

GETTING STARTED

ESTABLISHING A COMMUNITY ORGANISATION

FACT SHEETS 1 – 8

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ESTABLISHING A COMMUNITY ORGANISATION

FACT SHEET 1

GETTING STARTED

Congratulations on wanting to make a difference! You have gone from thinking “I should do something about that...” to wanting to put your idea into action.

Establishing a community organisation is a challenge but very rewarding.

Before you start running around, setting up meetings and pouring all of your energy into this project here are few ideas and tips about getting started.

1. **Undertake research** – that is check out:

- Whether there are already organisations that are already working in the area. To find out about other groups:
 - you can check what is happening in your local area with your local council, State or Federal member of Parliament;
 - look up the ourcommunity website which has a list (Australia-wide) of community organisations at its ‘join in- join up’ section – go to <http://www.ourcommunity.com.au>
 - check with the relevant State authority the Office of Fair Trading at <http://www.fairtrading.qld.gov.au> or the relevant government department for the area in which you wish to set up the organisation. For a list of government departments go to <http://www.qld.gov.au/departments/>
 - another valuable source is relevant peak bodies that cover your area of interest. For example you can contact the Queensland Council of Social Sciences <http://www.qcross.org.au> or <http://www.peakcare.com.au> or <http://www.selfhelpqld.org.au> which covers self help groups.
 - Search the internet
- Once you have decided that you really do want to establish a new community organisation to address the issue then it would be a good idea to undertake research into who is affected, what help is required and what can be done to help. This assists in identifying your purpose. For more detail about undertaking this type of research go to - <https://wiki.qut.edu.au/display/CPNS/1.1+Identify+Your++Purpose>

2. **Get others involved**

By now you have communicated with a number of people about a need for a new organisation and no doubt have found others who want to get involved. The best way to keep up momentum is to start having regular meetings. At the meetings you can:

- Invite people to share their ideas and contribute to the vision
- Invite experts or professionals
- Invite the public

For further discussion on how to get other involved and how to conduct meetings go to – <https://wiki.qut.edu.au/display/CPNS/1.2+Getting+Others++Involved>

And <https://wiki.qut.edu.au/display/CPNS/Meetings>

3. Form a work group

The purpose of this group is to set up the new organisation. Ideally the group consist of about five to seven people to share the work-load but at the same time keep decision-making quick and less formal. If the work group includes some-one who is affected by the issue their experience and connections can be invaluable. For more details about setting up the work group go to: <https://wiki.qut.edu.au/display/CPNS/1.3+The++Work+Group> or to <http://www.pilch.org.au/gettingstarted>

4. Define who you are and what you do.

Your mission and what you want to achieve should be top of mind from the start. If you have crystallised your thoughts about the group's purpose it will make it easier to decide the structure of your group and whether or not to incorporate.

Other useful resources can be found at:

<http://www.ourcommunity.com.au>

<http://www.communitybuilders.nsw.gov.au>

<http://www.pilch.org.au/gettingstarted>

<http://www.communitydoor.org.au>

<http://www.nonprofitqanda.com.au/>

5. Choose a name

If you are considering becoming incorporated there are some legal requirements around names you can't use and requirements about what needs to be included in the name so that the public is aware of what type of organisation it is dealing with.

You should also check the names registers to make sure that the name is not already taken. You can do a national names index search through ASIC -

<http://www.search.asic.gov.au/gns001.html>

A Queensland search through <http://www.fairtrading.qld.gov.au>

It may also be wise to check that the name you are thinking of has not already been protected for example as a trademark. You don't want an international corporate giant suing your organisation for breach of intellectual property. For more information go to: <http://www.ipaustralia.gov.au/>

Your group is up and running with a name, clear aims and enthusiastic members. The next decision is whether your group is going to operate on a 'for-profit' or 'nonprofit' basis. The next Fact Sheet explains what 'nonprofit' means.

Other useful resources can be found at:

- [Developing your Organisation](#) is an online wiki from QUT's Centre for Philanthropic and Non-profit Studies.
- [Developing your Board](#) is an online wiki from QUT's Centre for Philanthropic and Non-profit Studies.
- [Starting your business](#) is aimed at people starting a small business but much of its content also applies to non-profit organisations
- [Licences and regulations](#) provides links to information and forms for starting your organisation.
- [Australian Taxation Office](#) offers non-profit organisations relevant GST and other tax information.
- [Incorporated Associations website \(Queensland Office of Fair Trading\)](#) provides information to support organisations incorporated under the *Associations Incorporations Act 1981*. This website also includes a simplified guide to Queensland's *Associations Incorporation Act 1981* and Associations Incorporation Regulation 1999.
- [Office of the Registrar of Indigenous Corporations \(ORIC\)](#) supports and regulates the corporations that are incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act)
- As well as the resources available on the communitydoor website you can check out the following information sites.

<http://www.ourcommunity.com.au>

<http://www.communitybuilders.nsw.gov.au>

<http://www.pilch.org.au/gettingstarted>

ESTABLISHING A COMMUNITY ORGANISATION

FACT SHEET 2

What does ‘nonprofit’ mean?

This fact sheet explains the term ‘nonprofit’ and the difference between a nonprofit (or not-for-profit) organisation and a for-profit (businesses) organisation.

You have decided to set up a group and are now clear on what your mission, objectives, membership and activities are. The next decision to make is whether your group is going to operate on a nonprofit or for-profit basis. This is important because there are different legal structures for ‘for-profit’ and ‘nonprofit’ organisations and different laws apply to each. Some laws refer to legal structures (such as incorporated associations) not being formed for financial gain of the members or pecuniary gain of members.

What is ‘profit’?

This term is confusing because most organisations need money to carry out their activities. An organisation may raise money by charging its members fees, holding raffles, seeking donations from the public, applying for grants of money from the government, or in many other ways. An organisation will have a ‘profit’ (a surplus) if it has extra money left over, after it has paid all its bills and expenses (for example, paying room hire, coffee and tea expenses, telephone bills, insurance premiums and employee wages).

Can a ‘nonprofit’ organisation make a profit or surplus?

Yes. Whether your organisation is a ‘nonprofit’ organisation is determined by what your organisation does with that profit, not by whether your organisation makes a profit.

In a ‘nonprofit’ organisation, the profits are not paid to the individual members of the organisation while the organisation is in operation or when it ends. Instead, any profit that the organisation makes must be used to further the purposes of the organisation. That is, the profits are re-invested (put back) into the organisation, to continue to pay for its activities and functions.

In fact, it might be a good idea for a nonprofit organisation to aim to have a small profit each year, to be able to pay for unexpected expenses or to start new programs. Nonprofit organisations can also:

- ▶ employ people and pay them reasonable salaries;
- ▶ make money by charging members of the public for services;
- ▶ make money by selling or leasing property; and
- ▶ invest money in shares and receive dividends.

It is what the organisation does with the profit, (rather than the fact it might have made a profit),

which makes the organisation nonprofit. For example, in a nonprofit organisation, any of the profits that the organisation makes (from the sale of services or property) must be used to carry out the organisation's purpose and must not be distributed to members or any other individuals.

What is a 'for profit' organisation and how is this different?

In a 'for-profit' organisation (such as a business), the profit may be distributed to the organisation's owners, or to individuals members or shareholders. In a 'for profit' organisation, people who are involved in the organisation are entitled to receive a personal benefit from the profits of the organisation (such as a dividend, or money when they sell their shares, or a payment directly from the profit). It can be a little confusing as some of these 'for-profit' organisations operate in the community sector (for example, in childcare and aged care).

