

Incorporating as an incorporated association in the Northern Territory

Legal information for Northern Territory community organisations

This fact sheet covers:

- ▶ the process of setting up an incorporated association in the Northern Territory
- ▶ key decisions such as nominating a public officer and deciding on a name for your organisation
- ▶ drafting or adopting a set of 'rules' or the 'model constitution' for your organisation
- ▶ deciding on the purposes of your organisation
- ▶ completing an 'Application for Incorporation of an Association' form with accompanying documents, and
- ▶ ongoing compliance

In the Northern Territory, the process of setting up an incorporated association is set out in the *Associations Act 2003 (NT)*.

Licensing NT regulates incorporated associations in the Northern Territory (**NT**) through the *Associations Act 2003 (NT)* (**the Act**). To become an incorporated association you must apply to Licensing NT.

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
- detail on the main requirements and considerations, and
- links to Licensing NT and other relevant websites

After an incorporated association is set up, it should seek legal advice about ongoing obligations that may apply, such as those related to annual general meetings, financial reporting and record keeping.



Related Not-for-profit Law resource

This fact sheet only summarises the process for setting up as an incorporated association in the NT. 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 on '[Choosing a legal structure](#)'.



Overview

Once you've decided you would like to incorporate an association in the Northern Territory, 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, your group will need to authorise the person who will submit the application. The Act requires the application to be made by a person who has been authorised by the committee of the association to apply for incorporation.</p> <p>An incorporated association in the Northern Territory must have at least five members.</p>
Step 2 — make an application	<p>Applications for registration of an association are made to Licensing NT using the 'Application for Incorporation of an Association' 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 purposes of the association • the names and addresses of the first committee members • the proposed rules of the association, and if these are not the model constitution, a statutory declaration declaring that the constitution complies with the requirements of the Act, and • a statutory declaration made by the applicant declaring that they are authorised by the committee to apply for incorporation , and that all the information provided in the application is true
Step 3 — wait to hear from Licensing NT	<p>Once Licensing NT has received your organisation's application for incorporation, it will review the paperwork. If all the requirements of the Act have been met, Licensing NT will approve the incorporation and a certificate of incorporation will be issued. Licensing NT 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

Under the Act, the person who lodges an application for the incorporation of an association with Licensing NT is automatically the organisation's 'public officer'. An organisation must have a 'public officer' at all times (the public officer role must be filled within 14 days of it becoming vacant and written notice must be given to Licensing NT of the new public officer's appointment).

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 legal representative and 'contact person' for the organisation. They must agree to give their details (such as name and address) to Licensing NT for this purpose
- has an ongoing administrative role in the organisation, particularly in relation to providing information to Licensing NT
- must be over 18 years of age and a resident of the Territory, and
- may also have other responsibilities in your association

Your association will also need to establish a management committee, which will govern the association in accordance with the association's constitution (also referred to as 'rules') (discussed further below). The public officer can be, but does not have to be, a member of the management committee.



Related resource

Detailed guidance on the public officer's role in an incorporated association is available on Licensing NT's website: [Appointing office bearers](#).

Deciding on a name for your organisation

The Act requires an organisation to choose an appropriate name and Licensing NT 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

Licensing NT 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 may choose to have a common seal (stamp) that includes the full name of the organisation.

If your organisation wants to change its name after incorporation, it must pass a resolution in accordance with its constitution and submit an application to change the association's name to Licensing NT. The name change is not official until it is approved.

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

The Act requires associations to incorporate with a set of 'rules' (sometimes called a 'constitution'). The constitution governs the internal affairs of the association and must set out minimum requirements – for example about membership, meetings and powers of the association committee. Section 21 of the Act sets out matters that an association's constitution **must** cover. You can include additional rules in the constitution if you wish.

To help organisations wishing to become incorporated associations, Licensing NT offers a [model constitution](#) which meets the requirements of the Act. Your organisation can choose to adopt the model constitution or register its own constitution.

If the organisation chooses to draft its own constitution, it must ensure that it that it contains all of the matters listed in Section 21 of the At, and also that it facilitates compliance with the general requirements of the Act (for example, the requirements in relation to the distribution of property, distribution of assets, and keeping accounts).



Caution

Although called a 'model constitution', it 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.

