



thinking Not-for-Profit Organisations

Community based groups and organisations are important in providing services to the general public, and it is important to understand how they are established and governed. Depending on the size and the objects of what a community group aims to achieve, there are a number of ways in which an organisation can be set up to ensure the best structure is in place for the right entity. With any established organisation there are a number of obligations which the responsible persons in charge must be aware of, and it's important to obtain the right financial and legal advice before starting your own community organisation.

Unincorporated and Incorporated Associations

Unincorporated and Incorporated Associations are the most common legal structures which a community organisation will establish, such as a sporting club; P&C Organisation, or a Rotary and Lions Club. If your association is unincorporated, you do not need to have a formal constitution or report to a regulatory authority. The committee members of the association will make all major decisions surrounding the operation of your organisation. It is important to note that the committee members of an unincorporated association are personally liable for any debts incurred during the course of the association's activities.

Incorporated Associations have their own separate legal identity, meaning that the members of the association are not liable for any debts incurred. Incorporated Associations are incorporated under the Associations Incorporation Act 2009 (NSW) and the Incorporation Association Regulations 2016 (NSW). There are various reporting obligations and the maintaining of membership records, which are all managed by the New South Wales Department of Fair Trading. Incorporated Associations can also enter into contracts and sue and be sued in their own right. A record of all incorporated associations in NSW are held on the Incorporated Associations Register on the Department of Fair Trading's Website.

Incorporation under the Corporations Act
Another alternative is to establishment

a company limited by guarantee under the Corporations Act 2001 (Cth). This type of structure primarily suits charities and larger non-for-profit organisations. Establishing a company brings additional obligations under the Corporations Act with accountability and directors fiduciary and statutory obligations. Corporations are also regulated by the Australian Securities and Investments Commission ("ASIC"). A not-for-profit Company will usually be established as a company limited by guarantee, meaning the liability of its members is limited to the amount contributed by the members to the property the company owns if it is wound up.

If an organisation was aiming to establish themselves as a registered charity, an application may be made to the Australian Charities and Not-for-profits Commission ("ACNC") to obtain registered charitable status. This is beneficial, as charities may then be entitled to apply to the Australian Taxation Office ("ATO") to acquire Deductible Gift Recipient ("DGR") status, which allows individuals to make tax deductible donations to the organisation. This is particularly appealing for philanthropic, significant and corporate donors.

A charity may also apply for income tax exemptions meaning that they do not have to pay tax on any income that is earned or lodge a tax return unless specifically asked to do so by the ATO. If your organisation operates as a registered charity, then the Australian Charities and Not-for-profits Commission Act 2012 (Cth) governs its regulation. A register of all charities is available through the ACNC's website.

It is important in establishing any not-for-profit organisation to seek appropriate legal and financial advice to ensure the right structure fits your organisational goals and objects. A solicitor and accountant can provide you with the assistance you need to get your new organisation on its feet. Talk to us, you'll be inspired!

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