**Notes re Incorporating CAUL in the ACT**

This document highlights important roles and documents and requirements related to CAUL’s incorporation in the ACT. Where specific documents are mentioned, it highlights only those sections that are not normal practice for CAUL, or where decisions need to be made by the Executive or CAUL members.

A separate document will indicate what decisions need to be made, when and by whom.

From: <https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1504/kw/incorporation>

Important resources:

### Publications

* [Associations practice manual (PDF 215KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2302) [essential reading]
* [Model rules (DOC 99KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2304) or [(PDF 111KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2303)
* [Association constitution and rules checklist (PDF 101KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2305)

### Legislation

* [*Associations* Incorporations *Act 1991*](http://www.legislation.act.gov.au/a/1991-46/default.asp)
* [*Associations* Incorporation *Regulation 1991*](http://www.legislation.act.gov.au/sl/1991-31/default.asp)
* [*Corporations Act 2001 (Cwlth)*](http://www.comlaw.gov.au/Series/C2004A00818)
* [*Corporations Regulations 2001 (Cwlth)*](http://www.comlaw.gov.au/Series/F2001B00274)

### Public registers

* [Associations public register (XLS 770KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2228) or [(PDF 1.56MB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2227)

From *Application to incorporate an association.doc* (in the ACT)

* The incorporation of an association creates a legal entity, under the management of the committee members. The committee members are held accountable for ensuring that the association operates in compliance with applicable laws including the Act and the *Associations Incorporation Regulation 1991* (the Regulation).
* The public officer is responsible for acting as a point of contact between the association and the community and is expected to be able to represent the association in dealings with Access Canberra.
* The Act prohibits any person from serving as a committee member or the public officer if that person is insolvent or bankrupt, without leave from the ACT Supreme Court under S 63 of the Act. A search should be conducted of the records held by the Australian Financial Security Authority (AFSA) at [www.afsa.gov.au](http://www.afsa.gov.au/) before accepting the nomination of a person as a committee member.
* If the association, the public officer or a committee member fails to meet their statutory obligations under the Act (such as failure to lodge annual returns), the Registrar-General may make an application to the ACT Civil and Administrative Tribunal (ACAT) for the disqualification of the office-holder. The disqualification will be for a period the ACAT considers appropriate if satisfied that the extent of noncompliance justifies disqualification.

The public officer must be an ACT resident aged 18 years or older. If you do not want your residential address on the public record, please list an alternative address in the ACT

…. if the association has drawn up and adopted its own set of rules rather than the model rules. A full copy of the rules must be attached to this form together with the completed constitution/rules checklist (which can be found at [www.act.gov.au/accesscbr](http://www.act.gov.au/accesscbr)). The inaugural committee is responsible for ensuring that the rules are complete and comply with the *Associations Incorporation Act 1991*.

….if the association has adopted the model rules from the *Associations Incorporation Regulation 1991*. The model rules cannot be altered. Under the model rules the committee has 7 positions, these being: President, Vice-President, Secretary, Treasurer, and 3 Ordinary Committee Members

Attachments:

* a copy of the association’s constitution/rules
* the completed Constitution/Rules checklist
* an annexure of the objects and purposes of the association

**Constitution/Rules checklist**

Under Schedule 1 of the *Associations Incorporation Act 1991*, matters to be provided for in the rules of the association, other than the model rules should be clearly identified.

1. State the liability (if any) of members of the association to contribute towards payment of the debts and liabilities of the association or the costs, charges and expenses of winding-up the association.
2. The procedure (if any) for disciplining members;
3. Make provision for the following matters in relation to general meetings of the association:
   1. Provide for the custody and use of the common seal of the association
   2. Make provision for the custody of any books, documents or securities of the association
   3. Provide for the inspection by members of any books or documents of the association.

**Fees and forms (June, 2017):**

Application for reservation of association name (DOC 141KB) or (PDF 143KB) $41.00

Application to incorporate an association (Online) or (DOC 243KB) or (PDF 211KB) $179.00

Change of committee particulars (DOC 161KB) or (PDF 161KB)

If lodged within 1 month of change nil if lodged late $41.00

Change of public officer particulars (DOC 127KB) or (PDF 159KB)

If lodged within 1 month of change nil if lodged late $41.00

Change of rules or objects of an association (DOC 178KB) or (PDF 187KB)

If lodged within 1 month of change $41.00 if lodged late $78.00

Annual return (DOC 208KB) or (PDF 196KB)

If revenue is more than $5,000 and lodged within 6 months of the end of the financial year $41.00. If lodged late regardless of revenue $78.00.

