

Northern Territory  
Not-for-profit Law  
Guide

# Incorporated association or company limited by guarantee?

A comparison between the two most  
common legal structures for not-for-  
profit organisations in the Northern  
Territory

November 2015

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# Introduction

## This Guide covers:

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- the differences between an incorporated association and a CLG
  - key issues to consider when choosing between structures:
  - issue 1: where will the group 'operate' or 'carry out activities'?
  - issue 2: will the group be a charity?
  - issue 3: will the organisation be able to pay initial and ongoing fees?
  - issue 4: annual reporting, audits and reviews
  - issue 5: other factors to consider
- 

**The aim of this guide is to help not-for-profit groups in the Northern Territory (NT) decide whether an incorporated association or a company limited by guarantee (CLG) is a more suitable incorporated structure for them.**

While most NT not-for-profit groups choose between incorporating as an incorporated association or as a CLG, these are not the only forms of incorporation available for not-for-profit groups. For information on other legal structures, see '[Choosing a legal structure](#)' on the [Not-for-profit Law Information Hub](#).

## Introduction

An incorporated association is a type of incorporated legal structure made under the *Associations Act* (NT) (**Associations Act**). A CLG is another type of incorporated legal structure made under the *Commonwealth Corporations Act 2001* (Cth) (**Corporations Act**). Both are suitable legal structures for not-for-profit groups in the NT.

Incorporated associations were originally designed to be low cost to register and simpler to run than a CLG. Recent changes to the laws for both incorporated associations and CLGs registered as charities mean that the arguments for choosing to incorporate as an association over a CLG are no longer as compelling.

For groups that are (or hope to be) registered as a charity, the transition of regulation of CLGs that are registered charities from ASIC to the Australian Charities and Not-for-profits Commission (**ACNC**) means that the regulatory approach for charity CLGs is now closer to that of an incorporated association. The ACNC takes a more educative approach as a regulator – meaning it is less likely to impose fines for technical breaches of reporting requirements. Some reporting fees formerly required to be paid to ASIC by CLGs are waived by the ACNC for charities.

This guide addresses some key factors that groups should consider when deciding between incorporating as an incorporated association or a CLG. Once you have read this guide and familiarised yourself with your organisation's options, you should seek legal advice from an advisor with experience advising not-for-profit groups. Spending some time (and, if necessary, money) getting professional advice on legal structure issues before you incorporate is a worthwhile investment in the long-term viability of your newly-forming organisation. Choosing the right legal structure can save your group considerable time, money and legal and administrative headaches further down the track!

# Issue 1: Where will the group 'operate' or 'carry out activities'?

When choosing between an incorporated association or CLG structure, it is important to think about where your group plans to operate, both when it starts and in the future.

## Where can a company limited by guarantee operate?

A CLG is incorporated under the Commonwealth Corporations Act and can carry out its activities anywhere in Australia.

## Where can a NT incorporated association operate?

The law relating to incorporated associations is state and territory -based, and each state and territory in Australia has its own laws. A group incorporated as an association under the NT Associations Act can operate anywhere in the NT. However, it cannot substantially operate in other states without taking further legal steps (discussed below).

Holding one-off or occasional activities in another state (such as a conference) would not count as 'operating', but carrying on more regular or substantial activities might.

If you incorporate as a NT incorporated association and want to legally operate in other states, you will need to consider the options summarised below. As appropriate, you should decide whether any of the options discussed below could work for your organisation, or whether you should incorporate as a CLG from the beginning.

## Options for NT incorporated associations to operate outside of the NT

If your group incorporates as a NT incorporated association, but wants to operate (undertake more than one-off or occasional activities) outside the NT, there are two options available to enable it to do so legally. Both of these options may involve costs and increased administration for your organisation. It is also possible for an incorporated association to convert to a CLG if necessary (discussed further below).

For more detailed descriptions of the processes described below, go to the Not-for-profit Law Fact Sheet at our page [Changing your organisation's structure](#).

