

# How to Guide: Changing to a Company Limited by Guarantee Structure

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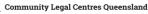
### **Acknowledgment of Traditional Owners**

Community Legal Centres Queensland affirms that the Aboriginal and Torres Strait Islander peoples are the Indigenous inhabitants of Australia and acknowledges their unique relationship with their ancestral country. In particular we acknowledge the Turrbal and Jagera peoples, the traditional custodians of the land in and around Brisbane and pay respect to their elders, past and present.



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### 1. Introduction

Amendments to the **Associations Incorporation Act 1981 (Qld)** (the **Act**) means the governance requirements of company structures commonly used by community legal centres (**CLCs**), not-for-profit (**NFP**) and other charitable organisations are changing.

This guide provides a summary of those changes, the ongoing obligations of companies and incorporated association under the Act and a guide to changing to a 'public company limited by guarantee' structure if your organisation decides that is more suitable.

## 2. Impending changes to the Associations Incorporation Act 1981 (Qld) and practical issues for CLCs

The Queensland Government introduced the Associations Incorporation and Other Legislation Amendment Act 2020 (Qld) to amend and update the Act. The amendments are designed to reduce red tape and improve internal governance for incorporated associations in Queensland and have either come into effect or are expected to come into effect in the 2021 /2022 year.

Given the wide sweeping changes to the Act, it is recommended that CLCs review their current rules to ensure they comply with the obligations under the Act. Tables 1.1 and 1.2 below outline the main amendments to the Act and the expected dates these requirements are set to take effect. Original target dates for commencement of some of the provisions have been delayed by the COVID pandemic, and so centres should keep up to date via the Office of Fair Trading website: <a href="https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-">https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-</a>

regulations/associations-charities-and-non-for-profits/incorporated-associations/newlaws.

### Table 1 Amendments already in effect

Section/s	Intent	Practical issues
Section 6(2), 48(1A)	Clarifying adoption of model rules	• Able to replace their own rules with the model rules or adopt the model rules via the passing of a special resolution at a general meeting.
		• Adoption or replacement needs to be registered with the Office of Fair Trading (OFT) within three months of the special resolution being passed.
	es to adopt the mo ng and notify the O	del rules, the CLC must draft a special resolution, pass it at a IFT.
Section 56	Technology for meetings	Permitted to conduct general meetings via communication technologies like Zoom or Skype without the need for the use of such technologies to be specifically authorised under its rules.
	ure members who p ogies (if they are to	participate in meetings have access and working knowledge of be used).
New section 89	Voluntary administration	Rather than applying to the Supreme Court for the appointment of a provisional liquidator, management committee has the power to voluntarily appoint an administrator to place their CLC into voluntary administration.
New section 90	Voluntary winding up	May be wound up voluntarily if the incorporated association resolves to do so by special resolution.
New section 92	Vesting of property on cancellation	Following winding up or cancellation, the Queensland Government will be permitted to provide directions regarding how surplus assets, property and money are to be vested via gazette notices (rather than by passing a regulation).
New section 92A	Voluntary cancellation	Can apply to the OFT Chief Executive to cancel their incorporation, bypassing formal winding up procedures. An application can only be made if the association has no outstanding debts/liabilities, has paid all applicable fees and penalties under the Act, and is not a party to any legal proceedings.

## Table 2 Amendments expected to come into effect in 2021 /2022(unless stated otherwise)

Section/s	Intent	Practical issues	
Section 21	Common seal	Incorporated associations are no longer required to have a common seal.	
A CLC must ar	mend its rules if it w	vishes to stop using a common seal.	
Section 28	Executing contracts without seal	Incorporated associations are no longer required to execute documents with a seal (they can do so if they choose to).	
New section 47A	Internal grievances	• From 30 June 2022, incorporated associations may set out a grievance procedure in their rules for dealing with disputes between members, management committee or the association itself.	
		• The Act prescribes what the policy must cover (e.g., must involve a mediation and give each party fair opportunities).	
		<ul> <li>If prescribed provisions are not included in the association's rules, the model rules providing for a grievance policy will apply.</li> </ul>	
	t a special resolution cedure in its rules.	on and organise a general meeting if it chooses to set out a	
New section 59	Maintaining proper records	Imposes a new obligation on management committee members to ensure the incorporated association keeps proper financial records.	
Section 66	Secretary to be over 18 years old	Secretaries must be an 'adult' rather than an 'individual'.	
CLC must ame	CLC must amend its internal governance policies to ensure its secretary is at least 18 years old.		
Section 72	Resolving a dispute	Incorporated associations cannot make an application to the Supreme Court to resolve a dispute under the association's rules unless the association or member has made reasonable attempts to resolve the dispute under the applicable	

