

# Incorporating as an incorporated association in the ACT

Legal information for community organisations in the ACT

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## This fact sheet covers:

- ▶ the process of setting up an incorporated association in the ACT
  - ▶ key decisions such as nominating a public officer and deciding on a name for your organisation
  - ▶ drafting or adopting a set of 'rules' for your organisation
  - ▶ deciding on the purposes of your organisation
  - ▶ completing Access Canberra's Application to Incorporate an Association, and
  - ▶ ongoing compliance
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**In the Australian Capital Territory (ACT), the process of setting up an incorporated association is set out in the *Associations Incorporation Act 1991 (ACT)*.**

Access Canberra, which is part of the Chief Minister, Treasury and Economic Development Directorate, regulates incorporated associations in the ACT. To become an incorporated association you must lodge an 'Application to Incorporate an Association' with Access Canberra.

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
- more detail on the main requirements and considerations, and
- links to Access Canberra and other relevant websites



## Related resource

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 Not-for-profit Law's webpage '[Choosing a legal structure](#)'.



## Overview

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

<b>Step 1– decide to incorporate</b>	<p>Before you can complete an application form to incorporate, you will need to formally decide to incorporate an association. Your group must pass a resolution (ie. majority decision) authorising the person who will submit the application to incorporate.</p> <p>You can only incorporate as an incorporated association if your group has at least five members and is a not-for-profit. To be considered a not-for-profit, an organisation can't:</p> <ul style="list-style-type: none"> <li>• trade or obtain financial benefit</li> <li>• hold capital in the form of shares, for its members, or</li> <li>• hold property where members have an interest that can be sold or transferred</li> </ul>
<b>Step 2 — make an application</b>	<p>Applications for registration of an association are made to Access Canberra using the <a href="#">'Application to Incorporate an Association'</a> form. The application form must be accompanied by the requisite fee and must include:</p> <ul style="list-style-type: none"> <li>• the name of the association</li> <li>• the purposes of the association</li> <li>• the proposed rules of the association, and</li> <li>• the details of the committee members and the first public officer</li> </ul>
<b>Step 3 — wait to hear from Access Canberra</b>	<p>Once Access Canberra has received your organisation's application for incorporation, it will review the paperwork. If all the requirements of the Act have been met, Access Canberra will approve the incorporation and a certificate of incorporation will be issued. Access Canberra 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 *Associations Incorporation Act 1991* (ACT) (**the Act**) requires an organisation incorporating in the ACT as an association to nominate a 'public officer' for the organisation. An association 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 duties and requirements for the role of the 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, which can be an office rather than home address) to Access Canberra for this purpose. The public officer has an ongoing administrative role in the organisation, particularly in relation to providing information to Access Canberra
- must be at least 18 years of age, live in the ACT and consent to being the organisation's public officer, and
- may also hold other office bearer positions in your association unless the association's rules provide otherwise

Your association will also need to establish a committee with at least three committee members, which will manage 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.

## Deciding on a name for your organisation

The Act requires an organisation to choose a name and Access Canberra 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.

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

You can apply to reserve a name for your organisation by submitting an 'Application for reservation of association name' form (available on the Forms and Fees section of Access Canberra's [incorporated association webpage](#)) and paying the necessary fee (\$44.00 as at January 2021).

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.' at the end of the association's 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's advisable to also include your incorporation number. Your organisation may choose to have a common seal (stamp) with the full name of the organisation.

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 your organisation must apply to Access Canberra (using the 'Application for change of association name' form). If the name change is approved, the organisation will receive a certificate of incorporated under the new name.

## Drafting 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 committee. Schedule 1 of the Act (found near the end of the Act) sets out the list of matters that an association's rules **must** cover. You can include additional rules if you wish.

To help organisations wishing to become incorporated associations, the *Associations Incorporation Regulation 1991* (ACT) (**the Regulation**) contains a set of '[model rules](#)' that meet all the requirements of the Act that organisations can choose to adopt. Many organisations register with their own rules rather than use the template model 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, 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. The model rules by themselves are unlikely to meet the ATO's requirements for this purpose. If your association is intending to obtain DGR status, you should get specific legal or tax advice on whether the model rules are suitable for your organisation.

If your organisation has decided to use the model rules contained in the Regulation, you must tick a box on your application which indicates that the model rules have been adopted.

When organisations submit rules that they have drafted themselves, Access Canberra reviews these rules and may communicate with your organisation if the rules do not meet all requirements. Go to Not-for-profit Law's [Constitution webpage](#), or Schedule 1 of the Act for a list of the matters that must be addressed in the rules.

Members must abide by the rules of an incorporated association. Once registered, the rules can only be changed by special resolution of the members, and you must notify Access Canberra by lodging a 'change of rules or objects of an association' form within one month of the resolution being passed.

## Deciding on the purposes of the association

The Act requires that an incorporated association state its objects (also known as 'purposes') in its application to incorporate.

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, the committee needs to consider the objects carefully when making decisions because if an organisation engages in activities outside the scope of its statement of objects, a court may order that the organisation be wound up.

As noted above, another important consideration when drafting objects is whether your organisation will apply for tax concessions or seek registration with the Australian Charities and Not-for-profits Commission (**ACNC**) 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 partly depend on your objects, and the ATO will look at your organisation's objects (and its rules). Objects 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 objects. Advice at an early stage will save your organisation from having to amend its objects in the future.



### Related Not-for-profit Law resource

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



## Sending the form, documents and fee to Access Canberra

You will need to complete the [Application to Incorporate an Association](#) form and attach the rules if not using the model rules.

You will also need to pay the fee which is set out in the *Associations Incorporation (Fees) Determination 2017* (ACT). As at January 2021, the fee for submitting an application to incorporate an association is \$200.00.

## Awaiting notice from Access Canberra

Once you submit your completed form to Access Canberra, Access Canberra will review your application to ensure it complies with the requirements in the Act.

Provided all necessary information is submitted:

- if you elect to adopt the model rules, your association should be incorporated within five working days, and
- if you elect not to adopt the model rules and use alternative rules instead, your association should be incorporated within 10 working days

If your application complies with the requirements in the Act and the association is eligible for incorporation, you will receive a certificate of incorporation.

If Access Canberra doesn't approve the rules 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 some cases, Access Canberra 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.

## Ongoing compliance

On becoming an incorporated association, your organisation will need to comply with the requirements of the Act, the Regulation and your organisation's objects, purposes and 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 are 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](#).

# Resources

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## 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](#)

## Access Canberra resources

- ▶ [Incorporated associations](#)

Access Canberra website has information about setting up an incorporated association in the ACT and information about the obligations of incorporated associations in the ACT.

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

Your organisation will need to complete and submit this form to Access Canberra (including your organisation's statement of purposes, rules and the relevant fee).

## Legislation

- ▶ [\*Associations Incorporation Act 1991 \(ACT\)\*](#)

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

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