



BUSINESS AFFAIRS

Information and Procedures to Incorporate an Association

Associations Act 2003

To become incorporated, the objects or purposes of an association, society, institution or body must fall within the following:

- (i) a religious, educational, benevolent or charitable purpose;
- (ii) the purpose of providing medical treatment or attention;
- (iii) the purpose of promoting or encouraging literature, science, art or a cultural activity;
- (iv) the purpose of recreation or amusement; or
- (v) the purpose of beautifying or improving a community centre

and these objects and purposes must be carried on, in whole or in part, in the Northern Territory;

If an association's objects and purposes do not fall within these bounds an application to incorporate may still be made to the Minister, through Business Affairs. This application attracts an additional fee.

EFFECT OF INCORPORATION

Upon an association becoming incorporated under the *Associations Act 2003* (the Act), the association –

- (a) becomes a body corporate with perpetual succession and a common seal;
- (b) may acquire, and subject to the Act and other laws, may hold and dispose of real and personal property; and
- (c) is capable of suing and being sued in its name.

THE ASSOCIATIONS NAME

An Association may not be incorporated under a name that is the same as, or similar to, another incorporated association, current company or business name. In addition there are some names (prescribed unauthorized names) that associations are prevented from using (see Schedule 1 of the *Associations Regulations*).

Should an association wish to include a prescribed unauthorized name in its name, application must be made to the Minister, through Business Affairs, for consent to use the desired name. Associations considering the use of such names should contact Business Affairs for further information.

INCORPORATION

To incorporate an association must undertake the following steps:

Step 1 – The Constitution

The association may adopt the [Model Constitution](#) or may draft it's own. See [Constitution Fact Sheet](#).

If electing to draft it's own constitution the association must ensure that it complies with the provisions of the Act, in particular section 21 which states:

- (1) The constitution of an incorporated association must provide for the following:
 - (a) the qualifications of members of the association;
 - (b) the creation of the executive offices of the association and the procedure for filling those offices;
 - (c) the procedure for the settling of disputes between the association and its members; the constitution of the committee of the association and the powers of that committee;
 - (d) the procedure for the conduct of meetings of the committee of the association;
 - (f) the manner in which the funds of the association are to be managed;
 - (g) the method of altering, adding to or rescinding the constitution of the association;
 - (h) the method of altering the objects or purposes of the association;
 - (i) in the case of an incorporated trading association –
 - (i) the rights of members of the association to share in its profits; and
 - (ii) the rights of persons who were members of the association at the time of winding up to share in the distribution of surplus assets, if any, resulting from the winding up.

Please Note:

- Ø Where the Association's constitution does not specifically state their financial year, it will default to 30 June as per section 4 of the Act.
- Ø Notification of 21 days is required for Special Resolutions as per section 37 of the Act.
- Ø The *Annual General Meeting* is to be held within 5 months of the end of the financial year of the Association as per section 36 of the Act.
- Ø *Audited Financial Statements* are to be available to members 14 days prior to the AGM for inspection and are required to be presented at the AGM as per section 43 of the Act.

Step 2 – Meeting of Members

An association wishing to apply for incorporation must hold a meeting of it's members to:

- Ø Adopt it's constitution;
- Ø Appoint Office Bearers;
- Ø Appoint a Public Officer;
- Ø Authorise the Public Officer to lodge the application for incorporation.

Step 3 – Lodging the Application for Incorporation

To apply for incorporation the Public Officer must lodge the following:

1. The [application form](#) duly completed and signed by the by the Public Officer;
2. The prescribed statutory declaration sworn by the Public Officer (downloaded with the application form above);
3. A complete copy of the constitution attached to the statutory declaration of the Public Officer referred to above. Please note in order to legally attach the constitution to the statutory declaration the constitution must be endorsed with the prescribed annexure clause (see application form for wording of the prescribed annexure clause);
4. The [appropriate fee](#).

Please note, the applicant will automatically become the association’s first Public Officer and no additional forms or fees are required to be lodged or paid in this regard.

On receipt of the application the Business Affairs checks the constitution to ensure:

- Ø the objects and purpose fall within the definition given in the Act;
- Ø the association’s name is appropriate;
- Ø compliance with the Act (see Step 1 above); and
- Ø all documentation is completed and signed / sworn by the Public Officer

If the Commissioner is satisfied that it is appropriate, the Commissioner will issue a Certificate of Incorporation.

An incorporated association has reporting obligations under the *Associations Act* and office bearers should familiarise themselves with the Act and their obligations. These include, but are not limited to, the lodgment of audited annual returns, lodgment of notices in relation to the details of the association’s Public Officer, and the way in which the affairs of the association are conducted.

