

Little Athletics Queensland

Conference Workshop 5 June 2021

Things you need to know about Governance

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Disclaimer

This is practical information based on our work with associations, clubs and charities.

The contents of this presentation:

- ▶ do not constitute legal advice,
- ▶ are not intended to be a substitute for legal advice and
- ▶ should not be relied upon as such.

You should seek specialist advice in relation to any particular matters you or your organisation may have.

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About your facilitator: Adrian Hart

- ▶ Formal studies in journalism, government, management, industrial relations, associations and governance
- ▶ 30 years' experience leading peak industry associations, including
 - ▶ CEO at Master Plumbers' Association of Queensland
 - ▶ CEO Swimming Pool and Spa Association of Queensland
- ▶ State Chair and National Director of Australasian Society of Association Executives
- ▶ Industry Superannuation Fund Board Chair
- ▶ Consulting - external reviews, committee training, governance advice, change management, member acquisition, media relations, advocacy, and member benefit programs.

Little Athletics Queensland

- ▶ State body to which all LAC are affiliated
- ▶ LAQ is affiliated with LAA
- ▶ Centres, State and National are incorporated associations
- ▶ All groups are voluntary community organisations
- ▶ LAQ provides significant support and assistance to individual centres - see <https://laq.org.au/resources/>
- ▶ LAA Mission: To develop children of all abilities by promoting positive attitudes and a healthy lifestyle through family and community involvement in athletic activities.

About LACs

Approved model constitution for Little Athletics Centres:

The Centre Management Committee shall comprise:

1. Centre Manager (President for the purposes of the Act)
2. Centre Secretary
3. Treasurer
4. Not less than 3 Committee members (Committee elects an Assistant Manager)

- ▶ Model Constitution (QLAA Model)
- ▶ Committee Roles and Responsibilities (Detailed descriptions)
- ▶ QLAA Policies and Plans (Access to excellent QLAA documents)

Agenda

1. Legal Framework
2. Legal Duties
3. Queensland Act and Amendments

Format

- ▶ Approximately 1.5 hours duration
- ▶ Introductions - why volunteer on committee
- ▶ Presentation
- ▶ Discussion
- ▶ Q & A (throughout)

