

Proposal for Entity Structure

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March 2019

DRAFT

Introduction

In OSGeo Oceania (OO)'s [Terms of Reference](#), one of our key responsibilities is to 'determine and formalise an appropriate non-profit structure', so that we can meet our objectives with regard to managing our affairs, undertaking activities, and building an organisation that is responsible to a community.

At present, OO has no means for directly managing funds, entering agreements, or formally managing its activities without the use of intermediaries and proxies.

To operate a series of FOSS4G/SotM events, we need to be able to handle funds and sign contracts.

One of OO's stated aims is to act as a local chapter for both OSGeo and the OpenStreetMap Foundation (OSMF). OSGeo doesn't require entity status to form a local chapter, but OSMF does.

We need to identify a path forward to allow the organisation to undertake its intended activities and meet its objectives. There are a number of options, including:

- Incorporated Association
- Public Company
- Operating under the auspices of another organisation.

This document reviews these options and presents a recommendation.

Option 1: Incorporated Association

Background

An incorporated association is a legal entity separate from its members. This means that:

- the committee makes decisions and manages the association
- the association becomes legally liable for these decisions
- individuals on the committee aren't personally liable (as long as they act in good faith).

Associations can be more effective for small community organisations. They are generally simpler and more affordable than a company structure.

All Australian states (and New Zealand) have similar regulations and compliance fees for the formation and ongoing running of an association.

We would need to create a committee with the following roles:

- public officer – primary contact for association
- chair – presides at association and committee meetings
- secretary – responsible for all correspondence
- treasurer – income and financial records
- committee members - general business.

We need to adopt association rules - generally we can accept the 'model rules', or we can create our own (but this usually adds to both the compliance and professional advice costs). An example is [here from QLD](#) (all states have similar).

To undertake business throughout all states and territories within Australia, we would subsequently need to create a [Registrable Australian Body](#).

An incorporated association must:

- comply with relevant state legislation
- review its financial affairs every year
- lodge copies of rules, annual returns and financial statements with relevant state legislation

Some key issues that we need to think about:

- Public Officer must reside in State of Incorporation
- Understanding membership classes and rights
- Residency requirements

- Physical address

See [Appendix 1](#) for jurisdiction-specific (ie. state-by-state) information

Cost

Item	Amount
Registration	<\$200 (depends on jurisdiction)
Application for registration as a registrable Australian body	\$403
Annual reporting fees	<\$100 (depends on jurisdiction)

Pros & cons

Advantages:

- Generally simpler and more affordable than a company structure (though becoming a Registrable Australian Body negates much of this)

Disadvantages:

- Requirement for at least one officer/director to be a resident of the incorporating jurisdiction, and/or requirement for a physical address in the relevant jurisdiction
- May limit participation from outside Australia
- May limit our ability to undertake activities outside Australia
- Credibility: being linked to a single state may be restrictive, particularly with regard to pursuing grants and sponsorship.

Option 2: Public Company

Background

Another option is to form a public company, in the form of a Company Limited by Guarantee (CLG).

Company Limited by Guarantee

See [link](#)

Charitable and not-for-profit organisations can be registered as public companies limited by guarantee. This means the liability of the company's members is limited. It is subject to Australia's Corporate Act and needs to operate within ASIC guidelines. It is a legal entity, able to sue and be sued, hold bank accounts and assets, and enter into contracts.

Due to its ability to function interstate and internationally, a CLG would find it easier to get specific grants around the country, while an incorporated association, such as one in Victoria, may find it more difficult to win a grant from a different state.

([source](#))

Special Purpose Company designation

See [link](#)

A Special Purpose Company (SPC) is generally one that's created for a set reason, not just general business. It appears we would be eligible if we can establish charitable status.

This designation would require that we define a specific reason for existence and a sole activity. Advice is needed on whether this can be as broad as '*promotion of open geospatial software and data in Oceania*'. However, if we can designate as such, it would significantly reduce our annual review fees.

Operational rules

A CLG is able to operate nationally, with no requirement for directors to be resident in a specified Australian state, or to be Australian citizens, however, at least two directors must 'ordinarily reside in Australia' ([source](#)).

A not-for-profit CLG is prevented from making distribution to its members and

paying fees to its directors.

To form a CLG, we would need to create a constitution. There are [templates available](#), and we can modify them as needed to suit our purpose.

A company must keep a written record (minutes) of resolutions and meetings. Members are entitled to inspect, free of charge, the minute books of a company at its registered office address or principal place of business. It is expected that we would meet this requirement with our existing practices (web tools such as Google Drive, wiki page, etc).

