

# Incorporating a farmer group



Many sugarcane growers are involved in a grower 'group'. The group is usually made up of neighbours or growers with common interests, usually co-operating to share ideas, experiences and equipment. There often comes a time when the group needs to become more formal. This may be to reduce individual liabilities, to allow the group to seek sponsorship or funding, to allow introduction of new members, or to allow the group to plan a path for the future.

For growers wishing to form a group or existing groups and contemplating the next step, incorporation, this fact sheet is designed to answer common questions, provide guidance and to point you in the right direction for further information.

## What is Incorporation?

Incorporation is the process of setting up a legally recognised structure that your group will be known by in the future. There are a number of legal entities a farmer group can become; for example a group could form a not-for-profit association, a company or it may even become a co-operative. Incorporated Associations and Co-operatives are applied for through and regulated by the Office of Fair Trading in Queensland and Company structures are regulated through the Australian Securities and Investment Commission (ASIC).

## Why Incorporate?

Incorporation has a number of advantages including providing the group with a clear, legal identity that is separate from the members, that continues regardless of changes to membership, and that establishes a management committee with specific responsibilities. Incorporation provides some protection for management committee

members against the possibility of being personally responsible for the association's debts or other liabilities.

Having a formal structure with a management committee and operational rules can help a group reach its goals, manage opportunities and deal with conflict. It is helpful for the group to develop a strategic plan to help provide a clear path for the group's activities and to help ensure a successful future.

## Disadvantages of Incorporation

There are some disadvantages associated with becoming an incorporated body. These include an increased time requirement to complete and maintain relevant paper work, a requirement for formal meetings, a need for committee members, various record-keeping requirements, fees for establishment and ongoing public liability insurance, and finances must be maintained appropriately and audited annually.

There are specific legal responsibilities set out in Parliamentary Acts that are applicable, depending on the incorporated structure the group adopts and the State in which incorporation will occur.

## Incorporated Structures

The three main options for grower groups to consider when incorporating are an Incorporated Association, Co-operative and a Company type structure.

# Information Sheet

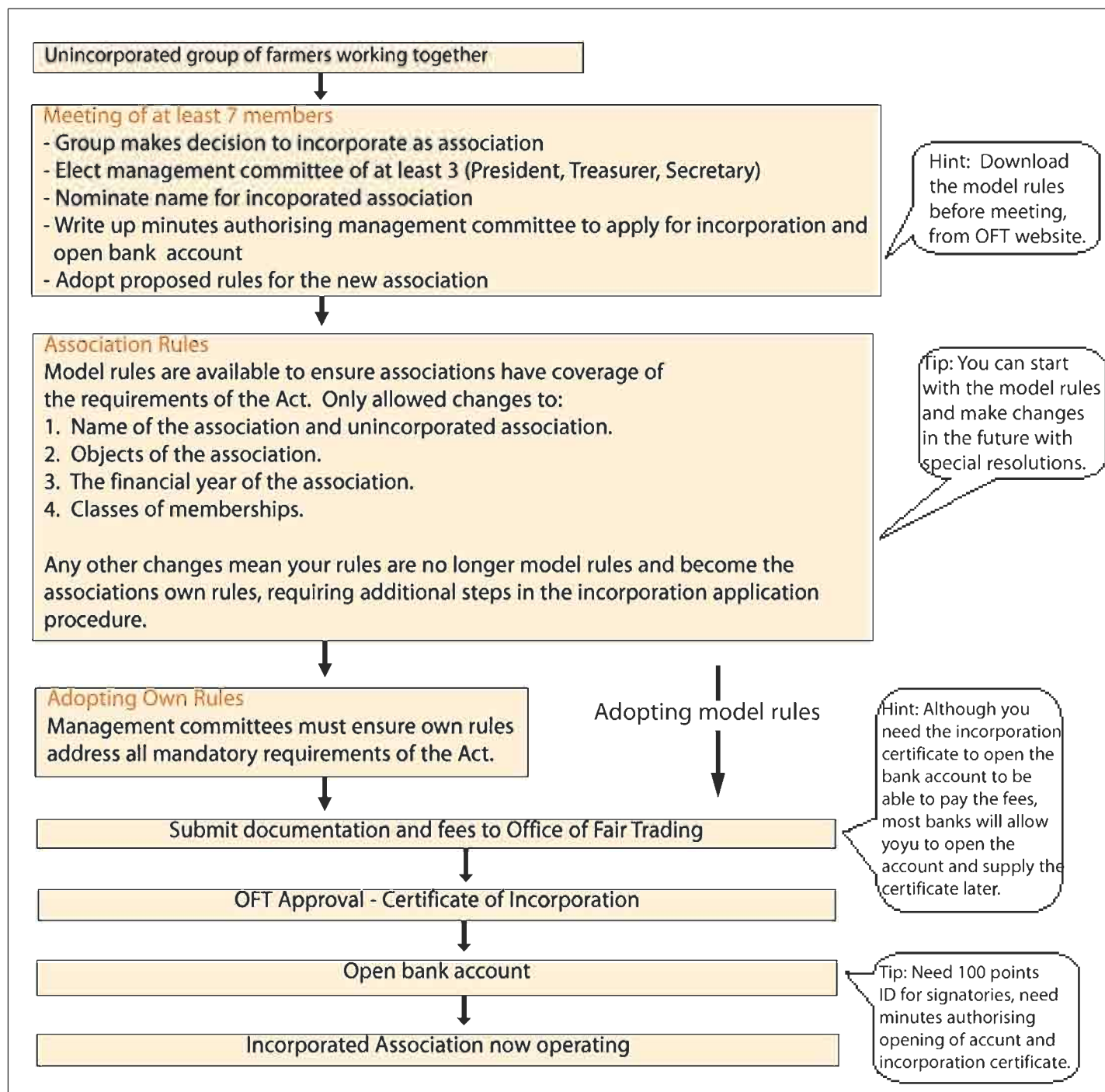
Table: Summary of Incorporated Structure Options

