

establishing a community organisation

Defining culture, policy and planning, local government, stakeholders, data, mapping

Community entrepreneurs make it happen

Community entrepreneurs are those community members who are energised by an idea or situation to make something happen with and for their community. They drive the engines of successful creative enterprises.

Many of the people reading this resource will be cultural entrepreneurs: those with the ability to envision, plan, budget for and project manage the activities and events for which we are advocating.

These organisers are often characterised by burn out and tend to be overlooked by funding bodies who are targeting the outcomes achieved by the creative 'stars' rather than the drivers of participatory activity. Let's hear it for the organisers. Yahoo!

The organiser is to be highly valued; the cultural worker who leads community consultation and planning processes is to be appreciated; the growing arts business is to be supported and the volunteer who makes it possible for things to happen in communities is to be treasured.

As cultural entrepreneurs begin their active work the question will inevitably arise as to how to structure their operation to maximise its effectiveness and get the job done efficiently.

Informal group or legal entity?

The level of complexity and the legal status of the organisation is the first decision the entrepreneur has to make. Here are some possible ways of organising your group.

Note: The information given below should be viewed as a guide only and should not be used as a substitute for professional legal advice.

Unincorporated Groups

It is possible for a group of people to undertake a project or stage an event without establishing a legally constituted organisation. Some community groups are known, legally, as unincorporated associations. They are usually established when people join together to achieve a common aim and use any profits or surplus funds to further the objectives of the organisation, rather than provide personal gain for its members. The disadvantages are that if anything goes wrong, then the individuals involved have little personal protection.

Auspecting organisations

If you believe the risks of remaining unincorporated are low, but still wish to receive public funding, you should look for an existing legally constituted body willing to “auspice” the funds. Funding or peak bodies will be able to suggest the names of suitable organisations in your area. The auspecting body takes responsibility for ensuring that the funds received are spent for the purposes for which they were allocated. They may also be able to offer other operational assistance, for example public liability insurance. You need to ensure that the nature of the relationship between your group and the auspecting body is clearly articulated and agreed upon in writing. This could involve signing an **Auspecting Agreement**. The auspecting body may request a fee for their services and this will need to be factored into your budget.

An **Auspecting Agreement** will detail:

- A description of the project
- Contact details of all personnel involved
- The role of the auspicee in adhering to the terms of the grant and acquitting the funds
- The role of the auspisor in releasing the funds in accordance with the conditions of the grant
- Timeframe for payments
- Procedure for the auspecting body to monitor the project
- Any charges for the auspecting services
- The protocol if there are to be any changes to a project in the terms of the original funding application
- Contingency plan if there are blow outs in the budget
- Commitment by the auspecting body to provide a financial report on completion of the project
- Procedure for any dispute resolution.

Legal Entities

There is one very practical reason why groups become legal entities. Most public funding bodies will only support individuals or groups of individuals if the funding is received and administered by a legal entity. As part of the process of determining whether or not to establish a legal structure, you need to be really clear about the purpose of the organisation or its mission. A **mission statement** describes your purpose or why the organisation exists.

Other factors for consideration include

- The nature and scope of the activity, project or event
- The size of the budget
- Relationship between professional workers and volunteers
- Experience and skills of those involved

Groups wishing to gain a legal standing can choose to do so under either Commonwealth legislation or State or Territory legislation

- **Commonwealth legislation** – Corporations Act 2001 administered by the Australian Securities and Investments Commission (ASIC)

A company’s registration under the Corporations Act 2001 is recognised Australia wide.

- **State or Territory legislation** – administered by the relevant state or Territory authority

e.g. in Queensland the Associations Incorporation Act 1981 and Associations Incorporation Regulation 1999 are administered by the Office of Fair Trading – www.fairtrading.qld.gov.au

An organisation incorporating under State or Territory legislation is restricted to operating in its home jurisdiction.

The Queensland Arts Council is incorporated under the Corporations Act 2001. Although affiliated to the QAC, Local Arts Councils in Queensland are independently incorporated bodies under the Associations Incorporation Act 1981.

