



Incorporating an Environmental Group

Last updated: March 2013

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Northern Rivers:	1800 626 239
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Overview

Environmental organisations may come together for a single issue such as opposing a particular development, or because of a shared concern over broader environmental issues. Incorporation is the way a group can have a legal identity separate from its individual members.

Why incorporate?

Incorporation benefits individual members of the association by protecting them from legal liability for the actions of the incorporated association. If an association isn't incorporated, legal obligations are the responsibility of individual members.

Incorporating allows an organisation to:

- create a legal entity separate from the individual members;
- provide a certain amount of limited liability for members;
- continue to exist regardless of changes in membership;
- enter into enforceable contracts including buying and selling property;
- sue and be sued in the corporate name;
- attract funding more easily; and

¹ http://www.edonsw.org.au/legal_advice

- apply for status as a charity or formally register as an environmental organisation.

Incorporation involves some ongoing costs, administrative burdens and legislative responsibilities. You should consider carefully whether your group needs to incorporate or whether you can work through an already incorporated group.

Defining Your Objectives

Spending time to properly define your objectives is an important and worthwhile exercise. There are at least three reasons to do so.

First, it can help to provide a constant reminder of your reason for being, guiding the decisions of your organisation and helping to resolve any internal disputes.

Second, it can help to 'bulletproof' your organisation from take-over, provided you have defined your objectives in specific enough terms. Some organisations have faced take-over bids because they have defined their objects too broadly – for example, 'the protection of the environment'. Framing your objects more specifically allows for more control over the organisation. An example would be, 'protecting the environment by working for the creation of national parks'. Those who do not agree with the objectives can be prevented from joining or asked to leave.

Third, it may help you to pursue legal rights of redress, if necessary. In New South Wales, most environmental legislation allows any person to challenge a breach, or anticipated breach of environmental laws. However, Commonwealth legislation and other jurisdictions have stricter rules.

The [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#) (EPBC Act) requires any individual or organisation that wants to apply for an injunction to remedy or restrain a breach of the Act to be an 'interested person or organisation'.²

In the case of an organisation, this means that the 'organisation's objects or purposes [include] the protection or conservation of, or research into, the environment'.³

Therefore, it is very important to ensure that your objectives adequately reflect what you do (and thus provide a constant reminder of your reason for being, e.g. to protect the environment) whilst also being mindful that they are not so narrowly defined that they prevent you from taking legal proceedings.

How to incorporate

There are three main steps to incorporating your association:

Step 1

The members of the group must have a meeting to pass certain special resolutions to incorporate. The group must have five or more members.⁴ A special resolution is one passed by a majority of at least three quarters of the members who are entitled

² *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, s. 475.

³ *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, s. 475(7)(b)(i).

⁴ *Associations Incorporation Act 2009 (NSW)*, s. 6.

to vote and who are present at a general meeting in person.⁵ Members must be notified of the meeting at least 21 days in advance.⁶

The group must pass a special resolution to:

- apply to [NSW Fair Trading, Department of Finance and Services](#) for incorporation of the association;⁷
- approve a statement of the association's objectives;⁸
- authorise a person (NSW resident, over 18 years old) to apply for incorporation;⁹ and
- approve a constitution for the association.¹⁰

If a group does not already exist, five or more persons can appoint a committee of at least three people and agree to go through the above process.¹¹

Step 2

The association must choose a name to reserve.¹² If you are going to be active in the public domain, early incorporation can be a way of protecting your group name (and reputation). Failing to incorporate can mean that other groups - even development-oriented groups - can adopt your name and seriously undercut your cause and message (as some environmental groups have experienced). You can read more information about reserving a name by visiting the New South Wales Office of Fair Trading website at www.fairtrading.nsw.gov.au or calling 13 32 20. You can also check the [Organisations & Business Names search](#)¹³ to find out if a name is already taken.

Step 3

The next step is to make your application. This must include both the application form to reserve your name and the application form to register the association, as well the other documents and fees discussed below.

