations must also complete *Associations Incorporation form 13—Notice of special resolution for amalgamation of association*. These forms are available from **www.qld.gov.au/fairtrading**. Lodgement details and fees are available on the website.

Each of the original incorporated association must also return their original certificate of incorporation within three months.

Voluntary transfer of incorporation

Associations have the opportunity to cost effectively voluntarily transfer incorporation into a company limited by guarantee or an indigenous corporation. Under this process transfer duty or capital gains tax may not apply because the association's assets are still owned by the same body, despite the change of corporate status. Associations should consider obtaining legal advice before embarking on this process.

The reporting requirements under the *Corporations Act 2001* (Cth) (Corporations Act) and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (CATSI Act) may better suit larger associations given they are designed to regulate large-scale corporate entities, unlike the *Associations Incorporation Act 1981*.

The amendments provide the Chief Executive (or the Minister in the case of a corporation under the *Religious Educational and Charitable Institutions Act 1861* (RECI Act) authority to approve the transfer. An application to transfer incorporation must be completed on either an *Associations Incorporation Form 28—Application for authority to transfer an association's incorporation (Associations Incorporation Act 1981)* or an *Associations Incorporation Form 29—Application for authority to transfer a corporation's incorporation from RECI Act*, whichever is relevant. These forms are available at www.qld.gov.au/fairtrading. Lodgement details are included on the form. No fee is payable on the forms.

Organisations seeking to transfer to the Corporations Act should first apply to ASIC to reserve the name before lodging the Form 28 with OFT.

Once the forms are completed and approved, an application for actual transfer under the relevant Commonwealth corporations' legislation must be made. Incorporated associations transferring to a company limited by guarantee must complete *ASIC Form 202—Application for registration of a body corporate as an Australian company*.

The next step is to ensure the company limited by guarantee or the Indigenous Corporation complies with the reporting and regulatory requirements of the Corporations Act or CATSI Act, whichever is relevant. ASIC can provide all necessary assistance and information in relation to the Corporations Act. In relation to requirements of the CATSI Act, the Office of the Registrar of Indigenous Corporations (ORIC) should be contacted.

Detailed information on the reporting and regulatory requirements of setting up and running a company limited by guarantee or an Indigenous Corporation in Australia can be found at **www.asic.gov.au** and **www.oric.gov.au**

Financial obligations



Financial reporting requirements

If a management committee does not fulfil its reporting requirements, OFT may issue a show cause notice asking the incorporated association to provide reasons why its registration should not be cancelled.

For the purpose of financial reporting, an incorporated association may be classed as a level 1, level 2 or level 3 association, depending on its current assets and total revenue. The three levels have different financial reporting requirements.

Current assets are assets that are easily turned into cash. They include cash itself, shares, accounts receivable and short-term investments. Current assets do not include property or depreciable assets. Total revenue is an incorporated association's total income during its last financial year before any expenses are deducted.

If your incorporated association's activities are governed by more than one piece of legislation, you will need to make sure the financial reporting requirements of all relevant legislation are met. For example, if your level 2 or level 3 association is required to have an audit under the *Collections Act 1966*, *Gaming Machine Act 1991* or under any law for any other purpose, the financial statements must be audited.

Your incorporated association level and auditing requirements are as follows:

<p>Level 1</p>	<p>Current assets of more than \$100,000 or total revenue of more than \$100,000.</p>	<p>For level 1 incorporated associations, a registered auditor or certified accountant must audit the financial statements.</p>
<p>Level 2</p>	<p>Current assets between \$20,000 and \$100,000 and/ or total revenue between \$20,000 and \$100,000.</p>	<p>Level 2 incorporated associations required to have an audit conducted under the <i>Collections Act 1966</i>, <i>Gaming Machine Act 1991</i> or under any law for any other purpose: A registered auditor or certified accountant, or person approved by OFT, must audit the financial statements.</p> <p>For other level 2 incorporated associations: An auditor or certified accountant, or person approved by OFT, must verify the financial statements.</p> <p>The verification statement must state ‘I have sighted the association’s financial records and the financial records show that the association has book keeping processes in place to adequately record the association’s income and expenditure and dealings with its assets and liabilities’.</p>
<p>Level 3</p>	<p>Current assets of less than \$20,000 and total revenue of less than \$20,000.</p>	<p>Level 3 incorporated associations required to have an audit conducted under the <i>Collections Act 1966</i>, <i>Gaming Machine Act 1991</i> or under any law for any purpose: A registered auditor or certified accountant, or person approved by OFT, must audit the financial statements.</p> <p>For other level 3 incorporated associations: The president or treasurer must verify the financial statements.</p> <p>The verification statement must state ‘The association keeps financial records in a way which properly records the association’s income and expenditure and dealings with its assets and liabilities’.</p>

