Incorporated association or company limited by guarantee? (QLD)

A comparison between the two most common legal structures for not-for-profit organisations in Queensland

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Contents

Introduction

Introduction

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The aim of this information sheet is to help Queensland not-for-profit groups decide whether an incorporated association or a company limited by guarantee is a more suitable incorporated structure for them.

Note – caution

On 16 June 2020 the Queensland parliament passed the *Associations Incorporation and Other Legislation Amendment Act 2019* (**Amendment Act**). The Amendment Act amends the *Associations Incorporation Act 1981* (**Act**) by (among other things):

- exempting associations registered with the Australian Charities and Not-for-Profits Commission (ACNC) from Queensland Government reporting requirements. (This means these associations will not have to submit annual financial reports to both a Commonwealth and state regulator)
- providing for use of communications technology in meetings
- allowing associations to voluntarily cancel their incorporation in certain circumstances
- clarifying the role of management committees and duties of committee members, and
- improving the internal governance of associations by providing that associations must follow a grievance procedure

The Queensland Government plans to implement these changes before the reporting deadlines for the 2020-21 reporting period. At 20 June 2020, regulations for the Amendment Act had not yet been published.

We are updating this fact sheet. In the meantime, if you are unsure about your association's position in Queensland, you may want to seek legal advice. Your association may be eligible for free legal advice through Justice Connect – contact us to find out.

While most Queensland not-for-profit groups choose between incorporating as an incorporated association or as a company limited by guarantee (**CLG**), these are not the only forms of incorporation available for not-for-profit groups. Please read the related Not-for-profit Law fact sheet: 'Choosing a legal structure', available on the Not-for-profit Law website (see the 'Getting Started' page).

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

Incorporated associations were originally designed to be low cost to register, and more simple to run than a CLG. Following changes to the laws for both incorporated associations and CLGs registered as charities, the arguments for choosing to incorporate as an association over a CLG are no longer as compelling.

For groups that are (or hope to be) registered as a charity, it is noteworthy that the primary regulator is the Australian Charities and Not-for-profits Commission (**ACNC**), whereas prior to the introduction of the ACNC, the primary regulator of all CLGs was the Australian Securities and Investments Commission (**ASIC**).

This guide addresses some key factors that groups should consider when deciding between incorporating as an incorporated association or a CLG. Once you have read the guide and familiarised yourself with your organisation's options, you should seek legal advice from an advisor with experience advising 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 legal and administrative headaches further down the track!

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

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When choosing between an incorporated association or CLG, it is important to think about where your group plans to operate, both when it starts and in the future.

Where can a Company Limited by Guarantee operate?

A CLG is incorporated under the Commonwealth Corporations Act and can carry out its activities anywhere in Australia.

Where can a Queensland incorporated association operate?

The law relating to incorporated associations is state-based, and each state and territory in Australia has its own laws. A group incorporated as an association under the Queensland AI Act can operate anywhere in Queensland. However, it cannot substantially operate in other states without taking further legal steps (discussed below).

Holding one-off or occasional activities in another state (such as a conference) would not count as 'operating', but carrying on more regular or substantial activities might.

If you incorporate as a Queensland incorporated association and want to legally operate in other states, you will need to consider the options summarised below. As appropriate, you should decide whether any of the options could work for your organisation, or whether you should incorporate as a CLG from the beginning.

Options for Queensland incorporated associations to operate outside of Queensland

If your group incorporates as a Queensland incorporated association, but wants to operate (undertake more than one-off or occasional activities) outside Queensland, there are two options available to enable it to do so legally. Both of these options may have costs involved and increased administration for your organisation. It is also possible for an incorporated association to convert to a CLG if necessary (discussed further below).

For more detailed descriptions of the processes described below, go to the Not-for-profit Law fact sheet, Changing Legal Structure', available on the Not-for-profit Law website (Changing or ending your organisation).

Option A – register the group as a Registered Australian Body (RAB) with ASIC

This is the option most commonly recommended (that is, rather than option B below or converting to a CLG). This will mean that your group will be regulated by ASIC as well as the Queensland Office of Fair Trading (**OFT**) and that extra forms will need to be prepared and lodged by your organisation each year and when certain changes occur. Your group must also display additional information along with its name. Groups that register as RABs that are also charities apply to ASIC to become a RAB but then report to the ACNC where they would otherwise report to ASIC (and continue to report to the OFT as usual).

