

WHAT IS A COMPANY (AND HOW IS IT DIFFERENT TO AN INCORPORATED ASSOCIATION)?*

You might be deciding what legal status to adopt for your not-for-profit organisation. An Incorporated Association is different to a Company, but what is a Company?

WHAT IS A COMPANY?

A Company is a legal entity formed to engage in business, either for profit or not for profit (NFP). Companies are governed by the *Corporations Act 2001* (Cth) a commonwealth act that applies across all states and territories in Australia.

All companies are regulated by Australian Securities and Investments Commission (ASIC) under the *Australian Securities and Investments Commission Act 2001* (Cth) another commonwealth act.

TYPES OF COMPANIES

There are two main types of companies: public and private (also known as proprietary). Under these two types there are different structures, under which the liability of members for business debts differs, such as:

a private company, either limited by shares, or unlimited (these companies end in 'pty ltd'); or

a public company, either limited by shares, unlimited, limited by guarantee or no liability (these companies end in 'limited' or 'ltd' or 'NL').

NFPs can only be a company limited by guarantee because the purpose of a NFP is not to return profits to members or shareholders.

Under this structure, an individual member's liability is limited to the amount they agree to contribute if the company is wound up. This amount is often found in the company's constitution (the governing document of the company) and is a nominal amount.

WHAT IS AN INCORPORATED ASSOCIATION?

An Incorporated Association is a legal entity formed under state or territory legislation, such as the *Associations Incorporation Act 1964* (Tas).

Like a Company, it is a separate legal entity from the members (such as the President and Public Officer or ordinary members who join the Association), but unlike a Company, it is not regulated by a federal body such as ASIC and has less intensive reporting and regulatory requirements.

However, as an Incorporated Association is incorporated under state or territory legislation it cannot operate outside the state or territory of incorporation unless it registers with ASIC and becomes a 'registered body'.

Practical Tip: Whether you sit on a company board or an association committee of management, you will have duties to the organisation including to act with care and diligence and in the best interests of the organisation. See the Facts Sheet on duties.