For further details see pages 35–37.

Auditors and persons able to verify financial affairs

Where your incorporated association's financial statements are required to be audited or verified by an auditor or certified accountant, one of the following persons should be appointed:

- a person registered as an auditor under the *Commonwealth Corporations Act 2001* (a register of auditors may be searched on **www.asic.gov.au**)
- a member of CPA Australia (**www.cpaaustralia.com.au**) who is entitled to use the letters CPA or FCPA
- a member of The Institute of Chartered Accountants in Australia (**www.charteredaccountants.com.au**) who is entitled to use the letters CA or FCA
- a member of the Institute of Public Accountants (**www.publicaccountants.org.au**) who is entitled to use the letters MIPA and/or FIPA.

If your auditor or verifier does not fit any of these categories, a level 2 incorporated association or a level 3 incorporated association required to have an audit, may lodge *Associations Incorporation form 21—Application for approval to conduct audit or provide verification statement* to seek approval of a particular person with suitable auditing or accounting experience.

Your auditor or verifier cannot be:

- the secretary or a member of your incorporated association's management committee
- an employee of the incorporated association
- a partner,
- employer or employee of the secretary, a partner, or a member of the management committee
- a spouse or dependant of any of the above.

The model rules require an incorporated association to appoint its auditor or verifier for the present financial year at the annual general meeting.

For a level 3 incorporated association not required to have an audit, the verifier is the president or treasurer.

You will need to provide your auditor or verifier with:

- cash receipts
- a register of receipt books
- receipt books containing duplicates of issued receipts
- unused receipt books
- duplicate bank deposit slips
- a cash receipts journal
- cash payments
- vouchers for payments made in chronological order
- cheque butts (used, unused and cancelled)
- a cash payments journal
- cash at bank
- your ledger account (if applicable)
- your bank statements for the year, plus one month before and one month after
- bank reconciliations for the financial year, and from the previous financial year
- petty cash
- petty cash vouchers
- petty cash summary
- depreciable assets
- a register of all non-current assets including any additions or disposals that occurred during the financial year
- documentation supporting any disposals
- accounts receivable
- a list of all amounts due at end of financial year
- indication of the number of days an account has been outstanding and when payment is expected
- details of any liabilities
- a list of all amounts owing at the end of the financial year
- a list of loans payable, to banks or otherwise, including interest rates, principal outstanding and repayments
- minute books
- a copy of your incorporated association rules
- a register of members
- any other documentation the auditor or verifier requests.

Annual returns

Your incorporated association must lodge an annual return.

The management committee must ensure financial statements are prepared and presented to the AGM for adoption. Within a month after the AGM, your incorporated association must complete and lodge an annual return.

Whether lodging online, by post or fax, the annual return must include a copy of the financial statement presented at the AGM, signed and dated by either the president or the treasurer, including:

- a profit and loss statement (income and expenditure)
- a balance sheet (assets and liabilities)
- details of all mortgages, charges and securities that affect any of your incorporated association's property at the close of the financial year.

The annual return must also include a copy of the signed audit report or verification statement.

Annual return form

Your incorporated association can lodge its annual return online at **www.qld.gov.au/fairtrading** within a month after the AGM. OFT will post an *Associations Incorporation form 12—Annual return of association* to the registered address of your association. This form will be sent within a month of your incorporated association's financial year ending.

If you do not receive or need another copy of this form, please contact OFT. If your incorporated association has not conducted any financial transactions during its financial year, and it has no assets or liabilities, you must submit a statutory declaration with the Form 12.

If you lodge the annual return online, you will receive a receipt automatically. For other lodgements you will need to request a receipt when you lodge the return.