Whilst there are similarities in terms of the requirements under the Acts, there are also some differences between a company structure under the Corporations Act 2001 and an incorporated association. Before you register, you should consider what structure best suits your organisation's purposes.

Company structure

Under a company structure, a not-for-profit or charitable organisation will generally be registered as a public company that is limited by guarantee. Limited by guarantee means the liability of the company's members is limited to the amount the members undertake to contribute to the property of the company if it is wound up.

Registration of a company under the Corporations Act 2001 creates a legal entity, separate from its members, which can hold property and can sue and be sued. As a general guide please refer to "Legal obligations of a company" on the ASIC website at www.asic.gov.au/companies for more information.

Incorporated Associations

Incorporation is a voluntary, simple and inexpensive means of establishing a legal entity. Company registration and incorporation are systems of registration that give an association certain legal advantages in return for accepting certain legal responsibilities.

For information on Incorporated Associations, it is recommended that you refer to Incorporated Associations – Good Business Guide (2006) which is published by the State of Queensland. An electronic version can be downloaded from www.fairtrading.qld.gov.au.

The Office of Fair Trading (OFT) registers all incorporated associations in Queensland, under the Associations Incorporation Act 1981 (the Act) and Associations Incorporation Regulation 1999 (the Regulation).

Generally, incorporation is available to any non-profit association with more than seven members that is formed or carried on for any lawful purpose. Like a company limited by guarantee, an incorporated association is also recognised as a legal entity separate from its members. Once incorporated, an association has all the powers of an individual and is legally able to do things in its own name, such as own land, sign a lease, receive public funding or appear in court. It may also give some protection to the management committee from personal liability for actions of the association carried out in good faith and due diligence.

Whether registered as a Company or an incorporated association, the organisation must comply with the provisions of the relevant Act and Regulations, which include:

- meeting a number of reporting obligations
- being internally managed by rules known as the Constitution
- keeping a record of all directors' and members' meeting minutes and resolutions
- keeping proper financial records.

Of greatest importance, under the legislation, Board or committee members must at all times:

- act in the best interests of the association
- avoid conflicts of interests
- exercise due care, skill and diligence.

The Constitution

The rules or constitution of a registered company or incorporated association govern the day to day operations. The *Associations Incorporation Regulation 1999* Associations (Schedule 4) provides a standard template for an association's rules called Model Rules which can be used to govern an association in accordance with the legal requirements. An organisation can choose to either adopt the Model Rules or to devise its own rules.

The constitution will set out matters such as the objects of the organisation, membership, powers and functions of the management committee or board of management, fees payable (if any), timing and conduct of meetings.

Resources

For further information on the responsibilities of boards or committees of non-profit organisations see

Fishel, David. *The Book of the Board: effective governance for non-profit organisations*. The Federation Press. 2003. www.ourcommunity.com.au

Forming an Arts Council

QAC is committed to supporting regional communities and they work with a network of independently incorporated Local Arts Councils to support and enhance the quality of life in regional communities.

Communities interested in forming a **Local Arts Council** can start the process by asking for a Kit to be sent by QAC. The **How to Form a Local Arts Council Kit** includes:

- Application Form
- QAC's Strategic Plan
- Affiliation Agreement and Model Rules

For more details visit www.incommunities.qac.org.au or contact:

Queensland Arts Council
Telephone: 07 3846 7500
Email: info@qac.org.au

Foundations or Specific Funds

There are several ways of attracting donations for cultural activity which offer benefits both to donors, in the form of tax deductibility, and to recipients as an additional source of funding for projects.

The establishment of an independent philanthropic foundation or fund is one sustainable way to provide ongoing benefits for a community. Such entities provide a legally recognised and easily accessible way for individuals and businesses to make tax deductible donations to their communities.

A foundation or fund receives donations, which are pooled to form a capital base which is invested. Only the income from the investment is used to fund community projects. In this way, a donor's gift continues to benefit the community year after year. The interest earned on investments is generally returned to the community through a mechanism such as an annual grants program.

Deductible Gift Recipient (DGR) Endorsement

It is necessary for the entity receiving donations to have DGR endorsement by the Tax Office.

A not for profit cultural organisation can become endorsed as a DGR in its own right by listing on the Register of Cultural Organisations (see below) or the organisation may choose to establish and operate a fund which is the entity registered as a DGR.

