

Positions in an incorporated association

Legal information for Northern Territory incorporated associations

This fact sheet covers:

- ▶ what is a committee?
 - ▶ governance
 - ▶ positions in a committee, and
 - ▶ duties of committee members.
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If you are starting an incorporated association in the Northern Territory, or are new to working with an incorporated association, it's a good idea to understand who runs the association and the legal duties that apply.

If you don't fully understand how your incorporated association works or what role different people play in its operation, it can often be useful to step back and look at the association as a whole.

This fact sheet provides an introduction to the key parts of, and people involved in, an association incorporated in the Northern Territory.

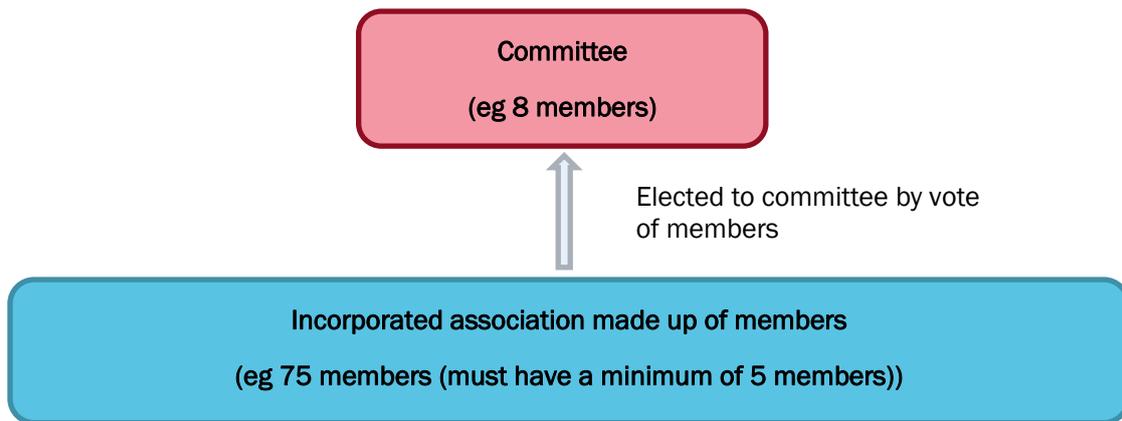
What is a committee?

Managing an incorporated association is the responsibility of a appointed committee. Sometimes other names are used for this governing body, such as the “board”, “council”, or “management committee”.

The committee is made up of those people who have the power to administer the association under the rules of the association. In the NT, the law does not require a minimum number of committee members, however most associations will have a minimum of three members. In many cases, the members of the association elect a small group of people, who are themselves members of the association, to be on the committee (see Diagram 1 below).

Note, a person is not required to be a member of the association to be elected to the committee by law, but it is reasonably common for an association's rules (also commonly known as a 'constitution') to make membership of the association part of the eligibility criteria for becoming a member of the committee.

Diagram 1: Electing a committee (example only)



CAUTION

In the Northern Territory, certain people are not allowed to be on the committee or take part in the management of the association unless they get permission from the Northern Territory Commissioner of Consumer Affairs (Commissioner). This includes a person who:

- has not been discharged from bankruptcy
- has been disqualified by the Commissioner
- within the past five years has been convicted or imprisoned for committing one of the following offences:
 - any offence under the *Associations Act 2003* (NT) (**Associations Act**)
 - any indictable offence (a serious criminal offence where a defendant has a right to trial by jury)
 - an offence involving fraud or dishonesty punishable by imprisonment for at least three months, or
 - an offence in connection with promotion, formation or management of a company, incorporated association or similar incorporated entity.

In some organisations, all the members of the incorporated association are also members of the committee. This is not against the law – it often happens in small associations or when the organisation first begins.

When all the members of an association are also on the committee, it can sometimes seem strange to separate the role of a member of the association from the role of a member of the committee. Further confusion can arise if the same people are also involved in actually operating the association (either employed or on a volunteer basis). However, it is important to understand the separate (legal) role of the committee.

Governance - how the committee differs from the “managers” of an association

Good governance practices are crucial to an association's ability to function, to achieve its objects and to comply with all of its legal, ethical and operational requirements. Community associations, especially small associations, often struggle to distinguish between:

- the role and responsibility of an association's committee (to make rules and set strategies, that is to govern the association), and
- the role and responsibility of the staff, “organisers” or key volunteers that are not on the committee (to “run things”, that is to operate the association).

While these two functions may be performed by the same group of people, distinguishing between issues of strategic governance and day-to-day management is important, as particular legal duties apply to the governance, but not management, of associations.

The 'governance' of an association is the responsibility of the committee, and generally refers to the direction and control of an association. This includes overseeing the affairs of the incorporated association and making sure its legal obligations are met.

Members of the committee of Northern Territory incorporated associations have particular legal duties imposed on them under the Associations Act and general (judge made) law, such as the duty to act with reasonable care, skill and diligence, the duty to act in good faith and in the best interests of the association and the duty to ensure that the association does not trade while insolvent, meaning not allow the association to incur debts if the association can't pay those debts. Obligations may also be imposed on committee members under the rules of the association. The association may draft its own rules or use the model rules contained in the *Associations (Model Constitution) Regulations 2004* (NT).

For Northern Territory incorporated associations, committee members' functions under the Associations Act include:

- ensuring an annual general meeting is held within five months of the end of the association's financial year
- keeping minutes of general meetings (formal meetings attended by members) and of meetings of the committee
- keeping accounting records that give a true and fair account of the transactions and financial position of the association
- ensuring annual financial statements are prepared and audited
- submitting audited financial statements and other information to members at the annual general meeting
- filing with the Commissioner the audited accounts of the association and other information relevant to the association
- overseeing the association's financial affairs. This includes making sure the association does not continue to operate if it is insolvent, and

- appointing a new public officer (position discussed below) within 14 days of the previous one vacating office.

