



Company Limited by Guarantee

Context

The [Sports Governance Principles](#) specify that an organisation should clearly define and document its structure and the duties, responsibilities and powers of members, directors, committees and management.

The [Sports Governance Standards](#) specify that the organisation should be a legal entity incorporated under the legislation which best fits its size, need and jurisdiction.

Company Limited by Guarantee

A company limited by guarantee is incorporated under the *Corporations Act 2001* (Cth) and can carry out its activities anywhere in Australia.

The law relating to incorporated associations is state- and territory-based. Accordingly, an organisation incorporated as an association under, e.g. the *Associations Incorporation Act 1981* (Qld) can operate anywhere in Queensland, however, it cannot substantially operate in other states without taking further legal steps. There are increased and duplicative administrative processes associated with the following further legal steps:

- Registering the organisation as a Registered Australian Body with the Australian Securities and Investments Commission (**ASIC**) and obtaining an Australian Registered Body Number (ARBN) – Being regulated by ASIC as well as the relevant state regulatory body means extra forms will need to be prepared and lodged by your organisation each year and when certain changes occur.
- Incorporating separately as an association in all other states and territories – Incorporation in multiple states can be difficult to manage and you may end up having to comply with multiple state and territory laws and report to multiple regulators. Additionally, being incorporated under a state or territory law usually means that the association's Public Officer needs to reside in the same state or territory in which the association is incorporated, which is not always possible.

In addition to the above obvious advantages, there are a number of other benefits to incorporating as a company limited by guarantee.

Benefits

- Regulation – Organisations with larger turnover, and which are seeking to become a significant national organisation are better positioned to be regulated by ASIC under the Commonwealth Act. The greater resources of the Commonwealth regulator means they are better able to monitor operations, and are more vigilant in addressing non-compliance of organisations.
- Understanding the relevant law – Although more complex, the principles of the *Corporations Act 2001* that apply to organisations are straightforward and are widely understood by legal professionals from all parts of Australia, unlike the various state and territory associations incorporations Acts.
- Company Secretary – The role of the Company Secretary of a company limited by guarantee is better defined in practice and in law than that of a Public Officer of an incorporated association.
- Culture – Anecdotal evidence leads to a suggestion that directors of a company limited by guarantee take their responsibilities more seriously than when these same directors were committee members of an association.



Differences

The below table provides an overview of a number of key differences your organisation may face as a company limited by guarantee or an incorporated association.

	Company limited by guarantee	Incorporated Association
Structure	Public company constituted by members and governed by a board; registered and regulated by the <i>Corporations Act 2001</i> , administered by ASIC; registration recognised Australia wide; does not have shares and therefore has no means for distributing earnings to members (thus not-for-profit).	Body corporate with legal personality separate from members; registered and regulated by the relevant state or territory Act, administered by state or territory government; not-for-profit prohibited from distributing income or assets.
Trade	Can operate anywhere in Australia; may conduct trade with the public as a primary purpose.	Without further steps, confined to trade within the state/territory it is registered; may only trade with the public if that trade is ancillary to the association's purpose; limited liability protection may not apply for activities conducted outside the state or territory.
Financial Reporting	Required to prepare an audited financial report in accordance with Australian Accounting Standards.	Required to prepare an audited financial report in accordance with relevant state or territory Act.
Auditor	Must be audited by a Registered Company Auditor or an Authorised Audit Company.	For organisations with turnover over a specified sum, the auditor needs to be a registered company auditor.
Directors' Reporting	Required to prepare a director's report as specified by the <i>Corporations Act 2001</i> .	Required to prepare a director's report as specified by the state or territory Act.
Annual Reporting	Required to be subject to a process for distributing the annual report, as specified by the <i>Corporations Act 2001</i> .	Required to be subject to a process for distributing the annual report, as specified by the state or territory Act.
Ongoing Compliance	Required to advise ASIC of any specified changes to the company.	Required to advise the relevant state or territory department of any specified changes to the association.
Duties	Directors owe a common law, fiduciary duty to the company to act in the best interests of the company as a whole; Directors have requirements under ss180-184 of the <i>Corporations Act 2001</i> .	Directors owe a common law, fiduciary duty to the association to act in the best interests of the association as a whole.
Liabilities	The liability of members is limited to the amount of their guarantee (the amount they agreed to contribute), and is only called in a winding up situation.	Subject to personal protection provided by the state or territory Act, the liability of members is limited to amounts due to the association by way of unpaid subscriptions, joining fees or other amounts payable under the constitution.