If your organisation is endorsed as a DGR in its own right, gifts to the whole organisation will be tax deductible. Alternatively, if an organisation is endorsed for a fund, authority or institution it operates – for example, a public fund maintained by an organisation that is on the Register of Cultural Organisations (ROCO) – only gifts to that part of the organisation are tax deductible.

For endorsement, an organisation must have an Australian Business Number (ABN) and have acceptable rules for winding up and revocation.

Further information is provided on the following Australian Tax Office (ATO) fact sheets:

- The endorsement process for deductible gift recipients (NAT 3193)
- Gift fund requirements (NAT 3194)

www.ato.gov.au/nonprofit/content/13268.htm

Only certain types of gifts to public funds on the register are tax deductible to donors. These include money (\$2 or more), property, shares and trading stock. For more information refer to the Gift types chapter in the ATO publication *GiftPack* (NAT 3132).

Register of Cultural Organisations (ROCO)

Cultural organisations can apply to the Commonwealth Department of the Environment, Water, Heritage and the Arts (DEWHA) to be listed on the Register of Cultural Organisations.

Note that public art galleries, museums and libraries are not included on the Register as they are endorsed by the Australian Taxation Office under another Deductible Gift Recipient (DGR) category. These bodies have the added benefit of being able to receive tax deductible donations of culturally significant items for their collections via the Australian Government's Cultural Gifts Program (see www.arts.gov.au/tax_incentives/cultural_gifts_program).

To apply to have your organisation's name listed on the Register of Cultural Organisations and gain endorsement as a DGR, you need to meet several requirements, including:

- Your principal purpose must be to promote literature, music, performing arts, visual art, craft, design, film, video, television, radio, community arts, Aboriginal arts or movable cultural heritage
- You must have an ABN and not distribute your assets or profits to members or owners.

If your organisation does not have an ABN, complete an Application for ABN registration for companies, partnerships, trusts and other organisations (NAT 2939).

The process for registration:

- Submitted applications are assessed by DEWHA
- Approximately every four months, the Minister for the Arts and the Treasurer consider each application and take a decision
- DEWHA advises each organisation in writing of the decision
- If entry on the ROCO is approved, the application form is sent on to the ATO for endorsement as a DGR
- The ATO advises the organisation that it has DGR status
- The organisation promotes its tax deductible status to potential donors, receives and issues official receipts for all tax deductible donations
- Every January and July, listed organisations provide information to DEWHA on all tax deductible donations received during the six month period using a Statistical Return of donations form
- Listed organisations advise DEWHA of any changes to personnel or funding processes
- Every three years, DEWHA reviews the eligibility of listed organisations to remain on the register.

Receipts for gifts

If your organisation is an endorsed DGR listed on the ROCO for a fund it operates, there are several things you must include on a receipt for a gift. You must state the name of the fund, authority or institution to which the gift has been made, your organisation's ABN and that the receipt is for a gift your organisation has received. An example of a receipt can be found in the Register of Cultural Organisations Guide 2007 www.arts.gov.au

Further information

Ask DEWHA for, or go to the DEWHA website at www.arts.gov.au/roco and download, an Application for Register of Cultural Organisations. This form also includes the DGR endorsement application information the ATO needs.

Alternatively, contact the

The Administrator

Register of Cultural Organisations

Department of the Environment, Water, Heritage and the Arts

GPO Box 787

CANBERRA ACT 2601

Phone: (02) 6275 9647

Fax: (02) 6275 9659

Email: roco.mail@environment.gov.au

Other resources

The Foundation for Rural and Regional Renewal and Philanthropy Australia have produced The Community Foundation Kit which offers a step-by-step guide to creating and developing a community foundation, as well as tips and assistance on other key topics and case studies from Australia and overseas.

The Kit is available for purchase from Philanthropy Australia.

Philanthropy Australia, Level 10, 530 Collins Street, Melbourne Victoria 3000

Telephone (61 3) 9620 0200, Fax (61 3) 9620 0199

Email: pa@philanthropy.org.au

Web www.philanthropy.org.au

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