[**Frequently asked questions**](file:///\\itsfs\megadisk\caul\Office\Incorporation\Application%20for%20reservation%20of%20association%20name.doc)

**Why *incorporate* an association?**

There is no requirement for an organisation or association to *incorporate*. An association *incorporated* under the Act is a body corporate with perpetual succession that is capable of performing all the functions of a body corporate. It has powers to acquire, hold and dispose of real and personal property and is capable of suing and being sued in its own name.

*Incorporation* creates a legal entity that is separate and distinct from that of the individual members. This is important because *incorporation* distinguishes the liability of an association from that of its members.

In effect, *incorporation* under the Act provides a relatively inexpensive means for a group to acquire legal status as a corporate entity.

If you are unsure about *incorporation* and its application to your circumstance, it is recommended that you seek independent legal advice.

### How do I incorporate a new association?

A group of five or more people may authorise a person 18 years or over who resides in the ACT to apply to incorporate an association.

An association can be incorporated by completing an [Application to incorporate and association (Online)](https://form.act.gov.au/smartforms/landing.htm?formCode=1249). The online application allows you to attach documents, such as a copy of your constitution, and is completed and paid for online. This is the preferred method of lodgement as well as being the quickest.

The application can also be made by printing an [Application to incorporate an association (DOC 243KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3910) or [(PDF 211KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3911) and either emailing, posting or lodging it at an Access Canberra Service Centre and be accompanied by the prescribed fee.

* The application must be signed by the authorised person and must indicate:
* the proposed name of the association;
* the name and address of the applicant;
* the name and address of the inaugural public officer;
* the names and addresses of all inaugural committee members;
* the address and opening hours of the association’s registered office if any;
* the association's intended objects and purposes;
* whether the name has been previously reserved;
* whether or not the model rules are to apply to the association, otherwise a copy of the rules must be attached to the application; and,
* whether any deeds or trusts apply to the association, in which case a copy of the deed or other instrument must be attached to the application.

If any of the above information is missing from an application, Access Canberra will not incorporate the association and return the application for completion.

**What timeframes does Access Canberra commit to?**

Access Canberra commits to:

* the *incorporation* of an association where the model rules are adopted within five working days; and,
* the *incorporation* of an association where the model rules are not adopted within ten working day.

### What does the association need to report to Government?

There are a number of reporting obligations for incorporated associations:

**Annual returns** - An incorporated association must lodge an [Annual return (DOC 208KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3900) or [(PDF 196KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3901) with Access Canberra along with the prescribed fee where applicable. The information that an association needs to lodge in the annual return is:

* an audited statement of the association's accounts;
* a copy of the auditor's report in relation to those accounts; and,
* a completed annual return form.

Two current members of the committee and the public officer must sign the form. This certifies that the association has complied with the provisions of the Act. The committee of the association is responsible for ensuring that annual returns are lodged with Access Canberra within six months of the end of the most recently ended financial year. Committee members may be prosecuted if they do not take all reasonable steps to ensure the association complies with the Act. If annual returns are not lodged for two consecutive years the association’s incorporation may be cancelled and the assets of the association vested in the Registrar-General.

**Changes of committee** – Whenever any changes to the committee occur or a committee member changes their address the association must lodge a [Change of committee particulars (DOC 161KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3912) or [(PDF 161KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3913) with Access Canberra along with the prescribed fee where applicable. The association must ensure a change of committee is lodged within one month of the change occurring.

**Change of public officer** – Whenever a change of public officer or their address occurs, the association must lodge a [Change of public officer particulars (DOC 127KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3914) or [(PDF 159KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3915) with Access Canberra along with the prescribed fee where applicable. The association must ensure a change of public officer is lodged within one month of the change occurring.

**Change of registered office** – Whenever an association opens a registered office, changes the address of the registered office, or changes the opening hours of the registered office, the association must lodge a [Change of registered office particulars (DOC 130KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3916) or [(PDF 161KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3917) with Access Canberra along with the prescribed fee where applicable.  The association must ensure a change of registered office is lodged within seven days of the change occurring.

