

Information memorandum Community Resource Unit Incorporated

Contact

Paul Paxton-Hall

Director

Level 10, 15 Adelaide Street, Brisbane Qld 4000

Telephone: 07 3007 9250

Email: paul.paxton-hall@paxton-hall.com.au

Affiliated with Fox and Thomas Pty Ltd ■ Goondiwindi ■ St George

www.paxton-hall.com.au

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1. Introduction

- 1.1 At the annual general meeting of the Community Resource Unit Incorporated (**CRU**) to be held in Brisbane on the 16th of November the members will consider a proposal for CRU to convert its status from an incorporated association to a company limited by guarantee (**CLG**) under the *Corporations Act 2001* (**CA**).
- 1.2 This information memorandum is designed to provide members with some background to the proposal and the rationale behind it.

2. Background and current issues

- 2.1 CRU is currently an incorporated association under the *Associations Incorporation Act 1981* (**AIA**) having been incorporated in October 1988. CRU was originally established through the initiative of Queensland Parents of People with a Disability (**QPPD**), a parent advocacy organisation.
- 2.2 QPPD wanted to improve the lives of people with a disability and the services which were available to them and their families. To this end, QPPD held a meeting in October 1997 which was attended by 90 people including people with disability, parents, service providers and government representatives. As a result of the workshop, a taskforce was formed to develop a strategy for supporting, informing and providing training opportunities for people with disabilities, their families, workers and organisations. CRU was established as a result of the taskforce. CRU remains committed to these same objects today.
- 2.3 Since CRU was first established it has grown substantially in all aspects. This includes the services which it offers to the community, its number of members and employees, its asset holdings and its community presence generally.
- 2.4 CRU is a registered charity with the Australian Charities & Not-for-Profits Commission (**ACNC**) under the subtype of public benevolent institution (**PBI**). CRU is accordingly endorsed as a deductible gift recipient (**DGR**) with the Australian Taxation Office (**ATO**).
- 2.5 The management committee is aware of the substantial changes which are occurring in the not-for-profit sector and which will continue to occur as a consequence of the *Australian Charities & Not-for-Profits Commission Act 2012* (**ACNC Act**) and more notably, the National Disability Insurance Scheme (**NDIS**). The commencement of the NDIS in Queensland from 01 July 2016 means CRU faces an uncertain funding future and will be seeking funding from a broader mix of sources. CRU will also need to consider working outside of Queensland and more nationally.
- 2.6 The introduction of the ACNC in 2012 brought about significant changes to the reporting obligations of charities. The changes essentially mean that incorporated associations which are charities have a dual reporting obligation to both the Office of Fair Trading in Queensland and the ACNC. Charities which are CLGs have a sole reporting obligation to the ACNC. Therefore, if CRU remains as an incorporated association, the management committee will continue to have duplicate reporting obligations.

- 2.7 Additionally, the management committee is of the view that CRU's corporate structure should allow for flexibility and growth in the future. Such a forward-looking trajectory is better accommodated in a company structure rather than an incorporated association.
- 2.8 Given these considerations, the management committee thinks it best that CRU convert its status to that of a company limited by guarantee.

3. What is proposed

- 3.1 The management committee proposes that CRU migrate from an incorporated association to a CLG under the CA. A recent amendment to the AIA means that an incorporated association may migrate to a CLG without there being any change of entity.
- 3.2 This has the effect of making the migration process relatively seamless and a low cost strategy with very little revenue implications or the need to change the ABN. In other words, no new entity is created; all that is happening is that the existing entity will be a CLG regulated by the CA, the Australian Securities & Investments Commission (**ASIC**) and the ACNC, rather than the AIA and the Office of Fair Trading.

4. How it would be effected

- 4.1 To effect the status conversion, the members of CRU at the annual general meeting must pass a special resolution that the conversion occur and, in doing so, adopt a new constitution for the CLG.
- 4.2 The new constitution will retain the existing objects of CRU and will satisfy other ACNC and ATO requirements for being a registered charity and a PBI/DGR. It will also contain the required provisions for a CLG.

5. What would change:

- (1) the legal structure of CRU;
- (2) the reporting requirements;
- (3) a new constitution will be adopted;
- (4) the appointment of a company secretary;
- (5) some terms, for example the management committee, will be known as the "board of directors"; and
- (6) Community Resource Unit Incorporated will change its name to Community Resource Unit Ltd. CRU will also register the business name "CRU".

6. What will stay the same:

- (1) the charitable objects of the old constitution will be mirrored in the new constitution; CRU will retain its original objects of supporting and providing relief and support to people with disabilities. The only major change will be the corporate structure through which CRU seeks to fulfil its objects.
- (2) the members of CRU will retain the same rights and responsibilities as they currently enjoy under the incorporated association; and
- (3) the members of the management committee, as elected prior to the adoption of the new constitution, will remain in office as directors of the CLG.
- (4) an annual general meeting will still be held. Members will still elect board members but the constitution may be amended to allow for longer terms of appointment. This approach assists in providing a stable governance environment and allows for board membership option planning

7. Pros and cons

7.1 Broadly, some of the advantages of a CLG over an incorporated association structure are:

- (1) A move to a CLG will enable CRU to operate nationally. Because a CLG is governed by the *Corporations Act 2001*, there is greater certainty and clarity surrounding the obligations of directors and the rights of members than that of an incorporated association. Because incorporated associations are governed by State-based legislation, operations conducted interstate become difficult. No such barrier exists for operations of a CLG as the *Corporations Act* is Federal legislation and so applies in all states and territories.
- (2) CRU anticipates CLG's will become the vehicle of choice by government in terms of funding arrangements
- (3) A CLG has much greater flexibility in the drafting of its constitution than does an incorporated association. So, for example, a CLG has greater flexibility around who can be appointed as director, the basis of appointment and the term of appointment e.g. directors do not have to be re-elected every year.
- (4) The introduction of the ACNC Act means that all endorsed charities have a mandatory reporting obligation to the ACNC. This means that for CLGs, they will be reporting to the ACNC as opposed to ASIC. However, incorporated associations have a dual obligation to report to both the ACNC and the Office of Fair Trading which is the State government department responsible for incorporated associations. This will continue until such time as the Queensland government agrees that ACNC reporting will suffice for the Office of Fair Trading's reporting purposes.

7.2 Disadvantages of the restructure are initial costing in effecting the restructure.

8. Frequently asked questions

8.1 What will be the enabling legislation for CRU?

If the proposed constitution is adopted, the enabling legislation will be the *Corporations Act 2001* and the *ACNC Act 2012*.

8.2 What will the regulatory body of CRU be following the proposed restructure?

CRU will be regulated by both ASIC as a CLG and the ACNC as a registered charity.

8.3 Will the governance and leadership of CRU be maintained by the proposed constitution?

The governance and leadership of CRU will be maintained and enhanced through the proposed restructures. This is because directors of a CLG have various duties, including fiduciary responsibilities.

8.4 What are the proposed categories of membership in the proposed constitution? What will happen to current membership?

- (1) All existing members will remain as members in the equivalent category of membership provided for in the proposed constitution.
- (2) The proposed membership categories are:
 - (a) ordinary members (meaning any individual who sympathises with the objects of CRU); and
 - (b) life members.
- (3) All members will continue to receive the existing levels of service and benefits of their membership. All members will retain similar rights to attend, be heard and vote at general meetings.

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