Option B – set up separate incorporated associations in each state or territory you wish to operate in

This is sometimes known as a 'federated structure'. This may be appropriate for your group if there are distinct groups involved in each state and territory that address distinct state-specific issues, which can be very difficult to administer for a single group (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 having a separate committee of management, financial records and reporting, etc). In addition, any tax concessions enjoyed by one such separately incorporated association (eg. income tax exemption and deductible gift endorsement) cannot be transferred to or shared by any of the other sister/brother associations in another state. Instead, each association will need to seek and maintain its own tax concessions.

Caution

Incorporation in multiple states and territories can be difficult to manage and you may end up having to comply with eight different state and territory laws and report to eight different regulators!

Converting to a company limited by guarantee structure

If you incorporate as an incorporated association, and the circumstances of your organisation change (for example you expand from operating just in Queensland, to operating across Australia) your group can 'convert' or 'migrate' from an incorporated association to a CLG. If the group is an Indigenous organisation, it can transfer its registration to be an Aboriginal and Torres Strait Islander Corporation under the Commonwealth *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)*.

Converting from an incorporated association to a CLG does not affect the identity of the organisation. Any contracts or agreements that the association had will continue to have effect after the association's transfer to a company. However, there are significant costs and administrative processes involved in converting your organisation's incorporated structure, so this approach should be avoided if possible.

Related Not-for-profit Law resource

For more information, go to the Not-for-profit Law fact sheet, 'Changing Legal Structure', available on the Not-for-profit Law website (Changing or ending your organisation).

Issue 2: Will the organisation seek to become registered as a charity?

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If your organisation intends to register as a charity, or is already registered as a charity, this significantly affects the choice to be made about the best legal structure for your group.

After the ACNC's establishment in December 2012, charities that became registered with the ACNC that were incorporated associations, rather than CLGs, became subject to dual reporting requirements under the ACNC regime and the relevant State or Territory incorporated associations regime. This therefore increased the initial and ongoing regulatory burden associated with the incorporated association structure.

Unlike in some other states and territories, these dual reporting requirements have not been 'switched off' in Queensland for incorporated associations that register as charities. As a result, if your organisation is an incorporated association that is registered as a charity, it will need to report to the ACNC *and* continue to report to the OFT.

Tip

The ACNC has published a template constitution for charitable CLGs. To read the template see the ACNC website.

Aside from this dual reporting issue, the regulatory analysis about which structure best suits your group now depends significantly on whether it intends, after it is incorporated, to register as a charity or not.

This is because the main regulator for a CLG that registers with the ACNC as a charity will be, after the CLG's incorporation, the ACNC rather than ASIC (although applications for incorporation as a CLG and to deregister a CLG are still required to be made to ASIC, as are notifications regarding a change of name of the CLG and removal of the auditor).

Further, different and less complex laws apply to CLGs that are charities than to other CLGs. That is because when a CLG or other body corporate (such as a proprietary company limited by shares or RAB) becomes registered as a charity, certain Corporations Act requirements in relation to directors and members' meetings 'switch off' and are replaced with corresponding, but less onerous, requirements under the ACNC regime. A good example is the Governance Standards that apply to charities under the ACNC regime. These provide a more flexible framework around holding meetings, accountability to members and other matters. The Governance Standards:

- establish a minimum level of outcomes for the practices and procedures expected of charities that are registered with the ACNC, and
- are 'principles-based' in that they specify the outcome the registered charity should achieve, not the means of achieving it. Accordingly, the manner by which registered charities can comply with the Governance Standards will vary according to a charity's particular circumstances, such as its legal structure, size and geographical reach, sources of funding and existing governance systems and processes.

In addition, the Corporations Act requirements in relation to:

- directors and members ' meetings, and
- preparing financial and directors' reports and distributing those reports to members,

that apply to CLGs that are not registered charities are more complex and prescriptive.

The new landscape that applies to charities under the ACNC's regime means that for groups that intend to be registered charities, the CLG structure is often the simplest to administer, and an attractive structure choice.

