

Types of Business Organisation

In the sport and recreation industry, there are two basic forms of business:

- (1) Non-Profit
- (2) For-Profit

Non-profit

An Incorporated Association is a non-profit business. **An Association is a group of people (called Members) who come together for a common purpose.**

Associations are managed by an elected committee or board, the head of which is usually called the President. Members of the board or committee are usually unpaid volunteers. Associations when they become **incorporated** must follow a system of rules that is called the **Constitution**.

Non-profit Associations can make a profit but this profit is **never distributed to the members**. If the Association is "wound up", that is ceases to exist, any surplus funds must be given away.

Non-profit Associations predominate in the sport and community recreation sectors of the industry.

For-Profit

A For-Profit Business is just a standard business that is owned by one or more people, and the business exists to make a profit that is a means to earn a livelihood for the business owner. There are different forms:

- **A sole trader**
- **A partnership**
- **A company:**

For profit businesses are overwhelmingly represented in the Fitness sector, and to a lesser extent the Outdoor recreation sector.

Benefits of Incorporation

When a business becomes "incorporated" two important changes occur:

1. **The gaining of limited liability status.** The members of the club or the shareholders of the company are protected if the association / business is sued. The extent to which individual members are liable to pay the debts of the association is generally limited to \$1.
2. **The gaining of legal personality** - the club becomes an entity apart from its members and can sue and be sued in its own right.

Legislation governing Incorporation

Associations and companies are incorporated under different legislation.

For-profit businesses that become incorporated do so under "**Corporations Act 2001 (Commonwealth)**" and become a **Limited Company**.

Non-profit associations that become incorporated do so under the **Incorporated Associations Act 1981 (Queensland)**.

Unincorporated Associations

Associations are not required to incorporate but it is definitely advisable to do this.

An unincorporated association does not have legal personality and:

- Does not exist apart from its separate members
- Cannot contract, sue or be sued
- Cannot employ
- Cannot hold property or lease
- Individual members can be sued
- Those who accept office must accept liabilities and responsibilities.

Case of Wayne Peckham

In 1972, footballer Wayne Peckham tried to sue Canterbury Rugby League Club for worker's compensation but failed as the club was unincorporated and did not "exist" in the eyes of the law. He was able to successfully sue one of the directors (personally) and this demonstrates how dangerous it is for an association not to have incorporation status.

Steps to Incorporating a Club or Association

1. An association can only apply for incorporation if it is a non-profit organisation i.e. does not provide financial gain to its members
2. An application needs to be made to the relevant government department, which in the state of Queensland is the Office of Fair Trading.

Call a meeting of members and decide certain matters
Decide the name of the association after it is incorporated?
Adopt rules for the Association (usually adopt the Model Rules – a template constitution.
Appoint a person to apply for incorporation.
Fill out an application form from the Office of Fair Trading, Queensland.
The application form will require information to be supplied about the intentions of the organisations, and who will be the office bearers
Pay a fee
A fee of \$50 must accompany the application for incorporation, which is sent to the Office of Fair Trading, State Law Building, Brisbane.

Obligations after incorporation

There are a number of important obligations once an association has become incorporated.

1. The association must complete an annual return that details the office bearers of the association.
2. Any amendment of the rules must be registered with the Office of Fair Trading (Form 8)
3. Any change in the address of the registered office must be notified to the Office of Fair Trading (Form 9)
4. Any change (election, appointment, etc) of President, Treasurer or Secretary must be notified to the Office of Fair Trading.

5. Any change of address of the Secretary must also be notified to the Office of Fair Trading (Form 14).
6. The association must apply for approval of an auditor to the Office of Fair Trading. An auditor is an external person (not connected with the association) who is a qualified accountant and prepares the annual Financial Statements.

The Constitution

All companies and associations are required to have a set of formal rules which dictate how an organisation is governed. These rules are generally referred to as the constitution. The constitution is very important and all Directors or Committee Members should endeavour to be familiar with it.

In the case of an Incorporated Association these constitution generally provides rules on the following:

- I. Name, objects and powers
- II. Classes of Membership
- III. Acceptance, Rejection and Termination of Membership
- IV. Composition of The Management Committee
- V. Duties of Office Bearers
- VI. Meetings of the Management Committee
- VII. Powers of the Management Committee
- VIII. General Meetings
- IX. Annual General Meetings
- X. Financial Management of the Association

New Associations generally do not write their own constitution, they adopt the **Model Rules**. This is a template constitution that can be obtained from the Office of Fair Trading (in Queensland) or the relevant government department in other states.

Any changes to the constitution are generally only made by the members of the association at Annual General Meetings. Changes must then be notified to the Office of Fair Trading.

Duties of Committee Members

Under common law office bearers have obligations arising from the trust placed in them by the members to properly manage the association (Fiduciary Duty). This includes:

- Keeping abreast of the company's affairs. Ignorance or absence of dishonesty is not a defence.
- Not taking action out of self-interest or making use of position for gain of self or a third party
- Not misusing confidential information
- Not making improper use of information
- Exercising a degree of care and diligence over the administration of the organisation's affairs (especially financial affairs)