



FOUNDATIONS

Choosing Your Legal Structure: Incorporated Association, CLG or Company

Why the entity you chose at formation may no longer serve the organisation you have become

Most associations never choose their legal structure. They inherit it. A handful of founding volunteers registered the organisation using whichever mechanism was familiar, cheapest, or closest to hand, often simply the Associations Incorporation Act of whichever state a key volunteer happened to live in. That decision, made in an afternoon decades ago, still governs the organisation today.

This is not a criticism of those founders. It is an observation about how little most boards revisit a decision that compounds in importance every year the organisation grows. Legal structure is not paperwork. It determines who regulates you, what you can and cannot do nationally, how exposed your directors are, and how credible you look to government, funders and members who are sizing you up. Get it right early and it disappears into the background. Get it wrong, or simply outgrow it, and it becomes a ceiling you keep hitting.

Which rules apply to your association?

The law depends on how your association is set up. A **company limited by guarantee** follows the Corporations Act 2001 (Cth) and its constitution. An **incorporated association** follows its state or territory associations Act and its rules. A **registered charity** also follows the ACNC Act and the ACNC Governance Standards, and some Corporations Act rules are replaced for charities that are companies. Check your own governing documents, and get advice before decisions with legal consequences.

In this resource

1. [The Two Paths Available To Australian Associations](#)
2. [The Question Every Board Should Ask, And Rarely Does](#)
3. [What The Transition Looks Like In Practice](#)
4. [What Conversion Actually Involves](#)
5. [What A CLG Costs You That An Incorporated Association Does Not](#)
6. [The Boardroom Test](#)
7. [The Honest Conclusion](#)

The Two Paths Available To Australian Associations

In Australia, most incorporated associations use one of two structures: an incorporated association under a state or territory Associations Incorporation Act, or as a public company limited by guarantee (CLG) under the Commonwealth Corporations Act 2001. A smaller number use other structures, such as co-operatives, Aboriginal and Torres Strait Islander corporations under the CATSI Act, companies limited by shares or statutory bodies, and some remain unincorporated. For most membership-based associations, the real choice sits between the first two.

Incorporated association status is granted and regulated at the state or territory level, through bodies such as Fair Trading, Consumer Affairs or the equivalent regulator in each jurisdiction. It is inexpensive, comparatively simple to set up, and light on ongoing reporting for smaller organisations. Its defining limitation is jurisdictional. An incorporated association is, by design, a creature of the state that registered it. Operating outside that state is possible, but an incorporated association that carries on business in another state or territory generally needs to register with ASIC as a registered Australian body and obtain

an ARBN, so check this before expanding. Most Associations Incorporation Acts are explicitly written to regulate small to mid-scale, locally-oriented not-for-profits.

A CLG is a public company registered with the Australian Securities and Investments Commission (ASIC) under Commonwealth law. It can operate anywhere in Australia without needing to register separately in each state, its governance is standardised under a single national framework, and it is a common structure for associations that operate nationally. Both CLGs and incorporated associations can register as charities with the Australian Charities and Not-for-profits Commission (ACNC), and the same ACNC Governance Standards apply to both. Members' liability is limited to a nominal guaranteed amount, typically a small fixed sum, rather than shares.

The Question Every Board Should Ask, And Rarely Does

The test is not which structure is objectively superior. It is whether the structure you have still matches the organisation you have become. Three questions surface the answer faster than any consultant's checklist:

- Are we operating, recruiting members, or seeking funding meaningfully outside the state we incorporated in?
- Is our credibility with government and national funders being constrained by a structure that funders and partners tend to associate with small, local bodies?
- Has our commercial, industrial or advocacy footprint grown to a scale where a state-based Act designed for small associations no longer fits the risk we are actually carrying?

A yes to any one of these is worth board time. A yes to two is worth a formal governance structure review, run deliberately and on your own timeline rather than as a reaction to an external trigger.

What The Transition Looks Like In Practice

The organisations that convert well share a common instinct: none of them treat the structural change as an isolated legal formality. A well-run conversion is usually the occasion for a broader governance reset, a new or updated constitution, a clarified membership base, and in some cases the amalgamation of previously separate state-based bodies into a single national entity. A charity that becomes a CLG reports to the ACNC rather than ASIC. Incorporated association charities may already have reduced state reporting, depending on their state or territory, so compare the actual reporting obligations before and after conversion.

That is the right instinct, and it is worth naming directly. Changing your legal structure without also reviewing the governance architecture sitting inside it wastes most of the value of making the change at all. A new certificate of incorporation with an old constitution bolted onto it solves a regulatory problem without solving the governance problem that usually sits beneath it.

