Different governance structures for organisations in Queensland

SPORT HQ

The two most common types of governance structures for not-for-profit organisations in Queensland are Incorporated Associations (IA) and Public Companies Limited by Guarantee (PCLG). Both choices establish legal entities that are separate from members, providing members certain levels of legal protection. There are around 24,000 incorporated associations in Queensland as this is the most common and usually the simplest choice of structure for not-for-profit organisations. Organisations wishing for a model with more membership flexibility, the ability to trade interstate and a board-driven structure, may choose to become a PCLG.

The table below shows the main differences between an IA and a PCLG.

The information presented in this guide:

- is general in nature and does not consider your organisation's specific situation;
- is correct at time of publishing; and
- should not be considered as legal advice.

> Both options provide legal protection to the organisation's members.



What type of organisations choose to be Incorporated Associations?

- Organisations that prefer to be member-driven
- Only trade in Queensland
- Small to medium sized organisations

Example of an Incorporated Association

Red Deer Tennis Club

- Medium community club with 150 members
- Main purpose is to provide opportunities for people to play tennis
- Members are integral to the club
- Annual financial turnover is $350, 000

What type of organisations choose to be Public Companies Limited by Guarantee?

- Larger organisations with multiple business units (e.g. sporting organisation with property portfolio)
- Require more flexibility for board structure (e.g. skills based, board appointments)
- Need to trade interstate

Example of a Public Company Limited by Guarantee

Brolga Creek Football Club

- 1000 members
- Annual turnover of $3.5 million
- Several business ventures (property, leagues organisation)

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Factor	Incorporated Association (IA)	Public Company Limited by Guarantee (PCLG)
Summary	• Chosen by most community organisations (around 24,000 in Queensland) • Member-driven • Simpler reporting obligations on management committee members than PCLG • Less flexibility than PCLG • Typically limited to trading and being based in Queensland (unless a Registrable Australian Body) • Members not liable for the debts of the association	• Less common option for community organisations • Depending on constitution, can be member or board driven • Higher scrutiny on board members (e.g. directors must have Director IDs and be registered with ASIC) • More flexibility than IAs • Can trade and be based anywhere in Australia • Members are bound to contribute a guaranteed sum of money (usually a small amount) if the company is wound up and is unable to settle its debts
Legislation	*Associations Incorporation Act 1981* and *Associations Incorporation Regulation 1999* (Qld) and regulations.	*Corporations Act 2001* (Commonwealth).
Regulator	Queensland Office of Fair Trading (OFT) An IA must submit an annual return to OFT, and depending on its size, may need to have its annual financial statements audited.	Australian Securities and Investments Commission (ASIC) A PCLG must prepare and lodge a financial report with ASIC, and depending on its size, may have to provide director's reports.
Purpose	Not for profit entity –prohibition against distribution of surplus assets to members.	Not for profit entity – prohibition against distribution of surplus assets to members.
Governing document	Must have a set of rules (i.e. constitution). Provisions of the *Associations Incorporation Regulation 1999* known as the model rules can be adopted or an IA can write its own rules, provided that they meet the requirements outlined in the *Associations Incorporation Act 1981* and regulation. Rules may be amended by special resolution at a general meeting, and take effect once lodged with and formally registered by OFT.	A PCLG must have a constitution. Provisions of the Corporations Act 2001 known as the replaceable rules can be adopted if desired. The constitution can be crafted to meet the membership and governance model appropriate for the company. Constitution may be amended by special resolution at a general meeting, and can take effect immediately.
Activity	An IA has all the powers of an individual and can conduct activities that are in furtherance of its purpose.	A PCLG has all the powers of an individual and can conduct activities that are in furtherance of its purpose.

