

Incorporating as an incorporated association in Tasmania

Legal information for Tasmanian community organisations

This fact sheet covers:

- ▶ the process of setting up an incorporated association in Tasmania
 - ▶ key decisions such as nominating a public officer and choosing a name for your organisation
 - ▶ drafting or adopting a set of 'rules' for your organisation
 - ▶ deciding on the purposes of your organisation
 - ▶ completing a Consumer, Building and Occupational Services 'Application for Incorporation of an Association' form, and
 - ▶ committee obligations
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In Tasmania, the process of setting up an incorporated association is set out in the *Associations Incorporation Act 1964 (Tas)*.

Consumer, Building and Occupational Services (**CBOS**), 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 CBOS.

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.

This fact sheet contains:

- an overview of the process for setting up an incorporated association
- some detail on the main requirements and considerations, and
- links to CBOS and other relevant websites



Related Not-for-profit Law resource

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 website.



Overview

Once you've decided you would like to incorporate an association in Tasmania, you will need to follow the steps set out below (some points are explained in more detail later in this fact sheet).

Step 1— authorise the person who will make the application to incorporate	<p>Before you can apply to incorporate an association, your group will need to authorise the person who will submit the application. The <i>Associations Incorporation Act 1964</i> (Tas) (the Act) requires the person submitting the application to state that they have been authorised to do so by the committee of the association.</p> <p>You can't incorporate if you are planning to carry on trading or to secure a pecuniary profit for members.</p>
Step 2 — make an application	<p>Applications for registration of an association are made to CBOS using the 'Application for Incorporation' form. The application form must be accompanied by the requisite fee and must include:</p> <ul style="list-style-type: none"> • the name of the association • the objects and purpose of the association • details of various people including the president, secretary and public officer • the declared financial year • the proposed rules of the association, and • contact details which include the best email address to contact the association
Step 3 — wait to hear from CBOS	<p>Once CBOS has received your organisation's application for incorporation, it will review the paperwork. If all the requirements have been met, CBOS will approve the incorporation and a certificate of incorporation will be issued. CBOS may also contact you for more information or to discuss your constitution.</p>

Some of the main decisions and actions outlined above are explained in more detail below.

Nominating a public officer

The Act requires an organisation incorporating as an association in Tasmania to nominate a 'public officer' for the organisation. It must have a public officer at all times (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 CBOS for this purpose
- has an ongoing administrative role in the organisation, particularly in relation to providing information to CBOS
- 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, except the office of auditor

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.



Related resources

Some guidance on the public officer's role in an incorporated association is available on the [CBOS website](#).

Deciding on a name for your organisation

The Act requires an organisation to choose a name and CBOS must approve that name.

When choosing a name, your organisation should:

- investigate whether the name (or a confusingly similar name) is already registered or being used by another person or organisation, and
- make sure the name reflects the organisation's nature, objects and purposes

CBOS will not approve a name that is the same or too similar to a name registered on ASIC's [business names register](#). You can search this register to check whether the name you'd like is registered.

Your organisation should also consider whether the name you'd like to use (or a confusingly similar name) is protected under intellectual property laws.



Related Not-for-profit Law resources

For more information on intellectual property rights, go to Not-for-profit Law's [intellectual property webpage](#)

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. 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 must then apply to CBOS for approval within one month after the date of the meeting. The name change is not official until it is approved.

Drafting a set of 'rules' for the association or adopting the 'model rules'

The Act requires associations to incorporate with a set of 'rules' (sometimes called a 'constitution'), and these must be attached to the application for incorporation. The rules govern the internal affairs of the association. 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](#) are set out in Schedule 1 of the *Associations Incorporation (Model Rules) Regulations 2017* (Tas). If you adopt a modified version of the model rules, any modification must be consistent with the model rules. 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. If you do draft your own rules, be aware that as long as those rules are not inconsistent with or do not exclude or modify any of the model rules, those model rules will automatically apply to your organisation.

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.

For example, 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**) for tax exemptions or DGR endorsement. 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 published examples of ATO approved rules that organisations can consider adopting on its [tax webpage](#). 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 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 30 June in each year, unless the Australian Charities and Not-for-profits Commission (**ACNC**) has approved a substituted reporting period. An application to CBOS 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 CBOS of any amendments within one month by lodging a [Notice of Special Resolution](#) and attaching a copy of the changes.



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 DGR status in the future.

Deciding on the purposes of the association

You will need to state your organisation's 'objects and purpose' when you apply to incorporate an association. The terms 'objects' and 'purpose' are often used interchangeably and mean the key reason for the organisation's existence or what it aims to achieve.

The Act defines an 'association' by way of a broad list of purposes, which include:

- religious, education, benevolent or charitable purposes
- providing medical treatment or attention
- promoting or encouraging literature, science or art, or
- recreation or amusement purposes

Any such organisation (or an organisation with 'like purposes') is eligible to be incorporated under the Act. An organisation which doesn't fall within the purposes listed (or similar) can only become an incorporated association with specific Ministerial approval.

While writing the purposes sounds like a simple task, your organisation should be aware that the wording of its purposes may have significant legal implications in the future. Importantly, your organisation can't 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 to the ATO for tax concessions or seek registration as a charity with the ACNC. 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.

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.



Related Not-for-profit Law resource

For more information about tax concessions, go to the Not-for-profit Law's [tax webpage](#).

Completing the 'Application for Incorporation' form

Your organisation will need to complete an 'Application for Incorporation' form, available from the [CBOS website](#).

Sending the form, documents and fee to CBOS

The Application for Incorporation can be lodged with CBOS [electronically](#), by post to Registration Services, Consumer, Building and Occupational Services, PO Box 56, Rosny Park TAS 7018 or in person at any [Service Tasmania](#) outlet. You will need to complete the form and attach a copy of the organisation's rules and, if relevant, any trust documents relating to the association.

You will also need to pay the fee which is set out in Schedule 2 of the *Associations Incorporation Regulations 2017* (Tas). As at January 2021, the charge for incorporation of a new association is \$162.00.

Awaiting notice from CBOS

If CBOS is satisfied that the requirements have been met, your application is complete and you will receive a Certificate of Incorporation. If CBOS doesn't approve your rules, you may wish to seek legal 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 Model Rules Regulations 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.



Related Not-for-profit Law resource

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 Not-for-profit Law's webpage on [Running the Organisation](#).

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 Not-for-profit Law's [Charity webpage](#).

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 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.

Resources

Not-for-profit Law resources

- ▶ [Getting started](#)

This page contains resources to help those who are in the process of getting their not-for-profit organisation started.

- ▶ [Running the organisation](#)

This page contains resources to assist those running not-for-profit organisations to understand and comply with legal requirements.

- ▶ [Registering as a charity](#)

Consumer, Building and Occupational Services Tasmania (CBOS) resources

- ▶ [Consumer, Building and Occupational Services: Incorporated Associations](#)

The CBOS 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 CBOS (along with a copy of your organisation's rules and the relevant fee).

Legislation

- ▶ [*Associations Incorporation Act 1964 \(Tas\)*](#)

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

- ▶ [*Associations Incorporation Regulations 2017 \(Tas\)*](#)

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 (Model Rules) Regulations 2017 (Tas)*.