grievance procedure.

Section/s	Intent	Practical issues
New div 2 and div 3,	Internal Governance	Duties of officers will be listed in the Act, rather than applying in accordance with common law requirements, including:
part 7		disclosure of material personal interests;
		• disclosure of remuneration and other benefits;
		• duty of care and diligence;
		• duty of good faith;
		• use of position;
		• use of information; and
		• duty to prevent insolvent trading.

CLC must adopt practices to ensure compliance with higher levels of disclosure and may need to provide training to management committee on what must be disclosed.

CLC must amend governance policies to reflect the listed duties and provide training to management committee on their obligations. For example, management committee must be aware of the CLC's financial position and always consider that position when making management decisions.

Section 5,	Reduction in	The Act will provide that a regulation may exempt classes of
section 49(2), new regulation	duplicated annual reporting for charities	associations from the requirement to provide annual financial reports to the OFT Chief Executive. The government intends to exempt associations that are registered as a charity the Australian Charities and NFP's Commission ( <b>ACNC</b> ). <sup>1</sup>

CLC should remove the requirement in governance policies to provide annual financial reports to the OFT Chief Executive.

<sup>&</sup>lt;sup>1</sup> The government indicates this intention in the explanatory memorandum for the Associations Incorporation and Other Legislation Amendment Bill 2019 and on the information website here: <a href="https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/incorporated-associations/new-laws">https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/incorporated-associations/new-laws</a>

## 3. Overview of legal considerations of public company limited by guarantee structure.

A public company limited by guarantee structure is commonly used by NFPs and charitable organisations. This structure is suited to NFPs and charitable organisations because any profit generated is reinvested into the company to be applied towards the NFP's or organisation's purposes or charitable objective. Given the amendments to the Act, some CLCs may prefer to convert to a public company limited by guarantee.

Whilst it is still a company, any profit is reinvested and therefore a public company limited by guarantee cannot:

- issue shares in itself; or
- pay dividends to its members (known as 'shareholders' in more traditional company structures).

Further, liability of the members of a public company limited by guarantee is limited to a fixed amount set out in the NFP or organisation's constitution – which replaces the 'rules' of an incorporated association.

Key **pro's** and **con's** that CLCs may also consider when deciding whether to change their company structure are set out below.

### Pros and Cons of company limited by guarantee structure

### Pro's

- Can carry on business nationally without having to separately incorporate in each State and Territory or register as an Australian Registrable Body
- + If registered with ACNC, will primarily report to ACNC (not ASIC)
- + Is a separate legal entity distinct from its members, which have limited legal liability if the entity is wound up

### Con's

- Will need to become familiar with an additional regulatory regime applicable to companies limited by guarantee under the Corporations Act 2001 (Cth) (Corporations Act) and the ACNC registration and governance requirements
- Must only pursue charitable purposes set out in the company's constitution and apply its income in promoting those purposes
- Directors still have various duties (which are contained in ACNC Governance Standard 5, rather than the Corporations Act)
- Unless waived by ASIC, must use the word 'Limited' or 'Ltd' in name

### 4. Updates required to CLC governance policies

CLCs should review and amend their internal governance policies and constitution to ensure they comply with the expected amendments to the Act (see the 'Impending changes to the Associations Incorporation Act 1981 (Qld) and practical issues for CLCs' section above) including amending its rules to prohibit the secretary from being less than 18 years of age and listing the duties of responsible persons (e.g., directors, committee members).<sup>2</sup>

CLCs should note that the actual changes required will depend on the current drafting of their policies and CLCs should seek legal assistance if they are not sure that their policies will comply with the Act.

