

Incorporating as an incorporated association in Tasmania

Legal information for Tasmanian community organisations

This fact sheet covers:

- 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' for your organisation
- deciding on the purposes of your organisation
- holding a pre-incorporation meeting
- completing a Consumer Affairs and Fair Trading (CAFT) 'Application for Incorporation of an Association' form
- sending the incorporation form, documents and fees to CAFT
- awaiting notice of incorporation of your organisation from CAFT, and
- ACNC registration.

In Tasmania, the process of setting up an incorporated association is set out in the *Associations Incorporation Reform Act 1964 (Tas)*.

Consumer Affairs and Fair Trading (CAFT), which is part of the Department of Justice Tasmania, regulates incorporated associations in Tasmania. To become an incorporated association you must apply to the Commissioner for Corporate Affairs through CAFT.

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 CAFT and other relevant websites.

RELATED RESOURCES

This fact sheet only summarises the process for setting up as an incorporated association in Tasmania. 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 Information Hub at www.nfplaw.org.au/legalstructure.



Nominating a public officer

The *Associations Incorporation Reform Act 1964* (Tas) (**the Act**) requires an organisation incorporating in Tasmania as an association to nominate a 'public officer' for the organisation. It must have a public officer at all times (note: the public officer position must be filled within 14 days of it becoming vacant).

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 'contact person' for the organisation. They must agree to give their details (such as name and address) to CAFT for this purpose
- has an ongoing administrative role in the organisation, particularly in relation to providing information to CAFT
- must be over 18 years of age, live in Tasmania and consent to be the organisation's public officer, and
- may also hold other office bearer positions in your association.

Usually, the public officer must be the person who makes the application to incorporate with CAFT.

RELATED RESOURCES

Some guidance on the public officer's role in an incorporated association is available on the CAFT website at [Consumer Affairs and Fair Trading: Incorporated Associations](#).



Your association will also need to establish a committee, which will govern the association in accordance with the association's rules. The public officer can be, but does not have to be, a member of the committee.

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 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 the Governance Standards, 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 rules of the organisation (discussed below).

Decide on a name for your organisation

The Act requires an organisation to choose a name and the Commissioner 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, as the Commissioner will not approve the name if this is 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 must have a common seal (stamp), which must also include the full name of the organisation. An association can still make oral or written contracts, depending on the type of contract. The association's common seal must be used in accordance with the association's rules for certain types of contracts (such as land transfers and contracts that need to be executed by an individual).

If, after incorporation, your organisation wants to change its name, your organisation must pass a special resolution at a meeting resolving to change the name, and then the public officer must apply to CAFT for the Commissioner's approval within 1 month after the date of the meeting. The name change is not official until it is approved.

FURTHER READING

For more information on intellectual property, go to Not-for-profit Law's Intellectual Property page on the Information Hub at www.nfplaw.org.au/ip

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

The Act requires associations to incorporate with a set of 'rules' (sometimes called a 'constitution'). The rules govern the internal affairs of the association and must set out minimum requirements, for example about the association's purposes, membership, meetings and powers of the association committee. To help organisations wishing to become incorporated associations, the Tasmanian Government offers a set of 'model rules' that meet all the requirements of the Act. Your organisation can choose to adopt the 'model rules' or register its own rules.

The [Model Rules](#) can be accessed from CAFT. If you wish to adopt the model rules, Schedule 1 of the *Associations Incorporation (Model Rules) Regulations 2007 (Tas) (Model Rules Regulations)* set out the matters that **must** be included. If you adopt a modified version of these model rules, any modification must be consistent with the Model Rules Regulations for the model rules to apply. A copy of the modification must also be provided with the application for incorporation.

Alternatively, you may draft your own rules. Organisations that choose to do so need to ensure that their own rules facilitate compliance with the requirements set out in the Act (for example, the requirements in relation to the disposal of property, distribution of assets, passing special resolutions and keeping accounts). Some organisations use the model rules as a base to draft their own rules.

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

CAUTION

Although called 'model' rules, the rules 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.



The model rules came into effect 1 January 2008 and were updated in 2012. 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 rules in their current form do not contain clauses that would satisfy the 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 rules 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 that organisations can consider adopting (see 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 purposes and rules.

If your organisation has decided to use the CAFT model rules, you can insert your name and purposes into the rules (this will not be considered a change to the model rules). Under the Act, the financial year is 12 months starting on the date of incorporation of the association. However, note that if your association is a registered charity, its financial year will need to be to June 30 in each year, unless the Australian Charities and Not-for-profits Commission (**ACNC**) has approved a substituted reporting period. An application to the Commissioner can be made to fix this period as the financial year.