Reportable financial year

Under normal circumstances, an incorporated association's reportable financial year is 12 months. Most incorporated associations select a financial reporting period of either January to December or July to June.

If your incorporated association's reportable financial year is not 12 months (for example, when it first incorporates or if it changes the period), it cannot be less than three months or more than 15 months.

Record keeping

All incorporated associations have obligations to keep proper financial records.

Financial recording requirements for your incorporated association include keeping:

- a cash book or statement of amounts received and paid
- a receipt book of receipt forms
- all association bank statements
- a register of assets
- a petty cash book.

Larger incorporated associations may also be required to use a journal and/or ledger. This depends on the type of financial operations your incorporated association requires. If you are unsure, contact your auditor or verifier for more information.

All financial records for your incorporated association must be kept for at least seven years after the final entry.

Cash book and receipt book

Your incorporated association's cash book is used to record all cash or cheque payments (expenditure) and receipts. It is generally kept in chronological order and split into two sections, one for payments and one for receipts. Your receipts should reconcile with your bank statements.

All monies received should be recorded and a receipt issued. Your incorporated association is required to keep a duplicate of all receipts, and you'll need these at audit time.

You also need to keep a register of these receipt books. Generally, incorporated associations use more than one receipt book each financial year, and this will help you and your auditor or verifier keep track of them.

The cash book should be balanced at regular intervals (e.g. monthly), and a reconciliation made between the cash book and bank balance.

Bank statements and petty cash book

Your incorporated association must hold an account with a financial institution and the account must be kept in a Queensland branch.

The management committee must be recorded in meeting minutes as either approving or ratifying all payments. Therefore, any invoices that need to be paid must be raised by the treasurer at a management committee meeting for approval.

Any payment greater than \$100 must be paid by cheque or electronic funds transfer. Any amount less than this can be paid from your incorporated association's petty cash. All payments from petty cash must be recorded in the petty cash book.

Journals and ledgers

Keeping a journal and ledger is generally only necessary for larger incorporated associations that must keep track of numerous accounts. All transactions are initially recorded in the journal in chronological order, then into the ledger. The ledger is a place to keep track of a number of accounts that may be used for different purposes.

Asset register

The asset register is a place for your incorporated association to record the details of all assets acquired and owned since incorporation. You need to include details such as the date of acquisition, cost, depreciation, location (if applicable) and disposal of assets. This register will assist your management committee to keep track of your association's assets, and will also be needed at audit time.

Winding up your incorporated association



A benefit of incorporating an association is that it has perpetual succession which enables it to continue to 'live' on regardless of changes in its membership. However, there may come a time where the 'life' of the incorporated association should come to an end. This is known as winding up the association.

An incorporated association may be wound up by:

- its members provided it is solvent
- appointing a voluntary administrator
- the Supreme Court of Queensland
- applying for cancellation itself
- having its incorporation cancelled by the OFT.

Winding up an incorporated association is a very important decision and should never be used as a means for the association to avoid its legal and financial responsibilities.

Winding up by members

Providing your incorporated association is solvent, members can pass a special resolution at a general meeting to wind it up. You will need to appoint a liquidator to finalise the winding up and distribution of your assets.

Winding up by voluntary administration

If your incorporated association is experiencing financial difficulties and cannot pay its debts, you might consider the option to appoint a voluntary administrator to assist you with your financial affairs.

You can also appoint a voluntary administrator as an alternative to liquidation to place the association into voluntary administration and this may allow you to continue operating.

Winding up by the Supreme Court

An incorporated association, can appoint a creditor, or the Chief Executive can apply to the Supreme Court of Queensland for the winding-up of an incorporated association in the manner prescribed under the Corporations Act 2001 (Cth). The association is responsible for all costs incurred if the Supreme Court appoints a liquidator.

The Supreme Court can then order the winding up of an incorporated association on certain grounds.

Winding up by voluntary cancellation

Your incorporated association can opt to apply for a voluntary cancellation, rather than go through a formal winding up process.

You can apply to the OFT to cancel your incorporation, if your association:

- has no outstanding debts or liabilities
- has paid all fees and penalties applying to it under the *Associations Incorporation Act 1981*
- is not a party to any legal proceedings.

