

# INCORPORATED ASSOCIATIONS MANUAL

by

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# 3

## Tasks Immediately After Incorporation

*Myles McGregor-Lowndes*

### **3-100 Introduction**

After the person appointed by the association to seek incorporation has received the certificate of incorporation from the Office of Fair Trading, a number of requirements ought to be attended to promptly. Some of these matters are required by the Office of Fair Trading and Australian Taxation Office, while others are necessary to get the newly incorporated association off on the right foot.

A successful management committee will spend a little extra time and effort to ensure that the financial records and minutes of their first term will serve as an example to those who follow. A proper system of bookkeeping and minutes will give future management committees a standard to live up to, rather than just continue the poor attempts of the previous committee. The time, effort and expense for a later committee to put things in order, if they ever can, far outweigh the time, effort and expense to get the records right from the start. The first committee of management has an important responsibility.

This chapter sets out the issues which a management committee ought to consider at their first meeting after incorporation, which should be held as soon as possible after receiving the certificate. This will normally be within the first week of the certificate's issue to comply with the time limits imposed by the *Associations Incorporation Act*.

### **3-200 Associations Incorporation Act requirements**

The interim office bearers on incorporation become the first office holders of the association (s 8(4)). Any change to membership of the offices of president, treasurer or secretary (or the secretary's address) must be notified by the secretary to the Office of Fair Trading within 1 month (s 68(3)). The mere addition of new committee members does not require notification to the Office of Fair Trading. Note that the committee members must be adults (s 61(2)) and not be in any of the circumstances described in ss 61 A & 64(2) such as being convicted, and imprisoned or bankrupt (refer to chapter 4 para 4-300).

If an interim secretary was not appointed, then s 65 requires the management committee to ensure that one is appointed or elected within one month of the association's incorporation. If the secretary vacates office for any reason, then the management committee is required to ensure a secretary is appointed or elected within one month after the vacancy happens (s 65(3)). Notification of any changes in the office of secretary (or their address) must be made to the Office of Fair Trading within one month after the election or appointment (s 68). Note that the secretary must be an adult (s 61(2)) (if a member of the management committee) and not be in any of the circumstances described in s 69(2) such as bankrupt, and must be a resident of Queensland or within 65km of the border (refer to chapter 4 para 4-300).

The management committee should ensure that upon incorporation the correct and legible name of the incorporated body appears on all its public documents (s 32). Old letterhead, brochures, cheques should be not be used unless the correct name with "Inc" or "Incorporated" is added.

Sections 53 and 54 of the Act require a secretary to provide a copy of the rules of the association to a member on request in a printed legible form. The secretary may require the member to pay the reasonable costs of providing the rules to the member. Many associations on incorporation provide every member with a copy of the rules and all new members are given a copy of the rules when they join.

Section 70 of the Act requires that the Management Committee arrange insurance for damage to property, death or bodily injury occurring on the property of the incorporated association. The Office of Fair Trading

is required to be notified by the secretary within 1 month of the taking out of the insurance (s 70(2)). For further details on insurance refer to Chapter 10.

If the association has adopted the model rules in Schedule 4 of the Regulations, then clause 22 requires the management committee to hold a general meeting not less than 1 month and not more than 3 months after the date of incorporation.

The management committee is also by implication obliged by s 31 to obtain a common seal and ensure that its full name appears on it in legible characters. If an incorporated association's name is not legible on the seal, the seal's use ineffective.

Regulation 10 requires that the association must open an account with a "financial institution" in Queensland. A financial institution is defined in the *Acts Interpretation Act 1954* s 36, as meaning a "bank, building society or credit union." Regulations 9, 12 and Schedule 5 specify the accounting records and registers that are required. These are dealt with in more detail in Chapter 11, but the form of a membership register which complies with model rule clause 9 is set out at precedent P3-3.

Land (that is, real property) which an unincorporated association owned before it was incorporated will be required to be transferred into the name of the new incorporated association (ss 22 & 24). The land may be held in various ways under different Acts and it is appropriate to consult a solicitor about the transfers. This is usually not expensive and well worth the expense for a management committee to avoid pitfalls and exacting paperwork required to effect the transfer. Note that amendments to the Act in 1995 place a positive duty on the secretary of the association to apply to transfer the property within 30 days of incorporation with the appropriate government agency.

### **3-300 Taxation**

The newly incorporated association is required to advise the Australian Taxation Office of its public officer for the purposes of the *Income Tax Acts*. This is dealt with further in Chapter 12.

Chapter 12 also deals with the issues of obtaining exemption from income tax, sales tax and the like. Management committees should carefully consider their obligations under these Acts.

