

## FACT SHEET 16: INCORPORATION

---

An incorporated association is a legal body which has rights and liabilities separate from its members.

P&C Associations are able to incorporate under the *Parents and Citizens' Associations Incorporated Act 1976*.

An incorporated P&C Association may enter into legal agreements, own assets and borrow money from financial institutions as an association. Individual members will not be required to act as guarantors nor personal signatories to contracts or legal agreements. If an association is incorporated, any debt or liability will be against the association itself, rather than its individual members. Personal action normally cannot be taken against individual members unless they have been personally negligent.

Incorporation is essential for associations that operate an Out of School Hours (OOSH) childcare centre or vacation care program; employ staff – e.g. canteen supervisors, uniform shop coordinators, OOSH employees; or enter into legal agreements. The decision to incorporate must be made by majority vote at a general or special meeting.

Associations may contact Federation's office or visit our website [www.pandc.org.au](http://www.pandc.org.au) to access the information package and forms.

Federation charges associations a one-off fee of \$100 to cover the administrative costs. Associations will receive a Certificate of Incorporation and copies of the relevant legislation.

There are no ongoing fees and incorporated associations will not have to lodge an annual return. However, they must send to Federation a copy of their audited annual financial statements within one month of the association's **annual general meeting**. These will be kept for seven years.

A P&C Association that elects to become incorporated must adopt the prescribed constitution and will not be able to make any changes to that constitution. This constitution has been endorsed by the Minister and gazetted. It is available from Federation or from Federation's website; is included in the Handbook and is also provided as part of the incorporation information package.

Incorporated associations may change their by-laws. All by-laws must, at all times, complement the constitution and provide members with further information about how constitutional requirements will be implemented on a day-to-day basis. Members must be given one month's written notice of any proposed by-law changes.

P&C Associations incorporated under the *Parents and Citizens' Incorporation Act 1976*

- i) do not need a registration number;
- ii) do not report to the Department of Fair Trading;
- iii) do not appoint a Public Officer (it is implied that the Federation's President holds this position).

P&C Association books must be subjected to an independent review every year. The person appointed to audit the books need not be a qualified chartered accountant or tax auditor. The auditor can be anyone, other than an officer-bearer of the association, who possesses appropriate skills and experience in auditing and financial record management and who does not have a personal or business relationship with an officer of the association (*refer Prescribed Constitution for Incorporated P&C Associations, clause 7 Annual General Meeting*).

All P&C Associations (both incorporated and unincorporated) must have an **Australian Business Number (ABN)**. Without an ABN the association will not be regarded as income tax exempt or as a not-for-profit charity, and may be liable for income tax on all profits.

Other key provisions of the *Parents and Citizens' Associations Incorporation Act, 1976* are:

- The rules for incorporated associations published in the Education Gazette, as amended from time to time, are the rules of each incorporated association;
- Incorporated associations must maintain membership of Federation;
- Incorporated associations must maintain approved public liability insurance which can be the coverage maintained by Federation.

The incorporation of an association can be cancelled at any time if the rules or the Act are not complied with.

