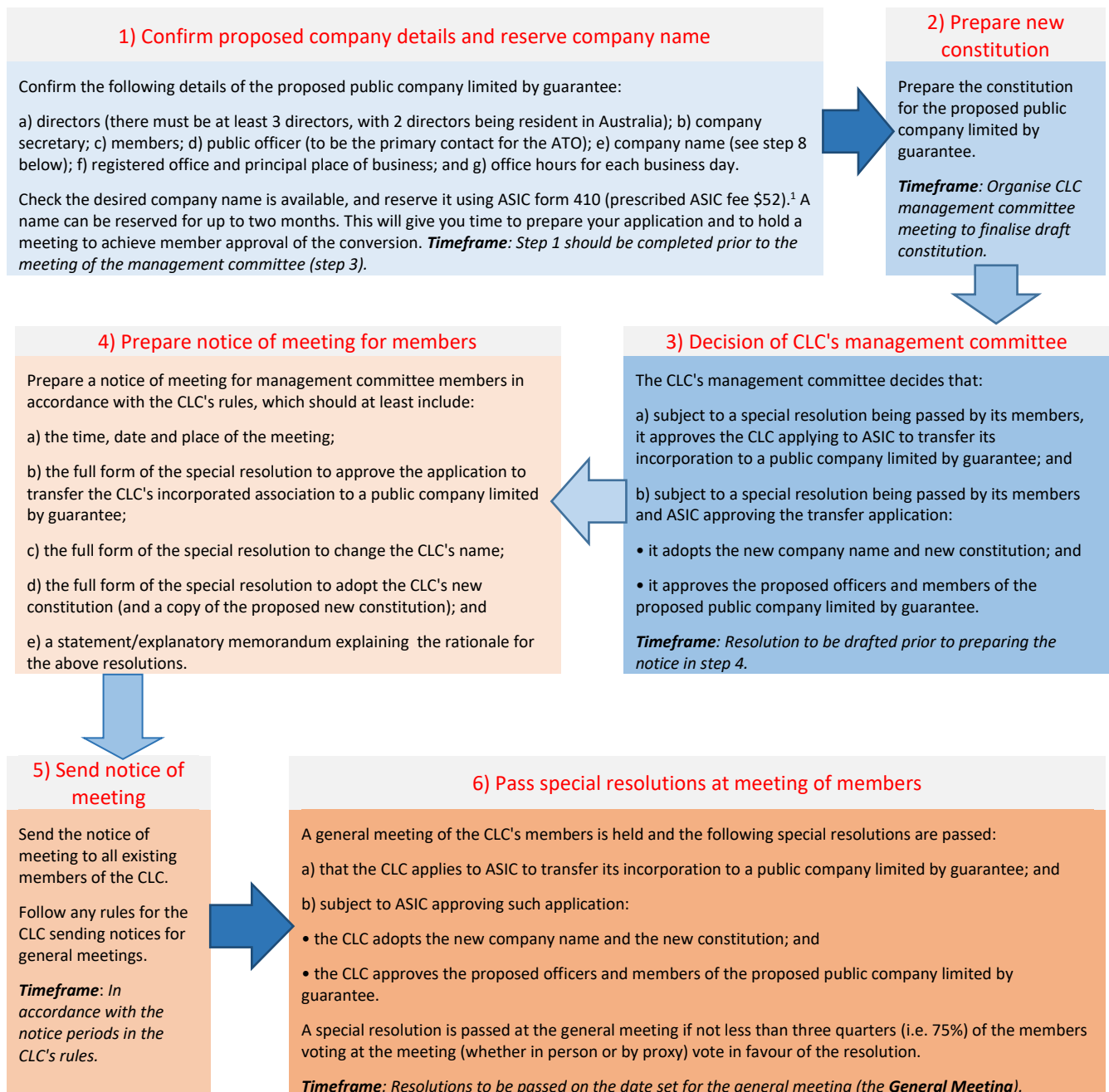


# Factsheet

## Roadmap & checklist for converting to a public company limited by guarantee



<sup>1</sup> Current as at 20 August 2021. See current fee and ASIC Form 410 here: <https://asic.gov.au/regulatory-resources/forms/forms-folder/410-application-for-reservation-of-a-name/>



### 7) Obtain consents

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.

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

The CLC needs to register the business name via ASIC Connect if it wishes to operate under a name that is different from: the proposed company name or its name currently registered on the ASIC Business Names Register (if it is registered).<sup>2</sup>

**Timeframe:** Must be completed prior to step 9.

### 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);<sup>3</sup>
- b) the prescribed ASIC fee (\$512);<sup>4</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.

### 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).<sup>5</sup>

**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**).

### 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).<sup>6</sup>

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.

<sup>2</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: <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rq-235-registering-your-business-name/>. Also see section 18(2) of the *Business Names Registration Act 2011* (Cth).

<sup>3</sup> ASIC Form 202 is available here: <https://asic.gov.au/regulatory-resources/forms/forms-folder/202-application-for-registration-of-a-body-corporate-as-a-company/>

<sup>4</sup> Current as at 20 August 2021. See current fee here: <https://asic.gov.au/regulatory-resources/forms/forms-folder/202-application-for-registration-of-a-body-corporate-as-a-company/>

<sup>5</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.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/incorporated-associations/running-an-incorporated-association/changing-your-associations-status/transfer-to-a-company-status>

<sup>6</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-a-company-name-to-omit-the-word-limited/>



### 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 Registration Date.

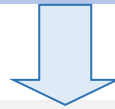


### 14) Notify other relevant bodies of change

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>7</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>8</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 stationery 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>7</sup> ATO Change of registration details form (NAT 2943) form is available here: <https://www.ato.gov.au/Business/Registration/Update-your-details/>

<sup>8</sup> ASIC's guide to updating business details is available here: <https://asic.gov.au/for-business/updating-your-business-name-details/>

## Checklist of documents required to be prepared and lodged 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. It is designed to be used in conjunction with the roadmap.

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

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