

Fact sheet: Incorporated association or a company limited by guarantee?

Overview

The aim of this fact sheet is to help Victorian not-for-profit 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 PilchConnect 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.

Note: The information contained in this fact sheet is intended as a guide only, and is not legal advice. If you or your group has a legal problem you should talk to a lawyer before making a decision about what to do. The information in this fact sheet is written for people or groups resident in, or affected by, the laws that apply in Victoria, Australia and is current at 20 August 2010.

Introduction

An incorporated association is a type of incorporated legal structure made under the Victorian *Associations Incorporation Act 1981* (Vic). 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 four 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?
- ▶ If the group is not a ‘charity’ (within the technical legal definition), will the group undertake substantial ‘trading activities’ with the public (rather than just with its members)?

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 may be important, depending on the circumstances of your group or its aims and activities. These have been listed, and briefly explained, in a table at the end of this fact sheet.

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.

Where can a company limited by guarantee operate?

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

Where can a Victorian association operate?

The law relating to incorporated associations is State-based law. Each State and Territory in Australia has its own laws about the incorporation of associations. A group incorporated as an association under the Victorian *Associations Incorporation Act* can operate anywhere in Victoria.

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

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

Option A: register the group under the *Corporations Act 2001 (Cth)*

Victorian incorporated associations can register with Australian Securities and Investments Commission (**ASIC**) as a 'Registered Australian Body'. This is the option most commonly recommended (that is, rather than those described as options B and C below).

This means 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 Consumer Affairs Victoria (**CAV**). 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 (Vic) 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.

Option B: 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. (Note: if the group is an indigenous one, it can transfer its registration to being under the Commonwealth *Corporations (Aboriginal and Torres Strait Islander) Act*.)

Transferring from an incorporated association to a company limited by guarantee 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 association's transfer to a company.

Tip:

Although converting to a company limited by guarantee is an option, it has some legal and administrative requirements which can be costly and time consuming. We recommend you seek legal advice about what is involved for your particular organisation, especially if your organisation has a large membership base. Below is information about some of the things that will need to be considered.

Once registered as a company, the name of the organisation will need to be changed on all public documents (for example, on the organisation's letterhead and email signature). A range of people and bodies will need to be notified of the new legal structure and name. For example, registrations such as the organisation's Australian Business Number (**ABN**), any fundraising licence (CAV), and any land holdings (Victorian government Titles Office) will need to be changed/updated, and funding bodies, lessors, suppliers, and banks will need to be notified.

If the organisation's objects and purposes (now in the company's constitution) have not changed from those stated in the (former) association's rules, the change in legal structure should not, of itself, change the organisation's eligibility for tax concessions (for example, income tax exemption and deductible gift recipient status). However, the Australian Taxation Office (**ATO**) needs to be notified of the change. In relation to capital gains tax, the ATO has (as at July 2009) informed us that, as there has been no transfer of ownership and no new legal entity has been created, it takes the view that there is no capital gains tax 'event' which would trigger a capital gains tax liability.

Option C: 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!

The highlighted box (below) may help to summarise the 'location of activities' issue for your group.

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

Our group will operate solely in Victoria.

You can operate in Victoria 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.

Our group will initially operate in Victoria – 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* (Cth). Some of these requirements (in relation to financial reporting, auditing and distribution of reports to members) depend on the size of your organisation and whether it is a deductible gift recipient (DGR). However, if your organisation can meet the requirements, it may save your group lots of time and potential legal difficulties to set up as a company limited by guarantee from the outset.

Alternatively, if your group will initially operate only in Victoria, 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 A above) or convert to a company limited by guarantee (see Option B 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 (often volunteers) will need to take the time and have 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 *Victorian Associations Incorporation Act* is more straightforward than the regime for companies under the *Commonwealth Corporations Act*.

Victoria'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 and lengthy 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 higher (see below for more about fees), it is crucial that a group which is going to incorporate as a company limited by guarantee understands, and complies with, the law and 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 published by ASIC and training is available through PilchConnect and others.

To find out more about the requirements for running an incorporated association or a company limited by guarantee, please see the 'Related Resources' section at the end of this document. In particular, note that (with support from the Victorian Office of the Community Sector, CAV and The Australian Centre for Philanthropy and Nonprofit Studies), PilchConnect has developed an online guide to assist the public officer / secretary of an incorporated association – please see the 'Related Links' section at the end of this document. We are also looking at developing further resources for companies limited by guarantee.