Terminology

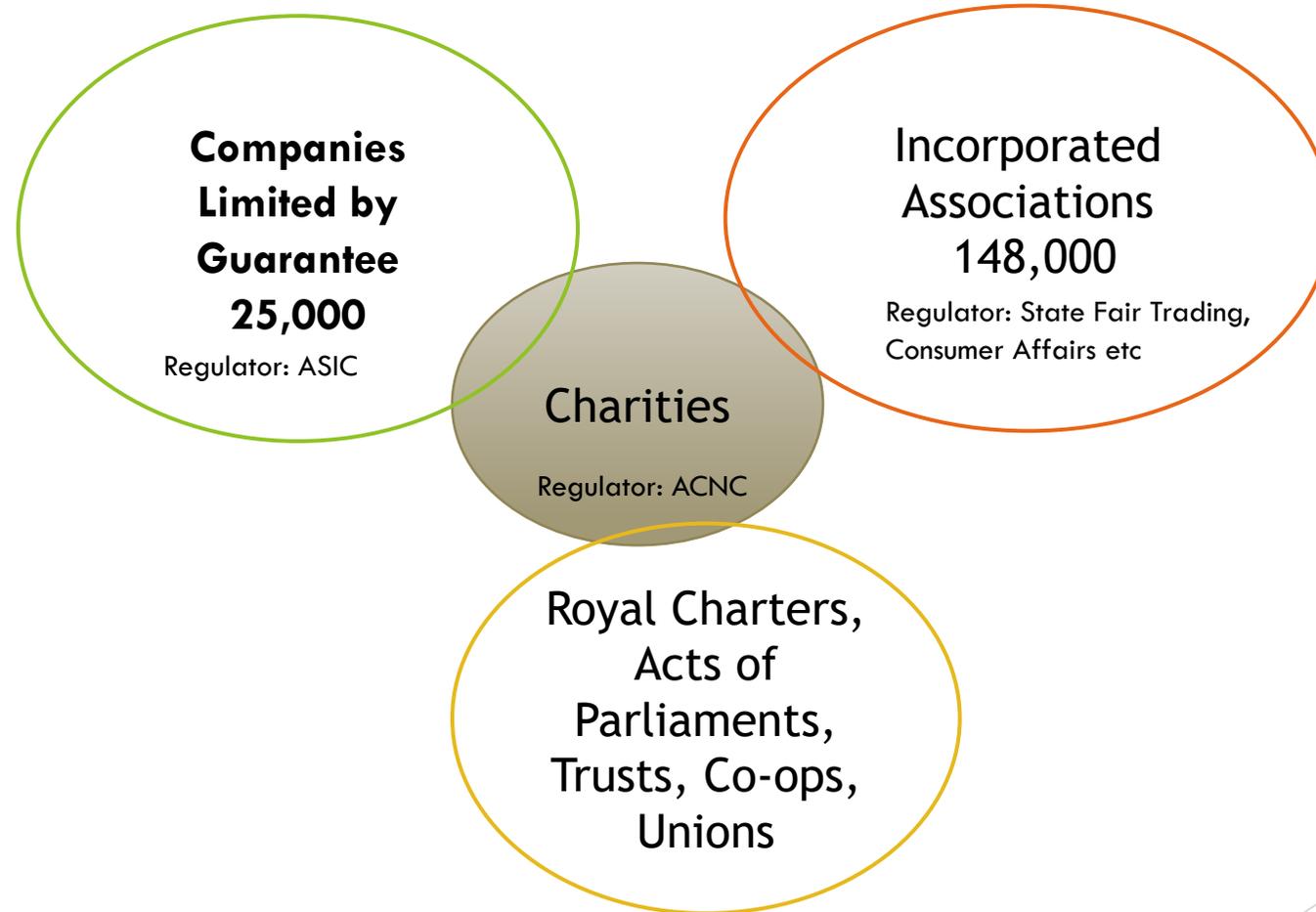
Governing Document	Constitution, <u>Rules</u> , Memorandum and Articles of Association
Governing Body	Board, Trustees, Council, Committee, <u>Management Committee</u>
Individuals on Governing Body	Directors, Trustees, Councillors, <u>Committee Member</u>
Members	<u>Members</u>
Senior Staff Person	Chief Executive Officer (CEO) Executive Officer (EO) Executive Director (ED)

Legal Framework

Why bother incorporating?

1. Protection for members
2. Limits liability: the corporate veil
3. Entity is sued, not individual
4. Credibility and legitimacy
5. Ownership of assets and liabilities
6. Ease of succession from member to member and Director to Director
7. A new independent entity is created, and it is more than a gathering of interests

