FACTSHEET QWALC 16-023

Incorporated Associations vs Companies Limited by Guarantee

Comparing business structure options for Landcare networks

There are two common structures that can be used to incorporate a Landcare Network or Group:

- An incorporated association; or
- A company limited by guarantee (CLG)

The below table examines the difference between each structure.

	Incorporated Associations	**Companies Limited by Guarantee**
Overview	Suited to locally focused groups wanting to operate in their local area. A legal structure which provides a simple and inexpensive means of incorporating a Landcare network or group. Set up costs are comparatively lower than CLGs. Not suitable for groups with less than 5 members. Must use the word 'Incorporated' or Inc' after its name.	Recommended for large Landcare Networks and networks that have significant operational budgets. Generally speaking, a CLG structure provides a greater compliance burden on the organisation. As a public company, a CLG has 'members' not shareholders and directors (minimum of 3), as opposed to 'committee members'. Must use the word 'Limited' or 'Ltd' after its name.
Regulation	Regulator is QLD Office of Fair Trading. Relevant legislation is *Associations Incorporation Act 1981* and *Association Incorporation Regulation* 1999. Reporting is undertaken annually to QLD Office of Fair Trading and ACNC.	Regulator is Australian Securities and Investment Commission (ASIC). Relevant legislation is Corporations Act 2001 (Cth) and Corporations Regulations. Reporting deadlines are strictly enforced with high penalties for non-compliance.
Reporting Obligations	The Act imposes financial reporting obligations on organisations depending on their annual income. Larger associations with an annual income exceeding $100,000 or current assets exceeding $100,000 (Tier 1) are required to have their annual financial statements audited. The Act varies the audit requirements on smaller organisations (Tier 2 and 3). Reporting obligations of each Tier can be found at: www.qld.gov.au search for: Financial responsibilities for incorporated associations.	Under the Act, there are 3 tiers of CLGs which define financial reporting obligations. Tier 1 includes small organisations which have annual (or consolidated) revenue of under $250,000. Tier 2 are CLGs with annual (or consolidated) revenue of less than $1 million. Tier 3 are CLGs with revenue in excess of $1 million. Reporting obligations can be found at: www.asic.gov.au/regulatory-resources/financial-reporting-and-audit/preparers-of-financial-reports/companies-limited-by-guarantee/

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WHY CHANGE TO A 'COMPANY'?

Andrew Lind of Corney & Lind Lawyers Pty Limited cites the following reasons for migrating from an 'Inc' to a CLG.

- It is a better fit for larger organisations.
- The Corporations Act is a far more sophisticated piece of legislation. While this does add a compliance burden, it usually means better governance.
- CLGs do not require Directors to be members of the organisation. This enables CLGs to co-opt individuals with specific skill sets to the Board.
- Migration allows an organisation to operate across state borders.
- CLGs can be seen as a preferred structure for some Federal Government funding (as evidenced in the Federal Government's consultation papers on the reform of the not-for-profit sector).
- An incorporated association can migrate to a CLG and remain the same legal entity.

PROCESS OF MIGRATION

Andrew Lind recommends the following checklist for organisations migrating to a CLG:

1. Write to organisation's funding bodies to confirm migration.
2. Reserve a new company name with ASIC by submitting Form 410.
3. Draft a new CLG Constitution. While templates are available, it is important to have a constitution that reflects the unique nature of your organisation.
4. Obtain the consent of intended members, directors and secretary of the CLG (in writing).
5. Obtain members' consent by way of special resolution, with members provided with at least 21 days notice, along with the special resolution proposed and in accordance with the organisation's constitution.
6. Advise key parties, such as contracting partners, of the migration to a CLG.
7. Submit an application (Form 28) to QLD Office of Fair Trading to authorise the transition to CLG.
8. Apply to ASIC (Form 201B) for registration as a Company. If approved, ASIC will issue your organisation with an ACN and certificate of registration.

FREQUENTLY ASKED QUESTIONS:

- For organisations migrating to a CLG, the ABN remains unchanged.
- Any Income Tax Exemptions or Deductible Gift Recipient Status will be retained by the CLG.
- As migration to a CLG does not affect the identity of the organisation, all employment contracts continue to carry on after migration.
- The CLG is considered the same legal entity it was prior to migration, therefore, property, rights and obligations of the organisation do not change.

DISCLAIMER: The information contained in this publication is based on knowledge and understanding at the time of March 2016. However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of QWALC or the user's independent advisor.

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