By 30 June 2022, its recommended that CLCs incorporate an internal governance procedure or dispute resolution process into their governance policies (it may also be outlined in the CLC's rules). If a CLC does not have a grievance procedure in place by 30 June 2022, the CLC must observe the grievance procedure in the model rules (to be developed by the OFT in consultation with industry bodies).<sup>3</sup>

To assist CLCs in changing to a public company limited by guarantee structure, the following resources have been included as part of this guide:

- a general roadmap of the steps to change to a public company limited by guarantee structure; and
- a checklist of the required documents.

<sup>&</sup>lt;sup>2</sup> For an example of how to describe these duties, see clause 47 and 48.1 of the ACNC template constitution for a charitable company limited by guarantee, available here: https://www.acnc.gov.au/tools/templates/constitution-charitable-company-limited-guarantee <sup>3</sup> For more information on the grievance procedure see the dedicated Queensland government website here: https://www.gld.gov.au/law/laws-regulated-industries-and-

## 5. Roadmap for converting to a public company limited by guarantee

#### 1) Confirm proposed company details and reserve company name

Confirm the following details of the proposed public company limited by guarantee:

a) directors (there must be at least 3 directors, with 2 directors being resident in Australia); b) company secretary; c) members; d) public officer (to be the primary contact for the ATO); e) company name (see step 8 below); f) registered office and principal place of business; and g) office hours for each business day.

Check the desired company name is available, and reserve it using ASIC form 410 (prescribed ASIC fee \$52).<sup>4</sup> A name can be reserved for up to two months. This will give you time to prepare your application and to hold a meeting to achieve member approval of the conversion. *Timeframe:* Step 1 should be completed prior to the meeting of the management committee (step 3).

### 2) Prepare new constitution

Prepare the constitution for the proposed public company limited by guarantee.

**Timeframe**: Organise CLC management committee meeting to finalise draft constitution.

#### 4) Prepare notice of meeting for members

Prepare a notice of meeting for management committee members in accordance with the CLC's rules, which should at least include:

a) the time, date and place of the meeting;

5) Send notice of

meeting Send the notice of

meeting to all existing

Follow any rules for the CLC sending notices for

members of the CLC.

general meetings.

accordance with the

notice periods in the

Timeframe: In

CLC's rules.

b) the full form of the special resolution to approve the application to transfer the CLC's incorporated association to a public company limited by guarantee;

c) the full form of the special resolution to change the CLC's name;

d) the full form of the special resolution to adopt the CLC's new constitution (and a copy of the proposed new constitution); and

e) a statement regarding the intention to propose the above resolutions as special <u>resolutions</u>.

### 3) Decision of CLC's management committee

The CLC's management committee decides that:

a) subject to a special resolution being passed by its members, it approves the CLC applying to ASIC to transfer its incorporation to a public company limited by guarantee; and

b) subject to a special resolution being passed by its members and ASIC approving the transfer application:

• it adopts the new company name and new constitution; and

• it approves the proposed officers and members of the proposed public company limited by guarantee.

**Timeframe**: Resolution to be drafted prior to preparing the notice in step 4.

### 6) Pass special resolutions at meeting of members

A general meeting of the CLC's members is held and the following special resolutions are passed:

a) that the CLC applies to ASIC to transfer its incorporation to a public company limited by guarantee; and

b) subject to ASIC approving such application:

- the CLC adopts the new company name and the new constitution; and
- the CLC approves the proposed officers and members of the proposed public company limited by guarantee.

A special resolution is passed at the general meeting if not less than three quarters of the members voting at the meeting (whether in person or by proxy) vote in favour of the resolution.

Timeframe: Resolutions to be passed on the date set for the general meeting (the General Meeting).

### 8) Registering the company name (if required)

The CLC needs to register the business name via ASIC Connect it wishes to operate under if that name is different from: the proposed company name or its name currently registered on the ASIC Business Names Register (if it is registered).<sup>5</sup>

Timeframe: Must be completed prior to step 9.