Different laws for nonprofits

It is important to know the difference because there are different laws that apply to 'for-profit' and 'nonprofit' organisations. Many of these laws treat nonprofits favourably – on the basis that the organisation hasn't been set up by people to make a personal profit, and that the resources of the organisation will be put back in to helping the community. For example:

- ▶ legal structure: if your organisation wants to incorporate, there are particular legal structures that are only available to nonprofit organisations (such as an incorporated association);
- ▶ tax laws: the tax laws offer a number of tax exemptions, concessions or benefits to eligible nonprofit organisations (although being not-for-profit is only one of a number of requirements);
- ▶ funding: some government grant programs and many private philanthropic bodies are set up only to fund nonprofit organisations; and
- ▶ fundraising: some laws only allow nonprofit organisations like charities and community groups to apply for registration to conduct certain fundraising activities (like minor gaming activities).

Queensland laws relating to incorporated associations.

The *Associations Incorporation Act 1981* (Qld) provides a legal simple legal structure for associations that are not formed for the purpose of providing financial gain to members. Financial gain is extensively defined in section 4 of the Act and while a little difficult to read because it is couched in the negative of what is not considered financial gain by listing a number of activities. For example it would not be considered financial gain if:

- the association makes a financial gain, but no part of the gain is divided among, or received by, any of the association's members;
- the association is established to protect or regulate a trade, business, industry or calling (the *pursuit*) engaged in by its members, or in which they are interested, but the association does not itself engage or take part in the pursuit;
- the association provides its members with facilities or services;

Associations may also pay wages, members can compete for prizes and trophies and can trade so long as it is ancillary to the principal purpose of the association. To view the legislation go to:

<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/A/AssocIncorpA81.pdf>

ESTABLISHING A COMMUNITY ORGANISATION

FACT SHEET 3

SHOULD WE INCORPORATE?

Most believe that you can only operate as an association if you legally incorporate. This is not so. Incorporation is not compulsory or obligatory it is a voluntary choice of the group. The information below gives you some information about incorporation including the advantages and some of the drawbacks. It is a good idea to weigh up the pros and cons of incorporation to make sure it is right for you.

What is incorporation?

Incorporation is a voluntary means of creating a legal identity. Through incorporation the association becomes in the eyes of the law a legal body which allows the group to:

- Continue to exist regardless of the change to the membership;
- Take legal action in its own name and also allows others to sue the association rather than individual members
- Buy, sell and own property
- Borrow money
- Enter into contracts
- Apply for government grants
- Accept gifts and legacies under a Will
- Limits the liability of members

Further details of what this means is listed below in the Pro's and Con's of incorporation section.

Do we have to incorporate?

Incorporation is not obligatory or compulsory. Many unincorporated groups and clubs operate in the community and function very well. But there are risks and disadvantages to remaining unincorporated.

Pro's and con's of incorporation

Advantages

Generally, once the group starts to accumulate money and assets and starts to become active in the community, it should seriously consider incorporating in a way that separates the individual person (member) from the entity. The benefits of incorporating your association include:

- Simplifies and clarifies the management and ownership of the money and other assets of the body. Bank accounts are held in the name of the association. Assets are purchased and owned by the association. The association can enter into contracts.
- Provides some legal and financial protection for the management committee of the association who otherwise might be liable for damages and contractual obligations arising from the activities of the association. Without incorporation, a group has no separate legal existence. Incorporation protects committee members from most personal liability but leaves them with the responsibility to act honestly and prudently.

- Clarifies and formalises the objectives of the association. To become incorporated, associations need to state clearly the purposes for which they are being formed. The purposes, frequently known as the objects of the association, are fixed in the rules of the association (also known as the constitution). The regulating body must be advised of any changes.
- Sets out regulations about how the association shall operate. These regulations are designed to ensure that the association operates fairly, responsibly and accountably to its members. They also protect against dishonesty and manage matters such as conflict of interest. Being incorporated also requires that some information is regularly made available to the regulating body and to the public about the affairs and operations of the association.
- Allows organisations to apply for a much wider range of public and private funding. Many government and philanthropic organisations make it a basic requirement that applicants for funding are incorporated.
- Allows some incorporated bodies to enjoy tax advantages. Considering the benefits incorporation provides within this Act, the cost for incorporation is a worthwhile investment.

Once incorporated, there are some regular compliance tasks required such as the keeping of records, holding of elections and submitting of returns.

Disadvantages

Incorporation whether as an Incorporated association or as a company limited by guarantee requires regular and ongoing compliance with Government regulation. There is a cost in fulfilling each of the requirements in both time and money. Incorporation also means being open to publicly scrutiny. Matters to consider prior to looking at incorporating are:

- Being prepared to forgo total privacy of the association's financial matters and accept that there will be public scrutiny of the association's activities.
- Being prepared to follow the regulations as set down by government. This may not give you the total flexibility that your group has now.
- Weigh up the risk associated with being incorporated against the benefits of incorporation.
- most incorporated associations will be required to have compulsory public liability insurance
- proper membership records and minutes must be kept

The Caxton Street Incorporated Association Manual set out the following rough checklist which you may find helpful.

PRECEDENTS

P1-1

ROUGH CHECKLIST TO WHETHER AN INCORPORATED ASSOCIATION STRUCTURE IS SUITABLE FOR YOUR ASSOCIATION

If you answer “yes” or “not applicable” or “does not matter” to the following questions an incorporated association may be appropriate. If you answer “no”, consideration ought to be given to whether an incorporated association is really the most appropriate structure for your organisation.

- Do your committee members require limited liability as far as the possible debts and liabilities of the association are concerned?
- Does your association need to borrow money from a financial institution?
- Does your association intend to buy or lease land?
- Does your association intend to enter into contracts to buy property (other than land) or services?
- Could your association be left a gift under a will?
- Will your association be given grants by a government department or local council?
- Can your association function along democratic lines?
- Will it make any difference to the public or members of the association if the word “inc” or “incorporated” must form part of its name?
- Can your association (if over \$100,000 in revenue or assets) afford to have its accounts prepared and audited properly each year or find volunteers to do this task?
- Does your committee meet at least once in every four months in the year?
- Can your association afford the incorporation fees?
- Can your association afford the premiums for public liability insurance if the association owns or leases land?
- Will the association’s members be willing not to receive any distributions of money from the association?
- Has your association at least three committee members and at least 7 members?
- Will all the committee members be adults?
- Do the members of the association mind if their annual report and financial statements are made public?
- Will the association exist for the foreseeable future?
- Is the association prepared to keep accurate minutes of its decisions and a register of members?
- Is the income and property of the association to be used solely in promotion of its objects?
- Will your association conduct art unions, raffles or bingo?

What are the obligations of being incorporated?

While there are benefits to incorporation (for example limited liability) being an incorporated group also comes with obligations. These include:

- Have to have a name (which generally must have the words ‘incorporated’ or “inc” or “limited’ or ‘Ltd” after it);
- Have to have a written constitution or set of rules that the group agrees to operate by;
- Having to pay registration fees and annual fees to government
- Having to keep the public register which includes the name and address of the contact person up to date
- Have to hold meetings and keep certain records.

NB: The requirements for initial incorporation and the ongoing obligations and reporting requirements vary depending on the type of incorporated legal structure your group chooses. It will also depend on the income and operations of your organisation. See Fact Sheets 4 and 5 for further details.

Although these obligations must be done they are not too onerous once you get started. However you do need to have people in the group ready, willing and able to take on the tasks required.

Other related resources

Fact Sheet 4 *Which incorporated legal structure should we choose?*

Fact Sheet 5 *Incorporated association or a company limited by guarantee?*

Legislation

Queensland Associations Incorporation Act 1981 -

<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/A/AssocIncorpA81.pdf>

Queensland Associations Incorporation regulations -

<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/A/AssocIncorpR99.pdf>

Australian Securities and Investments Commission for details about companies limited by guarantee <http://www.asic.gov.au/asic/asic.nsf>

- [Developing your Organisation](#) is an online wiki from QUT's Centre for Philanthropic and Non-profit Studies.
- [Incorporated Associations website \(Queensland Office of Fair Trading\)](#) provides information to support organisations incorporated under the *Associations Incorporations Act 1981*. This website also includes a simplified guide to Queensland's *Associations Incorporation Act 1981* and Associations Incorporation Regulation 1999.
- Caxton Street Legal centre – <http://caxton.org.au>

Other websites

- <http://www.ourcommunity.com.au>
-
- <http://www.communitybuilders.nsw.gov.au>
-
- <http://www.pilch.org.au/gettingstarted>

ESTABLISHING A COMMUNITY ORGANISATION

FACT SHEET 4

Which incorporated legal structure should we choose?