### Option A – register the group as a Registered Australian Body (RAB) with ASIC

This is the option most commonly recommended (that is, rather than option B below or converting to a CLG). This will mean that your group will be regulated by the Australian Securities and Investments Commission (**ASIC**) as well as by Licensing NT (Department of Business), and that extra forms will need to be prepared and lodged by your organisation each year and when certain changes occur. Your group must also display additional information along with its name. Groups that register as RABs that

are also charities apply to ASIC to become a RAB but then report to the ACNC where they would otherwise report to ASIC (and continue to report to Licensing NT as usual).

## Option B – set up separate incorporated associations in each state or territory you wish to operate in

This is sometimes known as a ‘federated structure’. This may be appropriate for your group if it has distinct parts involved in each state and territory that address distinct state/ territory-specific issues, which can be very difficult to administer for a single group (especially if there are more than two separate associations required). Each incorporated association will be a separate legal entity and will need to comply with the requirements of that state or territory’s legislation (including having a separate committee of management, financial records and reporting, etc.). In addition, any Commonwealth tax concessions (eg. income tax exemption and deductible gift enforcement) enjoyed by one such separately incorporated association cannot be transferred to or shared by any of the other sister/brother associations in another state. Instead, each association will need to seek and maintain its own tax concession.

### CAUTION

Incorporation in multiple states can be difficult to manage and you may end up having to comply with multiple state and territory laws and report to multiple regulators!



## Converting to a company limited by guarantee structure

If you incorporate as an incorporated association, and the circumstances of your organisation change (for example you expand from operating just in the NT to operating across Australia) your group can ‘transfer’ from an incorporated association to a CLG.

Transferring from an incorporated association to a CLG as regulated under sections 56-63 of the Associations Act does not affect the identity of the organisation. Any contracts or agreements that the association had (including employment contracts) will continue to have effect after the association’s transfer to a company. However, there are significant costs and administrative processes involved in converting your organisation’s incorporated structure, so you should give careful consideration to the implications of taking this approach.

A NT incorporated association that holds certain types of property can only transfer to a CLG structure with written permission from the Commissioner of Consumer Affairs (administered through Licensing NT as part of the Department of Business).



### TIP

If your organisation has complex membership or funding arrangements, changing legal structure may be difficult and time consuming.

### TIP

If the group is an Indigenous one, it could consider voluntarily transferring its registration to being under the *Commonwealth Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).



## RELATED RESOURCES



For more information about changing legal structure more generally, including the steps involved in obtaining permission from the Commissioner of Consumer Affairs to change structure, go to the Not-for-profit Law Fact Sheet [Changing your organisation's structure](#).

## TIP



Although converting to a company limited by guarantee is an option commonly considered by incorporated associations, it has some significant legal and administrative requirements involved. We recommend that you seek legal advice about what is involved for your particular organisation, especially if your organisation has a large membership base.

## Issue 2: Will the organisation seek to become registered as a charity?

**If your organisation intends to register as a charity, or is already registered, this significantly affects the choice to be made about the best legal structure for your group**

The ACNC was established in 2013. Prior to this, the differences between incorporating as a CLG and incorporating as an incorporated association were much greater for charities. The analysis about which structure best suits your group now depends significantly on whether it intends to register as a charity or not.

This is because if an organisation incorporates as a CLG and is a charity, its main regulator is the ACNC and not ASIC (although applications for incorporation will still be made to ASIC, and applications for Commonwealth tax concessions are still decided by the Australian Taxation Office). Further, different and less complex laws apply to CLGs that are charities than to other CLGs, because when a CLG becomes registered as a charity, most Corporations Act requirements 'switch off'. A good example are the Governance Standards for charities, which provide a flexible framework around holding meetings, accountability and other matters. The Corporation Act requirements for non-charitable CLGs are much more complex and prescriptive.

If your organisation is an incorporated association that is registered as a charity, it will need to report to the ACNC *and* continue to report to Licensing NT. The ACNC is currently advocating for states to similarly 'switch off' their regulatory regime for incorporated associations that register as charities, however so far only South Australia has indicated it may go down this path.

