Government of South Australia
Consumer and Business Services

Public officer responsibilities

under the *Associations Incorporation Act 1985*.

www.cbs.sa.gov.au

public officer responsibilities

This information is intended to assist the association to understand the role of the public officer. It explains, in general terms, requirements of the *Associations Incorporation Act 1985* (the Act). It also provides suggestions on how common problems might be avoided. It is not intended to be a document offering legal advice and no person should rely on its contents without first obtaining advice from a qualified professional. References to section numbers in this brochure correspond to sections of the Act.

The public officer

The *Associations Incorporation Act 1985* requires that an incorporated association have a public officer. The public officer must be a natural person of or above the age of 18 years who is resident in South Australia. It is not necessary for the public officer to be a member of the association. On the other hand he or she may have other responsibilities within the association such as being a member of the committee of management.

To not have a public officer is a breach of the Act and it is the responsibility of the association to ensure that it complies. Non-compliance can mean penalties against the association. There have been cases where associations have been declared defunct and removed from the public register because their public officers could not be contacted. In most cases this could be the result of failing to keep up to date information on public file about their public officers.

The Act provides that any process, notice or other document can be served on an incorporated association by serving it on its public officer. Most of the forms and returns lodged under the Act must be signed by the public officer. These provisions and requirements mean that the public officer performs an important role as the central contact person for the general public and Consumer and Business Services (CBS).

All associations should have a copy of the Act, the Regulations made under the Act, and any amendments. Up-to-date legislation can be found on the internet at the South Australian Parliament site. Public officers should familiarise themselves with the requirements of the Act.

The main requirements relating to lodgement of forms and returns are discussed in this document.

Document lodgement

Changes to rules/constitution or name of an association

In some cases associations change their constitution by amending their existing rules. In other cases they may adopt a completely new set of rules. It is recommended that a complete set of the new rules/constitution be lodged with CBS for the association's future references.

The rules/constitution of many incorporated associations set out the procedures and requirements for making changes. When the rules/constitution do not contain the procedures and requirements, the Act enables an incorporated association to change its rules by a special resolution.

A special resolution means a resolution passed at a duly convened meeting of the members of the association where:

- at least 21 days written notice specifying the intention to propose the resolution has been given to all members of the association, and

- it is passed at the meeting by a majority of not less than three-quarters of such members of the association as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at the meeting.

If the rules of an association do not provide for it to have members then there are different requirements for a special resolution. They are set out in Section 3 of the Act.

Although changes to the rules/constitution of an association are effective immediately after the resolution has been accepted and passed at a duly convened meeting of members, an application for registration of alterations to rules needs to be lodged with this office within one month of the resolution of the association.

Where a change to the rules consists of or includes a change of the association's name, the new name is subject to approval. Upon approval, a Certificate of Incorporation showing the new name will be sent to the association.

An application for registration of alteration to rules must be made on the appropriate forms (Forms 6 and 7 – available from CBS or at www.cbs.sa.gov.au) and must be accompanied by the appropriate fee (late fees apply if the forms are not lodged within one month of the resolution of the association).

Both forms must be completed and need to be signed by the public officer. A copy of the alterations made to the rules, or the new set of rules (typed on single sheets of A4 white paper) must also accompany the forms. The Justice of the Peace taking the statutory declaration from the public officer (Form 7) must endorse the copy of the alteration to the rules (or, where applicable, the copy of the new set of rules) in the manner shown at the bottom of that form.

Amalgamation of associations

Two or more incorporated associations may, by special resolution of their respective members, resolve to amalgamate to form a new association. For the meaning of special resolution refer to the text under the heading 'Changes to rules' in this brochure.

An application for amalgamation must be made on the appropriate form (Form 4 and Checklist for proposed rules, available from CBS) AND be accompanied by the appropriate fee.

In addition to the documents referred to in Form 4, the Certificates of Incorporation of the amalgamating associations must accompany the applications. If lost, an appropriate statement should be given in writing. One of the documents referred to in Form 4 contains the rules of the proposed amalgamated association. Those rules must be typed on single sheets of A4 white paper.

The public officers of both (or all) the amalgamating associations are required to sign the application.

Lodgement of periodic returns

Associations with gross receipts in excess of $500,000 are required to lodge with this office a Periodic Return (Form 9), Financial Accounts, Committee Statement, Committee Report and a copy of the Auditor's Report. These documents, together with the appropriate fee should be lodged within six months of the end of the association's financial year. (Late fees apply if lodged after that time). The Periodic Return (Form 9) must be signed by the public officer.

If you consider that there is any prospect that your association may be obliged to lodge a Periodic Return, please refer to the definitions of 'gross receipts' and 'prescribed association' contained in Section 3 of the Act and the requirements of Sections 35 to 39 inclusive.

Change of public officer or change of address of public officer

It is a breach of the Act for an association to be without a public officer for a period longer than one month. The public officer's name and current residential address must at all times be registered with this office.

If the public officer changes his or her residential address, or if the association changes its nominated public officer, this office should be notified within one month of the change on the prescribed form (Form 10). No fee is payable. (Late fees apply if lodged after the prescribed time).

Generally the appointment of a public officer is made by the association's committee of management. The rules of an association can provide for particular procedures to be followed. Where the rules are silent, the appointment is made at a meeting of the committee.

Where the change being notified is a change of residential address, there is no need for the committee to authorise the change. The form is simply completed giving particulars of the change of address and signed by the public officer. Where the change being notified is a change of public officer, the form must be signed by the new (incoming) public officer.

Completing documents and using the association's name

All documents lodged must be clearly printed or typewritten so they are capable of reproduction by photographic means.

All documents lodged must contain the full and correct name of the association as printed on the Certificate of Incorporation (or they will be returned for correction).

Fees

Particulars of the fees referred to in this pamphlet are set out in the fee schedule.

Additional Resources

How to incorporate: guidance and direction through the basic steps when considering incorporating.

An example of Rules: for an Incorporated Association.

Administration of affairs: Information to assist in the running of an incorporated association and explain some of the account keeping and audit requirements of the *Associations Incorporation Act 1985*. Includes information about required qualifications of an auditor.

Dealing with suspected breaches: Provides guidance in relation to suspected breaches of the *Associations Incorporation Act 1985*.

Contact CBS

If you require any additional information or copies of the above publications please contact CBS on

telephone 131 882

Consumer and
Business Services

Occupational Licensing
and Registration
Chesser House
91-97 Grenfell Street
Adelaide SA 5000
Telephone 131 882
Facsimilie (08) 8204 9771
www.cbs.sa.gov.au

Translating & Interpreting
Service (TIS)
Telephone 131 450

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