

Incorporated association or company limited by guarantee? (NT)

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

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Introduction



Introduction

This section covers:

- ▶ The differences between an incorporated association and a company limited by guarantee (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, and
 - ▶ Issue 5: other factors to consider
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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 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. Please read the related Not-for-profit Law fact sheet: '[Choosing a legal structure](#)', available on the Not-for-profit Law website (see the 'Getting Started' page).

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. Changes to the laws for both incorporated associations and CLGs registered as charities with the Australian Charities and Not-for-profits Commission (**ACNC**) mean that the arguments for choosing to incorporate as an association over a CLG, which are discussed in this guide, are no longer as compelling.

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'?



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 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 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 with ASIC

Registering with the Australian Securities and Investments Commission (**ASIC**) as a Registered Australian Body (**RAB**) 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 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 or 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 enjoyed by one such



separately incorporated association (e.g. income tax exemption and deductible gift enforcement) 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 apply to transfer its registration to become incorporated under another Act, such as a CLG under the Corporations Act. The association must hold a general meeting where members of the association pass a special resolution agreeing that the association will become a CLG. The association must then notify the Commissioner of Consumer Affairs (administered through Licensing NT as part of the Department of Business) (**Commissioner**) by lodging a copy of the resolution along with the relevant forms.

Transferring from an incorporated association to a CLG 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 may be 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 its incorporation with written permission from the Commissioner.



Tip

If the group is an Indigenous organisation, it could consider voluntarily transferring its registration to being under the *Commonwealth Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth). An organisation registered under this Act can operate nationally, and its corporate rule book can take into account Aboriginal and Torres Strait Islander customs and traditions.



Related Not-for-profit Law resource

For more information about changing legal structure more generally, including what types of property are 'prescribed property' for incorporated associations, go to the Not-for-profit Law fact sheet [Changing your organisation's structure](#).

**Tip**

Although converting to a CLG is an option commonly considered by incorporated associations, there are 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?**

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.

After the ACNC's establishment in December 2012, charities that became registered with the ACNC that were incorporated associations, rather than CLGs, became subject to dual reporting requirements under the ACNC regime and the relevant state or territory incorporated associations regime. This increased the initial and ongoing regulatory burden associated with the incorporated association structure.

Unlike in some other states and territories, these dual reporting requirements have not been 'switched off' in the NT for incorporated associations that register as charities. As a result, 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.

Aside from this dual reporting issue, the regulatory analysis about which structure best suits your group now depends significantly on whether it intends, after it is incorporated, to register as a charity or not.

This is because the main regulator for a CLG that registers with the ACNC as a charity is the ACNC rather than ASIC (although applications for incorporation as a CLG and to deregister a CLG are still required to be made to ASIC, as are notifications regarding a change of name of the CLG and removal of the auditor.



Tip

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

Further, different and less complex laws apply to CLGs that are charities than to other CLGs. That is because when a CLG or other body corporate (such as a proprietary company limited by shares or RAB) becomes registered as a charity, certain Corporations Act requirements in relation to directors and members' meetings 'switch off' and are replaced with corresponding, but less onerous, requirements under the ACNC regime. A good example is the Governance Standards that apply to charities under the ACNC regime. These provide a more flexible framework around holding meetings, accountability to members and other matters. The Governance Standards:

- establish a minimum level of outcomes for the practices and procedures expected of charities that are registered with the ACNC, and
- are 'principles-based' in that they specify the outcome the registered charity should achieve, not the means of achieving it. Accordingly, the manner by which registered charities can comply with the Governance Standards will vary according to a charity's particular circumstances, such as its legal structure, size and geographical reach, sources of funding and existing governance systems and processes

In addition, the Corporations Act requirements in relation to:

- directors and members' meetings, and
- preparing financial and directors' reports and distributing those reports to members,

that apply to CLGs that are not registered charities are much more complex and prescriptive.

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



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). The difference in the approaches to regulatory enforcement that are adopted by the ACNC and ASIC have removed some of the concerns that unincorporated groups intending to register as charities may have previously had about having a stricter regulatory compliance burden if they chose to adopt a CLG structure rather than an incorporated association structure. As a result, the CLG option has become a more accessible option for those groups also intending to register as charities after their incorporation.