What Conversion Actually Involves

Converting from an incorporated association to a CLG is not a rebadge. It typically involves drafting a new constitution compliant with the Corporations Act 2001 and, for charities, the ACNC Governance Standards; a formal transfer of incorporation, which in most states is achieved through a specific transfer

mechanism rather than winding up the old entity and starting fresh; member approval, usually by special resolution, since the change fundamentally alters the legal contract members are party to; and updating existing registrations and records, including Australian Business Number (ABN) details, ACNC charity details, insurances, bank mandates, contracts and trademarks. Under a transfer of registration the body usually continues as the same legal entity, so confirm with your lawyer, your accountant and the ATO what changes and what carries over before the board commits.

None of this is prohibitively difficult for an organisation with competent governance advice. It is, however, more involved than most boards expect when the idea first surfaces, which is precisely why it tends to get deferred year after year until an external trigger, a funding body's due diligence, a merger opportunity, a compliance near-miss, forces the conversation.

What A CLG Costs You That An Incorporated Association Does Not

An evidence-based comparison has to include the cost side, not just the benefit side. CLGs carry heavier ongoing compliance than most state Associations Incorporation Acts impose on smaller organisations. A non-charitable CLG pays an ASIC annual review fee and reports under the Corporations Act, with requirements scaled by revenue. A CLG registered as a charity pays no ASIC annual review fee and reports to the ACNC instead, under the ACNC's size-based reporting tiers. Either way, the audit or review requirements can differ from those under your state Act, so compare the thresholds that apply in your jurisdiction before deciding. Directors of a non-charitable CLG are subject to the Corporations Act duties and civil penalty regime. If the CLG is a registered charity, ACNC Governance Standard 5 replaces the general civil duties, although some Corporations Act offences and the duty to prevent insolvent trading still apply. None of this is a reason to avoid the structure when it fits. It is a reason to make the decision deliberately, with the compliance uplift priced in as a real cost of the national credibility and operational freedom the structure buys you, rather than discovering it as a surprise twelve months after conversion.

The right structure is the one that matches the organisation you are becoming, not the one that was convenient for the organisation you were.

The Boardroom Test

Before your next strategic planning day, run this test as a standalone agenda item rather than folding it into a broader governance discussion. It deserves the focus.

- 1 List every state or territory in which the organisation currently has members, delivers services, or runs events.
- 2 Confirm whether your current structure was chosen deliberately at formation, or inherited by default.
- 3 Ask whether a national funder, government department or corporate partner has ever questioned or hesitated over your incorporation type during due diligence.
- 4 If you are a charity or are considering charitable registration, confirm with your ACNC adviser whether your current structure creates any friction with that pathway.
- 5 If two or more of the above raise real concern, commission a formal structure review before the next constitutional amendment cycle, not as a reaction to a crisis.

The Honest Conclusion

Most associations should not convert. The state Associations Incorporation Acts exist because the overwhelming majority of not-for-profits in Australia are, and should remain, local or regional in character, and the lighter compliance burden serves them well. Conversion is the right call for a defined minority: organisations that have become national in scope, carry meaningful commercial or industrial risk, or need the structural credibility a CLG signals to government and major funders.

The failure mode is not choosing the wrong structure at formation. It is never asking the question again. A structure chosen well decades ago for a small regional body says nothing about whether it still fits an organisation now operating nationally with a far larger and more diverse membership base. Put the question on the agenda deliberately, on your own timeline, before circumstance puts it there for you.

This is one of the practical governance topics built into our Board Director course, alongside the papers, tools and frameworks that turn the principle into your board's actual practice. [Explore the course](#)

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BOARDROOM ACTION WORKSHEET

Choosing Your Legal Structure: Incorporated Association, CLG or Company

Turn the resource into evidence, a decision and an accountable next step. Keep the completed record in your association's approved board records system.

1 What is the issue or decision?

State the governance question in one clear sentence.

2 What evidence do we already have?

Record the facts, source documents and stakeholder evidence available now.

3 What evidence is still needed?

Identify the legal, regulatory, financial, member or operational information still required.

4 What is the agreed next action?

Capture the owner, timeframe and how the matter will return to the board.

Action owner	Review date	Board decision or resolution

General education, not legal, financial, tax, clinical or governance advice. Confirm specifics at the relevant primary source or with your own qualified adviser. Nexus Leadership is operated by Lipstick Consulting Pty Ltd · ABN 15 619 120 482.

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