Altogether, the new landscape for charities means that for groups that intend to be registered charities, the CLG structure is often the simplest to administer, and an attractive structure choice.

### TIP

The ACNC has published a template constitution for charitable CLGs. To read the template see the [ACNC website](#).



Finally, the ACNC aims to take an educative regulatory approach, meaning it will use a range of measures to help organisations comply with their legal obligations, rather than taking a strict approach (as is generally taken by ASIC, which regularly issues fines for failing to meet reporting deadlines). This also addresses the previous concern organisations had about incorporating as CLGs and meeting ASIC's strictly-enforced requirements.

If your organisation incorporates as a CLG but is not a registered charity (or was a charity but loses its charitable status), it will remain regulated by ASIC, and will need to bear in mind that it will be subject to ASIC's stringent regulatory approach.

## Issue 3: Will the organisation have capacity to pay fees?

**The amount of money your group has to pay, both in initial and ongoing fees, may be a factor in determining whether an incorporated association or CLG is the best structure for it.**

In general, ASIC charges CLGs higher fees than Licensing NT charges incorporated associations, and your group will need to be realistic about the resources it has (or is going to have), and how organised it is going to be about keeping information up-to-date and paying fees on time (to avoid late fees – which are significant for CLGs regulated by ASIC).

Groups that are charities and registered as CLGs will largely report to the ACNC, not ASIC (although CLGs still incorporate with ASIC), and the ACNC does not charge fees for lodging reporting and notifications. The ACNC can charge late fees where charities do not lodge information within required timeframes. For charities, the difference in fees between incorporated associations and CLG is far less significant. Incorporated associations that are charities will continue to report to Licensing NT (part of the Department of Business) (and pay the required fees to Licensing NT) and must also report to the ACNC.

### Initial application fee

The initial application fee for incorporation as a CLG is higher than that for an incorporated association (see the incorporation and ongoing fees table below). However, there are significantly lower fees for not-for-profit CLGs that meet the requirements of a ‘special purpose company’

**Note for charities:** Many charities will meet the definition of ‘special purpose company’ and will only need to pay the lower incorporation fee as a CLG if they:

- are formed for charitable purposes
- have non-profit and non-distribution clauses in their constitutions, and
- have certain rules relating to directors.

#### FURTHER READING

For more information about special purpose companies, go to ASIC’s resource:

<http://asic.gov.au/for-business/starting-a-company/how-to-start-a-company/special-purpose-companies>



### Penalties and late fees

The ‘late fees’ for not complying with legal requirements (for example to lodge documents or pay fees) are generally higher for a CLG than for an incorporated association.

ASIC, the regulator of non-charitable CLGs, imposes penalties for late reporting and is rigorous in its collection of late fees. If your group is late lodging documents, ASIC late fees can quickly accumulate. Late fees may be payable in some circumstances by incorporated associations to the regulator of incorporated associations, NT Licensing.

A comparison of the main fees payable by each structure is set out on the next page. Fees listed are for the 2015/2016 year and are indexed (go up) each year.

**Note for charities:** There are late fees for charities reporting to the ACNC, although they are not frequently applied. CLGs registered as charities will no longer undertake financial reporting to ASIC, and therefore the ASIC fees listed below do not apply.

## 2015/2016 incorporation and ongoing fees

For fees for incorporated associations see: [www.dob.nt.gov.au](http://www.dob.nt.gov.au) Department of Business-Fees for incorporated associations.

For payments and fees for companies limited by guarantee see: [www.asic.gov.au](http://www.asic.gov.au). [ASIC fees for corporations](#).

For penalties for charities that fail to lodge documents on time with the ACNC see: [https://www.acnc.gov.au/ACNC/Publications/Policy\\_PDFs/Penalties.aspx](https://www.acnc.gov.au/ACNC/Publications/Policy_PDFs/Penalties.aspx).

