

## CHAPTER ONE: INSTITUTIONAL STRUCTURES<sup>1</sup>

### 1. Introduction

There are hundreds of collection-related organisations in Australia. They range from organisations established as statutory bodies with budgets of millions of dollars, to service and professional bodies such as Museums Australia, to small community-based museums and to informal clubs with no financial resources at all. They vary in size and purpose. Some are primarily collecting, educational or research institutions, others are service organisations; some are membership based, others are not. Some receive funding from governments, some are supported by funds from their members, and some are supported by sponsorships and donations.

Indeed, irrespective of their size or their structure, most collecting organisations live off a cocktail of funding types. Even institutions that are primarily government funded must earn considerable amounts of additional funding to support their activities.<sup>2</sup>

The need for a new organisation or the continued existence of an ongoing one, should never be taken for granted. Every organisation should be thought of as a living creature: it comes into being, grows, learns, matures, develops diverse interests, can be trained or ill trained, may achieve its potential or be a dreadful disappointment. Some flourish into old age; others should either be put to sleep or just allowed gracefully to die.

This chapter describes the basic types of structures and their characteristics. Some legal structures suit certain purposes better than others. The structure adopted must complement the objectives of the organisation and provide for the needs and expectations of its members.

### 2. Preliminary Issues

This chapter is about not-for-profit collecting organisations. This is an important distinction, because the function of collecting (and indeed some of the functions of related service organisations) could be done, at least in theory, by commercial, for-profit, organisations: There are private businesses that run museums, galleries and information repositories; there are private businesses that provide an enormous range of services to the collection community. That recognised, this discussion focuses on the public, rather than the private.

<sup>1</sup> First published on 24 December 2008, updated August 2016 by Shane Simpson and Ian McDonald. Panel of Experts for the 2008 edition: Ms Dimitra Birthisel Corporate Counsel And Board Secretary, Museum Victoria; Ms Jasmine Cameron Assistant Director-General, National Library Of Australia; Mr Tony Caravella Member, Social Security Appeals Tribunal; Mr Joseph Corponi Senior Project Manager, Arts Victoria; Mr Frank Howarth Director, Australian Museum; Dr Matasha McConchie Director, Collections Development, Department Of The Environment, Water, Heritage And The Arts; Mr Peter Morton Executive Officer, Powerhouse Museum; Mr Russell Smylie Executive Officer, Australian National Maritime Museum; Mr Tim Sullivan Deputy CEO and Museums Director, Sovereign Hill Museums Association.

<sup>2</sup> For example, in 2014-15, the National Library of Australia earned just over \$16 million in off-budget funding.

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## 2.1 *What Does 'Non-Profit' Mean?*

'Non-profit' does not mean that the group or organisation does not make money. Rather, 'non-profit' means non-profit-distributing, not non-profit-making. A 'non-profit' organisation does not divide profits among its members. Instead, all profits are spent on the objectives of the organisation. (This is why such organisations are also called 'not for profit organisations' or, simply, 'not for profits'.)

Nor does 'non-profit' mean that the participants cannot be paid. It is not the same as 'voluntary'. For example, in a non-profit company such as the Wollongong City Gallery, the staff get paid – they just don't get a share of any profits that the company may make. Any profits go back into the business of running the gallery.

That is why it is important to ask when starting an organisation:

- (a) what will happen to any profits made by the organisation? and
- (b) will any profits be distributed to the members or will they be ploughed back into the objectives of the organisation?

If the intention is to return all profits to the organisation in order to further that organisation's objectives, then, as you will see from this chapter, there are a number of different structures that might be suitable.

## 3. Types of Legal Structure

It is important to have an understanding of the legal foundations of the organisation so that you can better understand its purposes, functions, rights and obligations, and your position within it.

There are numerous legal structures within the collection community. This diversity creates considerable complexity: Particularly in the case of government organisations, there is a bewildering range of underlying structures. In this section, we describe the various types of legal skeleton, how each of those types are different, and some of the consequences of those differences.