Your application must have passed a special resolution under its rules at a general meeting approving the making of the application, or by the administrator if there is one in place.

At that meeting, members must also pass a special resolution specifying who to distribute any surplus assets to.

Within one month of the passing of the special resolution, the association must lodge a copy of the special resolutions with OFT together with an application form which is available at www.qld.gov.au/fairtrading. The form provides details of the documents required including evidence of the distribution of any surplus assets.

Cancellation by the OFT

The Chief Executive of the OFT, may cancel the incorporation of an association on a number of grounds, including:

- the failure to lodge required returns and financial statements
- the association has ceased to exist
- on public interest grounds.

Search the incorporated associations register



There is a free, searchable register of incorporated associations at **www.qld.gov.au/fairtrading**

OFT keeps a public register where you can request information about incorporated associations.

You can request a further search on a specific incorporated association to find its:

- annual returns
- incorporated association rules
- rule changes
- name changes
- president, secretary and treasurer changes.

More information on the public register is available at **www.qld.gov.au/fairtrading**

Useful contacts



These contacts are current as at June 2020.

Office of Fair Trading

www.qld.gov.au/fairtrading

Ph: 13 QGOV (13 74 68)

Registrar of Titles

Department of Natural Resources and Mines

www.dnrm.qld.gov.au

Ph: 13 QGOV (13 74 68)

Dispute Resolution Branch

Department of Justice and Attorney-General

www.qld.gov.au/law

Ph: 1800 017 288

Standards Australia

www.standards.org.au

Australian Securities and Investments Commission

www.asic.gov.au

Queensland Courts

www.courts.qld.gov.au

Queensland legislation

www.legislation.qld.gov.au

- *Associations Incorporation Act 1981*
- Associations Incorporation Regulation 1999
- *Charitable Funds Act 1958*
- *Charitable and Non-Profit Gaming Act 1999*
- Charitable and Non-Profit Gaming Regulation 1999
- *Collections Act 1966*
- *Gaming Machine Act 1991*
- *Fair Trading Act 1989*

Commonwealth legislation

www.legislation.gov.au

- *Corporations Act 2001*

CPA Australia

www.cpaaustralia.com.au

Chartered Accountants Australia and New Zealand

www.charteredaccountantsanz.com

Institute of Public Accountants

www.publicaccountants.org.au

Interpreting services

English

For interpreting services, call 13 14 50

Arabic

بالانسببة لخدمات الترجمة الفورية، إتصل بنا على الرقم 13 14 50

Bosnian Bosanski

Za usluge tumačenja, nazovite 13 14 50

Dari

برای خدمات ترجمانی به 13 14 50

Dinka

Na wïc wër thok ka yï yup 13 14 50

French Français

Pour les services d'interprétariat, appelez le 13 14 50

German Deutsch

Sollten Sie die Dienste eines Dolmetschers benötigen, so rufen

Sie uns unter der Nummer 13 14 50 an

Greek

Για υπηρεσίες διερμηνείας καλέστε το 13 14 50

Italian Italiano

Per servizi di interpretariato, chiamate il numero 13 14 50

Hindi

13 14 50 तक 13 14 50 तक 13 14 50 तक

Japanese

通訳サービスが必要な場合は、13 14 50までお電話ください

Korean

통역 서비스를 받으려면 13 14 50번으로 전화하십시오

Samoan

Mo auaunaga fa'aliliu upu, vala'au le 13 14 50

Simplified Chinese

如需传译服务，请致电13 14 50

Spanish

Si necesita servicios de interpretación, llame al 13 14 50

Swahili

Kwa huduma za ukalimani, piga simu kwa 13 14 50

Traditional Chinese

如需傳譯服務，請致電13 14 50

Vietnamese

Đề có dịch vụ thông ngôn, hãy gọi số 13 14 50

This guide contains essential information about administering an incorporated association in Queensland.

You can find the most up-to-date information at **www.qld.gov.au/fairtrading**

Office of Fair Trading
www.qld.gov.au/fairtrading
Phone: **13 QGOV** (13 74 68)
Email: **Brisbane.OFT@justice.qld.gov.au**

Follow us on