Legal structures of associations



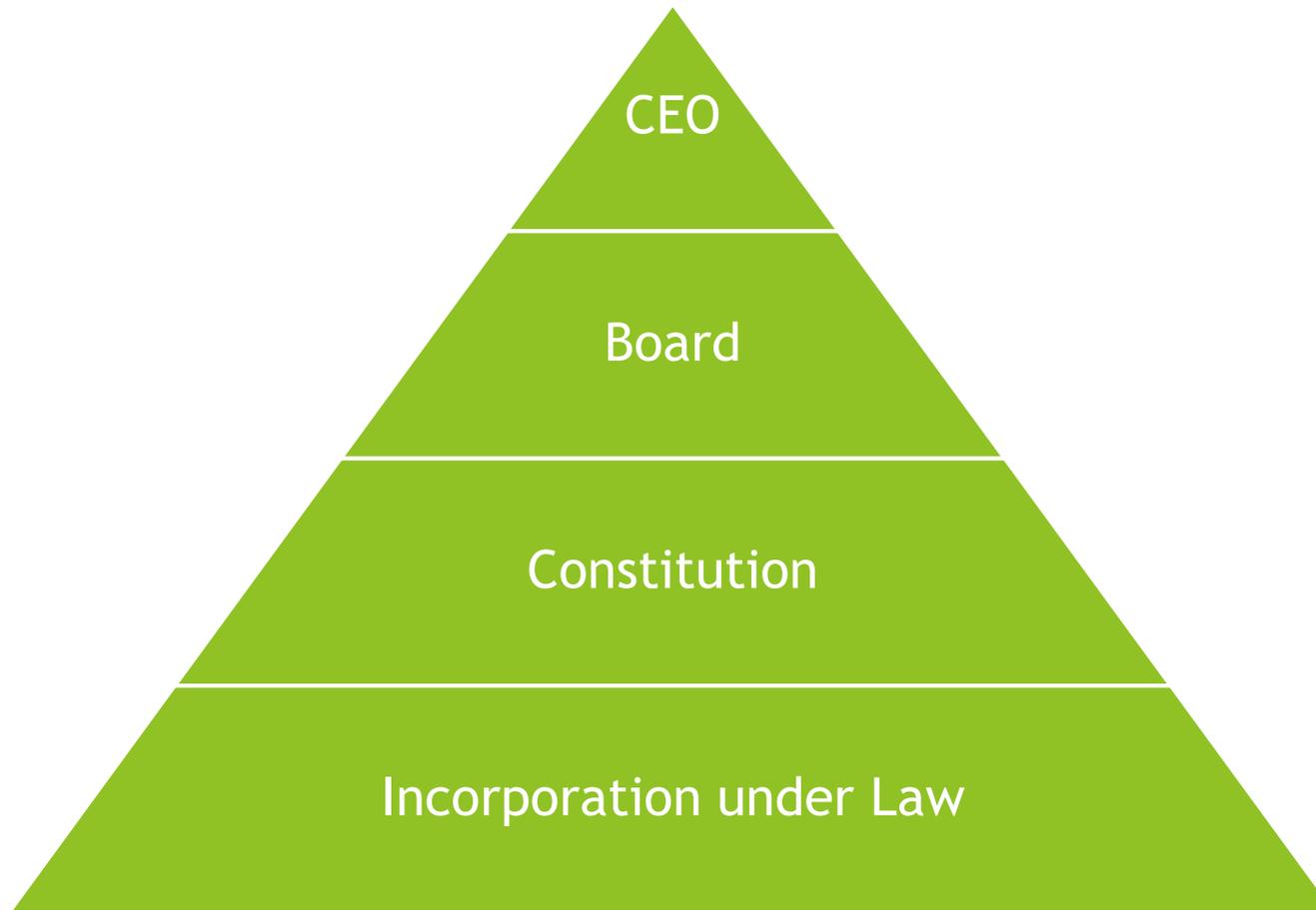
How to choose a structure

1. If one State only and small entity - Associations Incorporation Act is OK
2. Associations working beyond a State should apply for an ARBN with ASIC
3. CLG's have considerable and clearer body of law and precedents, more advisers across Australia, higher compliance standards, more serious image
4. The principles of governance apply regardless of whether an incorporated association or CLG
5. Principles of governance are merging across jurisdictions - note Queensland 2020 amendments

Main benefits and obligations

Benefits	Obligations
<ul style="list-style-type: none">• creates a separate legal entity allowing you to enter into contracts, own or lease property or equipment, employ people, take out insurance and more. All in the name of the organisation rather than in individual• protects the liability of those involved with the organisation, as generally the organisation itself is liable, and• perpetual succession allows the organisation to continue even as people join and leave	<ul style="list-style-type: none">• must have a constitution or set of written rules the group agrees to follow• must comply with regulatory framework and annual reporting requirements• initial registration fees (\$165.05) and ongoing annual fees in some instances• must meet minimum number of members (7), and have people willing to sit on committee or board• names of members in some positions need to be provided to regulator• required to hold certain meetings and keep certain records available, and• obligations to members

Build upon solid foundations



Culture and governance at heart of misconduct

Crown Resorts not suitable to operate Sydney casino, inquiry finds

'Fed up' government launches formal RSL investigation

Former Keep Australia Beautiful NSW CEO David Imrie convicted of defrauding charity

A FOI
for st

Former Surf Life Saving NSW boss charged over 'brazen' \$2.7m charity fraud

Board anger as Bulldogs director fails to mention pub ownership

'Too much spin': icare board papers reveal business is a 'shambles'



Adele Ferguson

Investigative journalist and columnist

Legal Duties

Who is a fiduciary

Created by case law or common law

“A fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence”

- Bristol & West Building Society v Mothew [1998] Ch 1 at 18 per Lord Millett (UK)

Common law fiduciary duty

1. Must act honestly, in good faith, and to the best of their ability in the interests of the organisation.
2. May not profit unless with Board's informed consent and in some circumstances, members' consent.
3. Must not allow conflicting interests or personal advantage to override the interests of the organisation.
4. The organisation must always come first.