Obtain signed consents from the proposed directors, proposed company secretary, proposed members and proposed public officer of the CLC.

*Timeframe:* Seek consents shortly after the special resolution has been passed. Step 7 must be completed before step 10.



<sup>4</sup> Current as at 20 August 2021. See current fee and ASIC Form 410 here: <u>https://asic.gov.au/regulatory-resources/forms/forms-folder/410-application-for-reservation-of-a-</u>

<sup>5</sup> If the CLC's business name was registered in Queensland on 28 May 2012, the name was automatically transferred to the ASIC Business Names Register. See the ASIC Regulatory Guide 235 Registering your business name, available here: <u>https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-235-registering-your-business-name/</u>. Also see section 18(2) of the *Business Names Registration Act 2011* (Cth).

### 9) Apply to the OFT

Apply to the OFT to transfer the CLC's incorporated association registration by submitting a Form 28 or Form 29 (depending on when the CLC was incorporated).6

Timeframe: Must be completed and the transfer must be approved by the OFT before completing step 10.

#### 12) Prepare registers

Prepare and maintain a register of members of the CLC and a register of officeholders of the CLC.

Timeframe: Prepare register shortly after the registration date (i.e., when ASIC approves the application made in step 11, the Registration Date).

### 13) Notify ACNC of changes

Within 28 days of the Registration Date, the CLC must submit a copy of the new certificate of incorporation and new constitution to the ACNC Charity Portal.

Timeframe: No later than 28 days after the Reaistration Date.

#### 10) Apply to ASIC for transfer of incorporation

Apply to ASIC for the transfer of the CLC's incorporated association to a public company limited by guarantee, which requires lodgement of the following:

a) ASIC Form 202 (signed by a person who has consented to become a director);7

b) the prescribed ASIC fee (\$512);<sup>8</sup>

c) a written declaration from a person who has consented to become a director / secretary containing: a copy of the relevant sections (Part 14) of the Associations Incorporation Act 1981 (Qld) that allow the transfer; a copy of the general meeting minutes where the members passed the special resolution approving the application to transfer the CLC's incorporation; and

d) the following additional documents: a certified copy (by the OFT) of the CLC's current certificate of incorporation; a certified copy of the CLC's current rules; a copy of the CLC's proposed new constitution.

Timeframe: The date of applying to ASIC for transfer of structure (the Application Date). This application should be made once the listed materials have been prepared for lodgement.

#### 11) Apply to ASIC to dispense with 'Limited' name requirement (optional step)

Apply to ASIC for approval to omit 'Limited' from the new company's legal name, which requires lodgement of the following:

a) ASIC Form 432 (signed by a person who has consented to become a director); and

b) the prescribed ASIC fee (\$422).9

The ASIC Form 432 can be lodged at the same time as the ASIC Form 202 (see step 10 above). In order for the CLC to be eligible to omit 'Limited' from its new company's legal name, the new constitution of the CLC must:

a) prohibit the CLC paying fees to its directors; and

b) require the directors of the CLC to approve all other payments the CLC makes to its directors.

Timeframe: Lodgement should occur on the Application Date.

#### 14) Notify other relevant bodies of change

The CLC should notify the transfer of structure (and change of name) to any bodies that it interacts with, which may include the following:

a) the ATO (notification as to, if relevant, change of name, authorised contact person and account details. Notification can be made online, by phone or by completing a Change of registration details form (NAT 2943));<sup>10</sup>

b) the Australian Business Register (notification as to, if relevant, address, ACN or ABN, public officer details and name of trustees. Notification can be made online via ASIC Connect);<sup>11</sup> and

c) other bodies, such as: the CLC's insurers; the CLC's superannuation funds; the CLC's funding bodies; fundraising regulators; any persons that lease property to the CLC; the CLC's suppliers (including suppliers of utilities); the Titles Registry Office; the CLC's banks; and the CLC's employees.

Timeframe: Notifications should be made as soon as practicable after the Registration Date. Note the ATO and the Australia Business Register must be notified within 28 days after the Registration date.

#### 15) Update all displays of the company name

Update the CLCs stationary and any documents the CLC publishes to incorporate its new company name, new ACN and new ABN. Also, ensure the CLCs name is on display wherever the CLC conducts its operations and is open to the public.