Overview

This fact sheet aims to provide Queensland nonprofit community groups with an overview of the main incorporated legal structures available.

What incorporated structures are available for nonprofits?

There are a range of incorporated legal structures which may be suitable for Queensland nonprofit community groups. The 4 main options that we will discuss are:

- ▶ an incorporated association;
- ▶ a company limited by guarantee;
- ▶ a non-trading co-operative; and
- ▶ an indigenous corporation.

These are the most common options. However, you can also set up under a range of other legal structures such as a trust, a special Act of Parliament or a trade union. These structures will not be discussed in this fact sheet. Please seek legal advice if you think one of these structures may be suitable for your group.

The following pages set out a brief profile of each of the four main nonprofit legal structures.

Incorporated Association

Features	Brief description
Relevant laws:	<i>Associations Incorporation Act 1981</i> (Qld) <i>Associations Incorporation Regulations 1999</i> (Qld)
Jurisdiction:	A group incorporated under the <i>Associations Incorporation Act</i> can operate (that is, carry on its activities) in Queensland. Queensland incorporated associations can operate outside Queensland if they register under the federal <i>Corporations Act</i> as a 'Registered Australian Body'.
Government regulator:	The body responsible for registration and ongoing compliance monitoring is the Registrar of Incorporated Associations at the Office of Fair Trading, Department of Employment, Economic Development and Innovation (DEEDI), which is a part of the State Government of Queensland.
Required abbreviation:	An incorporated association must use 'Incorporated' or 'Inc.' after its name. There are some limited exceptions.
Number:	In Queensland- approximately 20,000 incorporated associations.
Description:	The <i>Associations Incorporation Act</i> was introduced to provide a simple and inexpensive means of incorporating nonprofit groups in Queensland. All other States and Territories have their own, similar laws which set up incorporated associations.
Most commonly used for:	It is likely that for locally focused nonprofit community groups wanting to operate in Queensland, an incorporated association will be the best structure. Setting up an incorporated association can be easier and less expensive than setting up a company limited by guarantee. Small incorporated associations are not required by legislation to have audited accounts for the purposes of the <i>Associations Incorporation Act</i> , and therefore may suit groups with limited funds and resources.
Not suitable for :	Incorporated associations require a minimum of seven members so this structure is not suitable for a parent organisation which wants to set up a wholly owned subsidiary (i.e. with it as the sole member).

Company limited by guarantee

Features	Brief description
Relevant laws:	<i>Corporations Act 2001</i> (Cth), <i>Corporations Regulations</i> (various)
Jurisdiction:	Can operate (that is, carry on activities) anywhere in Australia.
Government regulator:	The body responsible for the registration and ongoing compliance monitoring is the Australian Securities and Investment Commission (ASIC). ASIC is an independent Commonwealth government body.
Required abbreviation:	Must use the word 'Limited' or 'Ltd' after its name (although charities with unpaid directors can apply for an exemption from this requirement).
Number:	In Australia - approximately 11,000 companies limited by guarantee.
Description:	Although we often think of a 'company' as being a business, a company limited by guarantee is a special form of public company that is used by nonprofit groups. It is a legal structure created by Commonwealth law (the <i>Corporations Act</i>), and is available for use by groups throughout Australia. It uses a company structure with 'directors', but has 'members' instead of 'shareholders'. Some of the provisions of the <i>Corporations Act</i> (e.g. directors' duties and penalties) that apply to 'for-profit' companies (ie. businesses) also apply to companies limited by guarantee.
Most commonly used for:	A company limited by guarantee may be a suitable structure for nonprofit organisations wanting to operate nationally or in more than one State or Territory and which have the resources to comply with the Act. Often larger nonprofits, including those that only operate in one State, will use this structure. Some legislation requires this structure for certain types of organisations (e.g. registered housing and aged care providers). A company limited by guarantee is also suitable for a wholly owned subsidiary organisation, as it can be set up with just one member.
Comment:	Companies limited by guarantee can be more costly to establish than incorporated associations and generally have higher ongoing compliance costs because of the requirement for all of them to have audited accounts. The penalties for non-compliance with reporting requirements are higher than for incorporated associations and more strictly enforced.

Co-operative

Features	Brief description
Relevant laws:	<i>Co-operatives Act 1997</i> (Qld) <i>Co-operatives Regulations 1997</i> (Qld)
Jurisdiction:	A group incorporated under the <i>Co-operatives Act</i> can operate (that is, carry on its activities) in Queensland. However, there are also a number of ways that co-operatives can register to be recognised in other States and Territories.
Government regulator:	The body responsible for the registration and ongoing compliance monitoring is Registrar of Co-operatives at the Office of Fair Trading, Department of Employment, Economic Development and Innovation (DEEDI), which is a part of the State Government of Queensland.
Required abbreviation:	Must include the word 'Co-operative' in its name and the word 'Limited' or 'Ltd' at the end of its name.
Number:	In Queensland - approximately 900 co-operatives.
Description:	A co-operative is an organisation that is concerned with providing for the needs of its members. The co-operative structure is based on certain co-operative values, including self-help, self-responsibility, democracy, equality, equity and solidarity. There are both trading and non-trading co-operative structures. Only a co-operative which has rules to prevent surpluses or profits from being distributed to members is a suitable as a nonprofit structure.
Most commonly used for:	Co-operatives are generally set up for the mutual benefit of members. They can be a suitable nonprofit structure for providing community services to its members.
Not suitable for:	Co-operatives are run according to co-operative principles (one member one vote) and may not be suitable for organisations that are larger (difficult to get a quorum at meetings) or want to have non-voting members.

For more detail on how to register a Co-operative in Queensland go to <http://www.fairtrading.qld.gov.au/register-cooperative.htm>

An indigenous corporation

Features	Brief description
Relevant laws:	<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth) (began on 1 July 2007, replacing the <i>Aboriginal Councils and Associations Act 1976</i>)
Jurisdiction:	Can operate (carry on activities) anywhere in Australia.
Government regulator:	The body responsible for the registration and ongoing compliance monitoring is the Office of the Registrar of Indigenous Corporations (ORIC).
Required abbreviation:	‘Aboriginal Corporation’ (or a number of other allowable variations)
Number:	In Australia - approximately 2,600 indigenous corporations.
Description:	<p>The structure of an indigenous corporation is somewhat similar to a company limited by guarantee, although ORIC has some additional powers to those of the Australian Securities and Investments Commission, including power to call meetings of members and appoint special administrators.</p> <p>Indigenous corporations can, but do not have to be, ‘nonprofit’. Indigenous corporations which want to be nonprofit have to have a ‘rule book’ which prevents surpluses or profits from being distributed to members.</p> <p>Only Aboriginal and Torres Strait Islander organisations can incorporate using this structure.</p>
Most suitable (or required) for:	The indigenous corporation is specifically designed to meet the needs of Aboriginal and Torres Strait Islander groups, and takes into account indigenous customs and traditions. Corporations holding or managing native title under the <i>Native Title Act 1993</i> and the <i>Native Title (Prescribed Bodies Corporate) Regulations 1999</i> must incorporate under this Act.
Not suitable for:	Non-Aboriginal and Torres Strait Islander groups.