What is corporate governance?

*“Corporate governance is the **system** by which companies (associations) are **directed and controlled**.*

Boards of Directors are responsible for the governance of their companies (associations).

(Members) role in governance is to appoint the Directors and the Auditors and to satisfy themselves that an appropriate governance structure is in place.”

- Sir Adrian Cadbury, The Committee on the Financial Aspects of Corporate Governance (UK) 1991

Act in good faith and for a proper purpose

Common law duties are codified in legislation.

You must act...

- a) in good faith in the best interests of the association; and
- b) for a proper purpose.

Section 70F Associations Incorporation Act 1981 (Qld) (Effective 30/6/21)

Section 181 Corporations Act 2001 (Cth)

Duty of care and diligence

You must act ... with the **degree of care and diligence that a reasonable person would exercise**

Section 70E Associations Incorporation Act 1981 (Qld) (Effective 30/6/21)

Section 180 Corporations Act 2001 (Cth)

Duty of care and diligence

1. What would a reasonable person have done?
2. Lack of skills can't reduce duty; but would a reasonable person resign?
3. Expected to use whatever skills you have for the benefit of the association
4. Expected to have basic financial skills and must be able to form a reasonable opinion of the association's finances and capacity to meet obligations
5. Must objectively assess what is presented
6. Must ask questions if not clear

Duty to prevent insolvent trading

It is an offence if:

- ▶ The association incurs debt while it is insolvent, or it becomes insolvent by incurring the debt; and
- ▶ Before incurring the debt there were reasonable grounds to expect that the association was already or would become insolvent by incurring the debt

Section 70I Associations Incorporation Act 1981 (Qld) (Effective 30/6/21)

Section 588G Corporations Act 2001 (Cth)

Duty not to improperly use information or position

You must not improperly use information or position to:

- ▶ gain an advantage for yourself or someone else; or
- ▶ cause detriment to the association.

Sections 70G & 70H Associations Incorporation Act 1981 (Qld) (Effective 30/6/21)

Section 182 & Section 183 Corporations Act 2001 (Cth)

Duty to manage & disclose conflicts of interest

- ▶ Fundamental duty to act in best interest of association - there are common law and statutory obligations
- ▶ Directors must declare material personal interest and Board must have policies on what to do if conflict arises
- ▶ Involves a relationship of some real substance to the matter under consideration (*McGellin v Mount King Mining*)
- ▶ Nature of interest has capacity to influence the vote of the Director

Duty to manage & disclose conflicts of interest

- ▶ All Directors must be able to say decisions made fairly and impartially
- ▶ Indirect benefits - giving employment to spouse, awarding grant to friend
- ▶ Have a register of interests and standing agenda item on conflicts

Sections 70B & 70C Associations Incorporation Act 1981 (Qld) (Effective 30/6/21)

Section 191 Corporations Act 2001 (Cth)

Business Judgment Rule

A director or other officer of a corporation who makes a business judgment is taken to meet the requirements and their equivalent duties at common law and in equity, in respect of the judgment if they:

- a) make the judgment in **good faith for a proper purpose**; and
- b) **do not have a material personal interest** in the subject matter of the judgment; and
- c) **inform themselves** about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
- d) **rationaly believe that the judgment is in the best interests** of the corporation.

The belief that the judgment is in the best interests of the corporation is a rational one unless the belief is one that no reasonable person in their position would hold. Consider implications for recording decisions

Directors are not ‘delegates’

1. Directors are not delegates or representatives of another body including employer or business or the people who elected them
2. Constitution should not use the term ‘delegate’ or ‘representative’
3. It is understandable Directors who wear more than one hat may feel some responsibility to advance interests of nominating body
4. However, Directors must act in the interests of the organisation

QLD Associations Incorporation Act 1981

Associations Incorporation Act 1981

1. The Act is prescriptive e.g. provides who can sign cheques over \$100, must have a common seal (soon to be optional) etc.
2. Previously did not specify duties in relation to governance matters but changing now with harmonisation of laws
3. Powers of an incorporated association are the same as an individual
4. Must report to members within 6 months of the end of the reportable year - Level 1 association finances must be audited
5. The Act prevails in relation to any inconsistency between the Act and the Association Rules
6. The Model rules apply if Association rules do not deal with a prescribed matter