### **3-600 Other matters for the management committee**

The following matters depending on the circumstances of the association may be considered at the first meeting:

- Notification of creditors and the public
- Transfer of any registered assets (land, cars) into the name of the incorporated association.
- Insurance arrangements.
- Appointment of an auditor.
- Dates for membership purposes pursuant to clause 5 of model rules.

A sample set of minutes is contained in Precedent 3-1.

### **3-700 First general meeting**

Clause 22 of the model rules requires that the first general meeting must be held not less than 1 month, and not more than 3 months, after the association's date of incorporation. It is usual for the management committee to arrange for this meeting to be held. An auditor would be appointed at this meeting if one has not already been appointed.

## PRECEDENTS

P3-1

### SAMPLE MINUTES OF THE FIRST MEETING OF THE MANAGEMENT COMMITTEE

Minutes of the first meeting of the XYZ Club Inc. (formerly the xyz Club) held at 1 Street, Suburb, City on the 7 January, 20XX.

Present	Ms U R Happy Mr Imma Happy Ms Y R U Silly Ms T Bag Mr X Ray
Chairperson	It was agreed that Mr Imma Happy take the chair.
Apologies	Mr Imma Late
Notification of Incorporation	Mr Happy announced the XYZ Club Inc. (formerly the XYZ Club) was incorporated under the <i>Associations Incorporation Act</i> on the 1 January, 20xx and produced to the meeting the original certificate of incorporation. The meeting resolved to place the original in a safe deposit packet at the association's bankers.
Common Seal	Resolved that the common seal produced to the meeting and impressed on these minutes be the common seal of the incorporated association.
Confirmation of Office Holders	Resolved that the interim office bearers of the previous body be confirmed in those offices in the new incorporated association.
Secretary	Resolved that Ms T Bag be the secretary of the incorporated association and the Office of Fair Trading be notified immediately. The secretary is also to prepare a minute book and a register of members. The secretary is also authorised to obtain new stationery for the association with the correct name.
Model Rules	Resolved that the secretary prepare a fair and true copy of the rules and these be circulated to all existing members and new members upon joining.
Members application	Resolved that for the purposes of model rule 6(1) the date is x January, 20xx and rule 6(2) is xx January, 20xx.
First general meeting	It was resolved that in accordance with rule 22 of the model rules that the first general meeting be held in 2 months time from today with the secretary to arrange the notice to members.
Treasurer	Resolved that the treasurer is to prepare a set of accounting books and receipts in accordance with Regulations 9, 12 and Schedule 5 of the <i>Associations Incorporation Act</i> .
Taxation	Resolved that the treasurer was to be the public officer for the provisions of the Taxation Acts and is to notify the Deputy Commissioner of Taxation. She is also to apply for exemption from income tax, sales tax and other imposts.
Bank Account	Resolved that the bank be notified of the incorporation of the association and that copies of the certificate of incorporation and rules be forwarded to it.  Resolved that the previous authorised signatories continue as signatories of all documents requiring signature of the bank.

	Resolved that all unused cheques under the previous associations be returned to the bank for credit and a cheque book in the name of the new incorporated association be obtained.
Notice of Name Change	Resolved that the secretary notify creditors and others who deal with the association of the association's new status and instructed to address all future correspondence to the incorporated association.
Auditor	Resolved that Ms R.U. Wright be appointed as auditor and a letter of acceptance was produced.
Insurance	Resolved to accept the policy of insurance over the assets of the association for public liability from Mooncorp Insurance company. This is to be notified to the Office of Fair Trading immediately. Resolved that all other insurances be changed into the name of the incorporated association immediately.
Land	Resolved to instruct Mr Imma Counsel of Messrs Friendly and Friendly, solicitors, to attend to transferring the club property at 1 Street, Suburb, City, into the incorporated association's name. He is instructed to do this within 30 days from our incorporation.
Truck	Resolved that the association's trucks registration be transferred into the incorporated association's name.
Thanks	Resolved to thank Mr X. Ray for having liaised with the Department about the incorporation of the association. Mr X. Ray who is noted for his vision recommended all management committee members to read the Associations Incorporation Manual which had helped him do such a fine job.

Affixing of the common seal

Signed as a correct record

Chairperson

MINUTE FOR THE BANK

XYZ Club Inc. hereby certifies that the following is a true copy of a minute passed at the first meeting of the above incorporated association after its incorporation under the *Associations Incorporation Act 1981*, which was passed on the 7 January 20xx.

“Resolved that the bank be notified of the incorporation of the association and that copies of the certificate of incorporation and rules be forwarded to it.

Resolved that the previous authorised signatories continue as signatories of all documents requiring signature of the bank.

Resolved that all unused cheques under the previous association be returned to the bank for credit and a cheque book in the name of the new incorporated association be obtained.”

The common seal of  
XYZ Club Inc. has been  
affixed by two officers  
of the association  
in the presence of

Witness.

Ms T. Bag