For more detail on how to set up an indigenous corporation go to details go to: [Office of the Registrar of Indigenous Corporations \(ORIC\)](#)

At a quick glance

	Incorporated Association	Co-operative Society	Section 150 Company
Basic Cost of Incorporation	\$120.45* *As at Oct 2010	\$283.25(non-trading coop); \$695.25(trading coop)* • as at Oct 2010	\$340.00* *as at Oct 2010
Number of Officers	Minimum of 3	Minimum of 3 but no stipulation in Act	Minimum of 3
Members	Minimum of 7	Minimum of 5 members	Minimum of 1 member
Age restrictions	Management committee must be adults	Directors must be over 18 years	Directors must be between 18 and 72 years
Registered office	No, but a nominated Qld. address for service of documents is required	Notice of registered office required	Notice of current address must be filed and the office must be open to the public at least 3 hours a day
Registers required	Register of members and assets	Members, directors and shares and loans, securities	Members, directors, secretaries and managers
Annual financial report	Submit to AGM and lodge within 1 month. Fee \$42.20* • as at Oct 2010	Lodge annual return and accounts. No fee if on time	Submit to AGM and lodge within 1 month. Fee \$41.00* • as at Oct 2010
Auditor	Required if over \$100,000 total revenue or assets	Required	Required
Insurance	Compulsory if own or lease land	None	Not compulsory
Reservation of name	Not required	Not required	Required on application
Administrative discretion as to incorporation	Yes	Yes	Yes
Eligibility for incorporation	An association formed for any lawful purpose but not for the purpose	Trading or Nontrading with or without shares	A public company limited by guarantee which is formed for purposes beneficial

	of financial gain for its members		to the community and prohibits payment of dividends to its members
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1.1 OK, so what next?

Having read the brief profiles, you might already have an idea of which structure would work well for your group.

You will note that two of the above structures – co-operatives and indigenous companies - are quite specialised. If your group would like to set up as one of these legal structures we have provided links to websites with further information about these click onto the links underneath the information table above.

For most nonprofit groups wanting to incorporate, the main decision is whether to choose to be an incorporated association or a company limited by guarantee. This is a detailed issue and different lawyers have different views. What is best will depend on the particular circumstances and future plans of your group.

For further information see related Fact sheets.

Please remember this is guide only and it is highly recommended you seek legal advice.

Seeking Legal Advice

The best way to find a solicitor if your group does not already have one is to seek the opinion of other associations that have recently incorporated in your area. They will soon tell you if they were satisfied with the work done by their solicitor. Otherwise the Queensland Law Society Incorporated can provide a referral to a solicitor in your area.

Unless the solicitor is particularly sympathetic to your cause, your association will have to pay fees for the time taken by the solicitor.

FACT SHEET 5

Incorporated association or a company limited by guarantee?

Overview

The aim of this fact sheet is to help Queensland nonprofit groups understand if an incorporated association or a company limited by guarantee is likely to be the best incorporated body for them. These are not the only forms of incorporation available for not-for-profit groups. Please read the related fact sheet: *Which incorporated legal structure should we choose?* for a summary of legal structure options for not-for-profit groups. However, for many not-for-profit groups the choice is between incorporating as an association or as a company limited by guarantee.

Deciding on the most appropriate legal structure is a very important issue and your group should seek legal advice about its specific circumstances. This fact sheet provides a general overview of the law and will help you understand the issues you may need to discuss with a lawyer or adviser.

Introduction

An incorporated association is a type of incorporated legal structure made under the Queensland *Associations Incorporation Act 1981* (Qld). A company limited by guarantee is another type of incorporated legal structure made under the Commonwealth *Corporations Act 2001* (Cth). Both are suitable legal structures for not-for-profit groups.

While there is debate among lawyers about the importance of some of these issues, we think there are three main overall issues to consider when deciding whether an incorporated association or a company limited by guarantee would be the best structure for your not-for-profit organisation:

- ▶ Where will the group operate or carry out its objects or activities?
- ▶ Does the group have access to expertise for ongoing compliance with relevant laws?
- ▶ Will the group have money to pay initial and ongoing fees, plus meet compliance costs?

Each of these factors will be explained in more detail below. There are also a number of other factors and differences between the two structures which, depending on the circumstances of your group or its aims and activities, may be important for your particular group's decision.

Issue 1: Where will the group ‘operate’ or ‘carry out activities’?

It is important to think about where your group plans to operate, both when it starts and in the future.

(a) Where can a company limited by guarantee operate?

A company limited by guarantee is incorporated under the Commonwealth *Corporations Act* and can, by registering once, carry out its activities anywhere in Australia.

(b) Where can a Queensland association operate?

The law relating to incorporated associations is State-based law and each State and Territory in Australia has its own laws about the incorporation of associations.

A group incorporated as an association under the *Queensland Associations Incorporation Act 1981* can operate anywhere in Queensland.

If a Queensland incorporated association wants to operate outside Queensland, it will need to take certain further steps to ‘register’ for this purpose (that is, in addition to registering under the *Queensland Associations Incorporation Act*).

The law is not completely clear about what constitutes ‘operating’ in another State. It seems clear that holding one-off or occasional activities in another State (such as holding a conference) would not count as ‘operating’, but carrying on more regular or substantial activities might.

If your group incorporates as an association in Queensland, but wants to operate (undertake more than one-off or occasional activities) outside Queensland, there are three options available to enable it to do so legally. We mention each of them in brief below, but if this is relevant to your organisation you should seek legal advice about which option is most suitable for the group.

(i) Option 1: register the under the Corporations Act

Queensland incorporated associations can register with Australian Securities and Investments Commission (ASIC) as a ‘Registered Australian Body’.

Under this option, your incorporated association is ‘recognised’ by the Commonwealth government and can therefore operate in any State or Territory in Australia.

Once registered in this way you must keep information about office holders and the organisation’s registered office updated with ASIC as well as with the Office of Fair Trading, Queensland. The organisation will be issued with an ARBN (Australian Registered Body Number) which must be displayed after its name and certain other details on all its public documents – eg. Helping People Inc Limited liability (Qld) A1234567A, ARBN 123 456 789. The office holders will also need to understand and comply with the provisions of the *Corporations Act* in respect of directors’ duties (including the insolvent trading provisions) which impose quite significant penalties for breaches.

(ii) Option 2: convert to a company limited by guarantee structure

At any time, your group can ‘convert’ or ‘migrate’ from an incorporated association into a company limited by guarantee.

Although this option is available, it has some legal and administrative requirements and can be costly. Transferring from an incorporated association to a company does not affect the identity of the organisation, and any contracts or agreements that the association had (including employment contracts) will continue to have effect after the transfer. However, the Australian Taxation Office will require the company to re-apply for tax and other concessions it may have received as an incorporated association. If the organisation’s objects and purposes (as stated in the company’s constitution) have not changed from those stated in the association’s rules, this change in legal structure should not, of itself, change the organisation’s eligibility for the concessions.

(iii) Option 3: incorporate separately as an association under the equivalent association legislation in each State or Territory in which it operates

Your group can set up separate incorporated associations in each State or Territory it wishes to operate in.

This may be appropriate if there are distinct groups involved in each State and Territory, but for one group this can be very difficult to administer (especially if there are more than two separate associations required). Each incorporated association will be a separate legal entity and will need to comply with the requirements of that State or Territory’s legislation (including a separate committee of management, finances, reporting etc.). This can be difficult to manage and you may end up having to comply with 8 different State and Territory laws and report to 8 different regulators!

(c) The highlighted box on the next page may help to summarise the ‘location of activities’ issue for your group.

(a) Summary Issue 1: Where will the group operate or carry out its activities?

 Our group will operate solely in Queensland.

You can operate in Queensland as either an incorporated association or a company limited by guarantee. In general, if your group only plans to operate locally then, subject to the other factors discussed in this fact sheet, an incorporated association may be the most appropriate structure. This is often so for groups which are likely to remain fairly small as the ongoing costs can be less (eg. there is no requirement under the Queensland *Associations Incorporation Act* for an annual audit of the organisation's accounts).

 Our group will initially operate in Queensland – whether we expand interstate will depend on how we go!

It may be advisable to plan for success – if your group plans to expand its operations interstate or nationally (even if it is in five to ten years time) it could be worth starting out as a company limited by guarantee. To do so, your group will need to have the capacity to comply with the requirements of the *Corporations Act*. However, if this is possible it may save your group the potential legal difficulties and time required to transfer to a new legal structure.