Type of fee	NT incorporated associations	Commonwealth company limited by guarantee <i>note that these requirements do not apply to CLGs registered as charities</i>	Notes for Charities
Initial application for incorporation	\$74 For amendment lodged within one month – \$17, later than one month – \$40	\$382 An additional fee applies to register without the word 'limited' in the name. These fees apply to CLGs registering and not registering with the ACNC.	No application fee to become registered as a charity, but must pay fee to NT Licensing or ASIC to incorporate (as either an incorporated association or a CLG).
Requirement for audited financial statement (approx. \$2,000 to \$20,000+ per year)	All incorporated associations must prepare an accurate annual statement of accounts according to form in <a href="#">Schedule 4</a> of the <i>Association Regulations</i> . The audit requirements vary depending on which tier the incorporated association falls within:  'Tier 1': Accounts must be audited by a person who must not be a member, and not in a specified way	'Tier 3' companies must have their accounts audited by a registered company auditor. 'Tier 2' companies must have their accounts 'reviewed' by an auditor (lesser standard than full audit). 'Tier 1' companies not required to have audited accounts (unless required to do so by members' direction or ASIC direction)	Incorporated associations that are charities must report both to NT licensing and the ACNC (ACNC tiers are the same as for CLGs, although DGR status is not relevant). CLGs that are charities only report to the ACNC. The ACNC Act specifies that only medium and large charities need to provide financial reporting to the ACNC, however from 2014 onwards the Annual Statement has included basic financial questions. You can read more about charity reporting obligations

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	<p>connected to or related to a member</p> <p>'Tier 2': The accounts must be audited by:</p> <ul style="list-style-type: none"> <li>• a person who is a member of an accountants body, or</li> <li>• a person who holds qualifications in a prescribed class of qualifications, or</li> <li>• a person who is, or is a member of a class of persons, approved by the Commissioner.</li> </ul> <p>'Tier 3': For tier 3 incorporated associations, the accounts must be audited by:</p> <ul style="list-style-type: none"> <li>• a person who holds a public practice certificate issued by an accountants body, or</li> <li>• a person who is, or is a member of a class of persons, approved by the Commissioner</li> </ul> <p>The tier classifications are explained in more detail above.</p>		<p>in Not-for-profit Law's fact sheet <a href="#">Financial reporting for charities</a>.</p>
Annual fee when lodging financial statement	\$17	<p>There is no fee to lodge financial statements with ASIC. However annual review fees are payable as follows:</p> <ul style="list-style-type: none"> <li>• \$1,161 (\$8,891 advance payment for 10 years), or</li> <li>• \$46 (\$347 advance payment for 10 years) for 'special purpose companies' (companies formed for 'charitable purposes', have non-profit and non-distribution clauses in their constitution and certain rules relating to directors).</li> </ul>	<p>There is no fee to lodge financial reporting statements with the ACNC. Incorporated associations that are registered as charities and categorized as medium or large need to lodge with both Licensing NT (including a fee) and ACNC (no fee).</p> <p>Medium and large CLGs registered as charities only need to lodge financial reporting to ACNC (no fee).</p>
Late fees when lodging annual statement	\$ 40 in total	Late lodgement fees will apply if financial statements are not lodged within 4 months of the	The ACNC may charge late fees both to incorporated

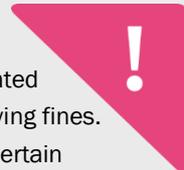
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		<p>end of the relevant financial year.</p> <p>Late payment of the annual review will incur late fees as follows:</p> <ul style="list-style-type: none"> <li>• \$75 if payment is received within 1 month after the due date, and</li> <li>• \$312 if payment is received more than 1 month after the due date.</li> </ul>	associations and CLGs that are registered as charities.
Lodge details of changes to information (eg. address, names of officers)	If lodged within 7 days – \$ 17, lodged later – than 7 days, \$40.	None, except for change of name for which a \$382 fee applies.	The ACNC does not charge to change details.
Lodge changes to constitution/rules	\$17, with a power to fine groups for late lodgement.	None.	The ACNC does not charge to change details.
Failure to lodge changes of details within required period (i.e. address, names of officers, change to rules/constitution)	Failure to lodge documents relating to a change of the constitution, objects, or purposes with the Commissioner within one month after alteration – Maximum 20 penalty units (s 23). In FY15-16 this is \$3060.	<ul style="list-style-type: none"> <li>• \$75.00 first month late, or</li> <li>• \$312.00 for more than a month late.</li> </ul>	The ACNC may charge late fees.