<sup>20mpany-name-to-onneare-word=inmeto-<sup>10</sup> ATO Change of registration details form (NAT 2943) form is available here: <u>https://www.ato.gov.au/Business/Registration/Update-your-details/</u></sup>

<sup>&</sup>lt;sup>6</sup> Use the Form 29 if the CLC was incorporated before 1 July 1982. Use the Form 28 if the CLC was incorporated after 1 July 1982. Both forms are available here: https://www.gld.gov.au/law/laws-regulated-industries-and-accountability/gueensland-laws-and-regulations/associations-charities-and-non-for-profit associations/running-an-incorporated-association/changing-your-associations-status/transfer-to-a-company-status

associations/running-an-incorporated-association/changing-your-associations-status/transter-to-a-company-status <sup>7</sup> ASIC Form 202 is available here: <a href="https://asic.gov.au/regulatory-resources/forms-folder/202-application-for-registration-of-a-body-corporate-as-a-company/">https://asic.gov.au/regulatory-resources/forms-folder/202-application-for-registration-of-a-body-corporate-as-a-company/</a> <sup>8</sup> Current as at 20 August 2021. See current fee here: <a href="https://asic.gov.au/regulatory-resources/forms/forms-folder/202-application-for-registration-of-a-body-corporate-as-a-company/">https://asic.gov.au/regulatory-resources/forms-folder/202-application-for-registration-of-a-body-corporate-as-a-company/</a>

<sup>&</sup>lt;sup>9</sup> Current as at 20 August 2021. See current fee and ASIC Form 432 here: https://asic.gov.au/regulatory-resources/forms/forms-folder/432-application-to-change-aanv-name-to-omit-the-word-limited

<sup>&</sup>lt;sup>11</sup> ASIC's guide to updating business details is available here: https://asic.gov.au/for-business/updating-your-business-name-detail

### 6. Checklist of documents required to be prepared and lodged by CLC to change to public company limited by guarantee structure

The checklist below is a **general guide** to the documents required to be prepared and lodged by CLCs to convert to a public company limited by guarantee structure and is designed to be used in conjunction with the roadmap included in this guide.

You should seek specific legal assistance to ensure these are the correct steps and documents for your organisation.

No.	Document / step		
1	ASIC Form 410: Application for reservation of a company name		
2	Constitution (certified copy)		
	Notice of meeting		
4	Members resolution		
	Letter attaching consent to act as director form		
7	Consent/s to act as director		
	Consent/s to act as secretary		
	OFT Form 28: Application for authority to transfer an association's incorporation		
0	Certificate of Incorporation (if OFT Form 28 is submitted)		
9 (OFT Form 28 or 29)	OFT Form 29: Application for authority to transfer a corporation's incorporation from RECI Act		
	Letters patent (if OFT Form 29 is submitted)		
	ASIC Form 202: Application for registration of a body corporate as a company		
	Prescribed ASIC Fee		
	Director's statement required by s601BC(7) of the Corporations Act		
	Director's statement required by s601BC(8) of the Corporations Act		
	Copy of meeting minutes		
10	Certified copy (by OFT) of the association's certificate of incorporation		
	Certified copy of the association's rules (incl. statement of purposes)		
	Copy of Part 14 of the Incorporation Associations Act 1981 (Qld)		
	Constitution (certified copy)		
	Any outstanding annual statements (if applicable)		
11	ASIC Form 432: Application to change a company name to omit the word 'Limited'		
LL (optional)	Prescribed ASIC Fee		
13	ACNC Form 3B: Change of charity details		

### 7. Ongoing obligations for an Incorporated Association and a Public Company Limited by Guarantee

The following table sets out the ongoing obligations of incorporated associations (referred to as 'IA') and public companies limited by guarantee (referred to as 'Co.' below) under the Act.<sup>12</sup>

All Queensland CLCs are listed as charities on the ACNC Charity Register.

Listed charities are generally exempt from some obligations applying to public companies under the Corporations Act – as such, this guide specifies the obligations of a charity listed on the ACNC Charity Register.

