

Incorporation of the Conjola Community Association (CCA) – Should we Incorporate?

This document outlines the key points for consideration by the Conjola Community Association on whether the Association should apply for incorporation under the *NSW Associations Incorporation Act 2009* (the Act). The information has been extracted from the NSW Fair Trading website. The points do not include the obvious requirements, e.g. finding a suitable name for the association, number of members, etc; refer to the NSW Fair Trading website for those details – <http://www.fairtrading.nsw.gov.au>

Incorporation benefits an association and its members. However, it also imposes a number of responsibilities on both Committee members and the Public Officer who are primarily responsible for ensuring an incorporated association complies with its statutory and reporting obligations.

Key Points:-

- An incorporated association is a legal entity in its own right, and carries liability for its acts. Therefore we will require insurance (e.g. public liability, protector liability (for volunteers)). We need to ask other CCBs what cover they have and the cost.
- The Conjola Community Association has annual revenue < \$250,000, and assets < \$500,000 and is therefore classified as a Tier2 Association under the Act.
- Incorporation requires documentation of objectives and a Constitution. Our Association should not require a solicitor to draw up a Constitution – a sample template is available on the Fair Trading site, or we could do a copy/paste from a similar association. Shoalhaven and other local council areas (e.g. Willoughby) have a number of incorporated Associations, and have their Constitutions on their respective websites (some updated Dec 2017).
- Fees (under the Act) – refer to the Fair Trading website for details, in summary –
 - One off : \$167 - to Register an Association
 - Annual : \$45 to lodge a Summary of Financial Affairs (with penalties if late)
 - AGM: \$32 to extend AGM beyond the date specified in the Constitution
 - Association Documents & Certifications – various charges, but generally only applies to get a copy of the Association documents (see Fair Trading Fees & Charges).
- The following records must be kept (in hardcopy or electronic form and samples of registers are available on the Fair Trading website):-
 - Register of Committee Members and a register of members
 - Disclosure of Interests by Committee Members
 - Association's Financial position and transactions
 - Minutes of Proceedings (committee and general meetings) – sample of what is to be recorded is on the FT website
 - Register of Authorised signatures
 - Record of Public Officer and official address of Association.
- Financial records to be kept are:-
 - receipt books
 - records of payments - with supporting documents and approvals
 - invoices
 - bank statements
 - bank deposit books (if used)

- cheque books.
- Financial statements for a Tier 2 Association must give a true and fair view of the Association's affairs, but do not have to comply with Australian Financial Standards.
- Financial statements do not need to be audited for the AGM, but need to be available if requested by Fair Trading or an authorised body.
- An Annual Summary of Financial Affairs (Fair Trading Form A12 – T2; it's a simple Form) must be lodged within 30 days after the AGM to NSW Govt (details of lodgement are on the Form).
- The AGM must be held within 6 months of the end of the Association's Financial Year
- Associations must comply with relevant State & Federal Legislation – e.g. Tax, Anti-Discrimination, Privacy, FairWork, SafeWork, etc

Advantages of Incorporation

The advantages of incorporating CCA include:-

- Clarifies and formalises the objectives of the CCA.
- Allows CCA to apply for a much wider range of public and private funding.
- Simplifies and clarifies the management and ownership of the money and other assets.
- Provides some legal and financial protection for the management committee of the CCA who otherwise might be liable for damages and contractual obligations arising from the activities of the association.
- Sets out regulations about how the CCA shall operate.

Disadvantages of Incorporation

The disadvantages of incorporating CCA include:-

- Additional costs, including liability insurance premiums
- Additional effort to comply with government regulation.
- Being prepared to forgo total privacy of the association's financial matters and accept that there will be public scrutiny of the association's activities.
- Potential loss of flexibility in the operations of CCA – i.e. need to comply with government regulations.