Finally, the ACNC aims to take an educative regulatory approach, meaning it will use a range of measures to help organisations comply with their legal obligations, rather than taking a strict approach (as is generally taken by ASIC, which regularly issues fines for failing to meet reporting deadlines). The difference in the approaches to regulatory enforcement that are adopted by the ACNC and ASIC have therefore removed some of the concerns that unincorporated groups intending to register as charities had about having a stricter regulatory compliance burden if they chose to adopt a CLG structure rather than an incorporated association structure. As a result, the CLG option has become a more accessible option for those groups also intending to register as charities after their incorporation.

However, if your organisation incorporates as a CLG but is not a registered charity (or loses its charitable registration), its main regulator will be ASIC, and will therefore be subject to ASIC's more stringent regulatory approach, and the full suite of legal requirements that apply to CLGs under the Corporations Act. If your organisation incorporates as an incorporated association in Queensland but is not a registered charity (or loses its charitable registration), its main regulator will the OFT.

Issue 3: Will the organisation have capacity to pay regulatory fees?

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The amount of money your group has to pay, both in initial and ongoing fees, may be a factor in determining whether an incorporated association or CLG is the best structure for your group.

As already mentioned, registered charities that are incorporated as CLGs will largely report to the ACNC, not ASIC (although CLGs still incorporate with ASIC). Currently, the ACNC does not generally exercise its power to impose filing fees or to impose late fee penalties. However, this may change in the future and charities will be liable to pay a penalty for late lodgement of documents. In addition, in some circumstances, failing to lodge documents when required can be grounds for the ACNC to revoke a charity's registration.

Groups that do not intend to register as charities and so will have ASIC as their main regulator should be aware that, in general, ASIC charges higher fees to CLGs than the OFT charges incorporated associations, and your group will need to be realistic about the resources it has (or is going to have), and how diligent it is going to be about keeping information up to date and paying fees on time (to avoid late fees – which may be significant for CLGs).

Incorporated associations that are charities will continue to report to the OFT (and pay the required fees to the OFT) and must also report to the ACNC.

Initial application fee

The initial application fee for incorporation as a CLG is higher than for an incorporated association (see the incorporation and ongoing fees table below). However, the fees for not-for-profit CLGs that meet the requirements of a 'special purpose company' are lower than the fees for CLGs that do not.

Note for charities

Many charities that are CLGs will meet the definition of 'special purpose company' and access the lower incorporation fee and ongoing filing fees if:

- they are formed for charitable purposes and are registered under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**) as a charity, and
- their constitutions:
  - prohibit the CLG from making distributions to its members and paying fees to its directors, and
  - require the directors to approve all other payments the CLG makes to directors

Related resource

For more information about special purpose companies, go to ASIC's website.

Penalties and late fees

The 'late fees' for not complying with legal requirements (for example to lodge documents or pay fees) are higher for a CLG than for an incorporated association.

ASIC, the regulator of CLGs not registered with the ACNC as charities, imposes penalties for late reporting and is rigorous in its collection of late fees. If your group is late lodging documents, ASIC late fees can quickly accumulate. Late fees may be payable in some circumstances by incorporated associations to the OFT.

A comparison of the main fees payable by each structure is set out on the next page. Fees listed are for the 2017/2018 year and are indexed (go up) each year.

Note for charities

There are late fees for charities reporting to the ACNC so charities need to understand and meet the reporting and notification requirements of the ACNC. CLGs registered as charities will no longer undertake financial reporting to ASIC, and therefore the ASIC fees listed below do not apply.

Tip

Remember that some organisations may be required to have audited accounts because of another requirement (eg. because this is in a funding agreement with the government, or because the members or committee of management believe it is good practice) even though it is not required by the Corporations Act (for companies) or the AI Act (for associations) or the or the *Australian Charities and Not-for-profit Commission Act 2012* (Cth).

2018/2019 incorporation and ongoing fees

For fees for incorporated associations see The Office of Fair Trading's website and webpage on incorporated associations forms and fees.

For payments and fees for CLGs see the ASIC website.

For penalties for charities that fail to lodge documents on time with the ACNC see the penalties page on the ACNC website.