<sup>&</sup>lt;sup>12</sup> It is important to note that all Queensland CLC's listed on the Community Legal Centres Queensland directory (as at 20 August 2021) are listed as charities in the ACNC Charity Register, and this impacts their obligations if they transfer to a public company limited by guarantee structure.

Obligation	Structure	Explanation
Office holder, director and management committee duties	Incorporated Association	<ul> <li>Officers have a range of duties, which will soon be listed in the Act, including:</li> <li>1. disclosure of material personal interests;</li> <li>2. duty of care and diligence;</li> <li>3. duty of good faith;</li> <li>4. use of position;</li> <li>5. use of information; and</li> <li>6. duty to prevent insolvent trading.</li> </ul>
		Given the CLC's are registered charities, CLC's (and its responsible persons) that are industry associations also have the duties listed immediately below.
	Company	Charities must abide by the ACNC Governance Standards, including:
		1. remain not-for-profit and work towards their charitable purpose;
		2. take reasonable steps to be accountable to and hear the governance concerns of their members;
		<ol> <li>must not commit a serious offence under any Australia law (e.g., fraud or penalty of 60 penalty units or more);</li> </ol>
		4. take reasonable steps to be satisfied that responsible persons are not disqualified from management a corporation under the Corporations Act or disqualified from being a responsible member by the ACNC Commissioner;
		<ol> <li>must take reasonable steps to ensure responsible members are subject to, understand and carry out the duties of responsible persons;</li> </ol>
		6. must take reasonable steps to become a participating non-government institution if the charity is, or is likely to be, identified as being involved in the abuse of a person either:
		(a) in an application for redress made under section 19 of the <i>National Redress Scheme for Institutional Child Sexual Abuse Act 2018</i> (Cth); or
		(b) in information given in response to a request from the National Redress Scheme Operator (Secretary of the Department of Social Services) under section 24 or 25 of the <i>National Redress Scheme for Institutional Child Sexual</i> <i>Abuse Act 2018</i> (Cth). <sup>13</sup>
		Responsible persons (e.g., directors, committee members) are exempt from the directors' duties in the Corporations Act, however are subject to the following duties (which are based on those statutory duties):
		<ol> <li>act with reasonable care and due diligence;</li> <li>act honestly in the best interests of the charity and for its purposes;</li> <li>not misuse the position of responsible person;</li> <li>not misuse information obtained performing duties;</li> </ol>
		<ul> <li>5. disclose any actual or perceived conflict of interest;</li> <li>6. ensure that the charity's financial affairs are management responsibly;</li> <li>7. not allow a charity to operate while insolvent.<sup>14</sup></li> </ul>

<sup>&</sup>lt;sup>13</sup> The 6 ACNC Governance Standards are explained in greater detail here: <u>https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/governance-standards</u>

<sup>&</sup>lt;sup>14</sup> These duties are specified in ACNC Governance Standard 5, which is available here: <u>https://www.acnc.gov.au/for-charities/manage/governance-standards/governance-standard-5-duties-responsible-persons/what-are</u>