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

The amount of money your group has to pay, both in 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 about keeping information up-to-date and paying fees on time.

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

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'.

Audited accounts

Some associations and some companies must have their accounts independently audited by an auditor. For companies limited by guarantee, as of June 2010, the Corporations Act sets out a three-tiered approach to reporting. So, the requirements for auditing depend on what reporting 'category' the organisation falls into. There are three categories, defined by reference to an organisation's annual revenue and whether it has deductible gift recipient (DGR) status. The below table briefly sets out the categories and requirements for financial reporting and auditing under the *Corporations Act*.

	Definition of category	Reporting/auditing requirements
Category 1	Annual revenue less than \$250,000; no DGR status.	Not required to prepare financial report or have account audited unless required to do so under members direction or ASIC direction.
Category 2	Annual revenue between \$250,000 and \$1 million and no DGR status; or annual revenue less than \$1 million and DGR status.	Can have financial report reviewed, rather than audited.
Category 3	Annual revenue over \$1 million, whether DGR or not.	Must have audited accounts.

For more detail about these categories see the Related Links section at the end of this document.

Note: These categories are new, and it may take you time to work out how the changes affect your organisation. If you need assistance with the categories and understanding the new financial reporting requirements you can call PilchConnect on 86364400 and our staff can talk them through with you.

For Victorian incorporated associations, only 'prescribed' associations – with an annual turnover of more than \$200,000 or assets worth more than \$500,000 – are required to have audited accounts. The range of people qualified under the Victorian *Associations Incorporation Act* to conduct such an audit is broader than for a 'category 3' company limited by guarantee. (You may need to consider this if you are a 'category 3' company operating in some country areas, as the peak accounting bodies report there is a shortage of registered company auditors in some of these areas.)

Tip: Also, remember that some organisations may be required to have audited accounts because of another requirement (eg. in a funding agreement with government, or because the members/committee of management believe it is good practice even) even though it is not required by the *Corporation Act* (for companies) or the *Associations Incorporation Act* (for associations).

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.

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 documents, ASIC late fees can quickly accumulate (\$278 per month) and can be crippling. To date, CAV (the regulator of incorporated associations) rarely imposes or collects late 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.

2010/2011 incorporation and ongoing fees

Type of fee	Victorian incorporated association	Commonwealth company limited by guarantee
Initial application for incorporation	\$59.80 (using 'model' rules) \$119.50 (using own rules)	\$340
Requirement for audited financial statement (approx. \$2,000 to \$20,000+ per year)	Sometimes – yes if a 'prescribed association' (ie. has over \$200,000 annual turnover or assets worth over \$500,000). If not "prescribed association" audit not required but statement, (which includes basic financial information) must be lodged.	'Category 3' companies must have their accounts audited by a registered company auditor. 'Category 2' companies must have their accounts 'reviewed' by an auditor (lesser standard than full audit). 'Category 1' companies not required to have audited accounts (unless members direction or ASIC direction).
Annual fee when lodging financial statement	\$41.80	\$1,029 (\$7,722 advance payment for 10 years); or \$41 (\$309 advance payment for 10 years) 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 later than a month
Lodge details of changes to information (e.g. address, names of officers)	None (Change of name \$35.90)	None (but note late fees below) (Change of name \$340)
Lodge changes to constitution/rules	\$71.70	None (but note late fees below)

Type of fee	Victorian incorporated association	Commonwealth company limited by guarantee
Failure to lodge changes of details within required period (ie. address, names of officers)	None	\$67.00 first month late \$278.00 for more than a month

For fees for incorporated associations see: www.consumer.vic.gov.au

For payments and fees for companies limited by guarantee see: www.asic.gov.au

Issue 4: Will the group undertake 'trading activities'?

Your group will need to think about whether it plans to 'trade' (both initially when it sets up or in the future). Not-for-profit organisations are allowed to make a profit from the selling of goods or services, so long as any profits are not distributed to members of the group. All profits must be put back into the organisation to pursue its aims or objects.

However, for a very limited number of not-for-profit groups (those which intend to engage in substantial trading activities with the public) there are some provisions in Victoria's *Associations Incorporation Act* which may affect whether the group chooses to become a company limited by guarantee or an incorporated association. Unfortunately the wording of the Act is very confusing!

Note: The Victorian State Government has recently passed new laws removing the prohibition on trading for incorporated associations. At the time of writing (20 August 2010) these laws have not yet been 'assented' to and are not yet in force. Unless an earlier date is specified, these (and other) changes will come into operation on 1 December 2011.