## CAUTION

If you choose to be a GLG and are not a registered charity, your organisation will be regulated by ASIC, a body that is systematic in imposing late fines and is inflexible in relation to waiving fines.

If you forget or are late or did not realise that you had to file documents or notify ASIC of certain changes, ASIC late fees can quickly accumulate. The ACNC that regulates CLG charities is likely to take a more educative approach to regulation.



## Issue 4: Annual reporting, audits and reviews

**Generally speaking, the regulatory regime for incorporated associations under the NT Associations Act is more straightforward than the regime for CLGs under the Corporations Act.**

If you wish to incorporate as a CLG, your group will need help from a person who has a good understanding of running a company, or access to professional legal or accounting advice. There are some basic fact sheets and resources published by ASIC.

However, as discussed under Issue 2, CLGs that are registered as charities have different and less complex obligations under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**), and reporting fees are also lower (waived entirely in many cases). Therefore, concerns about the complexity of the Corporations Act and reporting to ASIC are not as relevant to groups who are or will be charities.

### FURTHER READING

For more information about reporting to government for incorporated associations, CLGs and charities, see the [Reporting to Government page](#) on the Information Hub.



Incorporated associations and some CLGs must have their accounts independently audited or reviewed each year. For both incorporated associations and CLGs, the type of audit or review required will depend on which of three 'tiers' your organisation falls into. Under both structures, only larger organisations (as well as CLGs of any size with Deductible Gift Recipient (**DGR**) status) need to fully audit their accounts.

An independent audit may cost between \$2,000 and \$20,000+, depending on the size of your organisation (or group). Therefore the requirement for audited accounts needs to be considered carefully.

### TIP

Many organisations may need to undertake audits for other reasons as well, including being required to do so under a funding agreement.



### Reporting tiers for CLGs

There are three categories or 'tiers' with different auditing requirements. The table below briefly sets out the tiers and the corresponding requirements for financial reporting and auditing under the Corporations Act.

	<b>Definition of CLG category</b>	<b>Reporting/auditing requirements</b>
<b>Tier 1 (known as "small CLGs")</b>	CLGs with annual revenue less than \$250,000, and who do not have DGR status.	Not required to prepare financial report, directors' report, or have accounts audited or reviewed unless required to do so under ASIC direction or members' direction (any group of members that make up at least 5% of members can direct the CLG to prepare a financial statement or directors' report and can require either a review or audit).
<b>Tier 2</b>	CLGs with annual revenue between \$250,000 and \$1 million and no DGR status; or annual revenue less than \$1 million and DGR status.	Must prepare financial report and have report 'reviewed'. This is not as comprehensive or expensive as a full audit (however CLGs can choose to have report 'audited' nonetheless). Must also prepare a directors' report.
<b>Tier 3</b>	Annual revenue over \$1 million, whether DGR or not.	Must have accounts fully audited by a person who is registered as an auditor under the Corporations Act and must also prepare a director's report.

**Note for charities:** The same tiers apply under the ACNC Act, and similar reporting requirements apply with financial reports submitted to the ACNC rather than ASIC. In contrast to CLGs regulated by ASIC, being endorsed as a DGR will not trigger higher tier reporting requirements.

#### RELATED RESOURCES

You can read more about the reporting obligations of charities in Not-for-profit Law's fact sheet [Financial reporting for charities](#).



## Tiers for NT incorporated associations

For NT incorporated associations, there are also three categories or 'tiers' with different auditing requirements as to who can audit the accounts and their required qualifications. The table below briefly sets out the tiers and corresponding requirements for financial reporting and auditing under the NT *Associations Act*.