Type of fee	Queensland incorporated associations	Commonwealth company limited by guarantee Note – these requirements don't apply to CLGs registered as charities	Notes for Charities
Initial application for incorporation	$158.55	$403 from 1 July 2018. An additional fee applies to register without the word 'limited' in the name. These fees apply to CLGs regardless of charity registration.	No application fee to become registered as a charity, but must pay fee to the OFT or ASIC to incorporate (as either an incorporated association or a CLG).

Requirement for audited financial statement	'Level 1' associations must have their accounts audited by an auditor or accountant. 'Level 2' associations must have their accounts 'reviewed' by an auditor, accountant or approved person. However, if a Level 2 association is subject to auditing requirements under another Act, the accounts will need to be audited by an auditor or accountant. There is no requirement for a 'Level 3' association to have their accounts audited or reviewed. The association's president or treasurer will need to verify your financial statements (a statement that the association keeps financial records in a way that properly records the association's income, expenditure and dealings with assets and liabilities). However, if a Level 3 association is subject to auditing requirements under another Act, the accounts will need to be audited by an auditor or accountant.	'Tier 3' companies must have their accounts audited by a registered company auditor. 'Tier 2' companies must have their accounts 'reviewed' by an auditor (lesser standard than full audit). 'Tier 1' companies not required to have audited accounts (unless required to do so by members' direction or ASIC direction).	Incorporated associations must report both to the OFT and the ACNC system (ACNC tiers are the same as for CLGs, although DGR status is not relevant). CLGs only report to the ACNC. The *Australian Charities and Not-for-profit Commission Act 2012* (Cth) (**ACNC Act**) specifies that only medium and large charities need to provide financial reporting to the ACNC, however from 2014 onwards the Annual Statement has included basic financial questions. You can read more about charity reporting obligations in Not-for-profit Law's fact sheet 'Financial reporting for charities'.
Annual fee when lodging financial statement	$55.35	There is no fee to lodge financial statements with ASIC. However annual review fees are payable as follows: $1,224 from 1 July 2018 ($9,374 advance payment for 10 years), or $49 from 1 July 2018 ($366 advance payment for 10 years) for 'special purpose companies' (companies formed for 'charitable purposes', have non-profit and non-distribution clauses in their constitution and certain rules relating to directors)	There is no fee to lodge financial reporting statements with the ACNC. Incorporated associations that are registered as charities and categorized as medium or large need to lodge with both the OFT (including a fee) and ACNC (no fee). Medium and large CLGs registered as charities only need to lodge financial reporting to ACNC (no fee).
Late fees when lodging annual statement	None	Late lodgement fees will apply if financial statements are not lodged within 4 months of the end of the relevant financial year.	The ACNC may charge late fees both to incorporated associations and CLGs that are registered as charities.

		Late payment of the annual review will incur late fees as follows: $79 from 1 July 2018 if payment is received within 1 month after the due date $329 from 1 July 2018 if payment is received more than 1 month after the due date	
Lodge details of changes to information (eg. address, names of officers)*	None, except for change of name, which incurs a fee of $76	None, except for change of name, for which a $403 fee from 1 July 2018, applies.	The ACNC does not charge to change details.
Lodge changes to constitution or rules*	$20.20	None	The ACNC does not charge to change details.
Failure to lodge changes of details within required period (ie. address, names of officers, change to rules or constitution)	None	The fees are as follows: $79.00 from 1 July 2018 first month late $329.00 from 1 July 2018 for more than a month	The ACNC may charge late fees.

Caution

If you choose to be a company and are not a registered charity, your organisation will be regulated by ASIC, a body that is systematic in imposing late fines and is inflexible in relation to waiving fines.

If you forget or are late or did not realise that you had to file documents or notify ASIC of certain changes, ASIC late fees can quickly accumulate.

Issue 4: Annual reporting, audits and reviews

Issue 4: Annual reporting, audits and reviews

Generally speaking, the regime for incorporated associations under the Queensland AI Act is more straightforward than the regime for CLGs under the Commonwealth Corporations Act.

If you wish to incorporate as a CLG that is not a registered charity, your group will need ongoing help from a person who has a good understanding of running a company, or access to professional legal or accounting advice.

