

# Incorporating as an incorporated association in the Northern Territory

Legal information for Northern Territory community organisations



## This fact sheet covers:

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- nominating a public officer for your organisation
  - the committee and its obligations
  - deciding on a name for your organisation
  - drafting or adopting a set of 'rules' or the 'model constitution' for your organisation
  - deciding on the purposes of your organisation
  - holding a pre-incorporation meeting
  - completing an 'Application for Incorporation of an Association' form and a 'Statutory Declaration'
  - sending the forms, documents and fees to Licensing NT
  - awaiting notice of incorporation of your organisation from Licensing NT, and
  - ACNC registration.
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## In the Northern Territory, the process of setting up an incorporated association is set out in the *Associations Act (NT)*.

Licensing NT regulates incorporated associations in the Northern Territory (**Territory**) through the *Associations Act 2003 No.56 (NT) (the Act)*. This Act was recently amended on 12 April 2017. To become an incorporated association you must apply to the Commissioner of Consumer Affairs (**Commissioner**) through Licensing NT.

While setting up an incorporated association is a relatively simple process, there are a few important decisions that your organisation will need to make and may need to get advice about.

Set out below is a brief explanation of the main requirements and considerations for setting up an incorporated association, and links to Licensing NT and other relevant websites.

After an incorporated association is set up, it should seek legal advice about ongoing obligations that may apply, such as those related to annual general meetings, financial reporting and record keeping.

## RELATED RESOURCES

This fact sheet only summarises the process for setting up as an incorporated association in the ACT. If you are a large organisation that operates across several states and territories, you may wish to consider other organisation structures, such as incorporating as a company limited by guarantee under the *Corporations Act 2001* (Cth). For more information on choosing a legal structure go to the 'Choosing a legal structure' page on the Not-for-profit Law website at [www.nfplaw.org.au/legalstructure](http://www.nfplaw.org.au/legalstructure).



## Nominating a public officer

The applicant who lodges an application for the incorporation of an association with the Commissioner is the organisation's 'public officer'. An organisation must have a public officer at all times (note: the public officer role must be filled within 14 days of it becoming vacant and written notice must be given to the Commissioner of the new public officer's appointment).

The Act sets out a number of the duties and requirements for the role of public officer. The person nominated as public officer:

- is the legal representative and 'contact person' for the organisation. They must agree to give their details (such as name and address) to Licensing NT for this purpose
- has an ongoing administrative role in the organisation, particularly in relation to providing information to Licensing NT
- must be over 18 years of age and a resident of the Territory, and
- may also have other responsibilities in your association.

The public officer must lodge the application to incorporate with Licensing NT.

Your association will also need to establish a management committee (**Committee**), which will govern the association in accordance with the association's constitution (also referred to as 'rules') (discussed further below). The public officer can be, but does not have to be, a member of the Committee.



## RELATED RESOURCES

Detailed guidance on the public officer's role in an incorporated association is available at Licensing NT's website: [Appointing office bearers](#).

## Committee obligations

One of the benefits of incorporating your association is that it separates the individual members from the organisation. This provides some legal and financial protection for the committee members involved in the management of the association who otherwise might be liable for damages arising from the activities of the association.

However, committee members are required to comply with the requirements of the Act and may be liable to pay damages if these requirements are breached. For example, a committee member has a duty not to improperly use their position, or information gained by virtue of their position in the association, and must disclose any financial personal interest in a contract with the association.

If your association becomes a charity registered with the Australian Charities and Not-for-profits Commission (**ACNC**), committee members will, in some circumstances, need to satisfy the requirements of a 'responsible person' under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and must comply with the corresponding regulations (including the Governance Standards). Under 'Governance Standard 5: Duties of Responsible Persons', responsible persons must:

- act with reasonable care and diligence
- act honestly and fairly in the best interests of the charity and for its charitable purposes
- not misuse their position or information they gain as a responsible person
- disclose actual or potential conflicts of interest
- ensure that the financial affairs of the charity are managed responsibly, and
- not allow the charity to operate while it is insolvent.

Committee members must also act in accordance with the constitution of the organisation (discussed below).

## Decide on a name for your organisation

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The Act requires an organisation to choose an appropriate name and the Commissioner, through Licensing NT, must approve that name.

Choosing a name is normally a simple task, but your organisation should make sure that the name chosen is not being used by (or too similar to) any other organisation, and that the name reflects the organisation's nature, object and purpose. The name will not be approved if this is not the case.

### TIP

Before settling on a name for your organisation to lodge for incorporation, we recommend you first check the national business name register administered by the [Australian Securities and Investments Commission](#) to see if another organisation has already registered that name.



When you decide on a name, your organisation may also wish to look into the laws that are available to protect the intellectual property rights in that name.