Alternatively, if your group will initially operate only in Queensland, has limited funding and resources and does not think it can comply with the requirements of the *Corporations Act* yet, it may be more realistic to initially incorporate as an association. If, a few years down the track, your incorporated association has more funding and wants to expand to operate nationally, your group can register with ASIC as a Registered Australian Body (see Option 1 set out above) or convert to a company limited by guarantee (see Option 2 set out above). Please note that both of these options have associated costs and your group may require legal assistance.

 Our group will operate nationally

If your group intends to operate nationally (or in several States), a company limited by guarantee is likely to be the best option. This is because as a company you can operate nationally and only have to comply with one set of laws (ie. the *Corporations Act*).

 Our group will operate / carry out activities overseas

You should seek legal advice if your group intends to operate overseas. In particular you should seek advice about the laws that regulate Australian organisations that operate overseas and the laws of the country your group intends to work in.

Issue 2: What expertise for ongoing compliance does the group have?

Whether your group decides to establish as an incorporated association or a company limited by guarantee, the people running the organisation will need to take the time to understand the compliance requirements for each regime. There is a difference in the amount of time and expertise that is required to understand and comply with the laws that govern incorporated associations and those that govern companies.

Generally speaking, the regime for incorporated associations under the Queensland *Associations Incorporation Act* is simpler and more straightforward than the regime for companies under the Commonwealth *Corporations Act*.

Queensland's *Associations Incorporation Act* was specifically designed to provide a simple and inexpensive means of incorporating not-for-profit groups. It is likely that, with help from resources that explain the *Associations Incorporation Act* (ideally supported by a good operations manual), most people would be able to assist in the running of an effective association without specialist skills or training.

In contrast, the *Corporations Act* is a much more complex, lengthy piece of legislation that governs both for-profit companies, as well as not-for-profit companies limited by guarantee.

Because the penalties ('late fees') for companies limited by guarantee are high (see further below for more about fees), it is crucial that a group which is going to incorporate as a company limited by guarantee understand and comply with the law and the timeframes for lodging various documents with ASIC.

Some people suggest that a group wanting to incorporate as a company limited by guarantee needs to have an experienced company secretary. At a minimum, your group will need help from a person who has a good understanding of running a company structure, or access to professional legal or accounting advice. There are some basic fact sheets and resources available on the ASIC website at <http://www.asic.gov.au>

Issue 3: Will the organisation have the money to pay fees?

The amount of money your group has, in order to pay both the initial and ongoing fees, may be a factor in determining whether an association or company is the best structure for your group. Your group will need to be realistic about the resources it has (or is going to have), and how organised it is going to be in respect of keeping information up-to-date and paying fees on time.

In general, incorporating as a company limited by guarantee is more expensive than as an association. However this statement requires some clarification.

(a) Initial application fee

The initial application fee for incorporation as a company is more expensive (see table on following page for fee comparison). However, there are significant reductions in initial fees for some types of not-for-profit companies which meet the requirements of a 'special purpose company'.

(b) Audited accounts

Recent changes to the Corporations Act now means that small companies that is those which have less than \$250,000 annual revenue and do not have deductible gift recipient (DGR) status, no longer have to have financial statements audited.

For companies with less than \$1million annual revenue and/or DGR status financial statements can be reviewed rather than audited and for companies with annual revenue of \$1million or more with or without DGR status audited financial statements are required.

For Queensland associations, only 'prescribed' associations – with current assets or total revenue of more than \$100,000 – are required to have audited accounts. The range of people qualified under the *Queensland Associations Incorporation Act* to conduct such an audit is broader than for a company limited by guarantee (you may need to consider this in some country areas as the peak accounting bodies report there is a shortage of registered company auditors in some of these areas).

Also, remember that associations (even those which are not 'prescribed' under the Act) may be required to have audited accounts because of another requirement (e.g. in a funding agreement with government, or because the members/committee of management believe it is good practice).

As an independent audit may cost between \$2,000 and \$20,000+ depending on the size of your group, the requirement for audited accounts needs to be considered carefully.

(c) Penalties and late fees

The 'late fees' for not complying with requirements (to lodge documents or pay fees etc.) are higher for a company than for an association.

ASIC, the regulator of companies, imposes penalties for late reporting and is rigorous in its collection of late fees and rarely waives them. If your group is late lodging required documents, ASIC late fees can quickly accumulate (\$270 per month) and can be crippling. To date, the Office of Fair Trading (the regulator of incorporated associations) has lesser penalty fees.

A comparison of the main fees payable by each structure is set out on the next page. Fees listed are for the 2010/2011 year and are subject to indexation.

(i) 2010/2011 incorporation and ongoing fees

Type of fee	Queensland incorporated association	Commonwealth company limited by guarantee
Initial application for incorporation	\$120.45* *As at Oct 2010	\$340* *As at Oct 2010
Requirement for audited financial statement (approx. \$2,000 to \$20,000+ per year)	None – unless the association has current assets or revenue of more than \$100,000, owns or leases land or is required to do so by other legislation	For small companies which have less than \$250000 annual revenue and do not have deductible gift recipient (DGR) status no audit is required. For companies with less than \$1million annual revenue and/or DGR status financial statements can be reviewed rather than audited and for companies with annual revenue of \$1million or more with or without DGR status audited financial
Annual fee when lodging financial statement	\$42.20	\$1,029; or \$41 (approx.) for ‘special purpose companies’ which are formed for ‘charitable purposes’, have non-profit and non-distribution clauses in their constitution and certain rules relating to directors.
Late fees when lodging annual statement	None	\$67 first month \$278 for each subsequent month
Lodge details of changes to information (e.g. address, names of officers)	None	None (but note late fees below)
Failure to lodge changes of details within required period (i.e. address, names of officers)	None	\$67.00 first month late \$278.00 for each subsequent month

Other factors for your group to consider

The issues discussed above (‘where’ your group is going to operate; the skills or expertise available to your group; its financial capacity; and whether it will undertake substantial trading activities with the public) are four of the main factors for groups to consider when choosing the right legal structure.

However, there are also some other potentially important factors that may impact on your group's decision whether to incorporate as an association or company. The table below lists a number of factors which may be relevant, and in some instance possibly of great importance, to your group's aims, activities or circumstances.

Feature	Brief description
Speed of incorporation	<p>In general, ASIC often approves an application for incorporation of a company within 24-48 hours of paperwork being filed.</p> <p>In contrast, the Office of Trading can take up to two months to approve an application for incorporation of an association, particularly where the organisation submits its own rules, rather than using the Office of Fair Trading model rules.</p>
Flexibility of rules or constitution	<p>The Queensland <i>Associations Incorporation Act</i> prescribes many different topics that associations must have in their rules and is quite rigorous when looking at rules submitted by newly incorporating associations. Changes to the rules do not take effect until approved by the Office of Fair Trading.</p> <p>In contrast the <i>Corporations Act</i> provides for much more flexibility in a company's constitution and ASIC is far less likely to reject a proposed constitution. Subsequent changes to the constitution can take effect from the date passed by the members.</p>
Directors duties	<p>The duties and liability of board members, and the fines and penalties imposed, are potentially more onerous under the <i>Corporations Act</i> than for committee of management and office bearers of an association under the <i>Associations Incorporation Act</i>. But remember the common law (ie. judge-made) duties and liabilities of these office bearers are probably the same.</p>
Number of members	<p>Groups wanting to incorporate as a company limited by guarantee only need to have one member. This may suit people wanting to set up a not-for-profit organisation where they retain a high degree of control or, where the organisation is to be a subsidiary of another organisation.</p> <p>In contrast, Queensland incorporated associations are required by law to have a minimum of seven members. In general, members will have voting rights and be able to call meetings and exercise some control in the organisation (for example, to remove committee of management members).</p>
Rights of members	<p>The laws that apply to (public) companies require that members of the organisation be allowed to appoint a member or non-member as a proxy (a person to vote at meetings on their behalf). Also a small percentage of members are able to force a members meeting to be called.</p> <p>There are no similar mandatory requirements for Queensland incorporated associations. For associations, the rights of members to vote and call meetings is generally decided by the group and written into the rules of the association.</p>
Availability of information about	<p>In a company, the names, date and place of birth of the directors need to be provided to ASIC and these details are available to the public (for a small</p>