You must apply to reserve your name by filling out an [Application for reservation of a name \(Form A1\)](#)¹⁴ accompanied by a fee of \$45.

At the same time, you must apply for incorporation by lodging an [Application for registration of incorporated association \(Form A2\)](#)¹⁵ accompanied by a fee of \$118. This is the form that you include you association's objectives on.

⁵ *Associations Incorporation Act 2009* (NSW), s. 39.

⁶ *Associations Incorporation Act 2009* (NSW), s. 39.

⁷ *Associations Incorporation Act 2009* (NSW), s. 6.

⁸ *Associations Incorporation Act 2009* (NSW), s. 6.

⁹ *Associations Incorporation Act 2009* (NSW), ss. 6, 34.

¹⁰ *Associations Incorporation Act 2009* (NSW), ss. 6.

¹¹ *Associations Incorporation Act 2009* (NSW), ss. 6, 28.

¹² *Associations Incorporation Act 2009* (NSW), s. 15.

¹³ <http://www.asic.gov.au/asic/asic.nsf/byheadline/Organisations+and+Business+Names?openDocument>

¹⁴ http://www.fairtrading.nsw.gov.au/About_us/Our_services/Forms/Associations_forms.html#Form_A1_Application_for_reservation_of_name

These forms can be found on the [NSW Fair Trading website](#).¹⁶ This application must also include a copy of the association's proposed constitution.¹⁷ NSW Fair Trading has a [model constitution](#) that can be adopted by the association.¹⁸ If you indicate that you will adopt this model constitution you do not need to include it in your application.¹⁹ You should also consider the requirements for status as a charity and for entry onto the [Register of Environmental Organisations](#).²⁰

The existing committee members will be the first committee of the incorporated association and the person authorised to incorporate the association will become the association's first public officer.²¹

Fees may change, so check with NSW Fair Trading for current information. For more information on incorporation, contact the New South Wales Office of Fair Trading.²²

Insurance

It is no longer compulsory for an incorporated association to hold public liability insurance, although it is usually advisable to do so as it is possible to be sued. As an association must comply with any relevant State and Commonwealth legislation applicable to its operations, it may be required to hold insurance under other applicable legislation, for example workers compensation insurance if the association employs someone. You may also consider taking out insurance policies for any property held by the association such as contents or motor vehicle insurance.

Public Officer

The public officer is responsible for lodging documents such as the annual return and financial statements.²³ The first public officer must be named in the application for registration.²⁴ Subsequent public officers must notify the NSW Fair Trading Commissioner of their name and address within 28 days of taking office.²⁵ It is important for the public officer to remain on top of their responsibilities as penalties can be imposed for non-compliance.²⁶

Committee

The committee must have at least three²⁷ members upon incorporation. However, the number of the committee depends on the constitution of the association. The model constitution requires the committee to consist of the office bearers (president,

¹⁵ http://www.fairtrading.nsw.gov.au/About_us/Our_services/Forms/Associations_forms.html#Form_A1_Application_for_reservation_of_name

¹⁶ http://www.fairtrading.nsw.gov.au/About_us/Our_services/Forms/Associations_forms.html#Form_A1_Application_for_reservation_of_name

¹⁷ *Associations Incorporation Act 2009* (NSW), s. 8.

¹⁸ http://www.fairtrading.nsw.gov.au/Cooperatives_and_associations/Incorporating_an_association/About_the_constitution/Model_constitution.html

¹⁹ *Associations Incorporation Act 2009* (NSW), s. 6.

²⁰ <http://www.environment.gov.au/about/tax/reo/index.html>

²¹ *Associations Incorporation Act 2009* (NSW), ss. 6, 29, 34.

²² <http://www.fairtrading.nsw.gov.au>

²³ *Associations Incorporation Act 2009* (NSW), ss. 43, 47.

²⁴ *Associations Incorporation Act 2009* (NSW), s. 6.

²⁵ *Associations Incorporation Act 2009* (NSW), s. 34.