To keep up-to-date on legal developments in this area subscribe to our monthly PilchConnect e-bulletin (see Related Resources at the end of this Fact Sheet).

What are 'trading activities'?

The term 'trading activities' is not defined in Victoria's *Associations Incorporation Act*, however it can be very loosely defined as activities where your group buys or sells (i.e. deals in) goods or services in exchange for money. One example might be selling a publication.

Can a company limited by guarantee engage in trading activities?

Yes. The *Corporations Act* allows that a company limited by guarantee can carry on unlimited trading activities (but it will only be regarded as a not-for-profit company under if its constitution provides that it can only operate on a not-for-profit basis as outlined above).

Can an incorporated association engage in trading activities?

Victorian incorporated associations can engage in some trading activities. However, the Victorian *Associations Incorporation Act* contains provisions which restrict certain incorporated associations from conducting 'substantial' or 'significant' trading activities. In practice, because of the way the restrictions are set out in the Act, most groups will not be affected by these provisions. To clarify this issue, we will first discuss the kind of trading that Victorian incorporated associations can undertake, before outlining the limited kind of trading that is not allowed.

All incorporated associations *can* trade freely with its members

All Victorian incorporated associations can trade freely with members of the organisation. There are no restrictions on this kind of trading at all. As long as the transactions are between the incorporated

association and its members, the trading activities may form a substantial part (or all) of the association's activities.

Example: DEF is a not-for-profit environmental group that aims to raise awareness about climate change. Income from selling member subscriptions to a climate change newsletter funds about 90% of DEF's activities. This kind of trading, although significant, would not be prohibited by the *Association Incorporation Act* as the trading is with the group's members. This trading would not prevent DEF from incorporating as an incorporated association in Victoria.

All incorporated associations *can* engage in 'incidental' trading activities

All incorporated associations can engage in 'trading activities' with non-members (for example, members of the public or other organisations) where such trading is 'ancillary' or 'incidental' to the main activities of the organisation.

This means that if the trading activities your group intends to undertake with the general public are not substantial in comparison with its other activities, your group can operate as an incorporated association in Victoria.

Example: XYZ is a not-for-profit self-help group that provides support to people suffering from a particular illness. They do this through a website where they provide free information to sufferers and by arranging for regular support meetings for members. Occasionally, XYZ organises a guest speaker to deliver a public lecture on new research in relation to the illness. XYZ charges a small fee for people (including non-members) to attend the lectures, or to receive the lecture notes.

This kind of 'trading' would appear to be 'incidental' to the primary purpose of the organisation - which is to support sufferers of the disease. If XYZ wanted to incorporate as an incorporated association in Victoria, this limited, occasional trading with the public would be in compliance with the provisions of Victoria's *Associations Incorporation Act*.

An incorporated association cannot engage in substantial trading activities with the public, *unless* it meets certain criteria

The Victorian *Associations Incorporation Act* prevents incorporated associations from engaging in trading activities with the general public (including individuals or other organisations) where the trading is a substantial activity of the group, unless:

- (i) the group's predominant purpose is 'charitable'; and
- (ii) the group's rules contain the relevant 'not-for-profit clauses'; and
- (iii) the group's rules allow trading.

Example: MNO is a not-for-profit group that represents a particular profession. MNO's aim is to support the profession generally, and the nature of the activities that MNO undertakes means that it is unlikely to have 'charitable' purposes (ie. it does not meet the technical legal definition of a charity). MNO intends to earn most of its income from selling goods and services to people other than its members.

The Victorian *Associations Incorporation Act* restricts incorporated associations which do not have charitable purposes from substantial trading with non-members. Therefore, incorporating as an association is unlikely to be a suitable option for MNO. It should consider incorporation as a company limited by guarantee and seek legal advice about this.

The term 'charitable' has a specific (and more limited) meaning in law than its general meaning. Your group should seek legal advice if it intends to be an incorporated association and engage in significant trading activities with the general public. The Victorian *Associations Incorporation Act* sets out penalties for members of associations that 'knowingly engage' in the kind of trading that is restricted by the Act.

The highlighted box below can be used to summarise the 'trading activities' issue for your group.

Summary Issue 4: Will the group undertake trading activities?