However, if your organisation incorporates as a CLG but is not a registered charity (or loses its charitable registration), its main regulator will be ASIC, and will be subject to ASIC's more stringent regulatory approach, and the full suite of legal requirements that apply to CLGs under the Corporations Act. If your organisation incorporates as an incorporated association in the NT but is not a registered charity (or loses its charitable registration), its main regulator will be the Commissioner.



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

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

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

As already mentioned, registered charities that are incorporated as CLGs will largely report to the ACNC, not ASIC (although CLGs still incorporate with ASIC). Currently, the ACNC does not generally exercise its power to impose filing fees or to impose late fee penalties. However, this may change in the future and charities will be liable to pay a penalty for late lodgement of documents. In addition, in some circumstances, failing to lodge documents when required can be grounds for the ACNC to revoke a charity's registration.

Groups that do not intend to register as charities and so will have ASIC as their main regulator should be aware that, in general, ASIC charges CLGs higher filing fees and imposes harsher penalties than Licensing NT does for incorporated associations. Your group will need to be realistic about the resources it has (or is going to have), and how diligent it is going to be about keeping information up-to-date and paying fees on time (to avoid late fees – which can be significant for CLGs regulated by ASIC).

Incorporated associations that register as charities will remain subject to the reporting requirements and lodgement fees imposed by the Commissioner.

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, the fees for not-for-profit CLGs that meet the requirements of a 'special purpose company' are lower than the fees for CLGs that do not.



Note for charities

Many charities that are CLGs will meet the definition of 'special purpose company' and will only need to pay the lower incorporation fee and ongoing filing fees if:

- they are formed for charitable purposes and are registered under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**) as a charity; and
- their constitutions:
 - prohibit the CLG from making distributions to its members and paying fees to its directors; and
- require the directors to approve all other payments the CLG makes to directors

Penalties and late fees



Related Resource

For more information about special purpose companies, go to [ASIC's resource](#).

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 CLGs not registered as charities, imposes penalties for late reporting and is systematic 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, Licensing NT.

A comparison of the main fees payable by each structure is set out on the next page. Fees listed are for the 2018/2019 year and are indexed (go up) each year.



Note for charities

The ACNC has the power to impose filing fees and penalties for late reporting, although to date it has not exercised this power regularly. CLGs registered as charities will no longer undertake financial reporting to ASIC, and therefore the ASIC fees listed below do not apply.



Tip

Remember that some organisations may be required to have audited accounts because of another requirement (e.g. because it 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 Corporations Act (for companies) or the AI Act (for associations) or the ACNC Act.

2018/2019 incorporation and ongoing fees

For fees for incorporated associations see [The Department of Business website](#) and their webpage on [Fees for incorporated associations](#).

For payments and fees for companies limited by guarantee see the [ASIC website](#) and their webpage on [ASIC fees for corporations](#).

For penalties for charities that fail to lodge documents on time with the ACNC see the [ACNC's resource on penalties](#).

Type of fee	NT incorporated associations (from 1 July 2018)	Commonwealth company limited by guarantee (from 4 July 2018) Note – these requirements don't apply to CLGs registered as charities	Notes for charities
Initial application for incorporation	\$76 An additional fee of \$59 applies to register an association for a purpose not listed in the Associations Act, as set out on the Licensing NT website .	\$403 An additional fee applies to register without the word 'limited' in the name. These fees apply to CLGs registering with ASIC and not registering with the ACNC.	No application fee to become registered as a charity, but must pay fee to Licensing NT or ASIC to incorporate (as either an incorporated association or a CLG).
Requirement for audited financial statement	All incorporated associations must prepare an accurate annual	'Tier 3' companies must have their accounts	Incorporated associations that are charities must report both to Licensing NT