	<b>Definition of IA category</b>	<b>Reporting/Auditing requirements</b>
<b>Tier 1</b>	Incorporated associations other than tier 2 or tier 3 incorporated associations being Incorporated associations with: <ul style="list-style-type: none"> <li>gross receipts of no more than \$250,000, or</li> <li>gross assets of no more than \$500,000.</li> </ul>	Requirement to prepare an accurate annual statement of accounts according to form in Schedule 4 of the <i>Association Regulations</i> . Accounts must be audited by a person who must not be a member, and not in a specified way connected to or related to a member.
<b>Tier 2</b>	Incorporated associations that are not tier 3 incorporated associations and the association:	Requirement to prepare an accurate annual statement of accounts according to form in <a href="#">Schedule 4</a> of the <i>Association Regulations</i> . The accounts must be audited by:

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	<ul style="list-style-type: none"> <li>• has gross receipts not exceeding \$25,000, or</li> <li>• has gross assets not exceeding \$50,000, or</li> <li>• holds a licence under the <i>NT Gaming Machines Act (2015)</i>, or</li> <li>• is a prescribed incorporated association or a member of a class of prescribed incorporated associations.</li> </ul>	<ul style="list-style-type: none"> <li>• a person who is a member of an accountants body, or</li> <li>• a person who holds qualifications in a prescribed class of qualifications, or</li> <li>• a person who is, or is a member of a class of persons, approved by the Commissioner</li> </ul>
<b>Tier 3</b>	<p>Incorporated associations that:</p> <ul style="list-style-type: none"> <li>• are an incorporated trading association, or</li> <li>• have gross receipts, at the end of a financial year of the association, exceeding \$250,000, or</li> <li>• have gross assets, at the end of a financial year of the association, exceeding the \$500,000.</li> </ul>	<p>Requirement to prepare an accurate annual statement of accounts according to form in <a href="#">Schedule 4</a> of the <i>Association Regulations</i>.</p> <p>The accounts must be audited by:</p> <ul style="list-style-type: none"> <li>• a person who holds a public practice certificate issued by an accountants body, or</li> <li>• a person who is, or is a member of a class of persons, approved by the Commissioner.</li> </ul>

**Note for charities:** The same tiers apply under the ACNC Act as under the Corporations Act, and similar reporting requirements apply for charitable CLGs, however reports are submitted to the ACNC rather than ASIC. Incorporated associations registered as charities will need to report to NT Licensing, and report again to the ACNC.

#### TIP

Remember that some organisations may be required to have audited accounts because of another requirement (eg. because this is in a funding agreement with the government, or because the members/committee of management believe it is good practice) even though it is not required by the Corporation Act (for companies) or the Associations Incorporation Act (for associations) or the ACNC Act.



#### RELATED RESOURCES

You can read more about the reporting obligations of charities in Not-for-profit Law's fact sheet [Financial reporting for charities](#).



## Issue 5: Other factors for your group to consider

The issues discussed above (where your group is going to operate; the skills or expertise available to your group; whether your group will be a registered charity; and its financial capacity) are four of the main factors for groups to consider when choosing their legal structure.

However, there are some other important factors that may affect your group's decision whether to incorporate as an incorporated association or CLG. The table below lists a number of factors which may be relevant to your group's aims, activities or circumstances.