Management Committee

1. Controls business and operations of the Association
2. Every member of MC and any manager appointed by MC deemed to be an agent of the incorporated association
3. MC must have at least 3 members including a President & Treasurer
4. Secretary may be elected or appointed - if appointed not on MC
5. MC must ensure the Association complies with its rules & legislation
6. MC must consider and advise members if Public Liability insurance applies, in some circumstances it is mandated

Associations Incorporations Act 1981 after 15 June 2007

- ▶ Level 1 - Over \$100K: No changes to insurance
- ▶ Level 2 - \$20K - \$100K: Can Choose no insurance
- ▶ Level 3 - \$20K: Can Choose no insurance
 - ▶ Must review annually, check with your sport, advise members, those nominating for committee, people applying for membership and anyone club *MAY* have dealings with.
 - ▶ Check your rules & sporting body

Associations Incorporations Act 1981 after 15 June 2007

Financial limits based on turnover or assets:

- ▶ Level 1 - Over \$100K
 - ▶ No changes to audit
- ▶ Level 2 - Between \$20K & \$100K
 - ▶ Accountant to confirm accounts (not audit)
- ▶ Level 3 - Up to \$20K
 - ▶ Treasurer's Statement Only

What Committees Must Do

General Requirements

- ▶ Maintain minimum seven (7) members
- ▶ Have a registered office which could be the Secretary's home (Sec 17)
- ▶ Obtain a common seal including "Inc" (Sec31) - will become optional
- ▶ Ensure all documents show Association's name, including internal documents (Sec 32)
- ▶ Have a bank account and keep all property in the club's name (Sec 24)
- ▶ Obtain public liability insurance (Sec 70)
- ▶ Keep a set of books & have them audited (Reg 9 & Sec 59)
- ▶ Control the Business and operations (Sec 60)
- ▶ Lodge an Annual Return (Form 12)
- ▶ Notify changes to OFT (Form 10a)

Duties, Acts & The Law (Qld)

Committees:

- ▶ Require a minimum of three positions
- ▶ President cannot be Treasurer

Committee Members must be:

- ▶ Members
- ▶ Living
- ▶ 18 years or older
- ▶ Reside in Queensland unless Secretary (65kms of border)
- ▶ Not be insolvent or a bankrupt
- ▶ Not be convicted of an indictable offence (In last ten years) - will be reduced to 5 years

What Committees Must Do (Qld)

For Members

- ▶ Ensure a copy of the constitution is available to all members (Sec 53)
- ▶ Ensure audited financials are submitted to members at the AGM (Sec 59) according to Level Requirements
- ▶ Always ensure an appropriate Secretary is appointed (Sec 66)
- ▶ Ensure an AGM is held every year (Sec 56)
- ▶ Make sure the club complies with the rules (Sec 57)
- ▶ Keep minutes (Reg 9)

QLD Act 2020 Amendments Summary

2020 Amendments Summary

Associations Incorporation and Other Legislation Amendment Act 2020*

Purpose to reduce red tape and improve internal governance:

- ▶ changes started on assent 22 June 2020
- ▶ changes expected by 30 June 2021
- ▶ changes expected by 30 June 2022

*<https://www.legislation.qld.gov.au/view/html/asmade/act-2020-017>

2020 Amendments Summary

Changes on assent - 22 June 2020

1. Use of technology does not have to be specified in rules
2. Can voluntarily appoint an administrator
3. Can voluntarily cancel registration
 - ▶ Avoids winding-up costs
 - ▶ No debts or liabilities
 - ▶ No legal proceedings
 - ▶ No outstanding fees payable under Act
4. 10-year prohibition reduced to five years

2020 Amendments Summary

Changes expected 30 June 2021

1. Use of Common Seal optional
2. Secretary to be 18 or older
3. No duplication of reporting with ACNC
4. Duty of Care and Diligence clarified
5. Duty to prevent insolvent trading
6. Disclosure and handling of material interest
7. Disclosure of committee and senior staff remuneration
8. Powers of OFT inspectors extended.

2020 Amendments Summary

Changes expected 30 June 2022

Internal grievance or dispute resolution procedures to be adopted

- ▶ Designed to provide procedural fairness
- ▶ Provides for unbiased mediation
- ▶ Low-cost alternative to Supreme Court
- ▶ Member may appoint any person to act
- ▶ Must be included in rules or model rules apply



Thank you!

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