Incorporated Structure	Advantages	Disadvantages
1. Incorporated Association	<ul style="list-style-type: none"> <li>- relatively easy to set up</li> <li>- relatively cheap to establish</li> <li>- separate legal entity</li> <li>- members not personally liable</li> <li>- perpetual succession</li> <li>- may register to become a cooperative in the future</li> </ul>	<ul style="list-style-type: none"> <li>- must have at least 7 members</li> <li>- fees to establish</li> <li>- requires \$1.1 million public liability insurance</li> <li>- financial record keeping/auditing obligations</li> <li>- must have management committee</li> <li>- obliged to hold AGM and meetings in accordance with the act</li> <li>- on wind-up, assets must be passed to a like organisation, not members</li> </ul>
2. Co-operative  Non-Trading Cooperative – without shares and  Non Trading Cooperative – with shares          Trading Cooperative	<ul style="list-style-type: none"> <li>- no upper limit on members</li> <li>- separate legal entity</li> <li>- members not liable for cooperatives debts or liabilities</li> <li>- member has advantages of services and facilities provided by co-operative</li> <li>- part of surplus may be distributed to members as bonus, shares, rebates or dividends</li> <li>- one member one vote irrespective of shareholding</li> <li>- allows distribution of surplus profits or share capital</li> <li>- aims to maximise returns to members by undertaking commercial activities beyond the capability of individuals</li> <li>- provides services such as collective marketing, bulk purchasing etc</li> </ul>	<ul style="list-style-type: none"> <li>- more complex to establish than incorporated association</li> <li>- must have at least 5 members and 3 directors</li> <li>- financial record keeping/auditing obligations</li> <li>- need to have AGM and other meetings as per rules</li> <li>- must have share capital to operate</li> <li>- unable to distribute profits</li> <li>- non-trading cooperative with shares have additional rules and processes dealing with shares</li> <li>- more complex to establish</li> <li>- funding and sponsorship opportunities may be more limited due to the direct profit benefit to members</li> <li>- financial record keeping/auditing obligations</li> <li>- need to have AGM and other meetings as per rules</li> </ul>
3. Company	<ul style="list-style-type: none"> <li>- separate legal entity</li> <li>- limitation of liability and protection for members</li> <li>- continuing entity – indefinite life</li> <li>- multiple ownership possible with variations of individual shareholder rights</li> <li>- Voting rights vary with shareholding</li> <li>- franking of dividends of distributions from tax paid profits</li> </ul>	<ul style="list-style-type: none"> <li>- most expensive to set up and maintain</li> <li>- more complex option – regulated by ASIC</li> <li>- Capital gains tax discount not available to companies</li> <li>- Financial management and reporting obligations more stringent</li> </ul>