- Our group intends to undertake 'trading activities', but these will generally only involve transactions with members**
Either an incorporated association or a company limited by guarantee is an appropriate incorporated structure for your group. Consider the other factors in making the decision.
- Our group is unlikely to undertake any trading or at most, will engage in some trading activities which will be incidental or ancillary to the group's main activities.**
Either an incorporated association or a company limited by guarantee is an appropriate incorporated structure for your group. Consider the other factors in making the decision.
- Our group intends to undertake regular and significant trading activities with the public (not just our members) as part of its core activities.**
Your group can incorporate as a company limited by guarantee, as the *Corporations Act* does not restrict companies from undertaking trading activities. Your group should only incorporate as an incorporated association if it has a predominant purpose which is 'charitable' (which has a technical legal meaning), and has certain clauses in its rules. If your group falls in to this category, you should seek legal advice.

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 instances possibly of great importance, to your group's aims, activities or circumstances.

Feature	Brief description
Flexibility of rules or constitution	<p>The Victorian <i>Associations Incorporation Act</i> prescribes 17 different topics that associations must have in their rules. CAV is quite rigorous when looking at rules submitted by newly incorporating associations. Changes to the rules do not take effect until approved by CAV.</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 serious 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 the common law (ie. judge-made) duties and liabilities of these office bearers are probably the same. For more information about the duties of directors and committee of management members, see the Related Resources section at the end of this document.</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 want 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.</p> <p>In contrast, Victorian incorporated associations are required by law to have a minimum of five 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>
Speed of incorporation	<p>In general, ASIC often approves an application for incorporation of a company within 24-48 hours of paperwork being filed online (but if it includes applying for a licence to omit the word 'limited', it will take longer).</p>

Feature	Brief description
	<p>In contrast, CAV usually 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 'model' rules contained in the Regulations.</p>
<p>Rights of members</p>	<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 Victorian 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>
<p>Legislation requiring a particular form of incorporation</p>	<p>In limited circumstances, there are laws that require organisations which are undertaking specific activities to adopt a particular legal structure. For example, there are Victorian laws that require organisations that provide housing services to the public and want to become a 'registered housing association' to be a company limited by guarantee. There are also requirements for organisations wishing to provide aged care services to adopt a particular structure. Your organisation should seek advice about any laws that might apply to the field you are working in.</p>
<p>Availability of information about the organisation to the public</p>	<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 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 CAV (which is then available to the public for a fee). An association must keep a register of members' details, however access to this register is a matter for the members of the organisation to agree on in the rules.</p>
<p>Flexibility for amalgamation</p>	<p>The Victorian <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>

Feature	Brief description
<p>Migration or conversion to another legal structure</p>	<p>It is usually possible for your group to change its legal structure without ‘closing down’ the existing structure and re-forming as a new organisation with a different legal structure. If the group is an indigenous one, it can transfer its registration to being under <i>Corporations (Aboriginal and Torres Strait Islander) Act</i>.</p> <p>To change from an incorporated association to a company limited by guarantee will require the consent of each member – this can be difficult to organise, especially if you have a lot of members.</p> <p>It is also possible for a company limited by guarantee or a co-operative to transfer to being an incorporated association.</p> <p>Although these options are available, there are legal and administrative requirements which can be costly and time consuming – that is why it is a good idea to think about the group’s future needs when deciding which legal structure to incorporate under.</p>
<p>Operating overseas</p>	<p>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 our <i>Corporations Act</i>. Many other countries will have similar requirements even if your group is operating as a not-for-profit.</p> <p>As a general comment, a company structure (that is, incorporation under the Corporations Act) will be a more readily understood and recognised legal structure in other countries, compared with other structures such as an incorporated association.</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!

Further Information

Related PilchConnect resources

Fact sheet: What does not-for-profit mean?

Fact sheet: What is incorporation and does our group need to incorporate?

Fact sheet: Which incorporated legal structure should we choose?

For online legal information resources for Victorian community organisations about:

- ▶ unincorporated groups see: www.pilch.org.au/UG/
- ▶ choosing the right legal structure see: www.pilch.org.au/legalstructure
- ▶ setting up an incorporated association see: www.pilch.org.au/incorporatedassociation
- ▶ the legal duties of members of a committee of management in an incorporated association see: www.pilch.org.au/positionsia
- ▶ setting up a company limited by guarantee see: www.pilch.org.au/companylg
- ▶ the legal duties of directors of a company limited by guarantee see: www.pilch.org.au/positionsclg/
- ▶ the Guide for secretaries and public officers see: www.pilch.org.au/thepeopleinvolved/
- ▶ the legal requirements for financial reporting and audits see: www.pilch.org.au/reporting/

Related legislation

Associations Incorporation Act 1981 (Vic)

Corporations Act 2001 (Cth)