**Changes of rules or objects** – Whenever the association resolves by special resolution to alter the objects or rules the association must lodge a [Change of rules or objects of an association (DOC 178KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3918) or [(PDF 187KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3919) with Access Canberra along with the prescribed fee where applicable. The information that an association needs to lodge along with the change of rules or objects of association is:

* a written statement of the specific changes;
* a fully updated copy of the association’s objects and purposes;
* a fully updated copy of the association’s rules, unless the association is adopting the model rules; and,
* a completed Association constitution and rules checklist.

Two current members of the committee must sign the form. This certifies that all changes to the objects or rules have been passed by special resolution and the provisions of the Act have been complied with. The committee of the association is responsible for ensuring that changes of objects or rules are lodged with Access Canberra within one month of the special resolution being passed. Alterations to rules or objects are of no effect until the change of rules or objects of association has been lodged and accepted by Access Canberra.

### What are the committee members' responsibilities?

The committee of the association is responsible for managing the affairs of the association. Committee members are responsible for the conduct of the association and are accountable for their actions to the members. For this reason committee members are encouraged to become familiar with the Act, the Regulation, the association’s rules and the Incorporated Associations Practice Manual.

If the association, public officer or a committee member fails to meet their obligations under the Act, application may be made to the ACT Civil and Administrative Tribunal (ACAT) for the disqualification of the office holder. The disqualification will be for a period the ACAT considers appropriate if satisfied that the extent of non-compliance justifies disqualification.

### What happens if the association does not comply with the legislation?

Proceedings for offences against the Act may be commenced. Offences against the Act may be punishable on summary conviction and attract fines or imprisonment.

**Annual Return:**

An incorporated association must lodge an [Annual return (DOC 208KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3900) or [(PDF 196KB)](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3901) with Access Canberra along with the prescribed fee where applicable.

The following extracts highlight changes to CAUL’s current processes:

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| **6. PARTICULARS OF ANNUAL RETURN** (Please attach the financial statements and audited report) | | |
| Starting date of association’s financial year |  | Ending date of association’s financial Year |
| Date audit completed |  | Date of Annual General Meeting (AGM) |
| If the accounts were not presented at the AGM, please specify the date of the general meeting at which the audited accounts were passed | | |

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| **9. CATEGORY OF ASSOCIATION** |
| Please tick if the association's gross receipts exceed $1,000,000 as such association is ‘prescribed’ under S.74 of the Act. In this case the auditor must be a registered company auditor under the *Corporations Act 2001. (Commonwealth).* |
| Please tick if the association's gross receipts and/or assets exceed $400,000 or the association has more than 1,000 members or has a licence issued under the *ACT Liquor Act 2010*, the association is prescribed under S.74(3) of the Act. The auditor must either be a registered company auditor under the *Corporations Act 2001 (Commonwealth)* or be a current member of the Institute of Chartered Accountants in Australia or the Institute of Public Accountants or CPA Australia. The auditor cannot be   * an officer of the association, * a partner, employer or employee of an officer of the association, or * a partner or employee of an employee of an officer of the association. |

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| **11. SIGNATURE OF AUDITOR**  (Please provide this only if the auditor has not signed and dated the audit report) |
| I have audited the attached financial statements of the association. In my opinion:  a) the financial statements of the association are properly drawn up;  i. so far as to give a true and fair view of the matters required by subsection 72(2) of the Act to be dealt with in the accounts for the financial year reported on;  ii. in accordance with the provisions of the Act; and  iii. in accordance with proper accounting standards   1. proper accounting and other records have been kept by the association   c) the audit was conducted in accordance with the rules of the association.   |  |  | | --- | --- | | **DATE AUDIT COMPLETED** |  | |

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| **13. STATEMENT BY PUBLIC OFFICER AND COMMITTEE**  (Must be completed by the public officer and two committee members) |
| As current office-bearers of this association, we certify under 79(1)(e) of the Act that the particulars shown on this form are true and correct, and reflect the association’s compliance with those provisions of the Act that apply in relation to:   1. the preparation of the annual statement of the association’s accounts; and 2. the auditing of the accounts and the presentation of the audited statement of accounts at the annual general meeting of the association.   We confirm that the committee listed in this document reflects the outcome of the AGM and that the AGM was called and conducted in accordance with the association’s rules/constitution lodged with A. |

Compiled by Diane Costello

1 July 2017