Licensing NT, that is the NT entity overseeing incorporated associations, may get involved in any complaints that relate to a breach of the Associations Act.

FURTHER READING

For further information about the responsibilities of the committee members, see the following information page on the Northern Territory Government's website:

<https://nt.gov.au/law/rights/incorporated-associations/appointing-office-bearers>.



NOTE

If the association is also registered as a charity with the Australian Charities and Not-for-profits Commission (**ACNC**) it will also need to comply with the requirements associated with being a charity.

For further information on record keeping requirements for charities go to the Not-for-profit Law Information Hub page on Record Keeping at www.nfplaw.org.au/recordkeeping.



In larger organisations, different people may be 'managers' (such as a CEO, finance manager or operations manager), and in smaller organisations, key volunteers may be responsible for making decisions about the day-to-day running of the association, based on the strategy decided by the committee. Normally these people do not need to comply with the legal duties that the committee must comply with, but occasionally, 'managers' or 'key volunteers' also need to comply with legal duties. This occurs where they are someone who takes part in making key decisions that affect the operations of an association or who is influential in the affairs (financial or otherwise) of the association (see discussion on "Committee members" and their duties below).

Are there special positions on the committee?

Commonly, there are a number of special positions on a committee. The people who take on specific positions on the committee are sometimes called "officers" or "office bearers" or "the executive" of the association. The titles of positions within a committee will vary between associations, however some common positions and their traditional roles are explained briefly below:

- the chairperson (or president) runs meetings and usually represents the organisation at public events
- the vice chairperson (or vice-president) takes on the role of the chairperson when that person is not available
- the treasurer (or financial officer) deals with the financial affairs of the organisation, though note the financial affairs of the association is the responsibility of all committee members, and
- the secretary organises meetings, deals with documents and maintains records of the association and is generally responsible for all correspondence.

The committee may have other members who do not hold a special position. These are sometimes called “ordinary committee members”. These ordinary committee members must also meet the duties that apply to officers of the committee.

Who is the public officer?

The Associations Act requires every incorporated association to have a 'public officer'. The public officer of an incorporated association in the Northern Territory has responsibilities under the Associations Act that include filing certain forms and documents with the Commissioner, and is the primary contact person for the organisation.

The public officer must be a member or employee of the association, over 18 years old and must be a resident of the Northern Territory. It is common for a public officer to have other responsibilities within the association, such as being a member of the committee of management.

When your association first incorporates, the person who lodges the application for incorporation as an association will be deemed to be the public officer.

FURTHER READING

For further information about the role of public officer, see the following information page on the Northern Territory Government's website: <https://nt.gov.au/law/rights/incorporated-associations/appointing-office-bearers>.



"Committee members" and their duties

The Associations Act uses the language of "officers" to describe the people in an association who have certain legal duties to the organisation that must be met. An "officer" is defined in the Associations Act to encompass (among others):

- committee members
- the secretary
- the treasurer
- the public officer
- any person who is takes part in the management of the affairs of the association, and
- any person whose instructions the committee typically follows.

Special legal duties apply to officers. Many duties that apply to officers are now listed in the Associations Act, including:

- the duty not to make improper use of information acquired by virtue of their position or to make improper use of their position to gain personal advantage or cause harm to the association
- the duty not to intentionally deceive or defraud the association, members or creditors of the association or creditors of any other person, and
- the duty to avoid 'insolvent trading'. This means that the committee should not allow the association to incur debts it cannot repay.

The Associations Act also provides that the following legal duties also apply specifically to members of the committee:

- the duty to disclose any personal conflict of interest in a contract or proposed contract with the association, and
- the duty not to take part in any decision of the committee in relation to that contract or proposed contract.

There are also duties under the general law that have been in existence for many years. The substance of these general law duties have not changed.

FURTHER READING

For more information about legal duties of office holders, see Not-for-profit Law's Guide to the Legal Duties of Not-for-Profit Committee Members on the Duties page of the Information Hub at www.nfplaw.org.au/governance.



The duties of committee members of incorporated associations would also include complying with the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the corresponding regulations (including the Governance Standards) if the association is registered as a charity with the ACNC.

Resources

Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub (www.nfplaw.org.au) has further resources on the following topics:

- ✔ Governance – www.nfplaw.org.au/governance
- ✔ Employees – www.nfplaw.org.au/employees
- ✔ Risk and insurance – www.nfplaw.org.au/riskinsurance
- ✔ Meetings – www.nfplaw.org.au/meetings
- ✔ Getting started – www.nfplaw.org.au/gettingstarted

Other important resources

- ✔ [NT Government's website page on incorporated associations](#)

This is a link to the NT Government's website that includes helpful information regarding the incorporation and management of incorporated associations in the Northern Territory.

Model Rules

The [Northern Territory's 'Model Rules' for an incorporated association](#) can be found in the schedule of the *Associations (Model Constitution) Regulations 2004* (NT).

For Treasurers

- ✔ [Our Community - Guide for Community Treasurers \(Westpac\)](#)

This is a link to the Our Community site which has developed a Guide for Community Treasurers in collaboration with Westpac bank.

Related Legislation

- ✔ [Associations Act 2003 \(NT\)](#)

This is the Act that regulates incorporated associations in the Northern Territory.

- ✔ [Associations Regulations 2015 \(NT\)](#)

These Regulations set out the details of some laws that apply to incorporated associations in the Northern Territory, including:

- the forms the association may need to submit to Licensing NT, and
- the fees that the association may need to pay to Licensing NT.

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

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