

Factsheet

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

This Factsheet outlines the ongoing obligations of Incorporated Associations and Public Companies Limited by Guarantee under Queensland's Associations Incorporation Act.¹

Listed charities are generally exempt from some obligations applying to public companies under the Corporations Act. As all Queensland CLCs are listed as charities on the ACNC Charity Register, the information in this Fact Sheet is limited to the obligations of organisations with ACNC charitable registration.

Obligation: Office holder, director and management committee duties

Structure	Explanation
<i>Incorporated Association</i>	<p>Officers have a range of duties, which will soon be listed in the Act, including:</p> <ol style="list-style-type: none"> 1. disclosure of material personal interests; 2. duty of care and diligence; 3. duty of good faith; 4. not be able to use position or information obtained from their position to gain a benefit or material advantage or cause detriment to the association; and 5. duty to prevent insolvent trading. <p>The expected standard of diligence and care that are expected to be applied will be clarified, to assist officers to meet these duties and exercise their powers accordingly.</p> <p>Given the CLC's are registered charities, CLC's (and its responsible persons) that are industry associations also have the duties listed immediately below.</p>
<i>Company</i>	<p>Charities must abide by the ACNC Governance Standards, including:</p> <ol style="list-style-type: none"> 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; 3. must not commit a serious offence under any Australia law (e.g., fraud or penalty of 60 penalty units or more); 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; 5. must take reasonable steps to ensure responsible members are subject to, understand and carry out the duties of responsible persons; 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:

¹ 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:	Office holder, direction and management committee duties (continued)
Company	<p>(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</p> <p>(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 Abuse Act 2018</i> (Cth).²</p> <p>Certain provisions under the Corporations Act are 'turned off' in respect of companies registered with ACNC, including the provisions setting out the directors' duties. Companies registered with ACNC must still however take reasonable steps to make sure responsible persons (e.g., directors, committee members) comply with the following duties to meet governance standards required by ACNC (which are based on those statutory duties):</p> <ol style="list-style-type: none"> 1. act with reasonable care and due diligence; 2. act honestly in the best interests of the charity and for its purposes; 3. not misuse the position of responsible person; 4. not misuse information obtained performing duties; 5. disclose any actual or perceived conflict of interest; 6. ensure that the charity's financial affairs are management 7. not allow a charity to operate while insolvent.³

Obligation: Reporting

Structure	Explanation
Incorporated Association	<p>Required to lodge an annual return and audited/verified financial statements, depending on the level of the association.</p> <p>Required to notify the OFT of certain changes (e.g., changes to the positions of president, secretary and treasurer (including updating their residential and postal addresses) and changes to the incorporated association's postal address).</p> <p>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.⁴ However, charities will have 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).</p>
Company	<p>Depending on the annual revenue of the company, generally 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, and does not have to report to ASIC or the OFT or pay an annual review fee to ASIC.</p> <p>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).</p>

² The 6 ACNC Governance Standards are explained in greater detail here: <https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/governance-standards>

³ These duties are specified in ACNC Governance Standard 5, which is available here: <https://www.acnc.gov.au/for-charities/manage/governance-standards/governance-standard-5-duties-responsible-persons/what-are>

⁴ This will be the effect of the new section 49, Division 2, Part 9 of the *Associations Incorporation Act 1981* (Qld) (change expected by in 2021/2022, dates yet to be fixed).

Obligation: Records

Structure	Explanation
Incorporated Association	<p>Management committee will soon be required to ensure proper financial records are maintained.⁵</p> <p>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.⁶</p>
Company	<p>ACNC requires all charities to keep financial records.⁷ This requirement replaces the obligations to keep written financial records under the Corporations Act.</p> <p>The charity may need to report to other government regulators who have their own record-keeping requirements, such as the ATO.⁸</p>

Obligation: Fees (current as at 1 July 2021)

Structure	Explanation
Incorporated Association	<p>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.⁹</p> <p>ACNC has the power to charge late fees for lodgement of forms (ranging from \$222 to \$5,550)¹⁰ and also waive late fees.¹¹ The ACNC takes a 'risk-based' approach waiving fees.</p>
Company	<p>No fees to notify ACNC of changes. No ASIC or ACNC review or annual lodgement fees.</p> <p>ACNC has the power to charge/waive late fees for late lodgement of documents (see above).¹²</p>

Obligation: Constitution / rules

Structure	Explanation
Incorporated Association	<p>Required to have a set of rules. There are model rules available for use, although the model rules must be adopted in their entirety (available online)¹³.</p> <p>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.</p>
Company	<p>Not required to have a constitution. May rely on the replaceable rules in the Corporations Act, or a combination of both.</p> <p>Constitution (if any) must be lodged with the ACNC and must address the matters set out in the ACNC governance standards.</p>

⁵ This obligation will be imposed by new section 59 of the *Associations Incorporation Act 1981* (Qld) (change expected in 2021/2022, date to be fixed).

⁶ The ACNC lists the record keeping requirements here: <https://www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc/keep-charity-records#financial>

⁷ The ACNC lists the record keeping requirements here: <https://www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc/keep-charity-records#financial>

⁸ The ACNC lists potential obligations to other government regulators here: <https://www.acnc.gov.au/for-charities/manage-your-charity/other-regulators>

⁹ Fees listed are current as at 31 July 2021. Full list of current fees available here: <https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/incorporated-associations/incorporated-associations-forms-and-fees>

¹⁰ Current as at 31 July 2021. See current penalties here: <https://www.acnc.gov.au/tools/topic-guides/penalties>

¹¹ 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>

¹² 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>

¹³ Current as at 10 November. Model rules available here: <https://www.publications.qld.gov.au/dataset/oft-incorporated-associations-forms-and-guides/resource/9a54beb5-8288-4ddd-847b-459a97822119>

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

Obligation: Members

Structure	Explanation
<i>Incorporated Association</i>	There must be at least seven members. No age restriction on members generally, however the secretary must be an adult. ¹⁴
<i>Company</i>	There must be at least one member. The constitution can set out a minimum and maximum number of members.

Obligation: Liability of members

Structure	Explanation
<i>Incorporated Association</i>	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.
<i>Company</i>	

Obligation: Management Committee /Directors

Structure	Explanation
<i>Incorporated Association</i>	Must have at least 3 members who sit on the management committee. The management committee must include the offices of president, treasurer and secretary.
<i>Company</i>	Must have at least three directors and at least one secretary. At least two directors and the secretary must ordinarily reside in Australia.

¹⁴ This requirement will be inserted by the amendments to section 66 of the *Associations Incorporation Act 1981* (Qld) (change expected in 2021/2022, date to be fixed).