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Factsheet

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, with any profit generated reinvested into the company to be applied towards the NFP's or organisation's purposes or charitable objective.

Because any profits generated must be reinvested, 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.

In light of recent amendments to Queensland's *Associations Incorporation Act*, some Queensland CLCs may consider converting to a public company limited by guarantee. Key **pros** and **cons** 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

Pros

+ 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, some of the more burdensome provisions of Corporations Act do not apply

+ Is a separate legal entity distinct from its members, which have limited legal liability if the entity is wound up

Cons

- 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

- If NFP, must pursue 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 requirement waived by ASIC as a 'special purpose company', must use the word 'Limited' or 'Ltd' in name (i.e. most companies limited by guarantee that are established for a charitable purpose and do not pay directors in their capacity as directors will qualify as a special purpose company).