

# Airwaves: September 2018

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**Evolving 'The Hang Gliding Federation of Australia Incorporated' to a  
Company Limited by Guarantee - Information for Members  
September 2018**

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The HGFA Committee of Management (CoM) has initiated the process to

The HGFA Committee of Management (COM) has initiated the process to change the HGFA from an *Incorporated Association* under the rules of the *NSW Associations Incorporation Act 2009* (our current legal structure), to a *Company Limited by Guarantee* (CLG) under the *Corporations Act 2001*.

This information sheet informs members and other stakeholders about why this process has been initiated, what it means for you, and how the process is expected to progress. Please click on the links in the text below for more information.

### ***Why is the HGFA planning to change to a CLG?***

- The HGFA was initially established as an Incorporated Association in NSW many years ago. At that time that legal structure was deemed appropriate. However, the law has changed, our organisation has grown, and best practice has evolved. We must change to remain relevant and prepare for the future.
- The Australian Sports Commission sets out [governance principles for national sporting organisations](#). The principles recommend '*That national sporting organisations be incorporated as a company limited by guarantee under the Corporations Act 2001 (Cth)*', particularly '*if a national sporting organisation carries on business in a state other than that in which it is incorporated*'.
- NSW Fair Trading is responsible for administering the *NSW Associations Incorporation Act 2009*. The HGFA is currently below the [Financial Threshold for Incorporated Associations](#) but if our membership increases we may exceed it in the coming years.
- The Australian Parachute Federation (APF) and Recreational Aviation Australia (RAA) have changed to this structure over the past few years.

### ***What does it mean for me?***

- For most members there will be little impact. We acknowledge that most pilots just want to fly, and care little about the back-end administrative arrangements that make it possible.

- A [CLG is a type of incorporated legal structure](#) that is suitable for some not-for-profit organisations such as the HGFA. In a CLG, the members of the company have limited liability. The members agree in writing (known as a 'guarantee') to pay a nominal amount to the property of the company in the event the company is wound up. The liability of the members is limited to the nominal amount that they have guaranteed. In practice, most CLGs have only a small nominal amount (usually \$20 - \$100, but it can just be \$1) identified as the member 'guarantee'. However, provided the company pays its debts as and when they fall due, and we are currently in a strong financial position with good governance to keep it that way, the likelihood of becoming insolvent and needing to wind the company up is very low. The CoM intends to propose that the guarantee amount is kept as low as possible.
- There are some one-off administrative costs associated with transfer to a CLG, but they are small in the context of our current normal annual administrative costs. The ongoing administrative costs of a CLG, including auditing and reporting, are expected to be about the same as for an Incorporated Association, however the CoM will investigate this further and provide a cost estimate to members as part of the special resolution.

### ***What happens now?***

- The NSW Associations Incorporation Act 2009 allows an incorporated association to 'transfer' its registration to become a CLG under the Corporations Act. Transferring from an incorporated association to a CLG does not affect the identity of the HGFA, but upon transfer, the HGFA will cease to be an Incorporated Association. [The steps to change structure are well established.](#)
- The transfer requires a special resolution be put to members and agreed in accordance with the rules for special resolutions set out in the current HGFA constitution. The CoM intends to issue a 'notice of special resolution' in time for a special resolution to be considered by members, and if the resolution passed, that the CLG be established by July 2019 in time for the beginning of the next Financial Year.

- The CoM intends to draft a special resolution over the coming months. The key elements of the special resolution will be:
  - To propose a new name for the CLG; the new name must include the word 'Limited', and as such the new CLG could be called 'The Hang Gliding Federation of Australia Limited' (to replace our current formal name which is 'The Hang Gliding Federation of Australia Incorporated'). However, we know that many pilots would prefer a more fundamental name change. The CoM will be polling members as part of drafting the special resolution, and will seek to propose a new name which has the maximum support from our current members.
  - To propose a new constitution for the CLG; our current constitution has some clauses which are out of date, and it does not fully comply with the Associations Incorporation Act of 2009. Moreover, a CLG has some other administrative differences in the way constitutions are set out. The CoM intends to propose a new constitution that seeks to retain the essence of the current constitution, with the minimal changes required to comply with the Corporations Act 2001.
  - To propose directors for the CLG; the principles and responsibilities for a director of a CLG are different from a committee member of an Incorporated Association. However, a reasonable first step to effect the transition is to appoint directors based on the HGFA CoM. It is not proposed that directors of the new CLG will be remunerated. The CoM intends to propose that the initial directors of the CLG will be formed from the HGFA CoM at the time of transfer. After that, directors will be elected by members in a similar way that the HGFA CoM is elected now.

### ***Who do I contact with suggestions or questions?***

Please contact a member of the CoM, or provide suggestions through your state association

**Until next time, safe, fun flying**

**- Paul Green, President, HGFA**



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