### 3.1 *Examples*

<u>the variations</u>	<u>examples</u>
<p>1. <i>Collections within a federal or state government department</i></p>	<ul style="list-style-type: none"> <li>• The National Archives of Australia<sup>3</sup></li> <li>• RAAF Museum (located in Melbourne, and administered by the Department of Defence)</li> <li>• Museums and collections of the Army Museum Network (Australia-wide, and under the command of the Australian Army History Unit within the Department of Defence)</li> </ul>
<p>2. <i>Collections within federal or state government agencies</i></p>	<ul style="list-style-type: none"> <li>• Reserve Bank Collection – being owned by the Reserve Bank of Australia, a body corporate that is a government authority</li> <li>• Museum of Australian Democracy at Old Parliament House (Old Parliament House a corporate Commonwealth entity within the Department of Communications and the Arts)</li> </ul>

<sup>3</sup> Created by the *Archives Act 1983* (Cth), the National Archives is an Executive Agency within the Attorney-General's Department. The National Archives of Australia Advisory Council provides advice to the Attorney-General and to the Director-General of the Archives.

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| 3. <i>Collections within federal or state government business enterprises</i>           | <ul style="list-style-type: none"> <li>• National Philatelic Collection in the Australian Postal Corporation</li> </ul>   |
| 4. <i>Collections that are statutory corporations created by specific legislation</i>   | <ul style="list-style-type: none"> <li>• Commonwealth collecting institutions such as: National Library of Australia; National Museum of Australia; National Gallery of Australia; National Film and Sound Archive</li> <li>• State government museums, libraries, archives &amp; galleries such as: Western Australian Museum; State Library of South Australia; Art Gallery of NSW; Museum of Applied Arts and Sciences (administering the Powerhouse Museum, the Sydney Observatory and the Discovery centre); Australian Museum; National Gallery of Victoria; and Museums Board of Victoria (Museum Victoria)</li> </ul> |
| 5. <i>Collections within statutory corporations created by non-specific legislation</i> | <ul style="list-style-type: none"> <li>• Performing Arts Collection and the Art Collection of the Victorian Arts Centre are examples of collections set up by a body that has its own Act and has other purposes<sup>4</sup></li> </ul>   |
| 6. <i>Organisations created under non-specific but enabling legislation</i>             | <ul style="list-style-type: none"> <li>• University collections such as the Grainger Museum at the University of Melbourne and the Nicholson and Macleay Museums at the University of Sydney</li> <li>• Collections in government schools</li> <li>• Local government collections such as the City of Melbourne Collection; the Orange Regional Gallery; Newcastle Art Gallery, The Briars Gallery (Mornington Shire Council); Wollongong Art Gallery</li> </ul>  |
| 7. <i>Statutory trusts</i>  | <ul style="list-style-type: none"> <li>• In some cases, the premises occupied by a collecting institution may be governed by a statutory trust (where the land is Crown land but where the day-to-day administration of the land is given by the relevant government to a different body, such as a local council)</li> </ul>   |
| 8. <i>Trusts (non-statutory)</i>  | <ul style="list-style-type: none"> <li>• National Railways Museum (operated, however, by a company limited by guarantee)</li> </ul>   |
| 9. <i>Collections within for-profit companies</i>                                       | <ul style="list-style-type: none"> <li>• Allens Arthur Robinson; Westfarmers; ANZ Bank; Macquarie Bank; ANZ Banking Museum (Melbourne); Australian Cement Museum</li> </ul>   |
| 10. <i>Companies limited by guarantee</i>   | <ul style="list-style-type: none"> <li>• New England Regional Art Museum (NERAM); Bundanon Trust; White Rabbit Gallery (in Sydney)</li> </ul>   |

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<sup>4</sup> Section 5(1)(e)-(fb) of the *Victorian Arts Centre Act 1979* (Vic) specifically gives the Trust the task of establishing these collecting functions, though it does not specifically establish the collections.