Transition

The process to be taken to transition an organisation from being an incorporated association to a company limited by guarantee differs slightly for each state and territory.

All state and territory Acts allow for associations to ‘transfer’ to be registered as a company limited by guarantee. Transferring does not affect the identity of your organisation; the association will be the same organisation for the purpose of contracts and liabilities, and any contracts or agreements that the association has continue to have effect after the association’s transfer to a company limited by guarantee.

Notwithstanding this, it is recommended that associations obtain independent legal advice to assist with transition. This is particularly important if your association receives funding from a third party, or owns assets that require registration (e.g. real property), as care must be taken to ensure the third party’s requirements are met, and all legal and regulatory steps are taken.

To assist, the below table provides a guide on the process in each state/territory. More information, including more detailed directions can be found at: <https://www.nfplaw.org.au/changingstructure>.

State/Territory	Process
ACT	<p>The <i>Associations Incorporation Act 1991</i> (ACT) provides that an incorporated association may ‘transfer’ its registration to become a company limited by guarantee under the <i>Corporations Act 2001</i> (Cth). The key steps are as follows:</p> <ol style="list-style-type: none"> 1. Propose a new constitution and new directors of the company. 2. Pass a special resolution of the association’s members. 3. Confirm whether current members agree to automatically become members of the new company, or if they need to apply afresh. 4. Lodge documents with Access Canberra to apply for transfer. 5. Lodge documents and pay fees with ASIC to register the company and receive an Australian Company Number (ACN). 6. Notify Access Canberra of the registration. 7. Write to the Australian Business Registry (ABR) to either retain old or apply for a new ABN. 8. Notify the ATO, banks, titles office etc of the transition.
NSW	<p>The <i>Incorporated Associations Act 2009</i> (NSW) provides that an incorporated association may ‘transfer’ its registration to become a company limited by guarantee under the <i>Corporations Act 2001</i> (Cth). The key steps are as follows:</p> <ol style="list-style-type: none"> 1. Propose a new constitution and new directors of the company. 2. Pass a special resolution of the association’s members. 3. Confirm whether current members agree to automatically become members of the new company, or if they need to apply afresh. 4. Lodge application for transfer with NSW Fair Trading. 5. Lodge documents and pay fees with ASIC to register the company and receive an ACN. 6. Notify NSW Fair Trading of the registration. 7. Write to the ABR to either retain old or apply for a new ABN. 8. Notify the ATO, banks, titles office etc of the transition.
NT	<p>The <i>Associations Act</i> (NT) provides that an incorporated association may apply to ‘transfer’ its registration to become incorporated under another Act, including a company limited by guarantee under the <i>Corporations Act 2001</i> (Cth). The key steps are as follows:</p> <ol style="list-style-type: none"> 1. Confirm if your association holds “prescribed property” and, if so, obtain written consent from Licensing NT (LNT) to transfer that property. 2. Propose a new constitution and new directors of the company. 3. Pass a special resolution of the association’s members. 4. Confirm whether current members agree to automatically become members of the new company, or if they need to apply afresh. 5. Lodge documents with LNT to notify of resolution, and publish intention to transfer property, if relevant.



6. Lodge documents and pay fees with ASIC to register the company and receive an ACN.
7. Lodge further documents to notify LNT of the registration.
8. Write to the ABR to either retain old or apply for a new ABN.
9. Notify the ATO, banks, titles office etc of the transition.

