

# INCORPORATION INFORMATION PAPER

## INTRODUCTION

The CCVT Affiliation Policy encourages all new or existing affiliated churches or agencies to be established as an incorporated association:

### 7.3.5 Governance

“CCVT encourages new Affiliates to become an Incorporated Association. New Affiliates are to be registered with the ACNC and maintain annual registration. Existing unincorporated associations are encouraged to incorporate or become a company limited by guarantee but must otherwise satisfy CCVT of their capacity to satisfy ACNC requirements.”

CCVT understands that new ‘start up’ churches may be better suited to be unincorporated and have a ‘Basic Religious Charity’ status with the ACNC for ease and cost effectiveness to establish the church operations and flexibility. Only unincorporated religious charities (that also meet other criteria) can fit within the limited group of charities the ACNC calls ‘Basic Religious Charities’.<sup>1</sup>

## BACKGROUND

A church that is an unincorporated association means that the members are “associated” together in being and doing church.

This means every member is a significant part of the church. As the church body, the members are collectively responsible for the liabilities and obligations of the church.

An unincorporated church does not have its own independent rights. Rather, the rights and obligations of the church are simply the cumulative rights and obligations of members.

Therefore, the major difference between an unincorporated church and an incorporated church is simply this: every member is responsible for the liabilities and obligations of an unincorporated church; while in an incorporated church, the church has a legal identity separate to that of its members and is responsible (not the members) for any liabilities or obligations.

An incorporated association is a type of incorporated legal structure provided for under the *Associations Incorporation Reform Act 2012*. An incorporated association must be registered with Consumer Affairs Victoria.<sup>2</sup>

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<sup>1</sup> ACNC: Unincorporated Associations and ACNC Registration: <https://www.acnc.gov.au/factsheet-unincorporated-associations-and-acnc-registration>

<sup>2</sup> Consumer Affairs Victoria : Register as an incorporated association: <https://www.consumer.vic.gov.au/clubs-and-fundraising/incorporated-associations/become-an-incorporated-association/register-as-an-incorporated-association>

Each State and Territory in Australia has its own laws providing for the incorporation of associations. An Affiliate incorporated as an association under the Victorian Associations Incorporation Act must only operate in Victoria unless it is registered with ASIC as a Registered Australian Body.<sup>3</sup>

Affiliated entities can also be a company limited by guarantee, which is another type of incorporated legal structure made under the *Corporations Act 2001* (Cth), and may be a suitable legal structure for a church or not-for-profit agency. A company limited by guarantee can operate in any State or Territory of Australia. Further advice should be sought on becoming a company limited by guarantee if that option is chosen.

## BENEFITS OF INCORPORATION

The following are benefits of incorporation:

### 1. Separate Legal Entity

An unincorporated association cannot enter into contracts in its own name, own land, employ people, or sue or be sued.<sup>4</sup>

Some commercial institutions prefer a church to be incorporated as this provides assurance concerning the organisation, purpose and function of the church.

### 2. Perpetual Succession

When the Affiliate incorporates, it becomes a ‘legal person’ – that is, a legal entity that stays the same even if its members change. That is, incorporation can affirm perpetual existence which means that the church is legally established to be in existence over a long period of time.

### 3. Personal Liability

When the church becomes a separate legal entity, church members are protected from the financial liabilities of the church.

This means that only the church’s assets, such as bank accounts, property, financial assets etc, will be used to satisfy the claims of a creditor or lawsuits brought against the church that are not covered by insurance. The legal entity can sue and be sued.

The personal resources of the church members will not be used to satisfy claims and liabilities against the church. This is the major advantage of church incorporation and is both desired and appreciated by many church members.

Incorporation protects the individual members of the association from legal liabilities.<sup>5</sup>

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<sup>3</sup> <https://asic.gov.au/for-business/registering-a-company/steps-to-register-a-company/registrable-australian-bodies/>

<sup>4</sup> ACNC: Unincorporated Associations and ACNC Registration: <https://www.acnc.gov.au/factsheet-unincorporated-associations-and-acnc-registration>

<sup>5</sup> Consumer Affairs Victoria: What is an incorporated association: <https://www.consumer.vic.gov.au/clubs-and-fundraising/incorporated-associations/become-an-incorporated-association/what-is-an-incorporated-association>

#### 4. Improved Governance

Incorporation will enable the church to look seriously at its Constitution and Governance Practices. The Constitution is required to state the name, location, mission and purpose statement, and the rules of conduct for the church, including the rights and privileges of the members, the responsibilities and powers of the church officers, and the rules to be followed in the meetings and activities of the church.

#### 5. Winding Up

The incorporation can be dissolved at any time by vote of the congregation.

### IN SUMMARY

CCVT encourages churches to consider incorporation to protect their leaders and members and to continue to improve their governance documents and practices.

As part of our commitment to resourcing CCVT affiliates we have had legal advisers prepare a draft constitution that we expect to meet the requirements of a church that is an incorporated association with a variety of parameters that could be included or adjusted to fit each church's specific situation. It is included in draft form with this paper to add substance to your church's consideration.

**We do not provide tax, legal or accounting advice. This material has been prepared for informational purposes only, and is not intended to provide, and should not be relied on for, tax, legal or accounting advice. You should consult your own tax, legal and accounting advisors for any matters you or your organisation may have.**

If you would like more information or would like to engage further with the draft constitution, please contact Claire Egan at the CCVT Office on 03 9488 8800 or [cegan@churchesofchrist.org.au](mailto:cegan@churchesofchrist.org.au).

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