

Question 1: Criteria to direct transition to ASIC structures

- Which triggers would be appropriate to require or strongly encourage transition?
 - Financial caps: Gross receipts & assets, staffing numbers.
 - Other caps: Geographical and operational spread, gaming machine venue.
- What transitional support (i.e. templates, timelines) would assist?

The clearest triggers to direct transition to ASIC structures are:

1. If the entity fails to comply with not-for-profit requirements
2. If the entity has substantial / material operations beyond the NT jurisdiction (excluding cross-border situations).

Healthy Living NT would caution against applying simplistic thresholds in isolation such as financial turnover or staffing size. These are just numbers that can vary dramatically from year to year. An arbitrary, one size fits all, approach will not produce beneficial results.

Consider matters such as:

- The nature of the organisation – its mission, is it “for purpose” for the broader NT community vs exclusive to a narrow membership only.
- Demonstration of benefit to the NT community.
- Whether the Associations Act is merely providing the basis for incorporation but not governance standards – for example, the organisation may have to comply with much higher governance and financial reporting standards by virtue of another Act e.g. charities under the ACNC Act.

What is served by directing organisations of this nature to transfer incorporation if they are meeting higher governance standards already?

By arbitrarily directing organisations to move to an ASIC-based form of incorporation (simply because of their size or some other factor) could do irreparable damage to the ‘for purpose’ sector in the NT by imposing a much higher resource (and cost) requirement to achieve and maintain corporate governance compliance. The NT community would be the ultimate loser.

The regulator should approach this question through a risk lens, not through a formula/metric-driven approach. Healthy Living NT is unable to comment on whether gaming machine licences should act as a trigger for a changed incorporation structure. Risk needs to be determined by the regulator.

Transition to an ASIC structure is a major corporate governance undertaking that requires substantial time, resource commitment and cost including for external advisory services. A minimum 3-year transition period should be allowed (excluding scenarios highlighted in points 1 and 2 above).

Question 2: Empower the regulator to direct special audits of all or part of an association’s financial records, triggered by particular events.

- Should the regulator be allowed to require an association’s financials to be audited outside of the standard audits required?

Yes

- When should a special audit be triggered (complaints, risk indicators, repeated late filings)?

Generally, a special audit would not be instigated unless there was a clear singular material breach/issue that the regulator was not able to resolve or a combination of issues and breaches that elevated the risk profile. The regulator should adopt a risk-based approach.

- Should there be limitations on the timeframe of financials to be audited?

Based on established ATO document retention requirements, 5 years should be a maximum timeframe.

- Should there be specific audit standards that apply?

The question is not clear. There is a vast difference between a compliance audit and a material audit.

The audit standard to be applied should be based on external expert advice relevant to the size and nature of the organisation and the audit standard that would normally be applied i.e. do not specify a General Purpose audit when Special Purpose audit is normally acceptable.

- Who should be responsible for the costs of an audit directed by the regulator?

The regulator should be responsible for costs and the appointment / selection of an appropriate auditor, with a copy of the report to be shared with both the association and the regulator. There is considerable variation in the integrity of auditors in the NT.

Question 3: Empower the regulator to instruct an association to hold a general meeting, appoint a mediator, or adopt a dispute-resolution process.

- What triggers warrant a directed meeting?

Clear singular material breach or a combination of issues that elevated the risk profile.

- Should directions include agenda setting, independent chair/mediator, and minute lodgement?

Yes

- Should review rights be available to members and the regulator (e.g. NTCAT)?

Yes

Question 4: Enforcement Actions

- Which offences should be eligible for infringement notices versus prosecution?
- What penalty levels are proportionate across Tier 1/2/3?
- What escalation pathway (warning → infringement → enforcement) is preferred?

An escalation pathway should follow normal application of principles of natural justice. Warnings should be initiated immediately a timeframe specified in the Act is breached, with infringements applicable as follows:

- Failure to lodge AFS, AGM Minutes >30 days of date specified in the Act
- Failure to update Public Officer >14 days of date specified in the Act
- Failure to comply with directions of the regulator >14 days of the date specified in the notice.

Enforcement should occur based on timeframes specified above i.e. failure to comply within a further 30 / 14 days of infringement notice.

The regulator should obviously have discretion to enter into compliance arrangements with engaged associations.

Question 5: Fee Structure

- What late fees would drive timely compliance without undue burden?
- Should late fees scale by tier?
- Should late fees be based on length of delay?

Change your thinking around this question to **incentivise compliance** by:

- a) Removing fees (i.e. no cost) for compliant lodgements within current timeframes (AFS and AGM minutes within 30 days of AGM (provided held within 5 months of EOFY) and change of Public Officer within 14 days)
- b) Instituting much higher late fees (payable per every month of delay) – could be scaled by tier if this did not create too much ‘busy work’.