Feature	Brief description
Flexibility of rules or constitution	<p>The Corporations Act provides some flexibility in a company's constitution, and ASIC is unlikely to reject a proposed constitution. Changes to the constitution of a CLG take effect from the date passed by the members (unless otherwise set out). Flexibility is even greater if your CLG is registered as a charity (and therefore reports to the ACNC).</p> <p>The requirements for a constitution under the Associations Act are straightforward and can be met by adopting the model constitution with the relevant information for a specific incorporated association inserted. You can also prepare your own constitution, as long as it addresses all matters required under the Associations Act. Changes to the constitution must be notified with supporting documentation within one month, and do not take effect until the documentation has been filed. To take effect, the changes to the objectives and purposes of the organisation need to be notified to (and be approved by) the Commissioner.</p>
Directors (board member) and office holder duties	<p>The potential liabilities of CLG board members are more serious under the Corporations Act than for committee members and other office holders of an incorporated association. There are significant penalties for directors of CLGs who breach their duties. CLGs registered with the ACNC are required to comply with the ACNC governance standards instead of the civil directors' duties under the Corporations Act. However, criminal penalty provisions and the duty to prevent insolvent trading under the Corporations Act still apply (but are rarely imposed).</p> <p>Incorporated associations have office holders' duties set out in legislation. The common law (i.e. judge-made) duties and liabilities of board members are similar for both structures. For more information about the duties of board and committee members, see Not-for-profit Law's page on <a href="#">governance</a>.</p>
Number of members	Groups wanting to incorporate as a CLG need only one member. This may suit a not-for-profit organisation wanting to retain a higher degree of

	<p>control (but remember, this type of company still needs 3 directors) or, where the organisation is to be a subsidiary of another organisation.</p> <p>In contrast, NT incorporated associations must have a minimum of five members.</p>
Speed of incorporation	<p>In general, ASIC often approves an application for incorporation of a CLG within 24-48 hours of paperwork being filed online (but if it includes applying for a licence to omit the word 'limited' from the name of the organisation, it will take longer).</p> <p>NT Licensing may take longer to approve an application for incorporation of an association, particularly where the organisation submits its own constitution, rather than using the 'model' constitution contained in the Regulations.</p>
Rights of members	<p>Members of CLG are entitled to appoint a member or a non-member as a proxy (a person to vote at meetings on their behalf). Also, for CLGs not registered as a charity, a small percentage of members is able to force a members meeting to be called (members with at least 5% of the votes that may be cast at a general meeting may call and hold a general meeting, but must meet procedural requirements and pay any expenses).</p> <p>There are no similar mandatory requirements for NT incorporated associations. For associations, the rights and liabilities of members – for example, the rights of members to vote and call meetings – must be written into the association's rules.</p> <p>See the <a href="#">'Members' Rights'</a> fact sheet on the Information Hub for more information.</p>
Legislation requiring a particular form of incorporation	<p>In limited circumstances, there are laws that require organisations that are undertaking specific activities to adopt a particular legal structure. Your organisation should seek advice about any laws that might apply to the field you are working in.</p>
Availability of information about the organisation to the public	<p>For a CLG, the name, date and place of birth of each director must be provided to ASIC and these details are available to the public (for a small fee). Further, a company is required to keep a register containing the details of members of the organisation, and is required to make this available to all members for free, and to the public for a fee.</p> <p>For an incorporated association, only the details of the public officer need to be provided to Licensing NT (which is then available to the public for a fee). The application for incorporated also requires the details (name, residential address, phone, email) of all committee members, although changes to these don't need to be notified to Licensing NT and they are not made publically available. An association must keep a register of members' details and make it available to members of the organisation.</p> <p>Certain details about registered charities (both incorporated associations and CLGs) are available on the ACNC Register (the register of charities</p>

	<p>maintained by the ACNC) – e.g. governing rules, names of directors, annual statements etc.</p>
Flexibility for amalgamation	<p>The Corporations Act does not provide for amalgamation and therefore usually requires that either one or both amalgamating entities wind up (with the possibility of termination of employment etc.) and then incorporate a new company.</p> <p>There is no provision in the NT Associations Act for two incorporated associations to amalgamate and become a separate amalgamated association.</p> <p>However, section 54 of the Associations Act allows one incorporated association to transfer all its real and personal property to:</p> <ul style="list-style-type: none"> <li>• another body, whether incorporated or unincorporated, formed for promoting objects similar to its own or charitable objects; or</li> <li>• a local government council for the area in which the property is situated.</li> </ul> <p>For more information see the <a href="#">Amalgamation and Mergers page</a> of the Information Hub.</p>
Operating overseas	<p>If your group wants to operate overseas it will need to seek legal advice about what the laws of the relevant country might require. Using Australia as an example, any overseas (foreign) company that wants to 'carry on business' (conduct activities) in any part of Australia must register with ASIC under our Corporations Act. Many other countries will have similar requirements, even if your group is operating as a not-for-profit.</p> <p>As a general comment, a CLG structure will be a more readily understood and recognised legal structure in other countries, compared with other structures such as an incorporated association.</p>

