

Incorporating as an incorporated association in the ACT

Legal information for community organisations in the ACT



This fact sheet covers:

- nominating a public officer for your organisation
- 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 an Application to Incorporate an Association (Form A1)
- sending the incorporation form, documents and fees to Access Canberra, and
- awaiting notice of incorporation of your organisation from Access Canberra.

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.

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

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.



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. He or she must agree to give his or her details (such as name and 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.

Usually, the person who lodges the application to incorporate with Access Canberra becomes the inaugural public officer.

Your association will also need to establish a committee with at least 3 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.

Decide on a name for your organisation

The Act requires an organisation to choose a name and the Registrar-General 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 Registrar-General 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 ACT and national business name registers 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 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 is advisable to also include your incorporation number. Your

organisation must have a common seal (stamp), which must include 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 the Registrar-General (using the 'Application for change of associations name' form). If the name change is approved, the organisation will receive a certificate of incorporated under the new name.

FURTHER READING

For more information on intellectual property, go to Not-for-profit Law's Intellectual Property webpage 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 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. Not-for-profit Law has also drafted a template that organisations can consider using called the [Not-for-profit Law Simple 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 the 'rules' and may communicate with your organisation if the rules do not meet all requirements. Go to Not-for-profit Law's Constitution page at www.nfplaw.org.au/constitution on the Information Hub, or Schedule 1 of the Act for a list of the matters that must be addressed in the rules.

Your organisation should note that members must abide by the rules of an incorporated association, and once registered, the rules can only be changed by special resolution of the members, and you must notify the Registrar-General by lodging a 'change of rules or objects of an association' form with Access Canberra within one month of the resolution being passed.

Decide 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 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.

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.

Hold a pre-incorporation meeting

The Act requires that before applying for incorporation, the members of the unincorporated association (being at least 5) must hold a meeting.

The requirements for the meeting are set out in the Act. At that meeting the members should approve a statement of the objects of the association, adopt the proposed rules of the association (either the model rules, or 'own rules'), appoint at least 3 inaugural members of the committee, and authorise a

person who is at least 18 years of age (who usually becomes the public officer unless the rules of the association provide otherwise) to apply for incorporation.

Complete the 'Application to Incorporate an Association' form

The form is available from the Access Canberra website.

Send in the form, documents and fee to Access Canberra

You will need to complete the Application to Incorporate an Association (Form A1) 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 24 July 2018, the fee for submitting an application to incorporate an association is \$193.00.

Await notice from Access Canberra

Once you submit your completed form to Access Canberra, Access Canberra will review your application to ensure that 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 5 working days, and if you elect not to adopt the model rules and use alternative rules instead, 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 does not 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.

On becoming an incorporated association, your organisation will need to comply with the requirements of the Act, the Regulations 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.

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.



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

Access Canberra resources

- ✔ [Incorporated associations](#)

Access Canberra website has information about setting up an incorporated association in the ACT.

- ✔ [Obligations of an incorporated association](#)

This page includes information about an incorporated association's obligations in the ACT.

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

Your organisation will need to complete and provide Form A1 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.

- ✔ [Associations Incorporation Regulation 1991 \(ACT\)](#)

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

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