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| 11. <i>Incorporated associations</i>   | <ul style="list-style-type: none"> <li>• Melbourne Cricket Club Museum; Essendon Football Club Hall of Fame; Ausbuilt Maritime Museum (operated by the Port Adelaide Historical Society); Queenscliffe Maritime Museum</li> </ul> |
| 12. <i>Unincorporated non-profit Collections</i>                             | <ul style="list-style-type: none"> <li>• Many local historical societies</li> </ul>   |
| 13. <i>Privately owned, controlled and funded, public access collections</i> | <ul style="list-style-type: none"> <li>• 'Jill and Vic Fauser's Private Museum'; 'Wyalong Park Private Museum (McNamara's); Squatters Rest Private Museum</li> </ul>  |
| 14. <i>Privately funded, not for profit collections</i>                      | <ul style="list-style-type: none"> <li>• Museum of Old and New Art (MONA); Maryborough Military &amp; Colonial Museum; Sherman Contemporary Art Foundation</li> </ul>   |
- 4.1 *Categories 1 to 3: collections in federal or state government departments; in federal or state government agencies; and in federal or state government business enterprises*

Some collections are simply sections or units within a government department. They are legally indivisible from the ministry or department within which they nestle and have no separate legal existence.<sup>5</sup> It is the government, through its ministry and its Minister, that owns the collection material, enters agreements on behalf of the collection and has the right to sue and be sued.

Although there will be laws that impose restrictions or safeguards on the collection (for example the oversight role of the Auditor-General) these are general and are not specifically aimed at departmental collections. They will apply to the whole of that tier of government.

Such collections are funded by the government; their staff are employees of the government; and such collections are the property of the relevant government.<sup>6</sup>

*... during the 1980s, Australia Post (then a government agency) placed its historical collection of postal technology in a disused Post Office in Richmond (a suburb of Melbourne), appointed a staff member as the Curator to look after the collection, and declared the Post Office Museum open. In the late 1980s, however, the business structures and philosophies of Australia Post changed as it commenced the move towards corporatisation. The organisation decided that running a museum was no longer part of its 'core business'. The Museum was closed, the curator was made redundant, and the collections were put into storage. A few years later, Australia Post opened the National Philatelic Centre (a museum of stamps rather than of postal technology) in its Melbourne headquarters building because it had become aware that the stamp-collectors formed a very important part of its market. The staff of the National Philatelic Centre (and the exhibition space that's now known as the Post Master Gallery) are members of Australia Post's staff and must ensure that their work integrates with the core business of the organisation. If the core business changes, those staff will have to think hard about the ways in which the heritage of stamps can*

<sup>5</sup> Examples include defence museums and police museums.

<sup>6</sup> Category 3 (collections within government enterprises) is included in this group because such collections are not protected by legislation. They may be abolished at the whim of the enterprise's management.

*be presented as part of that new core business; otherwise, their jobs may suffer the fate of the curator of the Post Office Museum.<sup>7</sup>*

#### 4.2 *Categories 4 and 5: collections that are statutory authorities created by specific legislation; and those in statutory corporations created by non-specific legislation*

These are collections that are either themselves statutory corporations or are created pursuant to non-specific legislation. Like the previous group, the core funding is still from the government but the organisation is expected to earn additional income from non-government sources.

With the exception of the National Archives, all of the major government collecting institutions are structured as statutory bodies.<sup>8</sup> They each have their own statute that accords them corporate status, defines its function, grants it an array of rights, imposes a number of restrictions, and outlines the structure of governance for the organisation.<sup>9</sup> Although they are legally independent entities, statutory bodies are also part of the machinery of government. Although they can sue and be sued in their own name, their chief executives and boards are still answerable to the government (and, in particular, to the Minister in the portfolio or department within which they sit.)

Their employees are public servants and the collection is owned by the statutory authority. Of course, given that the statutory body is a government entity, at the end of the day, the collection is the property of government. However, the significant difference in these instances is that there is a distinct administrative and decision-making machinery responsible for the collection. It is protected by its legislation and it cannot be done away with unless the parliament concurs.

Statutory bodies are controlled by a wide range of instruments: by their own statute; by the regulations and by-laws enacted pursuant to that statute; by departmental directives; by the general legislation designed to control arms of government.<sup>10</sup> These vary between jurisdictions.<sup>11</sup>

#### 4.3 *Category 6: collections created under non-specific but enabling legislation*

These collections do not have an independent existence: They are components of a greater statutory creature. Their statutory underpinnings are enabling rather than prescriptive: they give no guidance whatsoever as to the legal complexities of keeping cultural material. There are two very common examples:

- (a) collections established by universities; and
- (b) collections established by local government (where the local government library, museum or gallery is merely established as a committee or division of the council and is, for legal purposes, an indivisible part of council).<sup>12</sup>

Similarly, unless there is a trust or other structure superimposed,<sup>13</sup> the university/council collection is simply the property of the university/council.