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Factor	Incorporated Association (IA)	Public Company Limited by Guarantee (PCLG)
Membership model	An IA must have a minimum of seven members and there is no maximum number. The IA model allows for membership to be divided into various classes, e.g. voting and non-voting members.	A PCLG must have one member, but otherwise may have unlimited members or a fixed number. The PCLG model allows for membership to be divided into various classes, e.g. voting and non-voting members.
Members' rights	Each eligible voting member has the right to vote at general meetings. This includes the right to vote in favour of or against: • Amendments to the rules (e.g. change to objects, membership model or governance model) • Election of management committee members • Removal of management committee members • Winding up and distribution of surplus assets The rules must provide a way for members to call a general meeting to vote on specific resolutions.	Subject to model of membership. In general, a voting member has the right to vote at general meetings in relation to members' business. This includes the right to vote in favour of or against: • Constitutional amendments (e.g. change to objects, membership model or governance model) • Election of directors • Removal of directors • Winding up and distribution of surplus assets The *Corporations Act 2001* provides for a member to bring action against the company in certain situations, including for oppressive conduct.
Members' personal liability	A member of an IA is not liable for the debts of the association. Their personal liability is typically limited to the amount of any unpaid membership fee.	A member of a PCLG is not liable for the debts of the company unless the company winds up and is unable to pay its debts. In this case, each member is bound to contribute the amount of the guarantee set out in the constitution. The amount can be fixed as a nominal fee (e.g. $1).
Membership fee	An IA can charge nomination, joining and membership fees. Depending on the constitution, either the management committee or the members set the fee amounts.	A PCLG can charge nomination, joining and membership fees. It is most common for the board to set the fee amounts.
Governance	The management committee must have at least three members, two of whom must be the president and the treasurer. Management committee members must be elected by the association's members. Only association members are eligible to be management committee members. An IA must have a secretary, who can be elected or appointed, and who may or may not be a member of the management committee.	The board must have a minimum of 3 directors. The board usually appoints a chair but there are no other mandatory board positions. Boards can include a mix of member-elected directors and board-appointed directors. A person does not have to be a member of the company to be a director. A PCLG must have a secretary, who can be elected or appointed, and who may or may not be a director.
Management committee members' and directors' duties	The *Associations Incorporation Act 1981* sets out the functions and duties of management committee members, including the requirements to prevent insolvent trading and to act diligently, with due care and honestly.	The *Corporations Act 2001* sets out the duties of a director of a company.
Management committee members' and directors' personal liability	The *Associations Incorporation Act 1981* imposes some duties on management committee members for which penalties can be imposed for breach, but these are not as broad as those imposed on directors of a company.	A director of a PCLG has duties imposed by the *Corporations Act 2001* and other legislation. Penalties apply for breach.

Elected means being voted into a committee position by the members of the organisation.

Appointed means being chosen to fill a committee position without an election.

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Registered Charities

Incorporated associations and public companies limited by guarantee may be eligible to be registered as charities with the Australian Charities and Not-for-profits Commission (ACNC). Public companies limited by guarantee that are registered charities do not have to lodge annual financial reports with ASIC nor pay an annual fee, but have to lodge documents with the ACNC. Incorporated associations that are registered charities only have to lodge their annual returns with ACNC, and not with OFT.

Indigenous Corporations

Aboriginal and Torres Strait Islander organisations can apply to be registered as a separate legal entity with the Office of the Registrar of Indigenous Corporations (ORIC) under the Corporations (*Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act*).

However, indigenous organisations don't have to be incorporated with ORIC. Depending on their circumstances, they may choose to be registered as an Incorporated Association with OFT or as a Public Company Limited by Guarantee with ASIC.

Registering under the CATSI Act allows an organisation to become a legal entity. The legal entity is registered on the Register of Aboriginal and Torres Strait Islander Corporations.

Registering under the CATSI Act has several benefits:

- Members can choose not to be responsible for the corporation's debts
- The corporation's rules can reflect Aboriginal or Torres Strait Islander customs and traditions
- The corporation can operate across Australia, not just in the state or territory of registration
- Registration is free, unlike other options that may charge a fee
- In certain cases, corporations might not need to submit an annual report
- Profits can be shared among members, if allowed by the rules
- Registered corporations can get advice and services from ORIC

Co-operatives

Co-operatives let organisations pool their resources with other operators in their industry. A co-operative belongs to its members and it operates for their collective benefit. A co-operative has the legal status of an individual. It may sue—or be sued—under its corporate name. This protects the members from being personally liable for most legal issues.

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