Feature	Brief description
the organisation to the public	<p>fee). Further, a company is required to keep a register containing the details of members of the organisation, and is required to make this available to all members for free, and to the public for a fee.</p> <p>For an incorporated association, only the details of the Public Officer need to be provided to the Office of Fair Trading (which is then available to the public for a fee). An association must keep a register of members' details. However access to the register of members is a matter for the members of the organisation to agree on in the rules.</p>
Flexibility for amalgamation	<p>The Queensland <i>Associations Incorporation Act</i> makes provision for one incorporated association to amalgamate with another, with all of the assets, liabilities and staff automatically transferred across to the amalgamated association without the need for winding up or termination of employment.</p> <p>The <i>Corporations Act</i> does not have a similar provision for amalgamation and therefore usually requires that either one or both companies must end their existence (with the possibility of termination of employment etc.) and then incorporate a new company.</p>

Conclusion

As highlighted in this fact sheet, a number of factors will influence a group's decision about whether to become an incorporated association or a company limited by guarantee. There is no quick and easy answer for any 'kind' of group. In the end, it may be a process of weighing the various factors to determine which structure best suits the activities, circumstances and resources of your particular group.

If in doubt, we urge you to seek legal advice from an advisor with experience of not-for-profit groups. Spending some time (and, if necessary, money) getting professional advice on legal structure issues before you incorporate is a worthwhile investment in the long-term viability of your newly-forming organisation. Choosing the right legal structure can save your group considerable time, money and possibly legal and administrative headaches further down the track!

For more detail on setting up an incorporated association go to Fact Sheet 6

For more detail on setting up a public company limited by guarantee go to Fact sheet 7

ESTABLISHING A COMMUNITY ORGANISATION

FACT SHEET 6

SETTING UP AN INCORPORATED ASSOCIATION

IN QUEENSLAND

The information on this page is for people involved in a Queensland-based community organisation that want to become an incorporated association (see Fact sheet 2 *Should we incorporate?*).

In Queensland, the process of setting up an incorporated association is set out in the *Associations Incorporation Act 1981* (Qld). This Act also sets out what your organisation must do to maintain its status as an incorporated organisation. To view the Act go to:

<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/A/AssocIncorpA81.pdf>

The government body responsible for administering the *Associations Incorporation Act* is the Office of Fair Trading Queensland. To become an incorporated association you must apply to the 'Registrar of Incorporated Associations' at Fair Trading at <http://www.fairtrading.qld.gov.au>

While setting up an incorporated association is relatively simple process, there are a few important decisions that your organisation will need to make (and may need to get advice about). In particular, the wording of your organisation's 'objectives' and 'rules' needs to be chosen carefully so that your organisation can apply for tax concessions, fundraising registration and other benefits in the future. It is worth getting these documents right at the start, as it can be time-consuming and difficult to change them later on.

Steps to incorporate - as an incorporated association

Step 1: Can your association legally incorporate?

- i) To incorporate an association in Queensland, you must be a:
 - Already an association with at least seven members and three committee members
 - nonprofit association.
 - be formed for a lawful purpose
- ii) The following organisations cannot incorporate under the *Associations Incorporation Act 1981* (Qld):
 - a corporation;

- a partnership under the *Partnership Act* 1891;
- an industrial organisation under the *Industrial Relations Act* 1999;
- a school council or parents and citizens association formed under the *Education (General Provisions) Act* 2006;
- a body which raises money by subscription and loans that money to the members;
- an association which is under a special Act of Parliament; and
- an association whose principal purpose is to hold property in which the association's members may divide amongst themselves, dispose of their interest, or distribute income or the use of the property among members or nominees of the members.

An exception to these general prohibitions gives the Registrar of the Office of Fair Trading a discretion whether to allow incorporation of an association in situations where the association is holding property to meet the medical costs of an individual who is suffering a serious medical condition or injury. (see section 5 (2) of the *Associations Incorporation Act* 1981 (Qld)).

Step 2: Hold a general meeting

To incorporate, an association needs to convene a general meeting. At this meeting, several decisions must be made.

An association must:

- pass a motion to incorporate by resolution
- choose an appropriate name
- adopt a set of operating rules
- elect a President, Secretary and Treasurer (two different people must hold the President and Treasurer positions)

A. Decision to incorporate

a. For an established association

If your association is already established then you would hold a general meeting in accordance with the rules and give notice that a proposed special resolution to incorporate will be moved at that meeting. An association must pass a motion to incorporate by resolution and the resolution needs a three-quarters majority vote to pass.

What needs to be in the special notice of this meeting is not set out in the Act but should include:

- the time and place of the meeting; and
- the proposed resolution to incorporate *eg.*

That the ABC club incorporate as an incorporated association under the provisions of the Associations Incorporation Act 1981 (Qld); and

- a proposed resolution to either adopt the model rules as set out in the Associations Incorporation Act 1981 (Qld) or adoption of the associations own rules for the purposes of incorporation. The rules need to be attached to the resolution; and

- details of any other business for the meeting such as the preferred name of the association and appointment of a person to prepare the application to incorporate and selection of interim officers.

For an example of a meeting notices and agenda see

<https://wiki.qut.edu.au/display/CPNS/Incorporated+Associations+Manual>

- b. Not yet an association but are planning an inaugural meeting and wish to incorporate*

Refer to Fact Sheet 1 *Getting Started*

B. The name of the association

Incorporated association names must:

- contain only English characters
- not be easily mistaken for the name of another incorporated association, business name, cooperative name or identical to an Australian organisation name
- have the word 'Incorporated' or the abbreviation 'Inc.' at the end of the name.

For restrictions on the use of certain names, see the *Associations Incorporation Act 1981* and the *Associations Incorporation Regulation 1999*. You can also search the Australian Securities and Investments Commission's National Names Index at www2.search.asic.gov.au.

Once your organisation is incorporated, you will need to use the word 'Incorporated' or 'Inc.' after your name. This indicates to other organisations and businesses that your organisation is incorporated and has limited liability. The Act requires that you use the full name on all business documents. There is a penalty if you don't use Incorporated or Inc after your name unless you have applied for and received an exemption not to use Incorporated. The Act provides that

an association may, by resolution of its members, decide to apply to the registrar for exemption from having to use the word Incorporated or Inc after its name either —

- (a) at the time of incorporation of the association; or
- (b) if it is an incorporated association—at another time.

The application must be in the approved form and be accompanied by the information, documents and fees. For a copy of the form go to:

http://www.fairtrading.qld.gov.au/Forms/Exemption_naming_form.pdf

After considering the application, the registrar may grant or refuse the application.

C. Rules of the Association

All incorporated associations must have a set of operating rules. These rules are sometimes known as the incorporated association's constitution. This written set of rules outlines the incorporated association's operations, its members' rights, how the management committee works and how meetings will be run.

You may use either the model rules or you can write your own rules.

Model rules

The model rules are a standard set of rules that an incorporated association can use instead of writing their own. The model rules are suitable for many associations but careful consideration should be given to whether any amendments need to be made to meet the needs of your association. This would avoid having to amend the rules later on.

