FACTSHEET
ARTIST RUN INITIATIVE (ARI) GOVERNANCE MODELS

If you are going to set up an Artist Run Initiative (ARI) or project space then you need to look at the structure, management and governance of that initiative. It is important to start thinking about how your ARI will be set up, managed and governed right from the beginning.

Good governance is about understanding your legal obligations, managing your ARI effectively and ensuring that each member understands their roles and responsibilities clearly. It is important in meeting legal obligations and providing clear leadership and direction for your organisation.

There are several options for governance of ARIs and you need to start by working out which one is best for you. You should be certain of exactly what you want to do with your ARI. When you first make the decision to establish an ARI you should start by asking yourself:

- What is the primary objective? Is it for not for profit or for commercial purposes?
- How many people will be involved?
- Will there be regular changes in membership of the group – people leaving and joining – or is membership fixed to a specific group?
- What happens if the group decides to split and the members go their own way?
- Is it a national or local operation?
- Do you have accounting expertise in the organisation?
- How will money be raised?
- What tax considerations do you have to think about?

By asking these key questions up front, you are ensuring that everyone is clear about what the purpose of your organisation is, what you are hoping to achieve and how you will manage it.

So, what is incorporation?

Incorporation is a method of registration. An Incorporated Association is generally suitable for small scale, non-profit and non-commercial activities which are limited to one State or Territory. It can own assets, enter contracts, employ staff, sue and be sued. You are required to register your Incorporated Association with the Department of Fair Trading (or its equivalent) in your State.

Why incorporate? What's in it for me?

There are advantages and disadvantages to being either incorporated or unincorporated.

An unincorporated association is a group of people who come together for a common purpose. An unincorporated association is not a legal entity and its members are personally liable for its debts and liabilities. They are generally non-profit but can be operated on a commercial profit –making basis provided there are less than 20 members. The Corporations Act requires associations with more than 20 members carrying on a for-profit business to incorporate. Generally, a management committee is established to administer the association's affairs.

As an unincorporated organisation there are no legal formalities to undertake, you are less likely to be publicly scrutinised and it is simple and inexpensive. However being unincorporated also means there is no separation between the organisation and you, so you can be held personally accountable for any liability issues. This means if someone injures themselves at an event run by the unincorporated group or organisation, which you operate, they could sue you personally for damages. An unpaid supplier may sue one or more of the group's members personally to recover the debt.

If you decide to incorporate then you have the advantage of limited personal liability because the organisation will exist as a separate legal entity. It can sue and be sued directly. Becoming an Incorporated Association also enables ARIs to apply for Federal and State grant funding. Most ARIs become incorporated organisations for these reasons. However there are establishment costs and reporting obligations.

Although incorporation is not compulsory it may be advantageous.

To assist you in deciding on a structure some advantages and disadvantages of each model are outlined on the following page.

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NATIONAL ASSOCIATION FOR THE VISUAL ARTS

Business structure: Unincorporated association

A group of people who come together for a specific purpose but do not formally incorporate. It is not a legal entity separate from members who make up the association.

NOTES
**No government or public examination. **Leaves members and directors personally liable for debts, costs etc.

ADVANTAGES	DISADVANTAGES
Costs	
• Simple and inexpensive to establish • Organisation not restricted from trading or doing business for personal profit. • Your organisation can have any number of members. • Your organisation will not have the expense of meeting statutory obligations of incorporation.	
Legal status	
• Lacks formality	• No separate legal entity from its members • Cannot sue/be sued in its own name
Legal protection for members	
	• Does not have limited liability for committee or ordinary members (meaning Directors may be personally liable) • Difficulty of members to be released from ongoing liabilities when ceasing membership.
Statutory obligations	
• No specific legal obligations with respect to establishment and ongoing existence.	
Disputes	
• Organisation is not required to have or use a dispute resolution procedure.	
Contracts and agreements	
• Can enter into contracts.	
Grants	
• May be eligible for a larger range of government and non-government grants.	• There may be difficulties with national or interstate fundraising. • Structure may not be regarded as having the same rigor as a company limited by guarantee.

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Business structure: Incorporated association

Formed by a group of people with a common interest, to undertake activities in the name of the organisation. This is the most common model for ARIs.