Type of fee	NT incorporated associations (from 1 July 2018)	Commonwealth company limited by guarantee (from 4 July 2018) Note – these requirements don't apply to CLGs registered as charities	Notes for charities
(approx. \$2,000 to \$20,000+ per year)	<p>statement of accounts according to form in Schedule 4 of the Associations Regulations. The audit requirements vary depending on which tier the incorporated association falls within:</p> <p>'Tier 1': 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</p> <p>'Tier 2': The accounts must be audited by:</p> <ul style="list-style-type: none"> • a person who is a member of an accountants body, or • a person who holds qualifications in a prescribed class of qualifications, or • a person who is, or is a member of a class of persons, approved by the Commissioner <p>'Tier 3': For tier 3 incorporated associations, the accounts must be audited by:</p> <ul style="list-style-type: none"> • a person who holds a public practice certificate issued by an accountants body, or • a person who is, or is a member of a class of persons, approved by the Commissioner <p>The tier classifications are explained in more detail below.</p>	<p>audited by a registered company auditor.</p> <p>'Tier 2' companies must have their accounts 'reviewed' by an auditor (lesser standard than full audit).</p> <p>'Tier 1' companies are not required to have audited accounts (unless required to do so by members' direction or ASIC direction).</p> <p>The tier classifications are explained below in more detail.</p>	<p>and the ACNC (ACNC tiers are the same as for CLGs, although deductible gift recipient (DGR) status is not relevant).</p> <p>CLGs that are charities only report to the ACNC.</p> <p>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.</p> <p>You can read more about charity reporting obligations in Not-for-profit Law's fact sheet Financial reporting for charities.</p>
Annual fee when lodging financial statement	\$18	<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"> • \$1,224 (\$9,374 advance payment for 10 years), or 	<p>There is no fee to lodge financial reporting statements with the ACNC.</p> <p>Incorporated associations that are registered as charities and categorized as medium or large need to lodge with both Licensing</p>



Type of fee	NT incorporated associations (from 1 July 2018)	Commonwealth company limited by guarantee (from 4 July 2018) Note – these requirements don't apply to CLGs registered as charities	Notes for charities
		<ul style="list-style-type: none"> \$49 (\$366 advance payment for 10 years) for 'special purpose companies' (companies formed for 'charitable purposes' and registered as charities, have non-profit and non-distribution clauses in their constitution and certain rules relating to directors) 	<p>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	\$41 in total	<p>Late lodgement fees will apply if financial statements are not lodged after 4 months from the 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"> \$79 if payment is received within 1 month after the due date \$329 if payment is received more than 1 month after the due date 	The ACNC may charge late fees both to incorporated associations and CLGs that are registered as charities.
Lodge details of changes to information (e.g. address, names of officers)	If lodged within 14 days – \$18, lodged later – than 14 days, \$41.	None, except for change of name, for which a \$403 fee applies.	The ACNC does not charge to change details.
Lodge changes to constitution or rules	If lodged within 1 month - \$18, lodged later than 1 month - \$41.	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 or 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 FY18-19 this is \$3,100.	<p>Fees are as follows:</p> <ul style="list-style-type: none"> \$79.00 first month late, or \$329.00 for more than a month late 	The ACNC may charge late fees.



Caution

If you choose to be a CLG or other body corporate (such as a proprietary company limited by shares or an RAB) and are not a registered charity, your organisation will be regulated by ASIC, which is systematic in imposing late fines and can be 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. To date, the ACNC as the main regulator for charities that are structured as CLGs, has taken a more educative and 'lighter touch' approach to regulation. This may change in the future.



Issue 4: Annual reporting, audits and reviews



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 and do not intend to register as a charity with the ACNC, your group will need ongoing help from a person who has a good understanding of running a company, or access to professional legal or accounting advice.

However, as discussed under Issue 2, CLGs that are registered as charities have different and less complex obligations under the **ACNC Act**, and reporting fees are also lower (waived entirely in many cases to date). 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.



Related Not-for-profit Resource

For more information about reporting to government for incorporated associations, CLGs and charities, see the [Reporting to Government page](#) on the Not-for-profit Law website.

Incorporated associations and some CLGs must have their accounts independently audited or reviewed each year. For CLGs and incorporated associations, the type of audit or review required will depend on which of three 'tiers' your organisation falls into. Only larger CLG organisations (as well as CLGs of any size with **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. 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.

	Definition of CLG category	Reporting and auditing requirements
Tier 1 (known as 'small companies')	CLGs with annual revenue less than \$250,000, and which 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).



	Definition of CLG category	Reporting and auditing requirements
Tier 2 (known as 'medium companies')	CLGs with annual revenue less than \$250,000.00 that are a DGR OR with an annual revenue of between \$250,000.00 and \$1,000,000.00 (whether or not they are DGR).	<p>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).</p> <p>Must also prepare a 'streamlined' directors' report.</p> <p>Members to be notified of annual reports (rather than automatic distribution).</p>
Tier 3 (known as 'large companies')	CLGs with annual revenue over \$1 million, whether DGR or not.	<p>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.</p> <p>Must give annual reports to any member who elects to receive them.</p>



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. Note that for registered charities, in contrast to CLGs regulated by ASIC, being endorsed as a DGR will not trigger higher tier reporting requirements.