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

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 constitution doesn't contain clauses that would satisfy certain 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 constitution which are required by the ATO and are suitable for your organisation.

Not-for-profit Law has published examples of ATO approved rules for the constitution 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 constitution.

If your organisation has decided to use the model constitution, you will need to insert various details such as your name, purposes and financial year end. If your association is a registered charity, its financial year will need to be to June 30 in each year unless the Australian Not-for-profits and Charities Commission (**ACNC**) has approved a substituted reporting period.

Your organisation should note that the constitution of an incorporated association forms a contract between the association and its members, and once registered, the constitution can only be changed by special resolution of the members, unless your organisation has adopted a constitution that provides otherwise.

Deciding on the purposes of the association

The Act requires that an incorporated association has its purposes in its constitution. In general, the purpose of an organisation is the key reason for its existence – its 'why'.

The Act provides that an association be formed or carried on for any of the following purposes, which must be carried out in whole or in part in the Northern Territory:

- religious, educational, benevolent or charitable purpose
- providing medical treatment or attention
- promoting or encouraging literature, science, art or a cultural activity
- recreation or amusement, and
- beautifying or improving a community centre

If an association's objects and purposes don't fall within these purposes an application to incorporate may still be made to Licensing NT. This application may attract an additional fee.

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 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 DGR endorsement). Access to these concessions will depend on your purposes, and the ATO will look at your organisation's statement of purposes and constitution. 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 Not-for-profit Law [tax webpage](#).

Authorising the application

The Act requires that, before applying for incorporation, the committee of the association authorises a person to make the application to incorporate. This person will be the public officer (discussed further above). The authorisation will need to comply with the particular rules or procedures of your group.

Sending the application form, documents and fee to Licensing NT

You will need to complete an '[Application for Incorporation of an Association](#)' and the person submitting the application will need to sign a 'Statutory Declaration' stating that they have authority to make the application and that they consent to being the public officer. The Statutory Declaration is in a standard form and can be downloaded from the '[Registering an association](#)' page of the NT government website. The organisation's proposed constitution must also be attached.

On receipt of the application, Licensing NT will check your application and the proposed constitution to ensure that:

- the objects and purpose fall within the definition given in the Act
- the association's name is appropriate
- the constitution complies with the Act, and
- all documentation is completed and signed or sworn by the public officer

You will also need to pay the fee which is set out in Schedule 3 of the *Associations Regulations 2004* (NT). As at January 2021, the charge for incorporation of a new association listed on the Licensing NT website is \$78.00.

Awaiting notice from Licensing NT

Once you submit your completed forms and the constitution you can lodge the documents with Licensing NT at any Territory Business Centre with the prescribed fee.

If all of the requirements have been met, Licensing NT will approve the incorporation and you will receive a Certificate of Incorporation. Licensing NT has indicated that it normally takes around seven to 14 days to process the application.

If Licensing NT doesn't approve the constitution 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 most cases, Licensing NT will ask you for further clarification or about areas of deficiency in the draft constitution in which 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 constitution in a secure place. The Certificate of Incorporation is evidence of the association's corporate status and is required for certain activities, such as opening bank accounts or accessing certain grants.

Ongoing compliance

On becoming an incorporated association, your organisation will need to comply with the requirements of the Act, the *Associations Regulations 2004* (NT) and your organisation's constitution. 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 should register as a charity with the ACNC. Further information is available from the ACNC website, accessible through this link: [Register my charity - ACNC](#).

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 the 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 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 'Governance Standard 5: Duties of Responsible Persons', 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 constitution 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](#)

Licensing NT resources

- ▶ [Incorporated associations](#)

The NT government website has information about setting up an incorporated association in the Territory. It also includes the 'Application for Incorporation', a schedule of fees and further information to assist incorporated associations comply with its obligations.

- ▶ [Associations \(Model Constitution\) Regulations 2004](#)

This link is to the model constitution and will assist associations to comply with their obligations under the Act. Your organisation should read the rules in the model constitution carefully and complete them where required with information to suit the needs of your particular organisation.

Legislation

- ▶ [Associations Act 2003 \(NT\)](#)

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

- ▶ [Associations Regulations 2004 \(NT\)](#)

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