ADVANTAGES	DISADVANTAGES
Costs	
	Cannot be established for financial gain of members.
Legal status	
• Structure is recognised by state and territory law. • Incorporating separates the individual person (member) from the entity. Incorporation makes the group (body) a single entity with certain rights and legal protections as well as some additional obligations. • Separate legal entity from its members- - Can buy and sell property - Enter into contracts - Sue or be sued - Accept gifts or bequests - Invest and borrow money - Open a bank account • Take out public liability insurance with greater ease • The association continues until wound up • Allows some incorporated bodies to enjoy tax advantages	
Legal protection for members	
Protection of members of the organisation in relation to liability (subject to interstate trading).	
Statutory obligations	
• Clarifies and formalises the objectives of the association. To become incorporated, associations need to state clearly the purposes for which they are being formed. • Sets out regulations about how the association shall operate. These regulations are designed to ensure that the association operates fairly, responsibly and accountably to its members. They also protect against dishonesty and manage matters such as conflict of interest. Being incorporated also requires that some information is regularly made available to the regulating body and to the public about the affairs and operations of the association.	• Must comply with strict legislative requirements (e.g. in some states, preparing audited accounts) • Association should register in each state/territory in which it will trade as an incorporated association (in accordance with that state/territory's legislation) • If the association trades interstate without registering with ASIC as a registerable body, it will be in breach of the Corporations Act. • Must pay fees for incorporating and lodging some administrative forms. There may be costs involved in meeting ongoing statutory obligations, such as financial reporting.
Disputes	
Organisation must either have its own procedure for resolving internal disputes, or use the procedure in the model rules for incorporated associations.	
Contracts and agreements	
Can enter into contracts.	
Grants	
• May be eligible to apply for a larger range of government and non-government grants. • Apply for a much wider range of public/private funding. Many government and philanthropic organisations make it a requirement that funding applicants are incorporated.	• May have difficulties with national/interstate fundraising. • Structure may not be regarded as having the same rigor as a company limited by guarantee.

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Business structure: Co-operative

People centered organisations that are owned, controlled and used by members.
A co-operative's main purpose is to benefit its members.
Members work together and mutually through a jointly owned and democratically controlled enterprise.

ADVANTAGES	DISADVANTAGES
Costs	
• Inexpensive to establish. • Can be used for profit making and not for profit businesses - must select which you are and cannot switch.	
Legal status	
• Legal entity separate from the members. • Can sue and be sued. • Can continue regardless of changed membership.	
Legal protection for members	
Limited liability for members (subject to rules for co-operative).	
Statutory obligations	
	• Must comply with statutory requirements (e.g. maintaining audited account and various registers). • State and territory based (no national recognition). • Compliance regime will be unfamiliar to potential members therefore administration can be more difficult.
Contracts and agreements	
Can enter into and enforce contracts (including holding, acquiring and dealing with property).	

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NATIONAL ASSOCIATION FOR THE VISUAL ARTS

Business structure: Sole Trader

An individual trading on their own. You trade, control and manage all aspects of your business.
** Not suitable for groups.

ADVANTAGES	DISADVANTAGES
• Few legal and tax formalities setting up. • Inexpensive to set up. • Full control of business. • Full benefits of profits. • No government or public examination	• Accesses to finances limited by own resources. • Legal responsibility for all aspects of the business. • Debts and losses cannot be shared. • No separate legal entity • Does not have limited liability. • Some funding bodies will only fund organisations, not sole traders.

Business structure: Partnership

Carrying on your business in common with one or more other people as partners and receiving your income jointly.
** Both people and companies can be members of a partnership.

ADVANTAGES	DISADVANTAGES
• Inexpensive to set up. • Greater access to finances from the resources of all partners. • More people to share the workload • More people to share losses and legal responsibilities. • No formalities to establishing a partnerships (can be done through an oral or written agreement).	• You must share the profits with the other partners. • You and your partners are responsible for the debts of the partnership, even if you do not directly incur or cause the debt. • You can lose private assets such as your home, contents and vehicles to settle debts of the partnership. • Partners are jointly and severally liable for debts that any partner incurs, and share in the profits of the business.

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