Your organisation should note that the rules of an incorporated association form a contract between the association and its members, and once registered, the rules can only be changed by special resolution of the members. The public officer is required to notify CAFT of any amendments within 1 month by lodging a [Notice of Special Resolution](#) and attaching a copy of the changes.

Decide on the purposes of the association

The Act requires that an incorporated association has its purposes incorporated in its rules.

The Act does not say what must be included. In general, the purpose of an organisation is the key reason for its existence – its ‘why’.

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 deductible gift recipient status). Access to these concessions will depend on your purposes, and the ATO will look at your organisation’s statement of purposes and its rules. Purposes are also relevant when seeking to be registered with the ACNC.

FURTHER READING

For more information about tax concessions, go to the Tax page on the Not-for-profit Law Information Hub at www.nfplaw.org.au/tax.

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.

Hold a pre-incorporation meeting

The Act requires that before applying for incorporation, the members of or persons interested in the unincorporated group hold a meeting.

The requirements for the meeting are set out in the Act. There is no explicit notice requirement, however providing 21 days’ notice is good practice as this is a requirement that applies once incorporated. At the meeting, the members should approve the proposed rules of the association (either the model rules, or its ‘own rules’) and then authorise the public officer to apply for incorporation.

Complete the 'Application for Incorporation' form

Your organisation will need to complete a CAFT 'Application for Incorporation' form, available from the CAFT website here www.forms.business.gov.au/smartforms/djt-oaft/application-for-incorporation.

Send in the form, documents and fee to CAFT

The Application for Incorporation can be lodged with CAFT [electronically](#) or by post to GPO Box 1244, Hobart Tasmania 7001 or in person at any [Service Tasmania](#) outlet. You will need to complete the form and attach a copy of the organisation's rules. A statement that the model rules have been adopted without modification, or a copy of any modification to the model rules, also needs to be provided to CAFT with the application.

You will also need to pay the fee which is set out in Schedule 2 of the *Associations Incorporation Regulations 2007* (Tas). As at February 2016, the charge for incorporation of a new association listed on the CAFT website is \$148.00.

Await notice from CAFT

Once you submit your completed form, either electronically or by post, you can email CAFT to nominate email as your preferred mode of communication. Where this is done, you will receive a confirmation email.

If the Commissioner is satisfied that the requirements have been met, your application is complete and you will receive a Certificate of Incorporation. If you are intending to use the model rules or a modified version of the model rules, CAFT will review them to ensure they meet requirements in the Model Rules Regulations. If you choose to use your own rules, CAFT has indicated that they will not review these rules so it is important that you ensure that they comply with the requirements of the Act. If CAFT does not approve rules that you have provided, you may wish to seek independent advice about whether they comply with the requirements in the Model Rules Legislation or ask for a second review. In some cases, CAFT will write to you for further clarification or about areas of deficiency in the draft rules, in which case 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 rules in a secure place.

On becoming an incorporated association, your organisation will need to comply with the requirements of the Act, the *Associations Incorporation Reform Regulations 2007* (Tas) and your organisation's rules. 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 Information Hub at www.nfplaw.org.au/runningtheorg.



ACNC Registration

If your association has been set up for a charitable purpose, is a not-for-profit and has obtained an ABN, then you may be able to register as a charity with the ACNC. Further information on registering as a charity is on the Information Hub's Charity page at www.nfplaw.org.au/charity.

Resources

Not-for-profit Law Resources

- Before you start - www.nfplaw.org.au/beforeyoustart
- Legal structure - www.nfplaw.org.au/legalstructure
- Registering as a charity - www.nfplaw.org.au/charity

Consumer Affairs and Fair Trading Tasmania (CAFT) resources

- [Consumer Affairs and Fair Trading : Incorporated Associations](#)

The CAFT website has information about setting up an incorporated association in Tasmania.

- [Model Rules](#)

This page includes information about what must be contained in an association's rules.

- [Application for Incorporation](#)

This is a link to this application form. Your organisation will need to complete and provide it to CAFT (along with a copy of your organisation's rules, relevant documents and the relevant fee).

Legislation

- [Associations Incorporation Act 1964](#)

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

- [Associations Incorporation Regulations 2007 No. 107](#)

This is a link to the regulations which govern the setting up and running of an incorporated association in Tasmania. The 'model rules' are set out in Schedule 1 of the *Associations Incorporation Regulations 2007* (Tas).

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

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