

# Incorporation and Not-For-Profit Status

This fact-sheet is designed to help clubs that want to pursue incorporation, or determine if they are classified as a not-for-profit organisation.

## What is incorporation?

An 'incorporated association' is legally recognised as an organisation by the government. That means it can enter into contracts and be held liable *as an organisation* for misconduct or failure to pay debts.

Clubs that are not incorporated are 'unincorporated associations'. This means that it is a group of people with a common purpose rather than an organisation. If the club wants to sign a contract, borrow money, or make some other kind of agreement, it has to be done by individual members.

In an unincorporated association, a committee member who signs a contract is personally responsible for making sure that it's fulfilled. They can be sued as an individual.

## Why incorporate?

Incorporation has some benefits for large clubs. For instance, it offers some legal protections for committee members and is a requirement for most community grants programs. Note that this requirement does not apply to the Clubs grant program.

However, incorporation comes with legal obligations and duties that must be performed every year or else the club will be fined. For further information about the advantages, responsibilities, and process of incorporation, see:

- [What is Incorporation?](#)
- [Advantages of Incorporation](#)
- [How to Incorporate](#)

## How do clubs incorporate?

A club may become incorporated in the same manner as any community association. You will need to make sure you meet the requirements (see the links above), pay a fee, and send some paperwork to the government.

However, if the name of your club contains the words 'Adelaide University' or 'University of Adelaide', it must have approval from the State Attorney-General. This requires a letter of support from the University.

In order to enquire about a letter of support, please contact Clubs Admin at [clubsadmin@auu.org.au](mailto:clubsadmin@auu.org.au).

## What is an auspice?

If a group wants to apply for a community grant, but is not incorporated, it can be auspiced by another organisation. The other organisation takes on responsibility for ensuring that the project is successfully completed and the funds used appropriately.

## Not for Profit Status

Another requirement for many community opportunities and grants programs is 'not-for-profit status' (NFP). This is also a requirement for a club to register with the Union.

NFP means that all funds raised by a club must be used to pursue its objectives, and may not be distributed to members. Clubs can only give money to members or their friends and family when it is legitimate compensation or reimbursement for a service or goods provided.

When a club is dissolved, its funds and assets must be donated to the Union or another organisation with similar objectives to the club. They cannot be given out to members.

## How does a club become NFP?

An organisation (including incorporated associations) is recognised as NFP where its governing documents prevent it from distributing profits or assets for the benefit of particular people. This includes both while the club is active and when it winds up.<sup>1</sup>

The easiest way to ensure your club is NFP is to include the following example clauses in your constitution, which can be found in our template:

- 5.1 The Club shall operate on a not-for-profit basis.
- 5.2 The income and capital of the Club shall be applied exclusively to the promotion of its objects and no portion shall be paid or distributed directly or indirectly to Members or their associates except as genuine remuneration of a Member for services rendered or expenses incurred on behalf of the Club.
- 16 Upon the dissolution of the club, Net Assets become the property of the Union and none shall be distributed to Members except as bona fide remuneration of a Member for services rendered or expenses incurred on behalf of the Club.

## What's the difference between NFP and charity?

NFP status is a requirement to register as a charity and to access tax-related benefits, but does not automatically mean that a club is a charity.

Charities must be registered with the Australian Charities and Not For Profits Commission (ACNC), and must follow very strict rules. This includes extensive reporting about how funds are managed and spent.

To be registered as a charity, the purpose and activities of a group must be *primarily* charitable. Providing social opportunities for students, even if they belong to a specific group or faculty, does not meet this criteria. For a list of what does and doesn't count as a charitable purpose, check out the ACNC website at [www.acnc.gov.au](http://www.acnc.gov.au).

Most clubs can't become charities for this reason, but in most cases NFP status will be more than enough for your purposes.

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<sup>1</sup> <https://www.ato.gov.au/Non-profit/Getting-started/Is-your-organisation-not-for-profit/>