

Charity law and tax tips for environmental organisations



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- Organisational structures
- Charitable tax concessions
- Are you an environmental organisation?
- The public fund
- Application process
- Assessment process

- Our work in social infrastructure is a central part of who we are as a firm. We provide legal and strategic advice to our social infrastructure clients and partners, so that they can build successful organisations and in turn, a stronger community.
- We help to lift the burden of regulatory compliance, governance and capacity issues, and allow them to focus on what they do best - helping others.
- Our social infrastructure focus can be broken down into the following core areas:
 - ☐ health, mental health and aged care
 - ☐ social enterprises, non-profit organisation and charities
 - ☐ community and affordable housing
 - ☐ philanthropy
 - ☐ Indigenous issues, and
 - ☐ education

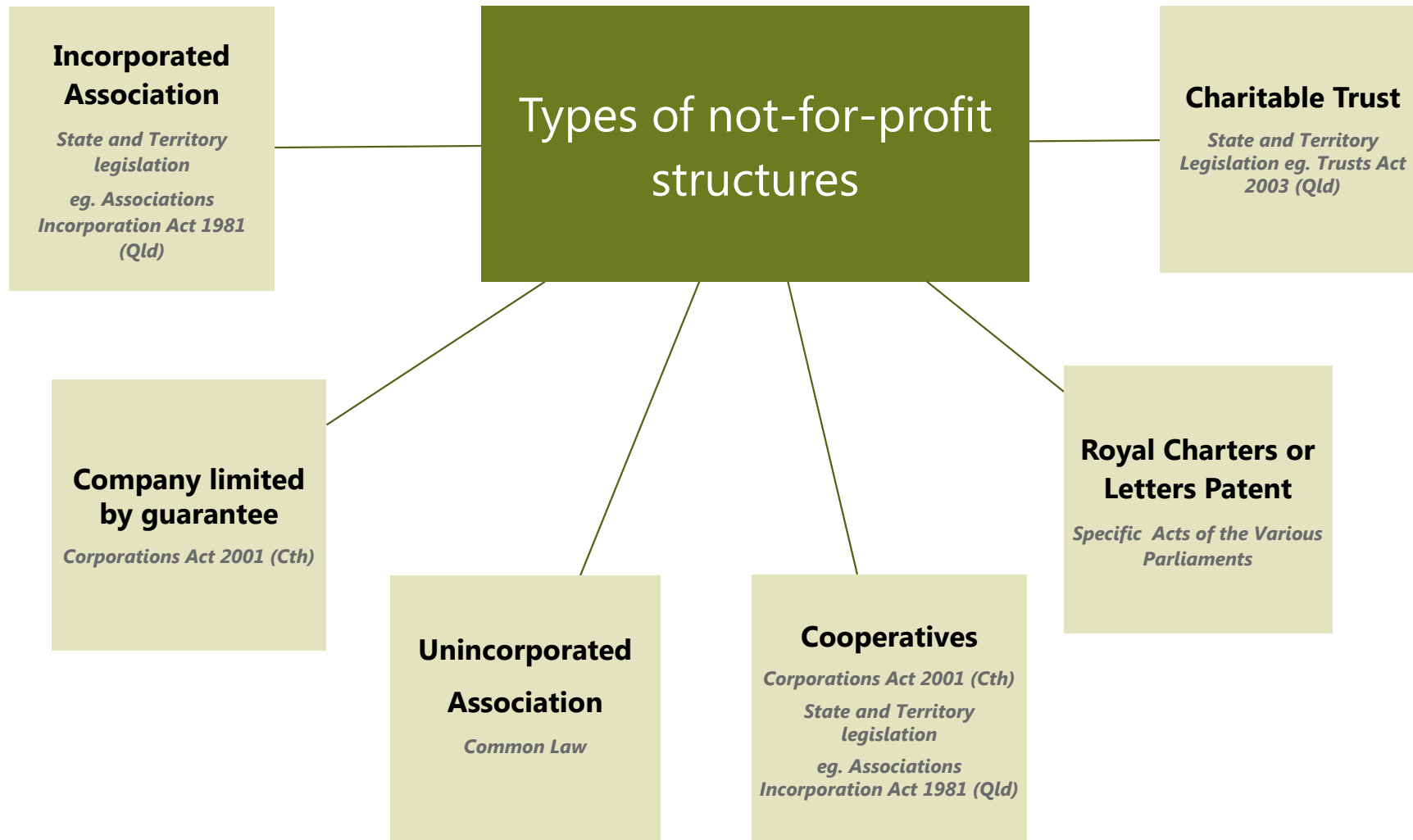
- Who are you? Where are you from?
- What is your organisation?
- What would you like to achieve?

Legal structures

Type of structure depends on a number of factors including:

- purpose of the organisation
- nature and type of activities
- nature of control that might be sought by the original stakeholders
- whether the activities will be local or interstate, and
- tax structure sought

Overview of available structures



Are environmental organisations charities?

Are environmental organisations charities?