The *Associations Act*, *Regulations*, Model Constitution, Proforma Annual Audited Statement of Accounts, forms and fact sheets are available from our web site www.caba.nt.gov.au

Please note all lodgment fees are exempt from GST

For further information contact Business Affairs phone (08) 8935 7722

Lodgement by Mail	Lodgement by Hand at Territory Business Centres			
Business Affairs GPO Box 1722 Darwin NT 0801	DARWIN Development House 76 The Esplanade Darwin NT 0800 Ph: (08) 89821700 Fax: (08) 89821725	KATHERINE 1 Randazzo Building 18 Katherine Terrace Katherine NT 0850 Ph: (08) 8973 8180 Fax: (08) 8973 8188	TENNANT CREEK Shop 2, Barkly House Cnr Paterson & Davidson St Tennant Creek NT 0860 Ph: 08 8962 4411 Fax: 08 8962 4413	ALICE SPRINGS Peter Sitzler Building 67 North Stuart Highway Alice Springs NT 0870 Ph: (08) 8951 8524 Fax: (08) 8951 8533

General Disclaimer: The material contained in this publication is intended for use as a guide and for general information only. It is not intended to be a substitute for independent professional advice. The Northern Territory Department of Justice accepts no responsibility or liability for the correctness, accuracy and completeness of any of the material in this publication and recommends that users of this publication exercise their own skill, care and judgment in the application of the information contained in the publication.

- Y *Committee Statement signed by President and Treasurer (or two other committee members);*
- Y *Committee Statement declares the required opinion as per Schedule 4 of the Regulations (page 14 of the Regulations);*
- Y *Committee Statement or a separate report of the Management Committee (signed by two Committee Members) states the prescribed information as per section 43(1)(c) of the Act;*

The information required under section 43(1)(c) of the Act to be included in the Committee Statement / separate report of the Management Committee is:

- 1. The name of each member of the Management Committee of the association during the relevant year;*
- 2. The principal activities of the association during the relevant year, and any significant change in the nature of those activities that occurred during the relevant year; and*
- 3. The net profit or loss of the association for the relevant year (net figure from the Profit and Loss Statement).*

- Y *Audit Report submitted;*
- Y *Audit conducted by a person with the relevant qualifications pursuant to the Act. See Fact Sheet: [Financial and Audit Requirements](#);*

- *Tier 1 – section 46(1)*
- *Tier 2 – section 47(2)*
- *Tier 3 – section 48(2)*

- Y *Audit Report states the Auditor’s qualifications (if Tier 2 or 3 Association)*

- Y *Audit Report signed and dated;*

- Y *Audit Report states correct full name of the Association. If unsure, refer to the association’s Certificate of Incorporation;*

- Y *Audit Report states correct financial year. If unsure, refer to the association’s current constitution. Please note, an association may only amend it’s financial year by amending the financial year in the constitution;*

- Y *Audit Report complies with the prescribed content pursuant to the Act and Regulations*

- *Tier 1 and tier 2 – Schedule 4 of the regulations (pages 11 and 12)*
- *Tier 3 – section 48(4, (5)) and (6) of the Act*

- Y *Audit Report contains an appropriate opinion pursuant to the Act and Regulations*

- *Tier 1 and tier 2 – Schedule 4 of the regulations (pages 11 and 12)*
- *Tier 3 – section 48(6) of the Act*

- ÿ *Returned the completed Annual Return of Association form (optional);*
- ÿ *Submitted a copy of the Minutes of the Annual General Meeting (optional).*

Please note all lodgment fees are exempt from GST

For further information contact Business Affairs phone (08) 8935 7722

Lodgement by Mail	Lodgement by Hand at Territory Business Centres			
Business Affairs GPO Box 1722 Darwin NT 0801	DARWIN Development House 76 The Esplanade Darwin NT 0800 Ph: (08) 89821700 Fax: (08) 89821725	KATHERINE 1 Randazzo Building 18 Katherine Terrace Katherine NT 0850 Ph: (08) 8973 8180 Fax: (08) 8973 8188	TENNANT CREEK Shop 2, Barkly House Cnr Paterson & Davidson St Tennant Creek NT 0860 Ph: 08 8962 4411 Fax: 08 8962 4413	ALICE SPRINGS Peter Sitzler Building 67 North Stuart Highway Alice Springs NT 0870 Ph: (08) 8951 8524 Fax: (08) 8951 8533

General Disclaimer: The material contained in this publication is intended for use as a guide and for general information only. It is not intended to be a substitute for independent professional advice. The Northern Territory Department of Justice accepts no responsibility or liability for the correctness, accuracy and completeness of any of the material in this publication and recommends that users of this publication exercise their own skill, care and judgment in the application of the information contained in the publication.