Related Not-for-profit Law resource

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.

	Definition of CLG category	Reporting and auditing requirements
Tier 1	Incorporated associations other than tier 2 or tier 3 incorporated associations.	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 is not a member, and is not in a specified way connected to or related to a member.
Tier 2	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 Schedule 4 of the <i>Association Regulations</i> . The accounts must be audited by:



	Definition of CLG category	Reporting and auditing requirements
	<ul style="list-style-type: none"> • has gross receipts exceeding \$25,000, or • has gross assets exceeding \$50,000, or • holds a licence under the NT Gaming Machine Act (2015), or • is a prescribed incorporated association or a member of a class of prescribed incorporated associations 	<ul style="list-style-type: none"> • a person who is a member of an accountants body, or • a person who holds qualifications in a prescribed class of qualifications, or • a person who is, or is a member of a class of persons, approved by the Commissioner
Tier 3	<p>Incorporated associations that:</p> <ul style="list-style-type: none"> • are an incorporated trading association, or • have gross receipts, at the end of a financial year of the association, exceeding \$250,000, or • have gross assets, at the end of a financial year of the association, exceeding \$500,000 	<p>Requirement to prepare an accurate annual statement of accounts according to applicable Australian Accounting Standards.</p> <p>The accounts must be audited by:</p> <ul style="list-style-type: none"> • a person who holds a public practice certificate issued by an accountants body, or • a person who is, or is a member of a class of persons, approved by the Commissioner



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 to ASIC. Incorporated associations registered as charities will need to report to Licensing NT, and report again to the ACNC.



Tip

Remember that some organisations may be required to have audited accounts because of another requirement (e.g. because this is in a funding agreement with the government, or because the members or committee of management believe it is good practice) even though it is not required by the Corporations Act (for small and medium companies) or the ACNC Act (for charities).



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



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 also 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). There is even greater flexibility 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 to the Commissioner with supporting documentation within one month, and do not take effect until the documentation has been filed. In addition, any changes to the objectives and purposes of the organisation need to be notified to (and be approved by) the Commissioner before they will take effect.</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, the criminal penalty provisions and the duty to prevent insolvent trading under the Corporations Act still apply. In addition, directors of CLGs registered with the ACNC are still subject to directors' duties arising at common law and in equity as these have not 'turned off'.</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 Governance and legal duties of office holders.</p>
Number of members	<p>Groups wanting to incorporate as a CLG need a minimum of y one member. This may suit a not-for-profit organisation wanting to retain a higher degree of 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>NT incorporated associations must have a minimum of five members.</p>



Feature	Brief description
<p>Speed of incorporation</p>	<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>Licensing NT may take longer to approve an application for incorporation of an association, particularly where the organisation submits its own constitution, rather than using the NT model constitution contained in the Regulations.</p>
<p>Rights of members</p>	<p>Members of a 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 are 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. For example, the NT model constitution provides for half the number of members constituting a quorum to force the committee to call a special general meeting.</p> <p>See the 'Members' Rights' fact sheet on the Not-for-profit Law website for more information.</p>
<p>Legislation requiring a particular form of incorporation</p>	<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>
<p>Availability of information about the organisation to the public</p>	<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 incorporation 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 publicly 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 maintained by the ACNC) – e.g. governing rules, names of directors, annual statements etc.</p>
<p>Flexibility for amalgamation</p>	<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>



Feature	Brief description
	<ul style="list-style-type: none">• another body, whether incorporated or unincorporated, formed for promoting objects similar to its own or charitable objects; or• a local government council for the area in which the property is situated <p>For more information see the Amalgamation and Mergers page of the Not-for-profit Law website.</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



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

Related Not-for-profit Law resources

▶ [Getting started](#)

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](#)

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

▶ [The incorporation decision](#)

▶ 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](#)

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

▶ [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 on the ACNC website provides an overview of the reporting requirements for registered charities, according to their size.

▶ [Registering as a charity](#)

This page on 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)

▶ [Starting a company](#)

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

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

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

▶ [Special purpose companies](#)

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

Chartered Accountants Australia and New Zealand

▶ [Financing not-for-profit annual and financial reporting \(2016\)](#)

▶ [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

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

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