However, as discussed under Issue 2, CLGs that are registered as charities have different and less complex obligations under the *Australian Charities and Not-for-profit Commission Act 2012* (Cth) (**ACNC Act**), and reporting fees are also lower (waived entirely in many cases). Therefore, concerns about the complexity of the Corporations Act and reporting to ASIC are not as relevant to groups who are or will be charities.

Related Not-for-profit Law resource

For more information about reporting to government for incorporated associations, CLGs and charities, see the 'Reporting to Government' page available on the Not-for-profit Law website.

Some incorporated associations and CLGs must have their accounts independently audited or reviewed each year. For both incorporated associations and CLGs, the type of audit or review required will depend on which of three 'tiers' your organisation falls into. Under both structures, only larger organisations (as well as CLGs of any size with Deductible Gift Recipient (**DGR**) status) need to fully audit their accounts. However keep in mind, many organisations may need to undertake audits for other reasons beyond their size, including being required to do so under a funding agreement.

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

Tip

Many organisations may also need to undertake audits for other reasons as well, including being required to do so under a funding agreement.

Reporting tiers for CLGs

There are three categories or 'tiers' of CLG based on the organisation's annual revenue. Each tier has different reporting and auditing requirements. The table below briefly sets out the tiers and the corresponding requirements for financial reporting and auditing under the Corporations Act.

	Definition of CLG category	Reporting and auditing requirements
Tier 1 (known as 'small CLGs')	CLGs with annual revenue less than $250,000; no DGR status.	Not required to prepare financial report, director's report, or have accounts audited or reviewed unless required to do so under ASIC direction or members' direction (any group of members that make up at least 5% of members can direct the CLG to prepare a financial statement or director's report and can require either a review or audit).
Tier 2	CLGs with annual revenue less than $250,000.00 that are a DGR OR with an annual	Must: • prepare financial report and have report 'reviewed'. This is not as comprehensive or expensive as a full

	revenue of between $250,000.00 and $1,000,000.00 (whether or not they are DGR).	audit (however CLGs can choose to have report 'audited' nonetheless) • prepare a director's report, and • give annual reports to any member who elects to receive them
Tier 3	Annual revenue over $1 million, whether DGR or not.	Must: • prepare a financial report; • have accounts fully audited by a qualified company auditor and • prepare a director's report, and • give annual reports to any member who elects to receive them.

Note for charities

The same tiers apply under the ACNC Act, and similar reporting requirements apply, with financial reports submitted to the ACNC rather than ASIC. Note that for registered charities, in contrast to CLGs regulated by ASIC, being endorsed as a DGR will not trigger higher tier reporting requirements.

Related Not-for-profit Law resource

You can read more about the reporting obligations of charities available on the Charity reporting page of the Not-for-profit Law website.

Tiers for Queensland incorporated associations

For Queensland incorporated associations, there are also three categories or 'tiers' with different reporting and auditing requirements. The table below briefly sets out the tiers and corresponding requirements for financial reporting and auditing under the Queensland AI Act.

	Definition of IA category	Reporting and auditing requirements
Level 3	Incorporated associations that have both: • current assets of less than the amount prescribed under a regulation or, if no amount is prescribed, less than $20,000, and • total revenue of less than the amount prescribed under a regulation or, if no amount is prescribed, less than $20,000.	A financial statement must be prepared for the reportable financial year within 6 months of the end of the financial year. There is no requirement for the accounts to be audited or reviewed, however the association's president or treasurer must prepare a signed statement stating that the association keeps financial records in a way that properly records the association's income and expenditure and dealings with its assets and liabilities. The financial statement and the statement of the president or treasurer must be presented to the association's general meeting for adoption, then lodged with the chief executive within 1 month of being presented to the general meeting, along with a return in the approved form and the applicable fee.