QLD

The *Associations Incorporation Act 1981* (Qld) provides that an incorporated association may 'transfer' its registration to become a company limited by guarantee under the *Corporations Act 2001* (Cth). The key steps are as follows:

1. Propose a new constitution and new directors of the company.
2. Pass a special resolution of the association's members.
3. Confirm whether current members agree to automatically become members of the new company, or if they need to apply afresh.
4. Lodge documents and pay fees with ASIC to register the company and receive an ACN.
5. Notify the Office of Fair Trading of the registration.
6. Write to the ABR to either retain old or apply for a new ABN.
7. Notify the ATO, banks, titles office etc of the transition.

SA

The *Associations Incorporation Act 1985* (SA) provides that an incorporated association may 'transfer' its registration to become a company limited by guarantee under the *Corporations Act 2001* (Cth). The key steps are as follows:

1. Notify Consumer and Business Services (CBS) of your intention to transfer.
2. Propose a new constitution and new directors of the company.
3. Pass a special resolution of the association's members.
4. Confirm whether current members agree to automatically become members of the new company, or if they need to apply afresh.
5. Lodge documents and pay fees with ASIC to register the company and receive an ACN.
6. Notify CBS of the registration and continued intention to transfer.
7. Write to the ABR to either retain old or apply for a new ABN.
8. Notify the ATO, banks, titles office etc of the transition.

TAS

The *Associations Incorporation Act 1964* (Tas) provides that an incorporated association may 'transfer' its registration to become a company limited by guarantee under the *Corporations Act 2001* (Cth). The key steps are as follows:

1. Propose a new constitution and new directors of the company.
2. Pass a special resolution of the association's members.
3. Confirm whether current members agree to automatically become members of the new company, or if they need to apply afresh.
4. Lodge documents with Consumer Affairs and Fair Trading (**CAFT**) to register the resolution.
5. Lodge documents and pay fees with ASIC to register the company and receive an ACN.
6. Notify CAFT of the registration.
7. Write to the ABR to either retain old or apply for a new ABN.
8. Notify the ATO, banks, titles office etc of the transition.

VIC

The *Associations Incorporation Reform Act 2012* (Vic) provides that an incorporated association may 'transfer' its registration to become a company limited by guarantee under the *Corporations Act 2001* (Cth). The key steps are as follows:

1. Propose a new constitution and new directors of the company.
2. Pass a special resolution of the association's members.
3. Confirm whether current members agree to automatically become members of the new company, or if they need to apply afresh.
4. Lodge documents and pay fees with ASIC to register the company and receive an ACN.
5. Notify Consumer Affairs Victoria (CAV) of the registration.
6. Write to the ABR to either retain old or apply for a new ABN.
7. Notify the ATO, banks, titles office etc of the transition.



WA

The *Associations Incorporation Act 2015* (WA) provides that an incorporated association may 'transfer' its registration to become a company limited by guarantee under the *Corporations Act 2001* (Cth). The key steps are as follows:

1. Propose a new constitution and new directors of the company.
2. Pass a special resolution of the association's members.
3. Confirm whether current members agree to automatically become members of the new company, or if they need to apply afresh.
4. Lodge application with the Department of Commerce.
5. Lodge documents and pay fees with ASIC to register the company and receive an ACN.
6. Notify the Department of Commerce of the registration.
7. Write to the ABR to either retain old or apply for a new ABN.
8. Notify the ATO, banks, titles office etc of the transition.

Background for National Sporting Organisations (NSO)

In order for a NSO to be recognised by the Australian Sports Commission, the organisation must be incorporated under the *Corporations Act 2001* (Cth) as a company limited by guarantee.



This document is from the Sport Governance Resource Library, which contains a suite of consistent governance resources aligned with the Sport Governance Principles and Sport Governance Standards. The library is a collaboration between the Australian Sports Commission and the state and territory agencies for sport and recreation, which are united in the pursuit of sport governance excellence.

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