<sup>7</sup> M. Birtley, *Museums Management Materials*, Deakin University, Topic 1, "Governance Systems".

<sup>8</sup> This includes federal and state libraries, archives, museums and galleries. Each such institution has its own legislation.

<sup>9</sup> In other words, they have an independent legal existence.

<sup>10</sup> For example, legislation that gives oversight to the Auditor General or to an integrity oversight mechanism such as the Independent Commission Against Corruption (NSW).

<sup>11</sup> For example, Commonwealth statutory corporations are usually directed to do things by Ministers through government policy orders given under section 22 of the *Public Governance, Performance and Accountability Act 2013* (Cth), and not through a broad departmental directive. However, section 22 confers a power rather than creating the sole way of making directives. For example, the *Public Service Act 1999* (Cth) introduced a Charter of Values across the whole Commonwealth Public Service.

<sup>12</sup> Take the situation where a city council decides to stop funding its art museum or art gallery so that it can put its money into sporting and recreational facilities. The collection has no individual legal identity. The board members have little power. Assuming that council owns the collection, it can dispose of it and spend the money on swings and roundabouts.

#### 4.4 *University collections*

In these cases, the museums, galleries and libraries are generally component parts of the whole university.<sup>14</sup> Most universities are statutory corporations and their power to own and operate such collections is generally set out in their legislation.<sup>15</sup> Their primary funding comes from the central funding of the University, either directly or via a departmental structure.

#### 4.5 *Local Government collections*

Collections established by local government are interesting in that they only exist because of state legislation authorising the establishment of local government. A town or city's library, museum or gallery is merely a committee of Council and accordingly, their collections are owned by the Council.

Town and city galleries, museums and libraries are almost always established pursuant to the generic powers granted to local councils under the *Local Government Act*.<sup>16</sup> The power under which these important community facilities are established, funded and administered, are usually extraordinarily general. Museums, libraries and galleries are often not specifically mentioned in the legislation at all; they are included by inference as community services and facilities.<sup>17</sup>

Some of these collections can be confusing to identify. What may look, at first glance, to be local council bodies can in fact be something quite different.

This was the case with the New England Regional Art Museum. When it was established in 1982, the collection owned by the Hinton Trust was housed in a building erected on Crown land that had been reserved for use as a museum by a declaration of the Minister for Lands. To do this, the government created a 'Reserve Trust' pursuant to the *Crown Lands Act 1989*. Originally, the Minister appointed a number of local citizens to the New England Regional Art Museum Reserve Trust Board which was given the responsibility of managing the statutory trust.<sup>18</sup> This continued until 2005 when, after a period of difficult politics, the Minister removed the individuals and appointed the Armidale Dumaresq Council to manage the statutory trust. In 2008 the Reserve Trust was renamed the Armidale Community Cultural Reserve Trust. (Are you still paying attention?)

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<sup>13</sup> Where there is a trust, careful regard must be had to the terms of the trust as these may have the effect of describing the purpose of the trust, limiting the powers of the trustee, and thus affecting the presumption of permanence.

<sup>14</sup> To illustrate the generality of a university's power to establish an internal collection, see, for example, sections 6 and 7 of the *Sydney University Act 1989* (NSW).

<sup>15</sup> If not specifically provided for, the legislation establishing a university will always have powers that are sufficiently wide to empower the governing council of the university to establish such collections.

<sup>16</sup> *Local Government Act* references are as follows: NSW section 24; VIC section 86; SA section 41; WA section 5.8; Qld section 257; TAS section 24; and NT section 54.

