

# Incorporating as an incorporated association in Queensland

Legal information for Queensland community organisations



## This fact sheet covers:

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- deciding on a name for your organisation
  - drafting or adopting a set of 'rules' for your organisation
  - deciding on the objects of your organisation
  - holding a pre-incorporation meeting
  - completing an Office of Fair Trading (OFT) 'Application for Association Incorporation' form
  - sending the incorporation form, documents and fees to OFT
  - awaiting notice of incorporation of your organisation from OFT, and
  - nominating a secretary for your organisation.
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**In Queensland, the process of setting up an incorporated association is set out in the *Associations Incorporation Act 1981 (Qld)* and the *Associations Incorporation Regulation 1999 (Qld)*.**

The OFT regulates incorporated associations in Queensland.

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 the OFT and other relevant websites.

### NOTE

This fact sheet only summarises the process for setting up as an incorporated association in Queensland. 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)*.



# Qualification to incorporate

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The *Associations Incorporation Act 1981* (Qld) (**the Act**), has specific requirements you must meet before you will qualify for incorporation under the Act. The main requirements are that your organisation must:

1. **have at least 7 members**
2. **be a not-for-profit association, and**
3. **have a physical address in Queensland.**

## Decide on a name for your organisation

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An association will need to have a name in order to incorporate and the OFT may reject an application if the application proposes a name that is an "unsuitable name" under the *Associations Incorporation Regulation 1999* (Qld) (**the Regulations**).

Choosing a name is normally a simple task. The main issue your organisation may face is if the name chosen is being used by (or is too similar to) any other organisation. If the name is already being used, or is considered to be too similar, OFT will not approve the name.

### TIP

Before settling on a name for your organisation to lodge for incorporation, we recommend you first check the national business name register to see if another organisation has already registered that name (see the Resources section at the end of this fact sheet).



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.' at the end of 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 documents that it endorses or issues (for example, business letters, invoices, notices, and advertising material). Your organisation must have a common seal (a stamp), which must include the full name of the organisation, the word 'Incorporation' or abbreviation 'Inc' and the word 'Common Seal'.

If, after incorporation, your organisation wants to change its name, your organisation must pass a special resolution at a general meeting of members resolving to change the name, and then the secretary must apply to the OFT for approval within 3 months of the resolution. The relevant form is on the OFT website and a \$78.70 fee must be paid. The original certificate of incorporation must be submitted with the form and fee. The name change is not official until you receive the approval notice from the OFT.

## NOTE

Under section 33 of the Act, an association may apply to the OFT for an exemption from using the words 'Inc.' or 'Incorporated' at the end of their name. Associations applying for this exemption are required to pay a fee, pass a resolution at a general meeting seeking the exemption, and submit the relevant form.

Importantly, the form states: *'the inclusion of the word Inc. or Incorporated in a name ensures members of the public are made aware of its incorporation status. An exemption is only granted when the reason given outweighs the public interest in knowing the legal status of the association'*.



## 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 membership, meetings and powers of the association's committee. Schedule 3 of the Regulations sets out the list of matters that an association's rules **must** cover. You can include additional rules if you wish. The rules must also include the objects of the association (discussed further below).

To help organisations wishing to become incorporated associations, the Queensland Government offers a set of 'model rules' that meet all the requirements of the Act which organisations can choose to adopt. Many organisations register with their own rules rather than use the template model rules. The model rules are set out in Schedule 4 to the Regulations and can be [accessed from the OFT website](#).

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, when they try to register for minor gaming licences or to apply for tax concessions or a grant in the future.



Many organisations will require 'not-for-profit' and 'winding up' clauses to access tax concessions available to charities, such as deductible gift recipient (**DGR**) endorsement and related tax concessions. If your group hopes to get DGR status, you should get specific advice on whether the model rules are suitable for your organisation.

If your organisation has decided to use the OFT model rules, you can insert your name, financial year, classes of membership and objects into the rules (this will not be considered a "change" to the model rules). However, note that if your association is a registered charity, its financial year will need to be to

30 June in each year unless the Australian Charities and Not-for-profits Commission (**ACNC**) has approved a substituted reporting period.

If your rules are not the model rules, you have to include the details of your rules in the application form. If your organisation's rules do not cover something that the Regulations specify must be included in the rules of an incorporated association, the model rules will automatically apply to those situations. If you want to prevent a provision in the model rules from applying to your organisation, you must outline the exclusion in your rules. For example, if your organisation does not want to permit proxy voting, it is not enough that your rules remain silent on proxies (as this will mean the model rules will still apply in relation to proxies), instead, you will need to specifically state that proxy voting is not allowed.

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.

## Decide on the objects of the association

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

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

While writing the objects sounds like a simple task, your organisation should be aware that the wording of your organisation's objects may have significant legal implications in the future. Importantly, your organisation cannot legally act beyond its objects, and directors need to consider the objects of your organisation when making decisions. The OFT may have the right to cancel your association's incorporation if the association carries on any operation which is beyond the scope of its objects.

Another important consideration when drafting objects 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 objects, and the ACNC and ATO will look at your organisation's statement of objects (and its rules). Objects are also relevant when seeking to be registered with the ACNC as a charity.