■ Common Law

■ Statute

☐ Commonwealth

- *Charities Act*
- *Income Tax Assessment Act*
- *Corporations Act*

☐ Queensland

- *Collections Act*
- Office of State Revenue
- Adopts common law interpretation



- The common law had accepted that certain purposes which advanced the 'environment' met the relevant tests and fell within the fourth head of charity
- The fourth head of charity is understood as an institution with a purpose that is both:
 - ☐ beneficial to the community, and
 - ☐ within the spirit and intendment of the Preamble to the Statute of Elizabeth
- Incrementally, the Courts found the following to be charitable:
 - ☐ preservation of native wild life both flora and fauna (*Attorney-General (NSW) v. Sawtell and Anor* [1978] 2 NSWLR 200)
 - ☐ the improvement and protection of a river (*Kaikoura County v. Boyd* [1949] NZLR 233)
 - ☐ the Australian Conservation Foundation (*Australian Conservation Foundation Inc v. Commissioner of State Revenue* [2002] VCAT 14)
- Queensland remains uncertain

- 'Advancing the natural environment' is defined as a charitable purpose under the Charities Act, which applies to Commonwealth laws
- This may include, for example:
 - ☐ protecting native flora and fauna
 - ☐ rescuing and caring for native animals
 - ☐ habitat protection and rehabilitation
 - ☐ sustainable development, and
 - ☐ environmental education

■ Income tax exemptions

- ☐ Organisations must pay income tax, unless they are exempt
- ☐ Registered charities are entitled to income tax exemption

■ Goods and services tax (**GST**) concessions

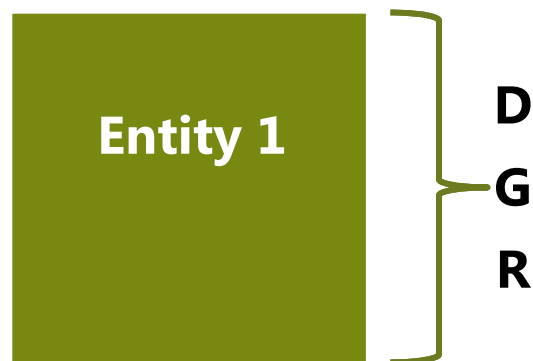
- ☐ GST is a tax on transactions (higher thresholds for charities – \$150,000)
- ☐ Registered charities may apply for GST concessions (for specific activities)

■ Fringe benefits tax (**FBT**) rebates

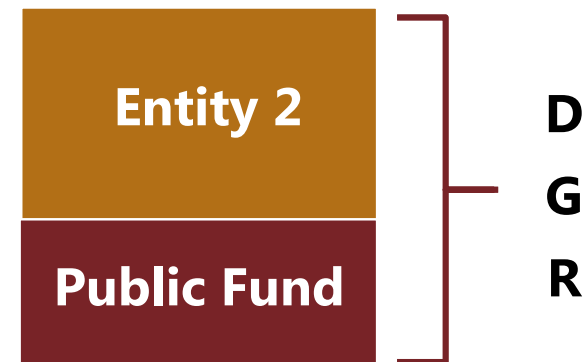
- ☐ FBT is a tax paid on any benefits that an employer provides to their employees outside salary or superannuation (e.g.. work vehicle, mobile phone, etc)

Deductible gift recipient status

- Environmental organisations that are deductible gift recipients (**DGR**) are not required to be charities
 - DGR status allows organisations to issue tax deductible receipts to donors
 - Applies to donations over \$2.00



PBIs, HPCs, public
hospitals, etc



Public Fund Register of
Environmental
Organisations

Is your organisation an 'environmental
organisation'?

- An environmental organisation is an organisation that has a public fund, which is listed on the Register of Environmental Organisations
- Generally, environmental organisations must be:
 - ☐ a body corporate
 - ☐ a cooperative society, or
 - ☐ a trust
- A body corporate or a cooperative society is an environmental organisation only if:
 - ☐ its membership consists largely of bodies corporate, or
 - ☐ it has at least 50 members who are individuals who are:
 - regarded as financial members, and
 - entitled to vote at general meetings, or
 - ☐ the Minister for Environment has waived the requirements because of special circumstances

- An organisation must maintain a special fund to be endorsed as a DGR:
 - ☐ all deductible donations must be made to the fund for the 'principal purpose'
 - ☐ any money received by the organisation is credited to the fund
- The public fund must be managed by a management committee or subcommittee
- To qualify as a public fund the majority of the fund managers must be 'Responsible Persons'
 - ☐ People with a wider degree of responsibility to the community
- There must be at least 3 people on the committee

- Environmental organisation's **principal purpose** must be:
 - ☐ the protection and enhancement of:
 - the **natural environment**, or
 - a significant aspect of the **natural environment**, or
 - ☐ the provision of information, education or the carrying on of research of the natural environment or a significant aspect of the natural environment

- Organisations must be an eligible entity type (e.g. a body corporate, cooperative society, a trust)
- Organisations must seek to obtain an ABN
- Organisations may need to amend their governing documents to meet the requirements for entry on the Register
- Complete and submit the application form

- **Department** - The Department checks that the organisation satisfies:
 - ☐ the legislative requirements
 - ☐ the Ministerial Rules, and
 - ☐ the guidelines
- **Minister** - The application is then referred to the Environment Minister for approval and to certify that the organisation is in fact an 'environmental organisation'
- **Treasurer** - The application is then provided to the Treasurer for further approval
- **ATO** - After the Treasurer approves the application, the ATO processes the endorsement of the public fund as a DGR



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