

✓ Incorporation

What is incorporation?

Incorporation is a system of State Government or Territory registration that gives an association or community groups certain legal advantages in return for accepting certain legal responsibilities.

What is an Incorporated Association?

An incorporated association is a registered legal entity usually established for recreational, cultural or charitable purposes. In order to be eligible to be an incorporated association in Victoria, you must have more than five members and be identified as 'not-for-profit'. This means that all profits must be applied to the purposes of the association, not to individual members.

An incorporated association receives recognition as a legal entity separate from its members and offers some protection for office holders from any debts or liabilities incurred by the group. Incorporation is voluntary. Once a group is incorporated, it will need to abide by relevant legislation under the Associations Incorporation Act (1981).

What are the advantages in becoming incorporated?

The main advantage is that it is relatively inexpensive to incorporate with limited legislative requirements. This means that an incorporated association still has some flexibility in how it manages its operations without needing to acquit or report in excessive detail on all those operations. If a group adopts the Model Rules for an Incorporated Association, the process is generally smooth and simple to implement. A downloadable copy of the 'Model Rules for an Incorporated Association' can be accessed from www.consumer.vic.gov.au.

Another advantage is that the group or organisation gains 'limited liability' on their activities. Limited liability is a legal term that means that individual members of a group will be protected from being personally liable to pay, from their personal assets, the debts incurred if the group happens to be involved in legal proceedings.

What are the disadvantages in becoming incorporated?

Because incorporation laws only cover the operations of a group in one state, a group would need to incorporate in every state or become a Registered Australian Body to do its work in other states (*see your Volunteer Resource Centre for more information about Registered Australian Bodies*).

Another disadvantage is that the activities of an incorporated association are not very closely monitored by independent legal authorities so if a small incorporated group is having 'problems', there may be little government support available to it.

Does incorporating a group mean we become a registered charity?

No. Incorporating is not the same thing as registering as a charity or getting entitlement to certain tax exemptions. That has to be done separately.

What do we need to do to incorporate our group?

You need to prepare a unique name for your group or organisation that is not already registered with the Australian Securities & Investment Commission (www.asic.gov.au). The next step is to give members of the group at least 21 days notice that a meeting will be held and that one of the agenda items will be to apply for incorporation as an association

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under the Associations Incorporation Act 1981. At the meeting, a majority of members (whether in person or by proxy) must vote to pass the motion to incorporate as an association and then a member must be authorised to apply to incorporate the association. A proposed Statement of Purposes and the Rules or Model Rules also need to be adopted and sent, along with the appropriate application fee, to Consumer Affairs Victoria.

Can a small group stay unincorporated?

The advantages of being unincorporated and unregistered mean that groups won't have to pay the costs associated with incorporation and will not have to comply with the legal requirements imposed on incorporated associations.

An individual member of the group will be obligated to act as a trustee for the group; however, if anything goes wrong during the course of the groups activities, such as a serious injury or damage to people or property, the trustee, and other group members may be held personally liable and may need to meet costs, or claims for damages, from their own private resources.

There can also be difficulties with opening bank accounts, arranging insurances, and confusion about who owns what property. If a trustee has their name on any group contracts and bank accounts but leaves that position, there may be difficulties transferring these responsibilities to a new member.

It is also important to remember that many funding agencies will not provide grants to groups unless they have incorporation status.

In conclusion

Once a group is become incorporated, it will need to fulfil statutory obligations each year it

is in operation. The opportunities for an incorporated association are, however, dramatically increased through access to funding for its activities and projects and the limited liability of its members.

The information contained in this information sheet is generic. Please contact your volunteer resource centre if you require further assistance.