### 1. Incorporated Association

This is the simplest and easiest option for grower groups to contemplate. Any group with at least seven members (5 in NSW) may become incorporated, under the Associations Incorporation Act 1981 (Qld) and 1984 (NSW), provided the purpose is not for the financial gain of its members. The procedure for applying for incorporation is outlined in Figure 1.

Figure 1: Process for becoming Incorporated Association



## 2. Co-operative

A cooperative can be formed by 5 or more members and is registered under the *Cooperatives Act 1997* (Qld) & *1994* (NSW). The Office of Fair Trading administers this act in Queensland and New South Wales. Cooperatives are established where there is a common service benefit that may be enjoyed by members, for example provision of technical agronomic advice to members. There are two types of cooperatives, trading cooperatives and non-trading cooperatives.

Trading cooperatives have rules that allow them to pay distributions of profits or capital surplus to members. Non-trading cooperatives can be set up to either have shares or not have shares. Non-trading cooperatives cannot make distributions of surpluses to members.

The process for establishing a cooperative is more involved and expensive to establish and maintain than for an Incorporated Association. It is recommended that professional legal and accounting advice be sought if your group is considering formation of a cooperative. The strongest structures are built on solid foundations.

## 3. Company Structure

It is recommended that professional legal and accounting advice be sought if your group is considering formation of a company structure.

### Australian Business Number or ABN

If an incorporated group of farmers is going to interact with other businesses, for example sponsors or equipment suppliers, it will require an Australian Business Number (ABN).

Some funding bodies may also only provide funding to incorporated farmer groups with an ABN. Applying for an ABN is relatively

easy – a form can be downloaded from the ATO website and submitted or an accountant can complete the application and lodge it on behalf of your group. However, the group will need some type of incorporated structure in place first, before it can apply for an ABN.

### Goods and Services Tax or GST

Seek professional accounting advice as to whether your group needs to be registered for GST. Quite often it doesn't, if the group's annual turnover is below \$100,000. However, the group will be unable to recoup the GST component of any expenses if it is not registered for GST.

### Acknowledgements

Information in this fact sheet has been drawn from Office of Fair Trading Website, Australian Tax Office web site, Queensland University of Technology website, S.B. Wright, Wright & Condie solicitors Mackay and the experiences of Plane Creek Sustainable Farmers Inc.

Funding and support came from Sugar Research and Development Corporation and BSES through project BSS287 "Enhancing Grower Groups in the Australian Sugar Industry".

### Further Information:

Office of Fair Trading [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) and [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)  
*Associations Incorporation Act 1981* (Qld) and *Associations Incorporation Act 1984* (NSW)  
*Associations Incorporation Regulation 1999* (Qld)  
 Australian Tax Office web site [www.ato.gov.au](http://www.ato.gov.au)  
*Cooperatives Act 1997* (Qld) and *Cooperatives Act 1994* (NSW)

Your accountant  
 Your Solicitor

Some Farmer Group Websites:

[www.pcsf.com.au](http://www.pcsf.com.au)  
[www.bcg.org.au](http://www.bcg.org.au)  
[www.wantfa.com.au](http://www.wantfa.com.au)



**Australian Government**  
 Sugar Research and  
 Development Corporation



**Queensland Government**  
 Department of Primary Industries and Fisheries

**Plane Creek  
 Sustainable Farmers Inc.**



Sugar Technologies from BSES

# Information Sheet