

Legal requirements of

incorporated associations



An incorporated association (IA) is a legal entity that is separate from its members and has the powers of an individual. This separation provides a certain level of protection, which limits the likelihood that management committee members can be held personally responsible for an organisation's debts and liabilities.

Incorporated associations in Queensland are registered with the Office of Fair Trading (OFT) under the *Associations Incorporation Act 1981 (Qld)*. An incorporated association and its management committee are required to meet certain legal requirements to remain incorporated and continue receiving the benefits provided by incorporation.

The list below outlines the legal requirements under the *Associations Incorporation Act 1981* for Incorporated Associations in Queensland.

Incorporation



An incorporated association must be registered with the Office of Fair Trading under the *Associations Incorporation Act 1981* to gain legal recognition as a separate legal entity.

Constitution



The association must have a constitution that is compliant with the requirements of the *Associations Incorporation Act 1981* and outlines the rules and objectives of the association.

Changes to a constitution must be approved at a general meeting by least 75% of the voting members in attendance and must also be approved and registered by the Office of Fair Trading.

Governance and management



An incorporated association must:

- have at least 3 management committee members, including the president and treasurer (note that these roles cannot be held by the same person)

If the position of president or treasurer is vacated, the management committee should ensure the roles are filled before making any decisions.

- have a secretary, who must be an adult residing in Queensland, or in another state but not more than 65 km from the Queensland border

If the position of secretary is vacated, the management committee must ensure a secretary is appointed or elected within 1 month after the vacancy happens.

- notify OFT of any changes to the association's details, including the details of the president, treasurer or secretary
- maintain a register of association members
- provide members with at least 14 days' notice for each general meeting of the association
- ensure that the income and property of the association are applied solely towards the promotion of the association's objects and are not distributed to the members of the association (excluding payments made for items such as reimbursement of approved out-of-pocket expenses, payments for sale or hire of goods or payment for services rendered to the association)



Insurance



The management committee of an incorporated association must, at least annually, consider whether there is a need for the incorporated association to take out public liability insurance and advise all new members regarding its decision.

Annual General Meeting



An incorporated association must hold an annual general meeting (AGM) within 6 months after the end date of the association's reportable financial year. Business conducted at the AGM must include:

- adoption of the association's financial statement and audit report or verification statement*
- appointment of an auditor or accountant*
- disclosure of material personal interests of management committee members
- presentation of the details of any remuneration or benefits paid to management committee members (and their relatives) or senior employees of the association (and their relatives)
- election of management committee members

Reporting



An incorporated association is required to submit an annual return, including required financial reporting and management committee details to OFT within one month of the annual general meeting.

The annual return can be lodged through the OFT online portal. Failure to submit an annual return within the required timeline can put the organisation's incorporated status at risk, and can also lead to fines for management committee members.

Compliance with laws



An incorporated association must comply with various laws and regulations, such as taxation laws, employment laws, occupational health and safety regulations and any other relevant legislation.

The specific legal obligations of an incorporated association may vary based on the association's size, purpose and activities. Consult the *Associations Incorporation Act 1981* and seek professional advice for comprehensive information regarding your particular circumstances.

* *Incorporated associations are classified as small, medium or large to determine financial reporting requirements.*

Management Committee Duties

The key duties of management committee members of an incorporated association are to:

- act with reasonable care and diligence. You must exercise your powers and duties with the care and diligence that a reasonable person would exercise if they were in your place
- act in good faith, in the best interests of the association and for a proper purpose. When acting as a management committee member you must make decisions that are in the best interests of the association and which help to further the association's objects. This includes putting the interests of the association ahead of your personal interests
- not to improperly use information or position. Any specific knowledge that you gain as a management committee member must only be used for the benefit of the association and never to further personal or other interests. This includes the appropriate use and treatment of confidential information. Similarly, you must not use your position to improperly gain an advantage for yourself or someone else, or to cause detriment to the association
- prevent insolvent trading. At all times, you must ensure that the association can pay its debts as and when they fall due
- disclose and manage material personal interests (sometimes called conflicts of interest). If you have a material personal interest in any transaction or matter involving the association, you must declare the interest at the next management committee meeting (or in writing) as soon as you become aware of the interest. The interest must be recorded in the minutes of the meeting, entered into a register of declared interests and disclosed at the next general meeting of the association

Failure by management committee members to fulfil the duties below can result in individual fines.

Public Company Limited by Guarantee

An alternative not-for-profit legal structure is to register as a Public Company Limited by Guarantee (PCLG) with the Australian Securities and Investments Commission (ASIC). The most significant differences between an IA and a PCLG in regard to legal requirements are:

- **Governing Legislation:** IAs in Queensland are governed by the *Associations Incorporation Act 1981*, while PCLGs are governed by the *Corporations Act 2001*, which is Commonwealth legislation.
- **Formation and Registration:** To become an IA in Queensland, an organisation must apply for incorporation with OFT. A PCLG is formed by registering with ASIC.
- **Reporting and Compliance:** PCLGs have more extensive reporting and compliance obligations compared to IAs. They are required to comply with the reporting requirements outlined in the *Corporations Act 2001*. IAs generally have less onerous compliance obligations. The duties, expectations and legal requirements of PCLG directors have typically been higher than those of IA management committee members.
- **Flexibility in Board Composition:** A PCLG may include provisions in its constitution, which allow for the appointment of non-members to the board of directors. In contrast, a management committee member of an IA must be a member of that association.

The information presented in this guide:

- is general in nature and does not consider your organisation's specific situation;
- is correct at time of publishing; and
- should not be considered as legal advice.