Level 2	An incorporated association that is not a Level 1 or a Level 3 incorporated association (i.e. value of current assets and total revenue between $20, 000 - $100,000).	A financial statement must be prepared for the reportable financial year within 6 months of the end of the financial year. There is no requirement for the accounts to be audited, however an auditor, accountant or approved person, who must prepare a signed statement stating that they have: • sighted the association's financial records, and • the association's financial records show that the association has bookkeeping processes in place to adequately record its income and expenditure and dealings with its assets and liabilities. The financial statement and the statement from the person who reviewed the accounts must be presented to the association's general meeting for adoption, then lodged with the chief executive within 1 month of being presented to the general meeting, along with a return in the approved form and the applicable fee.
Level 1	Incorporated associations that have either: • current assets of more than the amount prescribed under a regulation or, if no amount is prescribed, more than $100,000, or • total revenue of more than the amount prescribed under a regulation or, if no amount is prescribed, more than $100,000.	A financial statement must be prepared for the reportable financial year within 6 months of the end of the financial year. The financial statement must be audited by an auditor or accountant. The financial statement and signed audit report must be presented to the association's general meeting for adoption, then lodged with the chief executive within 1 month of being presented to the general meeting along with a return in the approved form and the applicable fee.

Note for charities

The same tiers apply under the ACNC Act as under the Corporations Act, and similar reporting requirements apply for charitable CLGs, however reports are submitted to the ACNC rather than ASIC. Incorporated associations registered as charities will need to report to the OFT and report to the ACNC.

Tip

Remember that some organisations may be required to have audited accounts because of another requirement (eg. because this is in a funding agreement with the government, or because the members or committee of management believe it is good practice) even though it is not required by the Corporation Act (for companies) or the AI Act (for associations) or the ACNC Act.

Issue 5: Other factors for your group to consider

Issue 5: 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, whether your group will be a registered charity, and its financial capacity) are four of the main factors for groups to consider when choosing their legal structure.

However, there are some other important factors that may affect your group's decision whether to incorporate as an incorporated association or CLG. The table below lists a number of factors which may be relevant to your group's aims, activities or circumstances.

Feature	Brief description
Flexibility of rules or constitution	The Corporations Act provides some flexibility in a company's constitution, and ASIC is unlikely to reject a proposed constitution. Changes to the constitution of a CLG take effect from the date passed by the members (unless otherwise set out). Flexibility is even greater if your CLG is registered as a charity (and therefore reports to the ACNC). The requirements for rules under the Queensland AI Act are relatively straightforward. The OFT has listed each of the matters that must be included in an association's own rules and a reference to where these matters are provided for in the Model Rules (see Appendix A on the Application for incorporation of association form). Changes to an association's rules must be by special resolution at a general meeting or according to the rules. The amendment must be notified to the OFT (Chief Executive) with supporting documentation ('Associations Incorporation form 8 - Application to register an amendment of rules) (and fee) within three month of passing the special resolution). On registration of the amendment (by the OFT), the change comes into effect.
Directors (board member) and office holder duties	The potential liabilities of CLG board members are more serious under the Corporations Act than for committee members and other office holders of an incorporated association. There are significant penalties for directors of CLGs who breach their duties. CLGs registered with the ACNC are required to comply with the ACNC governance standards instead of the civil directors' duties under the Corporations Act. However, the criminal penalty provisions and the duty to prevent insolvent trading will still apply. In addition, directors of CLGs registered with the ACNC are still subject to directors' duties arising at common law and in equity as these have not been not turned off'. Incorporated associations have office holders' duties set out in legislation, however, the penalties for breaching the duties are lower than those for directors of a CLG. The common law (i.e. judge-made) duties and liabilities of board members are similar for both structures. For more information about the duties of board and committee members, see Not-for-profit Law's fact sheet 'Governance and legal duties of office holders' and 'Duties Guide', available on the Not-for-profit Law website (see the 'Running the organisation' page).