### FURTHER READING

For more information about tax concessions, information can be found on the ATO website [here](#).

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 objects. Advice at an early stage will save your organisation from having to amend its objects in the future.

# Resolutions at the pre-incorporation meeting

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The Act requires that before applying for incorporation, the members of the unincorporated organisation (noting you must have at least 7 members) must hold a meeting. If your organisation already has a set of rules, you should call this meeting in accordance with those rules. Otherwise, you could consider giving members at least 14 days' notice of the meeting (which is the standard amount of time as set out in the model rules) depending on the size and complexity of the group.

At that meeting, certain resolutions must be passed in order to proceed with the incorporation.

These resolutions are as follows:

- 1. Incorporation** - The members must agree to incorporate under the Act by special resolution. This means at least 75% of the members must vote in favour of the resolution.
- 2. Representative** (referred to as an 'appointed person' in the Act) - The members must nominate a person by resolution to organise the incorporation. This representative is empowered under the Act to do anything necessary or desirable to obtain the incorporation of the association, even if the rules of your association would usually require that person to seek approval for their actions.
- 3. Interim Officers** - The members must also appoint "interim officers" for the association. This must include a president and treasurer, but may include other people (such as a secretary if you would like). If a secretary is not appointed at the time of incorporation, the incorporated association must appoint a secretary within one month of incorporation and notify the OFT. As a result, associations will generally appoint 3 interim officers. These interim officers will take up their roles on incorporation of the association and will remain in place until new officers are elected or appointed in accordance with the rules of the incorporated association.
- 4. Rules** - It is a requirement under the Act that the members adopt a set of rules at the initial meeting. These can be either the model rules or the association's own rules.

## Complete the OFT 'Application for Incorporation of an Association' form

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The form is available through the Queensland Government website and can be found [here](#).

## Send in form, documents and fee to OFT

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You will need to complete the form and, if not using the model rules, attach a copy of your organisation's proposed rules.

You will also need to pay the fee which is set out in the Regulations. As at July 2018, the charge for incorporation of a new association listed on the OFT website is \$158.55.

## Next steps

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Once you submit your completed form, you will await a decision from OFT. The OFT website states that the normal processing time is 3 to 4 weeks, unless 'further information is required'.

OFT may require your organisation to:

- 1. submit further information or documents that may relate to the application, or**
- 2. publish or send to individuals a notice stating that the organisation is intending to incorporate. This notification may include a 14-day opportunity for the public to object to your organisation's incorporation.**

Once the OFT has considered your application in full, they will advise you of their decision. If the OFT elects not to incorporate your organisation, you will be provided with reasons for the refusal.

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 Regulations and your association'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.

### RELATED RESOURCES

For more information on ACNC governance standards, see the [Governance page](#) of the Not-for-profit Law website.

## Once incorporated - nominating a secretary

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The Act requires that the association has appointed an appropriate secretary within 1 month of its incorporation. From this date, the association must have a secretary at all times (note: the secretary position must be filled within 1 month of it becoming vacant). This role used to be known as the 'public officer'.

The Act sets out a number of the duties and requirements for the role of secretary. The person nominated a 'secretary':

- calls the meetings of the incorporated association, including preparing notices of meeting and of the business to be conducted at the meeting in consultation with the president of the association
- keeps minutes of each meeting
- keeps copies of all correspondence and other documents relating to the association
- maintains the association's register of members
- must be over 18 years of age, live in Queensland (or within 65km of the Queensland State Border) and consent to be the organisation's secretary, and
- may also be a member of the association's management committee (but cannot act as an auditor of your association).

Under the Act, a person can be disqualified from being a secretary if they become bankrupt or are convicted of an offence under the Act, or convicted of other offences specified in the Act, or if they cease to live in Qld (or within 65km of Qld). Your association should be aware of these restrictions so that they can appoint a new secretary if one of these events occurs.

# 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)

## Name Searches

- ✔ [ASIC Business Name Search](#)

This national business register will provide information on whether your proposed association name is available.

## Office of Fair Trading (OFT) resources

- ✔ [Incorporated associations guide](#)

OFT's website has information about setting up and managing an incorporated association in Queensland. See the column on the right-hand side for the incorporated associations guide.

- ✔ [Setting up an Incorporated Association](#)

This page includes a short form guide to the incorporation process.

- ✔ [Application form to become an Incorporated Association](#)

Your organisation will need to complete and provide this form to the OFT along with a copy of your rules (if they are not the model rules) and the relevant fee.

## Legislation

- ✔ [Associations Incorporation Act 1981 \(Qld\)](#)

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

- ✔ [Associations Incorporation Regulation 1999 \(Qld\)](#)

This is a link to the regulations which govern the setting up and running of an incorporated association in Queensland. The 'model rules' are set out in Schedule 4 of the Regulation.

A Not-for-profit Law Information Hub resource. Access more resources at [www.nfplaw.org.au](http://www.nfplaw.org.au). Justice Connect Not-for-profit Law acknowledges the generous support of our funders and supporters. Find out more at [www.nfplaw.org.au](http://www.nfplaw.org.au)

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