- [Model rules \(PDF, 85 KB\)](#)
- [Model rules \(DOC, 99 KB\)](#)

You may wish to check the following rules to see if you are happy with the terms set out:

- Clause 38(2) - Each member present and eligible to vote is entitled to 1 vote only and, if the votes are equal, the chairperson has a casting vote as well as a primary vote. Do you wish all types of members to have a vote?
- Clause 18 - The management committee of the association consists of a president, treasurer, and any other members the association members elect at a general meeting. Are the terms 'president'; 'secretary and 'treasurer' appropriate for your association?
- Clause 18 (3) At each annual general meeting of the association, the members of the management committee must retire from office, but are eligible, on nomination, for re-election. Do you wish to elect a new committee each year or perhaps it would better suit your association to have a rotating committee which allows for two or three year terms?
- Clause 22 (3) requires members' approval to borrow or invest moneys.
- Clauses 24 and 36 are the quorum provisions – check to see if your association is comfortable with these provisions.
- Clause 37 – is the rule in relation to proxies – are you comfortable with this rule?
- Clause 49 – provides for the distribution of surplus assets on winding up – are you comfortable with this rule?

Also if you will be applying for grants or funding from government or other funding bodies they may have stipulations relating to an association's rules/constitution.

If you use the model rules, the only details you can change are:

- the name of the incorporated association
- the name of the unincorporated association
- the objects of the incorporated association
- the financial year of the incorporated association

- the classes of membership.

Own rules

If you have your own set of rules prior and wish to keep these rules then check to see if they comply with the requirements of the *Associations Incorporation Act*. The requirements are set out in Schedule 3 to the regulations – which can be found at <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/A/AssocIncorpR99.pdf>

If your own rules do not cover all matters as required by the Act or as set out in the model rules then the Act implies there is an omission and the model rule will be applied. If you do not intend for a rule to apply e.g. the rule in respect of proxies then it must be expressly stated that proxy voting is not permitted. The Act also provides that if a rule of an association is inconsistent with the Act then the Act prevails to the extent of the inconsistency.

It would be best to get legal advice on the drafting of specific rules to ensure that they meet the requirements of the Act. Care also should be taken when drafting rules as your appointed person needs to sign a Statutory Declaration that the rules comply with the Act and regulations.

If your association plans to use the model rules, you must complete Appendix B on the application for incorporation. If your association writes its own rules, you must complete Appendix A.

The rules become effective once your association is incorporated.

[Also note for future reference :- Changes to rules - Your incorporated association can apply to register amendments to its rules, or adopt the latest version of the model rules, at any time. A special resolution at a general meeting must be passed. Within three months of passing the special resolution, the Secretary must complete and lodge a change of rules form. This form is available from www.fairtrading.qld.gov.au. Lodgement details and fees are included on the form.]

D. Elect a management committee

In accordance with the rules, your association should elect its committee members. The management committee will usually consist of, at minimum, a President, Treasurer and Secretary.

Your rules must set out provisions for electing the management committee including:

- how committee members are elected and appointed

- terms of office of committee members
- grounds or reasons for which a committee position may become vacant
- filling casual vacancies occurring on the committee

E. Appointing a person to lodge the applications

After passing the incorporation resolutions, the association must, by resolution of its members, appoint an individual (the ***appointed person***) to prepare and make an application for the association to be incorporated. This only needs to be by a simple majority vote. The person appointed has the power to do anything necessary or desirable to obtain the incorporation of the association.

Step 3 Lodging the Application

The Application needs to be lodged by an appointed person who will be the contact person for the Office of Fair Trading.

The form is completed and then lodged with the Office of Fair Trading together with accompanying documents and the set fee. The form is available online at

[Association Incorporation Form 1 - Application for incorporation of an association \(PDF, 337 KB\)](#)

The fee at present in 2010 is \$120.45 but this is subject to CPI increases.

You will also need to have an address in Queensland where documents can be personally served.

The normal processing time for an application is 3-4 weeks.

Step 5 Tasks immediately after incorporation

Common Seal

Your association must have a common seal made. A common seal is a rubber stamp used to legally stamp documents signed by the officers of the association. The words ‘common seal’ and your associations full name as it appears on the certificate of incorporation must be on the seal This includes the word Incorporated or the acceptable abbreviation Inc.

Bank Account

You will need to set up a new bank account in the name of the incorporated association as this is a new legal entity. The bank may wish to sight the original certificate of incorporation and a copy of your rules. You will need to appoint two signatories to the account. All incorporated association cheques must feature two signatures with at least one being an office bearer.

If operating outside of Queensland

If the association is going to operate outside of Queensland you will also need to register as an Australian body . Details about registering as an Australian body can be found on the Australian Securities and Investments Commission (ASIC) website at <http://www.asic.gov.au>

Public Liability Insurance

If your association owns or leases land or holds land in trust then it is compulsory to have public liability insurance. In all other cases the management committee has to make an assessment and decide how much insurance it needs, if any.

Transfer of motor vehicle registration and property

If the unincorporated association held property (which would have been on trust) prior to incorporation then this should be transferred to the incorporated association. For information and forms to transfer property go to: <http://www.derm.qld.gov.au>

Motor vehicles owned by the previous group should have their registration transferred to the incorporated association.

Put record keeping systems to be put in place. If you do not already have record keeping systems in place now is the time to do it. For information about putting in place records systems go to; <https://wiki.qut.edu.au/display/CPNS/Keeping+Records>

Other tasks:

- Appoint an auditor if your association is required to;
- Advise the debtors and creditors of the unincorporated association of the association's incorporation
- Record dates of membership for the purposes of Rule 6 of the Model Rules.

ESTABLISHING A COMMUNITY ORGANISATION

FACT SHEET 7

Company limited by guarantee

Although we often think of a ‘company’ as being a business, a company limited by guarantee is a special form of public company that can be used by nonprofit groups. It is a legal structure created by Commonwealth law (the *Corporations Act 2001*), and is available for use by groups throughout Australia. It uses a company structure with ‘directors’, but has ‘members’ instead of ‘shareholders’. Some of the provisions of the *Corporations Act 2001* (e.g. directors’ duties and penalties) that apply to ‘for-profit’ companies (i.e. businesses) also apply to companies limited by guarantee.

The government body responsible for regulating companies limited by guarantee is the Australian Securities and Investments Commission (ASIC). You can go to their website at: <http://www.asic.gov.au>

This following information is intended as a guide only, and is not legal advice. We acknowledge the work of PILCH which is a Victorian based nonprofit that promotes law in the public interest. PILCH through their website <http://www.pilchconnect.org.au> assist nonprofits with information sheets on legal matters and we acknowledge their work and information in compiling this fact sheet.

If you or your organisation has a specific legal issue, you should seek legal advice before making a decision about what to do.

This fact sheet looks at:

- What is a company limited by guarantee?
- What are companies limited by guarantee most commonly used for?
- How do we set up a company limited by guarantee?
- Related Resources

What is a company limited by guarantee?

A company limited by guarantee is a public company which is formed for purposes beneficial to the community and which prohibits payment of dividends to its members. See information on what is a special purpose company above.

A company limited by guarantee needs to comply with the laws in the *Corporations Act* that apply to public companies. Companies limited by guarantee must include the words 'Limited' or 'Ltd' after their name (unless they are eligible for an exemption from this requirement).

Limited by guarantee means that the members guarantee to pay a fixed but small amount of money in the event of the liquidation of the company. The members agree in writing (known as a 'guarantee') to pay a nominal amount (usually \$20 - \$100) to the property of the company. If the company is wound up, the liability of the members is limited to the nominal amount that they have guaranteed.

Advantages of a company limited by guarantee include:

- creating a legal entity separate from its members.
- all the other advantages of an incorporated association – see Fact sheet 6; and
- the ability to carry-on business outside of Queensland as a company's registration is recognised Australia-wide.

Disadvantages of a company limited by guarantee include:

- it's more expensive to register than an incorporated association
- compliance with the requirements of the *Corporations Act* is more expensive and onerous than compliance with the *Associations Act*.

What are companies limited by guarantee most commonly used for?

A company limited by guarantee may be a suitable structure for nonprofit organisations wanting to operate nationally or in more than one State or Territory and which have the resources to comply with the Act. Often larger nonprofits, including those that only operate in one State, will use this structure. Some legislation requires this structure for certain types of organisations (eg. registered housing and aged care providers).

A company limited by guarantee is also suitable for a wholly owned subsidiary organisation, as it can be set up with just one member.