<sup>17</sup> For example, in NSW the Act provides:

*A council may provide goods, services and facilities, and carry out activities, appropriate to the current and future needs within its local community and of the wider public, subject to this Act, the regulations and any other law."*

Section 355 of the Act then describes (in the most general terms imaginable), how local government may exercise its functions:

*A function of a council may, subject to this Chapter, be exercised:*

- (a) *by the council by means of the councillors or employees, by its agents or contractors, by financial provision, by the provision of goods, equipment, services, amenities or facilities or by any other means, or*
- (b) *by a committee of the council, or*
- (c) *partly or jointly by the council and another person or persons, or*
- (d) *jointly by the council and another council or councils (including by means of a Voluntary Regional Organisation of Councils of which the councils concerned are members), or*
- (e) *by a delegate of the council (which may, for example, be a Voluntary Regional Organisation of Councils of which the council is a member).*

It is section 355(b) that provides the non-specific legislative power that underpins most local government museums and galleries. It is for that reason that, in each State, the committees that control such organisations are colloquially referred to by the relevant section of their Local Government Act: Thus, in NSW one might refer to a 'Section 355 Committee' whereas in Victoria it would be a "Section 86 Committee" – but they are essentially the same creature.

<sup>18</sup> See section 92(6) by which the affairs of a reserve trust can be managed (a) by the Minister, (b) by a trust board appointed by the Minister (c) by a corporation, or (d) an administrator.

At all times, the Hinton Trust (and then the subsequent Coventry Trust) had its own separate legal identity, distinct from that of the Council. The Council was merely the trustee. However, outwardly, it appeared that the collections (including the Hinton Trust collection) were owned by the Armidale Dumaresq Council and indeed there were times that the Council seemed to forget that it was merely a trustee and that the collections were not an asset of Council.

Then, in 2008, NERAM Ltd was established – a company limited by guarantee established to manage the operations of the museum and its collections and act as the trustee of the Hinton and Coventry Trusts.

Local councils play a crucial role in the establishment and continued support of collecting institutions, particularly in regional areas. Those that are established under the Local Government legislation are part of their local council. Their employees are employees of council; their collections are the property of council. They are subject to the vagaries and influences of local politics and their governance is often subjected to political pressures that have little to do with codes of ethics espoused by Museums Australia or the International Council of Museums (ICOM). But more of this later.

#### 4.6 *Category 7: collections established as statutory trusts*

Some structures are incorporated by virtue of generic legislation such as the *Crown Lands Act 1989* (NSW). This legislation (and its variants in other jurisdictions) allows the Minister to establish “reserve trusts”. So called “trusts” created pursuant to legislation are not trusts – in other than name. They are incorporated bodies (which true trusts are not). They are really generic statutory corporations;<sup>19</sup> they enjoy the powers set out in the legislation; they are obliged to comply with the generic duties and restrictions set out in the legislation; they are overseen by their Minister of the Crown. In short, they are “cookie-cutter” statutory corporations, in that the government does not need to draft individual legislation for each such statutory body.

They are formally under the management of the Minister of Land and Water Conservation but usually the Minister delegates this responsibility to either a trust board or a corporation. As is illustrated by the woe-filled case of the New England Regional Art Museum, this is not a structure that promotes the long-term stability of a collecting institution. It may provide a useful quick fix to a problem but it should only ever be used as segue to a more appropriate structure.

#### 4.7 *Category 8: collections established as non-statutory trusts*

In some respects, a trust is an obligation rather than a structure. It is a legally enforceable obligation that rests on a person (or group of people) who is given the legal ownership of property, either for the benefit of another or for a specified purpose. The trustee is the legal owner of the trust property: The beneficiary merely has an equitable interest in the property.<sup>20</sup>

The structure may be provided in the “trust deed”, the written document that sets out the property, objects, powers and persons responsible for the trust. Trustees are heavily regulated and their legal responsibilities are onerous.

Beware the use of the word “trust” – it is often misleading. Many organisations that use the word “trust” in their name or describe their board members as “trustees” are not, in a legal sense, trusts. For example, the Art Gallery of NSW is a statutory corporation. It has its own legislation.<sup>21</sup> In that legislation the board members are called “trustees”. This use of the words “trust” and “trustees” merely gives an old-world sense of security is really a non-legal reference to the custodian role that the board members are expected to play. It does not make them trustees in a legal sense; nor does it make the gallery itself a trust. The Art Gallery of NSW is not a trust: It is a statutory corporation.<sup>22</sup>

<sup>19</sup> They are generic in the sense that they do not have their own individual legislation.

