

WHAT IS AN ASSOCIATION?*

An Association is a group of individuals who come together in an organised way for a shared purpose. Associations can be incorporated or unincorporated, and this distinction affects their legal status. It also affects your responsibilities, and protections.

UNINCORPORATED ASSOCIATIONS

An Unincorporated Association is not recognised as a legal entity. This means any obligations or liabilities incurred are the responsibility of the individual members because the members can only act in their own personal capacity.

An Unincorporated Association cannot enter into contracts, hold property, or sue or be sued in its own name.

Unincorporated Associations are informal groups formed for social, sporting, or community purposes, for example a social run club or book club.

It is possible for large groups to remain unincorporated, however the risks to individual members should be considered in deciding if this is the right legal structure for your activities.

INCORPORATED ASSOCIATIONS

An Incorporated Association is a separate legal entity, meaning that the law recognises the association as a 'thing' separate to its members.

One of the most significant advantages of incorporation is limited liability. This means that the legal and financial obligations of the Association (such as debts or legal claims) do not generally extend to individual members or officeholders.

As a result, members are protected from personal risk, provided they act within the scope of their roles and obligations.

Sometimes Incorporated Associations become a Registerable Australian Body which means it is registered with the Australian Securities and Investment Commission (ASIC) which allows it to operate legally within all states and territories and not be restricted to the state or territory in which it first registered.

As a separate legal entity, the Incorporated Association can do things in its own name including:

- Enter into contracts
- Operate bank accounts

- Own property
- Hold insurance
- Sue or be sued
- Continue existing even if there are changes in membership.

GOVERNANCE AND STRUCTURE OF INCORPORATED ASSOCIATIONS

Incorporations happens when the individuals seek registration with Consumer Building and Occupational Services (<https://www.cbos.tas.gov.au/>) under Tasmanian legislation.

This involves paying a fee (which may be reduced or waived in some cases) and either drafting a constitution or adopting the Model Rules under the state Act (the *Associations Incorporation Act 1964* (Tas)).

Incorporated Associations are also required to appoint a public officer. This is the person responsible for meeting certain legal obligations, such as filing annual reports, on behalf of the incorporated association.

The name of an Incorporated Association must include either the full word “Incorporated” or the abbreviation “Inc” (for example, Monsters Inc.).

NOT-FOR-PROFIT (NFP) NATURE

The Association must have a stated purpose – that is why it is being established. Under Tasmanian legislation Incorporated Associations cannot exist to make a profit for its members which means profits need to be linked to the purpose which might be social housing, community sports or education.

Note: NFP status is not the same as being a registered charity

Practice tip: If no one is named in the application, the public officer is the person who lodged the application. Note, the position of public officer must not be vacant for more than 14 days after becoming incorporation.