Obligation	Structure	Explanation
Reporting	Incorporated Association	Required to lodge an annual return and audited financial statements. Required to notify the OFT of certain changes (e.g., changes to the positions of president, secretary and treasurer and changes to the incorporated association's postal address or the secretary's residential address). ACNC registered charities will soon no longer be required to lodge a summary of their annual financial records with the OFT or pay annual lodgement fees. <sup>15</sup> However, charities will have to notify the ACNC of certain changes, including change of legal name, address for service, change in
	Company	responsible persons (committee members, directors, trustees), and changes to governing document (constitution, rules or trust deed). Required to submit an Annual Information Statement with ACNC (with a financial report, if the company is medium or large) within six months of the end of the charity's reporting period.
		Required to notify the ACNC of certain changes, including change of legal name, address for service, change in responsible persons (committee members, directors, trustees), and changes to governing document (constitution, rules or trust deed). Not required to report to ASIC. No requirement to report to OFT.
Records	Incorporated Association	Management committee will soon be required to ensure proper financial records are maintained. <sup>16</sup> However, ACNC requires all charities to keep financial records. The specific obligations are dependent on its size, complexity, activities, how it spends or receives money, and whether it has extra obligations from state regulators. <sup>17</sup>
	Company	ACNC requires all charities to keep financial records. <sup>18</sup> This requirement replaces the obligations to keep written financial records under the Corporations Act. The charity may need to report to other government regulators who have their own record-keeping requirements, such as the ATO. <sup>19</sup>
Fees (current as at 2 March 21)	Incorporated Association	Annual return of association fee of \$58.60. Change of rules fee of \$22.10. Change of name fee \$83.80. No fees for change of details relating to an incorporated association. <sup>20</sup> ACNC has the power to charge late fees for lodgement of forms (ranging from \$222 to \$5,550) <sup>21</sup> and also waive late fees. <sup>22</sup> The ACNC takes a 'risk-based' approach waiving fees.
	Company	No fees to notify ACNC of changes. No ASIC or ACNC review or annual lodgement fees. ACNC has the power to charge/waive late fees for late lodgement of documents. <sup>23</sup>

- <sup>15</sup> This will be the effect of the new section 49, Division 2, Part 9 of the Associations Incorporation Act 1981 (Qld) (change expected in 2021-22).
   <sup>16</sup> This obligation will be imposed by new section 59 of the Associations Incorporation Act 1981 (Qld) (change expected in 2021-22).
   <sup>17</sup> The ACNC lists the record keeping requirements here: https://www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc/keep-charity-records#financial
   <sup>18</sup> The ACNC lists the record keeping requirements here: https://www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc/keep-charity-records#financial
   <sup>19</sup> The ACNC lists potential obligations to other government regulators here: https://www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc/keep-charity-records#financial
   <sup>19</sup> The ACNC lists potential obligations to other government regulators here: https://www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc/keep-charity-records#financial
   <sup>20</sup> Fees listed are current as at 20 August 2021. Full list of current fees available here: https://www.acnc.gov.au/fo.charities/manage-your-charity/obligations-and-associations-forms-and-fees
   <sup>21</sup> Current as at 20 August 2021. See current penalties here: https://www.acnc.gov.au/tools/topic-guides/penalties
   <sup>22</sup> The size of late fees is dependent on the size of the organisation and is available here: https://www.acnc.gov.au/tools/topic-guides/penalties
   <sup>23</sup> The size of late fees is dependent on the size of the organisation and is available here: https://www.acnc.gov.au/tools/topic-guides/penalties
   <sup>23</sup> The size of late fees is dependent on the size of the organisation and is available here: https://www.acnc.gov.au/tools/topic-guides/penalties
   <sup>24</sup> The size of late fees is dependent on the size of the organisation and is available here: https://www.acnc.gov.au/tools/topic-guides/penalties
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Obligation	Structure	Explanation
Constitution / Rules	Incorporated Association	Required to have a set of rules. Although they can use the model rules. The rules (i.e., governance document) must be lodged with the ACNC and must address the matters set out in the ACNC governance standards. Must notify the ACNC of a change to the rules.
	Company	Not required to have a constitution. May rely on the replaceable rules in the Corporations Act, or a combination of both. Constitution (if any) must be lodged with the ACNC and must address the matters set out in the ACNC governance standards.
		Must notify the ACNC of a change in the constitution. The change has effect when approved by members and is not dependent on the ACNC's approval.
Members	Incorporated Association	There must be at least seven members. No age restriction on members generally, however the secretary must be an adult. <sup>24</sup>
	Company	There must be at least one member. The constitution can set out a minimum and maximum number of members.
Liability of members	Incorporated Association Company	The liability of members is limited to that amount which they have agreed in the constitution to contribute on the dissolution or winding up of the company which can be nominal.
Management committee / directors	Incorporated Association	Must have at least 3 members who sit on the management committee. The management committee must include the offices of president, treasurer and secretary.
	Company	Must have at least three directors and at least one secretary.

<sup>24</sup> This requirement will be inserted by the amendments to section 66 of the Associations Incorporation Act 1981 (Qld) (change expected in 2021-22.