Realistically, the current lodgement costs are negligible and do not produce meaningful revenue to the NTG; they are unlikely to even cover the cost of administration. Waiving fees for compliant and timely lodgements combined with more punitive late fees would considerably incentivise associations to report (or at least contact the regulator for an extension). Currently, doing nothing is an easy option.

A further means of incentivising compliance is to ensure that only compliant associations are eligible to receive NTG funding. While this is undoubtedly the current stated policy, there have been instances in the recent past where non-compliant associations (no Audited Financial Statements) have continued to receive substantial funding from the NTG. This did not appear to be under a particular scheme of arrangement.

Question 6: Membership Requirements to Strengthen Governance and Accountability

- What minimum membership balances accessibility and governance robustness?

Leave at the current minimum (i.e. 5). There is no correlation between size of membership and robustness of governance

- Should exemptions apply for remote, culturally specific or small community groups?

No – especially if current minimum is maintained

- Would raising the minimum help reduce committee instability?

No. There is no correlation between size of membership and an increased number of people wishing to serve on Committee. Higher numbers could actually increase committee instability. Quantity and quality are two different things.

The Department needs to show a greater understanding of trends in the sector – decreased levels of volunteerism and decreased levels of service organisation membership. Many associations look outside their membership for people wishing to serve on committees/boards, sometimes as a mechanism to attract specific skill sets.

Question 7: Property and Transactions

- What property/land scenarios have caused ambiguity (trusts, transfers on name change, mergers)?

There have been no issues of this nature experienced.

- Should certain high-value transactions/liabilities require notification or special resolutions?

Absolutely not, this is an over-reach by the regulator. To the extent this needs to be addressed, the Association’s Constitution is the correct vehicle to determine this matter – by the members.

- How should legacy vesting arrangements be reviewed or regulated? Would a statutory “vesting review” process resolve legacy title issues without court action?

Not in a position to comment.

- Should funds from dissolved associations be used for strengthening the governance and compliance of other associations and administering the Act?

Absolutely not, funds from dissolved associations should be distributed to other like associations (the current situation). If the regulator is holding funds from dissolved associations with no beneficiaries nominated, then there should be a transparent mechanism for these funds to be returned to the sector e.g. through the Community Benefit Fund. Strengthening governance and compliance under the Act should be through NTG budget appropriation.

- Should community land be returned to the Territory not the CEO?

Yes

Question 8:

Removing annual audit for tier 1 associations

- Should tier 1 associations have their annual financial statements audited, noting the auditor can be an unqualified person?

Yes, annual AFS requirements should continue for Tier 1 associations. The term “unqualified” is inappropriate – it simply means that audits can be done by a person who is not a member of a professional (accountancy) body. There are many people qualified to conduct audits on Tier 1 associations – retired or non-practicing accountants, bookkeepers, in fact anyone who is financially literate.

Consider greater specification on the role and responsibility of auditors who are not members of a professional (accountancy) body.

- Would removing the audit requirement for tier 1 associations reduce administrative burden?

No. Audits form part of normal governance.

- Could tier 1 associations transparency and accountability be improved through updated and easy to use financial statement and annual report templates?

Yes, provided they are not mandatory (minimum requirements to be met should be specified by the Act/regulation, not guidance templates).

Question 10: Updated and Easy to use model constitution

Proposed updates include provision for electronic advancements for funds, transfer, communication, and attendance methods – payments, emails, meetings, - teleconferences/video conference (incl, physical attendance at more than one location)

- Are there other matters that should be contemporised or added?

An updated model constitution would be useful to many smaller associations but should not be mandatory: an association’s constitution needs to meet the minimum requirements of the Act (not those of the model constitution).

Final Comments

Acknowledge that contemporising of the Associations Act is overdue. However, there is a natural tension between the role of regulation/the regulator and the NTG policy objective of ‘restoring Territory lifestyle’. There is opportunity for the Department to look beyond its regulatory role and to focus on industry development. Consider:

- To the extent possible, consider minimising changes to the Act that would then require each and every incorporated association to update its constitution.
- Promote/celebrate the value of the sector / its contribution to the NT community

- Does the Department have sufficient information on the sector to develop a profile of the sector e.g. by number, location, tier, # volunteers and staff and activity area? If not, consider additional questions in the Annual Return.
- Improve transparency about the sector – availability of a public portal with all incorporated associations listed including their constitution and whether or not they are compliant.
- Invest in the development of the sector
 - Make information about establishing/running/winding up an incorporated association far more accessible, structured and logically organised. (The current NTG website structure means having to search through 2 or 3 layers to find out specific information on incorporated associations. Consider one landing page with all topics/links listed.)
 - Establish a portal where association information can be uploaded and viewed i.e. enable associations to interact digitally.
 - Consider appointing an experienced mentor to each new incorporated association for the first year / annual cycle of its operation. If structured as a supportive mechanism, this may be of particular benefit to CALD and ATSI groups.