<sup>20</sup> This tension between legal and equitable ownership is sometimes colloquially called ‘split title’. The split is between control, management, and possession (enjoyed by the trustee), while benefit, enjoyment and use (enjoyed by the beneficiary). For example, the late Peggy Glanville Hicks left her house to be used as a residence for composers. A trust was established and the trustee is the owner of the house and responsible for its maintenance, choosing who should be composers in residence, raising money, and so on. The members of the community of composers are the ‘beneficiaries’. The trustee owns the House so that the composers might benefit.

<sup>21</sup> *Art Gallery of NSW Act 1980* (NSW).

<sup>22</sup> There are many examples of this in the cultural sector: for example, the *South Australian Country Arts Trust Act 1992* purportedly establishes the South Australian Country Arts Trust. What it actually establishes is a

Similarly, the National Trust is a company limited by guarantee. It is not, in any legal sense, a trust. However, in that it is a non-government not-for-profit organisation that works to preserve the nation's heritage for both its present and future citizens, it is reasonable to call it a trust in a colloquial sense.

It is not uncommon for collecting institutions to act as the trustee of a third party charitable trust that remains the actual owner of the works (such as the Hinton and Coventry trusts) They can only deal with such works in line with the relevant trust deed. In contrast, there are cases where the trust owns and controls the collection and lends it to the collecting institution on contractual terms (such as the Chartwell Trust and the Auckland Art Gallery.) These may look alike from the outside, but legally they are quite different.

#### 4.8 *Category 9: collections in for-profit companies*

A corporate collection is an asset of the company. It does not have a separate legal entity. It is funded by company funds and tended by company employees and contractors.<sup>23</sup>

Like other non-core assets, corporate collections may be readily sold. They are susceptible to a downturn in finances, a takeover, a change of corporate ideology, an issue with PR or HR, the death of the CEO or even an attack of sports sponsorship virus.<sup>24</sup>

#### 4.9 *Category 10: collections in not-for-profit companies*

Several collection organisations, and almost all service organisations in the sector, are non-profit distributing companies limited by guarantee.

A “company limited by guarantee” doesn't have shareholders – instead, it has members. These are people who ‘guarantee’ that if, when the company is wound up and its debts exceed its assets, then they will contribute the (nominal) amount stated in the constitution. It is usually between \$20 and \$100.

If the organisation's budget is large and its activities are extensive, or if the organisation is intending to have a national or inter-State focus, this option will be the first to consider. It is legally straightforward, its constitution is easy to amend so that it meets the individual needs of the organisation and it is a well-known and therefore comfortable structure.

The company owns the collection and the board of the company is responsible for its management. This is an excellent model for museums and galleries presently based within local government administrative structures: by moving the collection to a separate, not-for-profit structure, the collection is protected from some of the vagaries of council politics and from collection management decisions being based on criteria other than those governing good museum practice.

Although most companies limited by guarantee are membership-based, sometimes that is illusory. For example, the Bundanon Trust (Arthur Boyd's gift to the nation) is a company limited by guarantee but its only member is the Commonwealth of Australia.

#### 4.10 *Category 11: collections established as incorporated associations*

In all jurisdictions, special legislation has been enacted to make the incorporation of non-profit organisations with community, cultural or sporting purposes, a fairly simple matter.<sup>25</sup> Accordingly, this is a particularly useful structure

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statutory corporation that the legislation calls a ‘trust’. It could have called it ‘dachshund’ or ‘milkshake’ but ‘trust’ has a better ring to it.

<sup>23</sup> A corporate collection might start as a PR initiative to support a claim of ‘good corporate citizenship’; some may be the product of ego-driven competition with other corporations; others might be focussed on providing a beautiful workplace (or client place). Whatever the rationale, they usually come into existence because of the commitment of one or two driving souls within the power elite of the organisation.

<sup>24</sup> Some of the major corporate collections that have now been disposed of (wholly or in part) include those of Fosters; Coles Myer; BHP Billiton; WMC Resources, John Fairfax; Tempo, Orica, CUB and Shell. On the other hand, there are still companies that have bountiful collections: UBS, Macquarie Bank, Allens, JP Morgan, and Deutsche Bank.