²⁶ *Associations Incorporation Act 2009* (NSW), ss. 34, 45, 49.

²⁷ *Associations Incorporation Act 2009* (NSW), s. 28.

vice-president, treasurer and secretary) and three ordinary members, meaning that under the model constitution there must be seven committee members in total.²⁸ A committee member can hold more than one position. A register must be kept with the name and address of each committee member and the date on which they became a member.²⁹

Requirements after incorporation

An incorporated association is required to meet once a year within six months of the end of the financial year.³⁰ This meeting is usually referred to as the annual general meeting or AGM. The first AGM must be held within 18 months of its incorporation.³¹

Incorporated associations must lodge an annual financial statement with NSW Fair Trading within one month of the AGM or 7 months after the end of the previous financial year, whichever is earlier.³² There are now two tiers of incorporated associations. The type of financial statement that needs to be lodged is determined by the tier of the association.³³

The tier of an incorporated association is determined by gross receipts and assets of that association. Because tier 1 associations are larger and deal with more money they are required to make more detailed financial statements than tier 2 associations.³⁴ Most small environmental or residents associations will fall into the tier 2 category.

For both tier 1 and tier 2 associations, a summary of the association's finances for the year must be lodged with Commissioner of Fair Trading, and this must be accompanied by the prescribed fee, which is currently \$51.³⁵ A tier 1 association's statement must also be accompanied by the association's financial statements for the year, an auditor's report of these statements, and any resolutions that were passed by the AGM with regard to the report.³⁶

Procedures

The constitution should provide general requirements about how meetings and affairs are to be conducted. Even if it is not required by the constitution of your association, it is good practice for an incorporated association to appoint a chairperson or convener to ensure that meetings are conducted properly.

Any decisions the association makes must be recorded as written minutes which are confirmed or amended at the next meeting.³⁷ These minutes must provide an

²⁸ Model constitution Under the Associations Incorporation Act 2009, Part 3.

²⁹ *Associations Incorporation Act 2009* (NSW), s. 29.

³⁰ *Associations Incorporation Act 2009* (NSW), s. 37.

³¹ *Associations Incorporation Act 2009* (NSW), s. 37.

³² *Associations Incorporation Act 2009* (NSW), ss. 45, 49.

³³ *Associations Incorporation Act 2009* (NSW), ss. 45, 49.

³⁴ *Associations Incorporation Regulation 2010* (NSW), cls. 7-9,

http://www.fairtrading.nsw.gov.au/Cooperatives_and_associations/Running_an_association.html#Financial_reporting.

³⁵ *Associations Incorporation Act 2009* (NSW), ss. 45, 49; *Associations Incorporation Regulation 2010* (NSW), Schedule 5.

³⁶ *Associations Incorporation Act 2009* (NSW), s. 45.

³⁷ *Associations Incorporation Act 2009* (NSW), s. 50.

accurate record of what took place at the meeting. It is also important to keep a record of who attends each meeting or at least the number of people who attend. These records help to facilitate the effective operation of the group. Complying with the constitution and any legal requirements can also help prevent messy take-overs and internal disputes. It is hard to fall back on the letter of the law when the group has acted informally for years. Good governance will also build the group's credibility for submissions, funding applications and other external documents.

An association must also ensure that proper accounting records are kept which correctly record and explain the transactions of the association and its financial position.³⁸ This will help when it comes to lodging financial statements to the Commissioner at the end of each financial year, as discussed above.

Registering to conduct charitable fundraising

A charity is a not-for profit organisation that has been set up exclusively or mainly for charitable purposes. Charitable purposes are grouped under four broad headings - relief of financial hardship, advancement of education, advancement of religion and other charitable purposes for the benefit of the community. Conservation and protection of the environment are considered charitable purposes for the benefit of the community.

