Business Structures

1. Why are business structures important?

Whether you are an artist, (eg. painter, actor, musician, director) or an arts organisation, in today's world you are also in business – at least if you want to make a living out of your art or survive as an organisation. This information sheet explains the difference between incorporated and unincorporated groups and some of the other issues you need to consider when looking at what business structure would suit you or your group.

2. Incorporated structure

- Creates a legal entity separate from its members. For instance, if individual members change the organisation continues. This kind of business structure can sue and be sued, and enter into contracts in its own right.
- There are establishment costs, and ongoing fees and regulations to comply with eg annual returns. This makes it more expensive to run than other business structures
- Common examples – proprietary limited company (profit), incorporated associations (non-profit), company limited by guarantee (non-profit), Aboriginal Corporation (profit or non-profit), Co-operative (profit or non-profit).

3. Unincorporated structures

- Doesn't create a legal entity separate from its members.
- Members come together for a common purpose, but are effectively trading as individuals – each person is personally liable for the debts and liabilities of the group.
- There are no legal formalities, so there are minimal costs to establish.
- Common examples – sole trader, partnership, unincorporated joint venture, unincorporated association.

4. Not for Profit Organisations

- This does not mean that your organisation cannot make a profit.
- What it does mean is that any profit made cannot be divided up between the members. The money must be put back into the organisation and used to achieve its objectives.
- There is also no reason why the staff of the organisation cannot be paid.
- Often Government funders require that an organisation is a not-for-profit before funding it.

5. Why is it important to look at these issues?

- To avoid misunderstandings within the group.

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- To provide a level of protection for the members.
- In general, if you are working as a group, it is a good idea to write down what you have agreed about how you will work together and decide whether you need to incorporate.

6. How do I choose a business structure?

You should think about a number of things before you select a business structure.

Objectives

- What are the aims of the business?
- What is the reason you are coming together?

This will affect the structure you choose (eg. is it to make money or to support the arts in your community?)

Are you trading?

- Do you intend to trade with the public?
- Is trading with the public your main activity?

If this is your main activity then some non profit structures are not allowed (eg. incorporated association.)

People

- Do you want to go into business with others?
- Who does what?

Set out in writing what the main people in your business or organisation are required to do (eg. in your constitution or have a written agreement with the other people involved).

- Who do you want to control the business?

If you want to personally control the business then having to have an elected Board or committee will not be suitable.

- Do you want to restrict the role of non-Indigenous people in your organisation?

The Aboriginal Councils and Associations Act only allows Aboriginal people and their spouses to be members with voting rights. If 75% of members agree, then a non-Aboriginal person may become a member but not vote or be on the committee.

- What happens if members of the group decide to go their own way?

An incorporated body has an identity separate from the members which means members can leave and the organisation still continues.

Money

- How will money be raised?
- Do you intend to apply for government funds?
- Some government grants are only available if you are incorporated and a non-profit organisation.

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- Will the group share the profits?

If you intend to divide the profits between the people involved then some non-profit structures are not appropriate.

- How much money have you got to set up and maintain the organisation? (eg. a company limited by guarantee is more expensive to establish and maintain than an incorporated association).

Place

- Do you want to operate across Australia or only in one state for example WA?

If you want to do business all around Australia then it may be better to have a national structure such as a company under the *Corporations Act*.

Liability/responsibility

- Who will be liable for the debts?

If you are not incorporated then the members may be personally responsible for the debts of the group.

- Are you at risk of being sued?
- Will it help to have limited liability?

If yes, then an incorporated structure may give the members some protection from being sued personally (ie. limited liability).

- What is limited liability?

A member's legal responsibility to make payment towards the organisation (even its debts) is limited to the amount that they have guaranteed to pay or the amount unpaid on their shares.

- Does the group need an identity separate to the individual members?

If you are incorporated then the group can enter into contracts in its own name, be sued or take legal action itself.

Time

- How much time do you want to put into the administration of the business?

Some structures require a lot more time to meet the requirements of the law.

Tax issues

- What are the tax considerations?

Some non-profit organisations can get tax concessions.

TABLE SUMMARY OF BUSINESS STRUCTURES

Business structure	Profit sharing	Non-profit sharing	Unincorporated	Incorporated

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Co-operatives	?	?		?
Company limited by guarantee		?		?
Incorporated association		?		?
Aboriginal corporation	?	?		?
Joint Venture	?		?	
Partnership	?		?	
Pty Ltd Company	?			?
Sole trader	?		?	
Unincorporated association		?	?	

Further information

- Charity registration is now a precondition for Deductible Gift Recipients
- Arts Law Centre of Australia (www.artslaw.com.au)
- Australian Securities and Investments Commission (ASIC) (www.asic.gov.au)
- Office of the Registrar of Aboriginal Corporations (www.oric.gov.au)
- Community Wise website (www.communities.wa.gov.au) – information for community organisations

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