<sup>25</sup> South Australia: *Associations Incorporation Act 1985*; Western Australia: *Associations Incorporation Act 2015*; Tasmania: *Associations Incorporation Act 1964*; Victoria: *Associations Incorporation Reform Act 2012*; Queensland: *Associations Incorporation Act 1981*; ACT, *Associations Incorporation Act 1991*; Northern Territory: *Associations Act 2003*; and NSW, *Associations Incorporation Act 2009*.



for community museums or special interest groups. It is easy, cheap and gives the members the security of limited liability.

Generally, to be eligible to form an incorporated association the organisation must have more than a specified number of members (usually five or more), have a set of objects and rules and have a non-profit purpose.

Because Incorporated Associations were invented to give protection to community groups, they have a simple structure and simple rules. Their establishment involves little complexity and in every State, the government provides a useful website providing all the information needed to set up an incorporated association.<sup>26</sup> Such sites even provide model constitutions and other pro-forma documents.

#### 4.11 *Category 12: unincorporated non-profit collections*

Many historical societies and special interest groups in the community are unincorporated. Such a group might operate a neighbourhood museum; it might be a reading group or a craft group; it might be a group of collectors that shares an interest in 19<sup>th</sup> century porcelain or in 20<sup>th</sup> century art glass.

Any group of people that bands together for specific purpose, but which does not incorporate as a company or as an incorporated association or a co-operative, can be described as an **unincorporated association**. If you are unincorporated, formation is free and without formality and thereafter the group runs itself according to its own rules and settles internal disputes in its own way. It is basically a private club. It sounds ideally simple and effective, but unincorporated bodies would usually be better served by a more considered, more certain, formal structure.

When incorporation is simple and inexpensive, why would you remain unincorporated and expose your members to personal liability? It is not hard to imagine a member or a visitor being badly injured after slipping on wet steps or tripping on a loose board. In such a case the injured person will seek compensation and will sue the legal entity responsible. Because the group is not incorporated, it has no legal existence separate from its members. Accordingly, the injured person will sue the members and the assets of every member are legally exposed. It was precisely to protect community groups from this kind of situation that the state and territory governments introduced the incorporated association structure. It is simple, inexpensive and provides basic protection for all its members.

#### 4.12 *Category 13: public access collections that are privately owned, controlled and funded*

There are hundreds, if not thousands, of collections that are privately owned, controlled and funded, to which their owners allow public access. Many of these are private heritage collections that have grown out of the personal interests of their owners and the collection objects are essentially assets of the owners.

These have been a part of our culture for a very long time. The selling of tickets to see private collections, curios and freaks of nature was a favourite of Victorian times and its modern manifestations extend from small private-interest collections of little commercial (and sometimes little cultural) interest to hugely important and large scale operations.

#### 4.13 *Category 14: privately funded not-for-profit collections*

This is a new and important development. Although it has long been a feature of American collecting, it has been unusual for the wealthy in Australia to establish foundations for the exhibition of cultural material. The principal difference between these kinds of collections is the issue of ownership. Some of these collections are owned by structures in which the public participates in governance, others are more tightly, privately, controlled. The common characteristic is that they are formally structured as not-for-profit entities and gain core funding from private endowment and donations.

## 5. Working together

The foregoing discussion has tried to give you a skeleton so that you can better understand the many structural options that are available. Within each of the main types, there are variations. Further, it is often advantageous for the organisations – often with different legal structures – to work collaboratively. In these cases, the collection objectives are shared but not the structure. For example, The Sovereign Hill Museums Association is an interesting

<sup>26</sup> Just do an Internet search of “Incorporated Associations” and stand back!

example of collaboration between differently structured collecting organisations: it is a not-for-profit company limited by guarantee and has one of the largest collections in regional museums in Australia. The Association has important working relationships with incorporated associations such as the Ballarat Historical Society (BHS) through which it gets access to the BHS collection (which is more broadly based in some areas, particularly in documentary and pictorial records) and in return, the Sovereign Hill Museums Association manages the BHS collection within its facilities. There is nothing that stops organisations having different structures from working together, sharing goals, resources, and collection material.