We would need to hold an Annual General Meeting once a year. This could be done in conjunction with the annual conference. If we successfully gain charitable status, this requirement is relaxed. ([source](#))

As a small CLG (<\$250k annual revenue), we would not be required to prepare a financial report or have it audited. We would be required to pay an annual review fee. ([source](#))

Liability

Note: The below does not form legal advice and is written only to highlight the basic issues around company liability.
(see [link](#))

The members of a 'limited' company are not liable (in their capacity as shareholders) for the company's debts. As shareholders, their only obligation is to pay the company any amount unpaid on their shares if they are called upon to do so. However, members who are also directors may become personally liable under certain circumstances.

The key areas of potential personal liability for you as a director are:

- debts incurred when the company becomes insolvent
- company losses caused by a breach of directors' duties
- if you act as a guarantor or provide security over personal assets
- debts incurred by the company acting as trustee
- illegal phoenix activity
- other regulatory action that might be taken against you

Cost

Item	Amount
Registration	\$403 (source)
Annual reporting fees	\$263 (reduced to \$49 for a public SPC)

Pros & cons

Advantages:

- Leadership positions are open to anyone in the Oceania region
- Ability to freely determine the organisational culture and constitution
- Ability to collaborate with sister organisations in a clear partnership framework
- Ability to make decisions and act on them quickly, and in our own decision making framework

Disadvantages:

- Slightly higher administrative burden, though this would be mitigated somewhat by our relatively small size and potential charitable status

Option 3: Operating under another organisation

We have explored the option of fitting in under an existing body, such that we can carry on our intended activities, without the overhead of forming and maintaining our own organisation.

Specifically, a few possibilities have arisen:

1. Operating as a Special Interest Group under SSSI.
2. Running the annual conference under the auspices of Linux Australia.
3. Operating as a committee of the OSGeo foundation.

SSSI

SSSI is a not-for-profit, limited by guarantee. See their website for more information on their [governance](#) and activities. SSSI was an important partner in operating our inaugural 2018 conference, acting as a guarantor, assuming financial risk, and providing accounting services for the event.

SSSI has informally suggested that we could consider forming a [Special Interest Group](#) (SIG) under their organisation. There are currently 2 SIGs in the SSSI organisation: Young Professionals and Women in Spatial.

SSSI has expressed concern about fragmentation of the industry through the formation of new representative entities, and would be supportive of the development of a relationship that would see OSGeo Oceania fit within the SSSI organisation.

Presumably such a relationship would see our finances continuing to be held by SSSI, and collected/disbursed as needed, at our direction. Our 2018 agreement included a 50% profit share, adding up to approximately \$25000. With the success of the 2018 event behind us, and reduced certainty about the outcome, we may be in a position to negotiate a higher share of the profit.

We would need to form an agreement to guide this relationship, but without forming an entity, it's unclear who would be party to this agreement. The 2018 conference agreement was signed personally by John Bryant and Alex Leith, which saw them assuming personal risk.

Linux Australia

Linux Australia (LA) is incorporated in NSW as an incorporated association. Their primary activity is supporting a number of open source community-driven

conferences in Australia & New Zealand, including LinuxConf, PyCon, Drupal, Joomla, Wordpress, and others. They offer this support in the form of providing access to banking and accounting, insurance, etc. In return, they expect a return of 6% of total revenue. For our 2018 event this would have been in the range of \$9000.

They have indicated a willingness to consider taking us on, but expressed concern that as a volunteer-run organisation, they may be reaching the limit of their capacity, and might be slow to respond. My impression (JB) is that if we were to enter an arrangement like this, we would be morally (and maybe practically) obliged to offer some institutional support to ensure we weren't a net burden to them.

Pros & cons

Advantages of operating under the auspices of SSSI or LA (or another such organisation):

- **Less administrative overhead.** We would not need to form an entity, satisfy regulatory requirements, or manage finances directly.
- **Relationship building.** By collaborating with another organisation, we would grow a relationship incidentally, and potentially benefit from being part of that organisation's network.

Disadvantages:

- **Need to negotiate an agreement.** This pertains more to the SSSI option, as LA's service is a well-trodden path. We would need to figure out exactly what the nature of the relationship would be, within the context of our intended activities. This represents a potentially large amount of work, with an unknown outcome.
- **Limited autonomy.** Our ability to determine our own path and evolve to changing circumstances could be constrained by taking this option. Without financial & governance independence, we would need to negotiate our activities. This carries considerable risk that we are unable to operate in the way we see fit.
- **Speed.** LA has indicated they may be slow to respond because of their limited capacity. Our experience with SSSI has sometimes also been marked with delays. If we wish to retain our ability to act quickly, this option may not provide enough autonomy.
- **Sub-regional specificity of existing organisations.** SSSI is specifically oriented towards representing the spatial industry in Australia. There is an existing organisation (Survey and Spatial NZ) that performs a similar role in New Zealand. By operating as a sub-entity of SSSI, it could be argued that we would not be able to sufficiently deliver on our mandate to represent the entire Oceania community.