## Conclusion

As highlighted in this guide, a number of factors will influence a group's decision about whether to become an incorporated association or a CLG. There is no quick and easy answer, but weighing the various factors will help you to determine which structure best suits the activities, circumstances, direction and resources of your particular group.

It is important to remember that as a result of changes in the law at both state and federal levels, as well as changes to the regulation of charities by the ACNC, this analysis will continue to change. You can keep in touch with us and access updates and alerts by subscribing to the Not-for-profit Law Update [here](#).

# Resources

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## Related Not-for-profit Law Resources on the Information Hub

- ✔ Getting started - [www.nfplaw.org.au/gettingstarted](http://www.nfplaw.org.au/gettingstarted)

This page sets out the things you will need to take into consideration when deciding on whether to establish a not-for-profit organisation, including links to helpful resources.

- ✔ Before you start - [www.nfplaw.org.au/beforeyoustart](http://www.nfplaw.org.au/beforeyoustart)

This page includes specific matters to address prior to setting up a not-for-profit organisation.

- ✔ The incorporation decision - [www.nfplaw.org.au/incorporationdecision](http://www.nfplaw.org.au/incorporationdecision)

This page gives guidance to those not-for-profits grappling with the decision to either formally incorporate, or remain as an unincorporated group.

- ✔ Choosing a legal structure - [www.nfplaw.org.au/legalstructure](http://www.nfplaw.org.au/legalstructure)

This page lists the various types of not-for-profit legal structures, allowing you to determine the best structure for your group.’

- ✔ Governance - [www.nfplaw.org.au/governance](http://www.nfplaw.org.au/governance)

This page provides information about how the organisation should be run, including information about directors’ duties.

## Legislation

- ✔ [NT Associations Act](#)
- ✔ [NT Associations Regulations](#)
- ✔ [NT Associations \(Model Constitution\) Regulations](#)
- ✔ [Corporations Act 2001 \(Cth\)](#)
- ✔ [Australian Charities and Not-for-profits Commission Act 2012 \(Cth\)](#)

## Australian Charities and Not-for-profits Commission (ACNC)

- ✔ [Reporting to the ACNC](#)

This page within the ACNC website provides an overview of the reporting requirements for registered charities, according to their size.

- ✔ [Registering as a charity](#)

This page within the ACNC website provides a summary of the steps to take should you wish to register your not-for-profit as a charity.

## Australian Securities and Investments Commission (ASIC)

- ✔ [Reporting obligations of companies limited by guarantee](#)

This page within the ASIC website provides an overview of the reporting requirements for companies limited by guarantee that are not charities.

### ✔ [Special purpose companies](#)

This page within the ASIC website provides information about special purpose companies (which will include some CLGs).

### ✔ [Starting a company](#)

This page within the ASIC website gives guidance on how to start a company, whether for-profit or not-for-profit.

## Chartered Accountants Australia and New Zealand

### ✔ [Enhancing not-for-profit annual and financial reporting \(2013\)](#)

### ✔ [A guide for charities reporting under the ACNC Act 2012 \(Cth\)](#)

Chartered Accountants Australia and New Zealand has published a helpful guide and a recent update for not-for-profit organisations relating to financial reporting obligations.

## Licensing NT

### ✔ [NT Licensing \(Department of Business\) information for incorporated associations](#)

This page within the NT Department of Business website summarises the annual reporting requirements, provides relevant forms and factsheets for NT incorporated associations, including a model constitution template and an audited annual reporting template for NT incorporated associations

### ✔ [Incorporated associations – Constitution](#)

This page within the NT Department of Business website provides information about the requirements of a constitution for an incorporated association.





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