This Factsheet has been prepared to assist prospective Outside School Hours Care services in New South Wales with the process of incorporating as an association.

This Factsheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation available from NSW Fair Trading at: www.fairtrading.nsw.gov.au

Note: Organisations engaged in commercial activities are not eligible for incorporation under the Associations Incorporation Act 2009. You can’t incorporate if you are planning to provide monetary gains to members.

WHY INCORPORATE?

An incorporated association has its own legal identity separate from its members, providing protection to members in legal transactions.

An incorporated association can:

• Enter into and enforce contracts, including the ability to hold, acquire and deal with property
• Sue or be sued
• Continue regardless of changes to membership.

PROCESS FOR INCORPORATION

Before incorporating a new association in NSW you need to consider the following important matters:

1. Understand your obligations
   
   Ensure your group is able to meet the costs and obligations involved in forming and running an incorporated association. Failure to comply with these obligations may lead to the issue of penalty notices, prosecution or cancellation of the association’s incorporation.

2. Number of people required
   
   You must have five or more individuals to apply for registration or if you are an existing unincorporated group you must have five or more individual members in the group.

3. Develop a constitution
   
   Every incorporated association must have a constitution. The constitution of an incorporated association is a contract between the association and its members, who agree to adhere to the provisions outlined in the constitution.

   The constitution can be the Model constitution that was developed by Fair Trading, or the association can develop their own constitution, which is then recorded in the public register of incorporated associations, maintained by NSW Fair Trading.

   Fair Trading may update the Model constitution from time-to-time, with the updates applying to any association who has adopted it. A copy of the Model constitution can be downloaded from the Fair Trading website at: http://www.fairtrading.nsw.gov.au/Cooperatives_and_associations/Incorporating_an_association/About_the_constitution/Model_constitution.html

   If you develop your own constitution you must address 16 matters which you will find listed on the fact sheet called About the constitution on the Fair Trading website: http://www.fairtrading.nsw.gov.au/Cooperatives_and_associations/Incorporating_an_association/About_the_constitution.html

4. Set up a committee
   
   You must establish a committee to manage the association’s affairs. The committee must have three or more members, each over 18 years of age and at least three of whom reside in Australia.

   If the group adopts the model constitution then your committee will have seven members. Committee members and the public officer are primarily responsible for ensuring an incorporated association complies with its statutory and reporting obligations.

5. Public officer
   
   Your committee must appoint a public officer who is over 18 years of age and is a resident of New South Wales. The public officer is an authorised signatory for the association and is the official point of contact for the association.

6. Official address
   
   Your association must have an official address within New South Wales. This may be the premises of the association, or the residential address, the place of business or employment of the public officer.

7. Reserve a name
   
   You need to reserve a name for your association by lodging a Form A1 - Application for reservation of name together with the prescribed fee.

8. Apply for incorporation
   
   You can apply for incorporation by lodging a Form A2 - Application for registration, together...
with the prescribed fee at any Fair Trading Centre or by mail to the Registry of Co-operatives & Associations.

9. Holding annual general meetings
The first annual general meeting (AGM) for a new association must be held within 18 months from the date of incorporation. After that, the AGM is held within 6 months after the close of the association’s financial year.

10. Insurance
There is no requirement under the Associations Incorporation Act 2009 for associations to take out and maintain any specific type of insurance. However, an association must comply with any relevant State and Commonwealth legislation applicable to its operations, and may be required to hold insurance under other applicable legislation. For example, service approval from the Department of Education and Communities (the Regulatory Authority) is only granted subject to a condition that the approved provider must hold a minimum $10,000.00 cover for public liability insurance.

As part of their governance obligations, committee members are responsible for:

- Assessing the risks applicable to the activities of the association, and
- Determining if insurance is required, and if so the type and level of cover.

There are a number of different insurance policies that may be appropriate, for example:

- Public liability insurance
- Directors and officers liability insurance
- Associations liability insurance
- Personal accident insurance
- Work, health and safety cover
- Workers compensation insurance
- Property and/or contents insurance
- Fidelity insurance
- Building insurance

A number of insurance companies have insurance products that may be suitable for Outside School Hours Care services. For more information contact Network of Community Activities on 02 9212 3244 or oosh@netoosh.org.au

The NSW Parents and Citizens Federation has arranged a number of Insurance Policies for Outside School Hours Care Service operated by a P&C association. For more information contact the P&C Federation on 1300 885 982 or insurance@pandc.org.au

MORE INFORMATION
The NSW Government Office of Fair Trading has excellent complementary information on this subject. Their contact numbers and website are as follows:

Telephone enquiries: 13 32 20 (8.30am - 5pm)
Website:  www.fairtrading.nsw.gov.au
Language assistance:  13 14 50 and ask for an interpreter in your language.
Postal address:   PO Box 972, Parramatta, NSW 2124

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FORMS
Copies of the following current approved forms relating to various provisions of the Associations Incorporation Act 2009 are available to download from the Fair Trading website:  http://www.fairtrading.nsw.gov.au/About_us/Our_services/Forms/Associations_forms.html

- Form A1 - Application for reservation of name
- Form A2 - Application for registration of incorporated association
- Form A3 - Application for registration of an amalgamated incorporated association
- Form A4 - Application for registration of incorporated association (company or co-operative)
- Form A5 - Certificate of public officer as to vesting of property
- Form A6 - Application to change objects or constitution
- Form A7 - Application for approval for change of name
- Form A8 - Application for voluntary cancellation of registration of an association
- Form A9 - Notice of appointment of public officer and Notice of change of association address
- Form A10 - Application for approval to transfer registration to a company or co-operative
- Form A11 - Application for extension of time for holding annual general meeting or lodging annual summary of financial affairs
- Form A12 - Annual summary of financial affairs