Number of members	Groups wanting to incorporate as a CLG only need one member. This may suit a not-for-profit organisation wanting to retain a higher degree of control (but remember, this type of company still needs 3 directors) or, where the organisation is to be a subsidiary of another organisation. In contrast, Queensland incorporated associations must 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).
Speed of incorporation	In general, ASIC often approves an application for incorporation of a CLG within 24-48 hours of paperwork being filed online (but if it includes applying for a licence to omit the word 'Limited' from the name of the organisation, it will take longer). In contrast, the OFT usually takes 3-4 weeks to process an application for incorporation of an association, particularly where the organisation submits its own rules, rather than using the 'model' rules contained in the Regulations.
Rights of members	CLGs are entitled to appoint a member or a non-member as a proxy (a person to vote at meetings on their behalf). Also, for CLGs not registered as a charity, a small percentage of members are able to force a members meeting to be called (members with at least 5% of the votes that may be cast at a general meeting may call and hold a general meeting, but must meet procedural requirements and pay any expenses). There are no similar mandatory requirements for Queensland incorporated associations. For associations, the rights and liabilities of members - for example, the rights of members to vote and call meetings - must be written into the association's rules.
Legislation requiring a particular form of incorporation	In limited circumstances, there are laws that require organisations that are undertaking specific activities to adopt a particular legal structure. Your organisation should seek advice about any laws that might apply to the field you are working in.
Availability of information about the organisation to the public	In a CLG, the name, date and place of birth of each director must be provided to ASIC and these details are available to the public (for a small 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. For an incorporated association, details of the President, Treasurer and Secretary need to be provided to the OFT. An association must keep a register of members' details and make it available to members of the organisation, with a few exceptions. There are certain details available about registered charities (both incorporated associations and CLGs) on the ACNC Register (the register of charities maintained by the ACNC) – eg governing rules, names of directors, annual statements etc.
Flexibility for amalgamation	The QLD AI Act 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. The Corporations Act does not have a similar provision for amalgamation and therefore the methods for implementing an amalgamation may be more complex and may vary depending on the particular circumstances. For more information see the 'Amalgamation and Mergers' page of the Not-for-profit Law website.
Operating overseas	If your group wants to operate overseas it will need to seek legal advice about what the laws of the relevant country might require. Using Australia as an example, any overseas (foreign) company that wants to 'carry on business' (conduct activities) in any part of Australia must register with ASIC under the Corporations Act. Many other countries will have similar requirements, even if your group is operating as a not-for-profit.

As a general comment, a CLG structure will be a more readily understood and recognised legal structure in other countries, compared with other structures such as an incorporated association.

Conclusion

Conclusion

As highlighted in this guide, a number of factors will influence a group's decision about whether to become an incorporated association or a CLG. There is no quick and easy answer, but weighing up the various factors will help you to determine which structure best suits the activities, circumstances, direction and resources of your particular group.

It is important to remember that as a result of recent changes in the law at both state and federal levels, as well as changes to the regulation of charities by the ACNC, this analysis will continue to change. You can keep in touch with us and access updates and alerts by subscribing to the Not-for-profit Law Update here.

Resources

Not-for-profit Law resources

- Getting started

  This page sets out the things you will need to take into consideration when deciding on whether to establish a not-for-profit organisation, including links to helpful resources.

- Before you start

  This page includes specific matters to address prior to setting up a not-for-profit organisation.

- The incorporation decision

  This page gives guidance to those not-for-profits grappling with the decision to either formally incorporate, or remain as an unincorporated group.

- Choosing a legal structure

  This page lists the various types of not-for-profit legal structures, allowing you to determine the best structure for your group.

Australian Charities and Not-for-profits Commission (ACNC)

- Reporting to the ACNC

  This page within the ACNC website provides an overview of the reporting requirements for registered charities, according to their size.

- Registering as a charity

  This page within the ACNC website provides a summary of the steps to take should you wish to register your not-for-profit as a charity.

Australian Securities and Investments Commission (ASIC)

- Reporting obligations of companies limited by guarantee

  This page within the ASIC website provides an overview of the reporting requirements for companies limited by guarantee that are not charities.

- Starting a company

  This page within the ASIC website gives guidance on how to start a company, whether for-profit or not-for-profit.

Office of Fair Trading (OFT)

- Financial responsibilities for incorporated associations

  This page within the OFT website summarises the annual reporting requirements for Queensland incorporated associations.

- Set up an incorporated association

This page within the OFT website summarises the process and requirements for associations incorporating in Queensland.

- Incorporated associations forms and fees

  This page within the OFT website summarises the relevant forms and fees for Queensland incorporated associations.

Legislation

- Associations Incorporation Act 1981 (Qld)
- Associations Incorporation Regulation 1999 *(Qld)*
- Collections Act 1966 *(Qld)*
- Gaming Machine Act 1991 *(Qld)*
- Corporations Act 2001 *(Cth)*
- Australian Charities and Not-for-profits Commission Act 2012 *(Cth)*

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