Once your organisation is incorporated, you will need to use the word 'Incorporated' or 'Inc.' after your name. This indicates to people and other organisations that your organisation is incorporated and has limited liability. The Act requires that you use the full organisation name on all business documents (for example, business letters, invoices, notices), and it is advisable to also include your incorporation number. Your organisation may choose to have a common seal (stamp) that includes the full name of the organisation. If it has a common

### FURTHER READING

For more information on intellectual property, go to Not-for-profit Law's Intellectual Property webpage at [www.nfplaw.org.au/ip](http://www.nfplaw.org.au/ip).

seal, the association can still make oral or written contracts, depending on the type of contract the association's common seal may need to be used.

If your organisation has adopted the model constitution, and after incorporation it wants to change its name, your organisation must pass a special resolution at a meeting resolving to change the name and the constitution accordingly. An application to change the association's name must be made to the Commissioner at a Territory Business Centre with the prescribed fee, and be made in accordance with the association's constitution. The name change is not official until it is approved.

## Draft a set of 'rules' for the association or adopt the 'model constitution'

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The Act requires associations to incorporate with a set of 'rules' (sometimes called a 'constitution'). The constitution governs the internal affairs of the association and must set out minimum requirements, for example about membership, meetings and powers of the association committee. Section 21 of the Act sets out matters that an association's constitution **must** cover. You can include additional rules in the constitution if you wish. The constitution must also include the objects of the association (discussed further below).

To help organisations wishing to become incorporated associations, Licensing NT offers a [model constitution](#) to assist organisations meet the requirements of the Act. Your organisation can choose to adopt the model constitution or register its own constitution. The model constitution is published by Licensing NT and can be accessed from the Northern Territory Government website (see link in the Resources section below). If the organisation chooses to draft its own constitution, it must ensure that it facilitates compliance with the requirements in the Act (for example, the requirements in relation to the distribution of property, distribution of assets, and keeping accounts).

While the model constitution is an easy option for newly forming incorporated associations to use for their constitutions, your organisation should be cautious and carefully consider (and possibly get legal advice) on whether the model constitution is suitable for your organisation.

The model constitution commenced on 11 August 2004, and was amended on 12 April 2017 by the *Statute Law Revision Act 2017* (NT) to change the definition of 'financial institution' to mean an 'ADI' (that is, an authorised deposit taking institution). Many organisations will require 'not-for-profit' and 'winding up' clauses to access tax concessions available to charities and not-for-profit entities, such as tax exemption and deductible gift recipient (DGR) endorsement. The model constitution in its current form does not contain clauses that would satisfy certain requirements of the Australian Tax Office (ATO). If your group hopes to get tax exempt and DGR status, you should get specific advice on the amendments to the model constitution which are required by the ATO and are suitable for your organisation. Not-for-profit Law has drafted examples of some of the ATO approved rules for the constitution that organisations can consider adopting (see [www.nfplaw.org.au/tax](http://www.nfplaw.org.au/tax)). If your organisation intends to apply for DGR and charitable status you should seek legal and tax advice about the most suitable wording of your organisation's purpose and constitution.

### ! CAUTION

Although called a 'model constitution', it may not have all of the wording that many organisations need in certain circumstances, for example, to apply for tax concessions or a grant in the future.

If your organisation has decided to use the model constitution, you can insert your name and purposes into it. The Act fixes the organisation's financial year to end on 30 June. An association may alter this date under its constitution. However, if your association is a registered charity, its financial year will need to be to June 30 in each year unless the ACNC has approved a substituted reporting period.

Your organisation should note that the constitution of an incorporated association forms a contract between the association and its members, and once registered, the constitution can only be changed by special resolution of the members, unless your organisation has adopted a constitution that provides otherwise.

## Decide on the purposes of the association

The Act requires that an incorporated association has its purposes in its constitution. In general, the purpose of an organisation is the key reason for its existence – its 'why'.

The Act does provide that an association be formed or carried on for any of the following purposes:

- religious, educational, benevolent or charitable purpose
- providing medical treatment or attention
- promoting or encouraging literature, science, art or a cultural activity
- recreation or amusement, and
- beautifying or improving a community centre and these objects and purposes must be carried on, in whole or in part, in the Northern Territory.

If an association's objects and purposes do not fall within these purposes an application to incorporate may still be made to the Minister, through Licensing NT. This application may attract an additional fee.

While writing the purposes sounds like a simple task, your organisation should be aware that the wording of your organisation's purposes may have significant legal implications in the future. Importantly, your organisation cannot legally act beyond its purposes, and committee members need to consider the purposes when making decisions.

Another important consideration when drafting purposes is whether your organisation will apply for tax concessions or seek registration as a charity. Certain eligible not-for-profit organisations can access quite significant tax concessions (such as exemptions from income tax and DGR endorsement). Access to these concessions will depend on your purposes, and the ATO will look at your organisation's statement of purposes and constitution. Purposes are also relevant when seeking to be registered with the ACNC.

