

ATTACHMENT

COMPARISON OF KEY FEATURES OF CURRENT AND PROPOSED LEGAL STRUCTURES

	Matter	Incorporated association under the Associations Act	Company under the Corporations Act
(a)	Legislation	<ul style="list-style-type: none"> The Associations Act is relatively short. The Associations Act adopts the Corporations Act in relation to winding up and administration. It can therefore be difficult to interpret the relevant version of the Corporations Act. Persons outside Victoria may be unfamiliar with the Associations Act. 	<ul style="list-style-type: none"> The Corporations Act is much longer and contains extensive provisions designed to regulate for-profit companies. There is substantially more commentary and case law regarding governance, which provides a more certain regulatory environment.
(b)	Familiarity of legislation	There is substantial variation between the Associations Act and legislation in other States and Territories. These differences can lead to governance and compliance errors.	The Corporations Act is Commonwealth legislation. It is widely understood and used by organisations which operate nationally or in a single State or Territory.
(c)	Right to trade interstate	<ul style="list-style-type: none"> Incorporated associations must register an Australian Registered Body Number (ARBN) with ASIC before trading interstate. ARBN's are not commonly obtained and are not well understood. ARBNs are often associated with foreign companies. 	<ul style="list-style-type: none"> Companies may trade interstate without any further registration. If BMG were to consider operating interstate in the future, being a CLG would provide clear benefits.
(d)	Name on interstate public documents	To comply with ARBN disclosure requirements, the letterhead would need to read 'Bacchus Marsh Grammar Incorporated VIC Association A0014286; ARBN [insert]; ABN 24 128 531 028; Limited Liability.' This is cumbersome.	To company with ACN disclosure requirements, the letterhead would simply need to read 'Bacchus Marsh Grammar ABN 24 128 531 078; ACN [insert].' This is much simpler. Section 150 of the Corporations Act allows for charity companies limited by guarantee to omit the word "Limited" at the end of the company name provided it has applied to ASIC to do so.
(e)	Minimum number of members	Incorporated associations must maintain at least five members at all times.	Companies only require at least one member.
(f)	Liability for members	Members of associations are not liable to contribute towards the payment of debts and liabilities of the association or the costs, charges and expenses of winding up, provided that the association does not trade or does not secure profit for its members.	The unique feature of a CLG is that its members must specify an amount they are willing to contribute to the property of the CLG upon its winding up if the CLG assets are insufficient to cover its liabilities. This amount is known as a guarantee and is usually specified in the CLG's constitution. This will be \$100.
(g)	Minimum number of directors	<ul style="list-style-type: none"> The numbers of committee members required depends on the rules of the incorporated association. 	Companies must have three or more directors at least two of whom are ordinarily resident in Australia.

		<ul style="list-style-type: none"> This is open to manipulation. 	
(h)	Notifying details to the regulator(s)	<ul style="list-style-type: none"> Incorporated associations are required to notify Consumer Affairs Victoria of their Secretary and registered office addresses, but are not required to notify committee member details. However, since BMG is a registered charity, it must notify committee changes to the Australian Charities and Not-for-profits Commission (ACNC). This requires dealing with two regulators. 	<ul style="list-style-type: none"> Companies are required to notify ASIC of their initial directors, members, Company Secretary and principal address for initial registration. Director details must be notified to ASIC (to maintain the ACN registration) within 28 days of a change. Once registered as a company and a charity, BMG would need to liaise mostly with the ACNC, which reports changes to ASIC. ACNC registered companies are therefore only sometimes required to liaise with ASIC. This provides a more streamlined reporting regime.
(i)	Annual reporting	The Associations Act auditing and review requirements are tiered depending on revenue and assets.	The ACNC's reporting regime is tiered depending on revenue.
(j)	Execution of documents	<ul style="list-style-type: none"> If a document is signed by an agent/attorney of an incorporated association, the public can presume it is validly executed. However, the agent/attorney must be formally appointed by the incorporated association in writing under its common seal or signed by two members of the committee. If a document is signed by two members of the committee or a member of the committee and the Secretary, the public can also presume that it is validly executed. However, lack of a public register of committee members makes the assumption less reliable. 	<ul style="list-style-type: none"> If a document is signed by two directors or a director and Company Secretary in accordance with the Corporations Act, the public can presume it is validly executed. This makes it easier for BMG to transact, particularly outside Victoria.
(k)	Director (Board Members) & Officer Holder duties	<ul style="list-style-type: none"> Incorporated associations committee members' duties are set out in the Associations Incorporation Reform Act. The penalties for breaching the relevant duties are lower than for directors of a CLG that is not a charity. The common law duties and liabilities of board members are similar for both structures. 	<ul style="list-style-type: none"> The potential liabilities of CLG board members are more serious under the Corporations Act than for committee members and other office holders of an incorporated association. There are significant penalties for directors of CLGs who breach their duties. Charity CLGs are required to comply with the ACNC governance standards instead of the civil directors' duties under the Corporations Act. Criminal penalty provisions under the Corporations Act still apply.
(l)	Transition	BMG is already established as a Victorian incorporated association. No further action is required.	BMG could convert to a company under the "transfer of registration" provisions. This will incur one-off costs and rebranding costs.