OSGeo Foundation

The international OSGeo foundation works through committees. These committees need not be incorporated in their own right, and can defer financial management to the OSGeo secretary. This was how the OSGeo Aust-NZ chapter managed FOSS4G 2009 which was run in Australia. OSGeo contracted a professional conference organiser, and then the conference organiser managed finances from there.

Advantages:

- Minimal management overhead if very minimal financial management is required.

Disadvantages:

- OSGeo Oceania's current financial management requirements will likely exceed the volunteer capacity of OSGeo Foundation.
- The OSGeo Foundation is incorporated in America, which will likely cause overheads when paying for services in the Oceania region.

Recommendation:

- Working through the international OSGeo foundation is not a good fit for OSGeo Oceania.

Discussion

Assumptions

- The entity would be based in Australia, due to larger potential membership and funding opportunities.
- The entity would be managed by volunteers (in the short to medium term at least), without any need for paid staff. There may be an occasional need for paid professional services by contract.

Banking

As both structures are legal entities in their own right, then the setting up of bank accounts is a reasonably straightforward process. Although not relevant for this document, we will need to formulate rules and/or guidelines around bank account management and usage.

A suggested path is to hold an Australian bank account only, and transact, as much as possible, in Australian dollars. Depending on what is available with the bank that is chosen, we may be able to have a foreign currency account for the duration of a conference that is held outside Australia, but this should be evaluated when running each conference. Transaction costs (credit card fees for foreign transactions) that will be incurred by our customers should be kept in mind, as should exchange rates. Further advice is being sought on banking, and this will become part of the OO Finance Policy.

Tax

We will need to confirm our not-for-profit status (and possibly charitable status). Charitable status may considerably simplify our reporting requirements and taxation situation. We may wish to engage professional assistance with this aspect of operating an entity.

GST considerations are still being investigated, and these are complicated by our running events in other countries.

Formation of OSGeo/OSMF local chapters

In general, the formation of local chapters for organisations such as [OSGeo](#) and/or [OSMF](#) have similar requirements. OSMF, in particular, requires us to be a legal entity. As such, either of the proposed structures will meet this requirement.

Cost

The lowest cost option is option 3 (operating under another organisation). However, the operational limitations of this option are considerable.

The other two options have costs on the same order of magnitude as each other: a few hundred dollars to form the entity, and then a relatively small annual filing fee.

There may be other costs associated with insurance, such as directors' liability insurance, should it be deemed necessary.

The real expense will come if/when we engage professional services. We can likely expect to spend \$3000-5000 on initial startup costs, and perhaps \$1000-2000 per year on accounting services.

The regulatory regime is not especially complex or onerous, but is sufficiently so that we are recommending the engagement of professional help to ensure we don't make potentially costly mistakes.

Recommendation

Our recommendation is as follows:

1. OSGeo Oceania should create a formal entity to manage its affairs. As an entity, we can operate efficiently, achieve its objectives, and create a solid foundation for growth.
2. This formal entity should take the form of a Company Limited by Guarantee, and we should seek Special Purpose Company designation for its advantages. A CLG is better suited to our requirement to operate, and draw membership & leadership from, across Oceania.
3. We should seek charitable status, to simplify our reporting and accounting requirements.
4. We should engage professional assistance with the process of forming the entity, so that we can ensure it is done quickly, efficiently, and correctly. We have discussed this with a company called The Association Specialists, and they can assist us for \$3000-5000. We are currently also looking at other options.
5. Even if we choose not to operate under the auspices of SSSI, we should endeavour to maintain a strong relationship with this key partner.

Appendix 1. Resources

Discussion of Incorporated Association vs Company Limited by Guarantee:

- <https://www.nfplaw.org.au/legalstructure>
- <https://www.theassociationspecialists.com.au/2419-2/>
- <https://www.murfett.com.au/MurfettLegal/media/Documents/Article/56-Associations-vs-Company-Limited-by-Guarantee.pdf>.

Miscellaneous:

- [The Guide to Running a CLG](#)
- <https://asic.gov.au/for-business/running-a-company/>
- [Directors' liabilities when things go wrong](#).

Jurisdiction-specific information (Incorporated Association option):

All states have similar regulations and compliance fees. The key issue will be appointing a resident public officer resident in the particular state.

Detailed information, by jurisdiction: [QLD](#) - [NSW](#) - [ACT](#) - [VIC](#) - [TAS](#) - [SA](#) - [WA](#) - [NT](#) - [NZ](#).