If your organisation intends to apply for tax concessions or register as a charity, you should seek legal and tax advice about the most suitable wording of your organisation's purposes. Advice at an early stage will save your organisation from having to amend its purposes in the future.

### FURTHER READING

For more information about tax concessions, go to the Tax page on the Not-for-profit Law website at [www.nfplaw.org.au/tax](http://www.nfplaw.org.au/tax).

## Hold a formation meeting

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The Act requires that before applying for incorporation, the members of the group of interested people must hold a meeting to authorise a person to apply for the incorporation. This person is the public officer (discussed further above) and must notify the Commissioner of their appointment, through Licensing NT, within 14 days of the meeting.

The members of the group need to be given notice about the meeting. If the model constitution is adopted, the notice period is 21 days. At that meeting the members should also approve the name of the association and the proposed constitution of the association (either the model constitution, or its own constitution) and then authorise the public officer to apply for incorporation.

## Complete the Licensing NT Application for Association Incorporation

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Your organisation will need to complete the Licensing NT 'Application for Incorporation' and the 'Statutory Declaration' in the form set out in the application. These documents are available from the Licensing NT website (and are accessible from the 'Resources' page below).

## Send forms, documents and fee to Licensing NT

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You will need to complete an 'Application for Incorporation' and a 'Statutory Declaration' in the required form and attach your organisation's proposed constitution. On receipt of the application, Licensing NT will check the constitution to ensure that:

- the objects and purpose fall within the definition given in the Act
- the association's name is appropriate
- compliance with the Act, and
- all documentation is completed and signed/sworn by the public officer.

You will also need to pay the fee which is set out in Schedule 3 of the *Associations Regulations (NT)*. As at May 2018, the charge for incorporation of a new association listed on the Licensing NT website is \$74.00.

## Await notice from Licensing NT

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Once you submit your completed forms and the constitution you can lodge the documents with Licensing NT at any Territory Business Centre with the prescribed fee.

If all of the requirements have been met, Licensing NT will approve the incorporation and you will receive a Certificate of Incorporation. Licensing NT has indicated that it normally takes around 7 to 14 days to process the application.

If Licensing NT does not approve the constitution that you have drafted, you may wish to seek independent advice about whether they comply with the requirements in the Act or ask for a second review. In most cases, Licensing NT will ask you for further clarification or about areas of deficiency in the draft constitution in which you may wish to seek advice on how to respond.

You should keep the Certificate of Incorporation and an up-to-date copy of your organisation's constitution in a secure place. The Certificate of Incorporation is evidence of the association's corporate status and is required for certain activities, such as opening bank accounts or accessing certain grants.

On becoming an incorporated association, your organisation will need to comply with the requirements of the Act, the *Associations Regulations* (NT) and your organisation's constitution. If your association becomes a charity registered with the ACNC it will also need to comply with the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the corresponding regulations (including the Governance Standards). You should become familiar with all of these requirements to make sure your organisation and its committee is complying with the law.

#### FURTHER READING

For more information about obligations for charities, Not-for-profit Law has many resources to assist groups to understand the requirements of running a not-for-profit organisation. Go to the Running the Organisation page on the Not-for-profit Law website at [www.nfplaw.org.au/runningtheorg](http://www.nfplaw.org.au/runningtheorg).



## ACNC registration

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If your association has been set up for a charitable purpose, is a not-for-profit and has obtained an ABN, then you should register as a charity with the ACNC. Further information is available from the ACNC website, accessible through this link: [Register my charity - ACNC](#).

# Resources

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## Not-for-profit Law Resources

- ✔ Before you start [www.nfplaw.org.au/beforeyoustart](http://www.nfplaw.org.au/beforeyoustart)
- ✔ Legal structure [www.nfplaw.org.au/legalstructure](http://www.nfplaw.org.au/legalstructure)
- ✔ Registering as a charity [www.nfplaw.org.au/charity](http://www.nfplaw.org.au/charity)

## Licensing NT resources

- ✔ [Incorporated associations](#)

The LNT website has information about setting up an incorporated association in the Territory. It also includes the 'Application for Incorporation', a schedule of fees and further information to assist incorporated associations comply with its obligations.

- ✔ [Associations \(Model Constitution\) Regulations](#)

This link is to the model constitution and will assist associations to comply with their obligations under the Act. Your organisation should read the rules in the model constitution carefully and complete them where required with information to suit the needs of your particular organisation.

Your organisation will need to complete and provide to Licensing NT with the 'Application for Incorporation' and 'Statutory Declaration' (which is attached to the application form) along with a copy of the association's proposed constitution and the fee to one of the four Territory Business Centres listed in the application form. For any enquiries relating to this application you can contact the Territory Business Centre on (08) 8999 1800.

## Legislation

- ✔ [Associations Act](#)

This is the legislation that governs the setting up and running of an incorporated association in the Territory.

- ✔ [Associations Incorporation Regulations](#)

This is a link to the regulations which govern the setting up and running of an incorporated association in the Territory.

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