There is no registration scheme for charities in NSW, but there is a registration scheme for conducting charitable fundraising appeals under the [Charitable Fundraising Act 1991](#).³⁹

A group must hold an authority to fundraise under this Act.⁴⁰ An authority may be granted for a single fundraising appeal or for an indefinite period of time and number of events.⁴¹ Conditions may be placed on the authority.⁴² To register, an organisation only needs to have one or more charitable purposes and conduct fundraising for that purpose.⁴³

For more information about the requirements of registration for fundraising, contact the [NSW Office of Liquor, Gaming and Racing](#).⁴⁴

Not-for-profit organisations with a charitable purpose are generally exempt from payroll tax.⁴⁵

Organisations with charitable purposes may be eligible for exemption from duties payable under the *Duties Act*.⁴⁶

Contact the [NSW Office of State Revenue](#)⁴⁷ on 1300 139 814 for more information about tax and duty exemptions.

³⁸ *Associations Incorporation Act 2009* (NSW), s. 50.

³⁹ *Charitable Fundraising Act 1991* (NSW).

⁴⁰ *Charitable Fundraising Act 1991* (NSW), Part 2 Division 2.

⁴¹ *Charitable Fundraising Act 1991* (NSW), s. 17.

⁴² *Charitable Fundraising Act 1991* (NSW), s. 19.

⁴³ *Charitable Fundraising Act 1991* (NSW), s. 5.

⁴⁴ http://www.olgr.nsw.gov.au/charitable_home.asp.

⁴⁵ *Payroll Tax Act 2007* (NSW), s. 48.

⁴⁶ *Duties Act 1997* (NSW), s. 275.

⁴⁷ <http://www.osr.nsw.gov.au/>

Tax deductions for donations

The Federal government keeps a [Register of Environmental Organisations](#)⁴⁸ approved for tax deductibility under the *Income Tax Assessment Act 1997*.⁴⁹ Any money paid into the public fund of a registered organisation can be claimed by the person giving the money as a tax deduction.⁵⁰

The Federal Department of Environment administers this register. To be eligible for the Register, a number of criteria must be satisfied. Some of these criteria must be included in the constitution of the organisation. In order to be eligible, an organisation must:

- be established for the principal purpose of:
 - protection and enhancement of the natural environment or of a significant aspect of the natural environment;⁵¹ or
 - the provision of information or education, or the carrying on of research, about the environment or a significant aspect of the environment,⁵²
- have at least fifty individual voting financial members,⁵³
- be not-for-profit,⁵⁴ and
- establish and maintain a public fund in Australia for gifts of money or property for its environmental purposes that is only used to support the body's environmental purposes.⁵⁵

For information on eligibility for the Register of Environmental Organisations, visit the Federal [Department of Environment website](#).⁵⁶

Other tax issues

Charities also need to apply for additional endorsement through the [Australian Taxation Office](#)⁵⁷ to receive income tax concessions (deductible gift recipient status and income tax exemption). Organisations can do this when registering for an Australian Business Number.

Not-for-profit organisations are not exempt from goods and services tax (GST). However, Income Tax Credit can be claimed to offset tax paid.

For more information about how the tax system affects your organisation contact the [Australian Tax Office website](#) or seek advice from an accountant.

⁴⁸ <http://www.environment.gov.au/about/tax/reo/index.html>

⁴⁹ *Income Tax Assessment Act 1997* (Cth), Subdivision 30-E.

⁵⁰ *Income Tax Assessment Act 1997* (Cth), Subdivision 30-A.

⁵¹ *Income Tax Assessment Act 1997* (Cth), ss. 30-265(1)(a).

⁵² *Income Tax Assessment Act 1997* (Cth), ss. 30-265(1)(b).

⁵³ *Income Tax Assessment Act 1997* (Cth), ss. 30-275(b).

⁵⁴ *Income Tax Assessment Act 1997* (Cth), ss. 30-270(1).

⁵⁵ *Income Tax Assessment Act 1997* (Cth), ss. 30-265(2).

⁵⁶ <http://www.environment.gov.au/about/tax/reo/index.html>.

⁵⁷ <http://www.ato.gov.au/nonprofit/>