How do we set up a company limited by guarantee?

Information about how to register a company can be found on the ASIC website

<http://www.asic.gov.au>

It is recommended that your organisation seek professional help from a lawyer, accountant, qualified company secretary or some other professional with experience setting up not-for-profit companies.

Initially, your organisation may also need someone with experience to advise you on the requirements for running a company limited by guarantee. This is not only because the law in this area is quite detailed, but also because the penalties that ASIC imposes for non-compliance with the law are quite significant.

It is worth getting some professional advice at the start, on issues such as:

- the drafting of a constitution with
 - an objects clause, non-profit and winding up clause and relevant funding clauses that will comply with the requirements for taxation and other concessions available to not-for-profit companies
 - provisions about the eligibility, election and removal of directors
 - provisions about voting rights and proxies
- Information and applicability of the Corporations Act provisions known as 'replaceable rules' which can be used to govern a company instead of a constitution. See ASIC fact sheet <http://www.asic.gov.au/asic/asic.nsf/byheadline/Constitution+and+Replaceable+Rules?opendocument#2>
- whether your company may be a special purpose company and under the Corporations (Review Fees) Regulations 2003 (Cth) eligible for reduced ASIC fees;
- whether your company is able to apply for an exemption from having to have the word 'Limited' in its name. (Note to apply for this exemption you must have a constitution)

What names can and can't be chosen

You can only choose a company name that is not already registered to a company or business. Also there is a list of words that you cannot use without special approval.

You can search the [National Names Index](http://www.search.asic.gov.au) at www.search.asic.gov.au This index lists all [Australian company and business names](#). You can also use our [Identical Names Check](#) facility to check whether your proposed name is identical to another name already registered. A search of company and business names can also be carried out at any ASIC Service Centre.

Certain words and phrases cannot be used in company names without the approval of a specified Minister or Government agency, for example words such as 'building society', 'trust', 'university', 'chamber of commerce' and 'chartered', as well as words suggesting a misleading connection with Government, the 'Royal Family' or an ex-servicemen's organisation. These restrictions make sure that a company's name does not mislead people about its activities. This list is in [Schedule 6 of the Corporation Regulations](#) .

ASIC may refuse to register certain names if they are offensive or suggestive of illegal activity.

You may also need to consider if your proposed name is similar or identical to any registered or pending trademarks. [Check the IP Australia website](#) to find out.

The [Australian Taxation Office](#) (ATO) has specific clauses which the constitution of a 'non-profit company' (generally public companies) must contain to be eligible for tax concessions.

The ATO can give you more details including examples of the clauses required.

Getting good professional advice at the outset could save your organisation a lot of time, cost, administrative headaches (and possible legal issues) further down the track.

Useful resources

Corporations Act 2001 (Cth)

[http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/CA1F0F9868473141CA256FB9002CA4B2/\\$file/Corps2001Vol1WD02.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/CA1F0F9868473141CA256FB9002CA4B2/$file/Corps2001Vol1WD02.pdf)

This is the legislation that governs the setting up and running of a company limited by guarantee (as well as other types of companies)

Corporations Regulations (various)

[http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrumentCompilation1.nsf/0/A00D13A25CEB0177CA257185000447B7/\\$file/Corporations+2001Vol5.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrumentCompilation1.nsf/0/A00D13A25CEB0177CA257185000447B7/$file/Corporations+2001Vol5.pdf)

There are a number of Corporations Regulations covering various topics- scroll down this page to 'Corporations' for links to each set of Regulations

Related links - the Australian Securities and Investments Commission (ASIC) information

- ASIC Homepage <http://www.asic.gov.au>

This is a link to ASIC's homepage - information about setting up can be found in the 'For Companies' section although much of this information has been written for different types of companies (like private, for profit companies).

- Registering not-for-profit and charitable organisations

This ASIC overview page provides an outline of the requirements for setting up a company limited by guarantee.

<http://www.asic.gov.au/asic/asic.nsf/byheadline/Registering+not-for-profit+or+charitable+organisations?openDocument>

- Special purpose companies

This ASIC overview page provides an outline of the requirements for setting up a company limited by guarantee as a special purpose company (to get reduced fees).

<http://www.asic.gov.au/asic/asic.nsf/byheadline/Special+purpose+companies?openDocument>

- Registrable Australian Bodies

This ASIC page provides basic information on what is required to register an incorporated association under the Corporations Act.

<http://www.asic.gov.au/asic/asic.nsf/byheadline/Registrable+Australian+Bodies?openDocument>

- How to register a company

<http://www.asic.gov.au/asic/ASIC.NSF/byHeadline/Starting%20a%20company%20or%20business>

This ASIC page provides basic information on the process for registering a company. It is not specifically written for not-for-profit companies.

ESTABLISHING A COMMUNITY ORGANISATION

FACT SHEET 8

USEFUL RESOURCES.

When starting a business or service it is important to ensure you comply with all the state, federal and local government regulations and licensing requirements.

A number of online resources will help you start a community service organisation.

Legislation:

Queensland Associations Incorporation Act

- <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/A/AssocIncorpA81.pdf>

Queensland Associations Incorporation Regulations

- <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/A/AssocIncorpR99.pdf>

Queensland Model Rules for associations

- [Model rules \(PDF, 85 KB\)](#)

Queensland Co-operatives legislation

- <http://www.fairtrading.qld.gov.au/register-cooperative.htm>

Commonwealth Corporations Act

[http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/CA1F0F9868473141CA256FB9002CA4B2/\\$file/Corps2001Vol1WD02.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/CA1F0F9868473141CA256FB9002CA4B2/$file/Corps2001Vol1WD02.pdf)

Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act).

<http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/780CC6A6F0328BA7CA2577130008FED9?OpenDocument>

Government Offices

- *Fair Trading Queensland*
- [Incorporated Associations website \(Queensland Office of Fair Trading\)](#) provides information to support organisations incorporated under the *Associations Incorporations Act 1981*. This website also includes a simplified guide to Queensland's *Associations Incorporation Act 1981* and Associations Incorporation Regulation 1999.

Australian Securities and Investments Commission

- ASIC – Australian Securities and Investments Commission –
- <http://www.asic.gov.au> You can also search the Australian Securities and Investments Commission's National Names Index at www.search.asic.gov.au.

Registrar of Indigenous Corporations

- [Office of the Registrar of Indigenous Corporations \(ORIC\)](#) supports and regulates the corporations that are incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

A guide to the legislation that governs Aboriginal and Torres Strait Islander corporations. Published: updated February 2010

- ['Get in on the Act' booklet \[20 pages PDF 110Kb\]](#)

Australian Tax Office

- [Australian Taxation Office](#) offers non-profit organisations relevant GST and other tax information. A guide for nonprofits is also available at:
- http://www.ato.gov.au/content/downloads/Nat7967_3_2007.pdf


Information , articles and tips:

[Developing your Organisation](#) is an online wiki from QUT's Centre for Philanthropic and Non-profit Studies.

- [Developing your Board](#) is an online wiki from QUT's Centre for Philanthropic and Non-profit Studies.
- [Starting your business](#) is aimed at people starting a small business but much of its content also applies to non-profit organisations
- [Licences and regulations](#) provides links to information and forms for starting your organisation.

Caxton Street Legal Centre publishes an Incorporated Associations Manual which can be accessed on their website <http://www.caxton.org.au/publications.html>

Other websites helping community groups

- The Ourcommunity website covers all of Australia and has many features and helpful information and templates for nonprofits.
<http://www.ourcommunity.com.au>
- Helpful information is provided here – but be aware this has a NSW focus.
<http://www.communitybuilders.nsw.gov.au>
- Helpful information and checklists can be found at:
<http://www.pilch.org.au/gettingstarted>
but be aware this is predominately prepared for Victorian nonprofits.
- Federation for Community Development Learning (UK)
www.fcdl.org.uk 
- If you have any questions you can go to:
<http://www.nonprofitqanda.com.au/>