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# Church Plants

## *Legal Tips for the Plant*

Kristel Winkler, Special Counsel & Miriam Sadler, Lawyer

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# Introduction

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# About your presenters



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**Lawyer**

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## Church Planting



*What are the legal challenges associated with the plant?*



**First (and often biggest) question –**

*Will the church start out autonomous from its mother church?*





•**Option 1 - Church not independent from mother**

- Church plant will legally be an “activity” of the mother church until it becomes autonomous
- All employees will be employed by the mother church
- All contracts (land and vehicle purchases, leases, vehicle purchases, equipment hire, services etc) will be with the mother church.
- The Pastor of the church plant and the elders/ leadership team can be given discretion to operate the church, while maintaining a close relationship with the mother church and adhering to reporting obligations.



## **Benefits of a church plant forming part of the Mother Church:**

- Allows ease of sharing resource as the new church is not a separate legal entity from the church plant, including shared policies etc;
- Mother church can adopt rules or regulations to govern the operation of the church plant;
- Smaller set up cost as there is no need for a new entity, the endorsements of the mother church apply to the plant





## **Difficulties**

- Shared liability (assets of the whole church – including the mother church – are potentially placed at risk if an incident occurs at the church plant).
- Mother church can end up bearing more of the financial and regulatory load.
- The bigger the plant grows, the more complicated it is to extricate the plant when the time comes for independence.





- Good idea if the mother church wants to maintain long or medium term control of the plant
- Mother church can retain all power to make decisions – including hiring employees, church policies, premises etc, or can delegate these to the oversight of the plant (like a subcommittee)
- Suitable for “campus” model churches (where a church is seen to be a campus of the mother church, the Pastor a “location Pastor” under the Senior Pastor of the Mother church, and the congregation of the plant is viewed as part of the larger congregation of the Mother church)





- Useful when you anticipate the plant will be difficult and there may be a need to leverage off the Mother church's resources and existing structure for an extended period of time.
- Allows full range of activities for plant as Mother church will usually be an incorporated entity, protecting leaders from risk, as far as legally possible.
- Can choose whether to open membership in the mother church to plant congregation



- **Option 2 - Church independent from mother**

- Church plant will legally be a separate entity from the mother church
- Legal structure of the plant will depend on the initial size of the church plant, its resources and the activities it intends to run in the short to medium term.
- Risk of the plant usually stops with the plant – public liability, borrowing etc
- Clean separation from Mother church (legally) from the beginning – eliminates administrative confusion



- **Independent Plant – Company Limited by Guarantee**

- Churches with access to some start up funds may choose to incorporate from the beginning
- Eliminates the risk of duplicating costs, but greater start up costs
- Leaders have the protection of the corporate veil from the beginning
- Incorporated church will need its own ABN, charity registration and tax endorsements
- The church has legal personality and can therefore enter lease or buy premises directly
- Can seek finance in its own name
- Constitution (ACC Constitution for Company Limited by Guarantee) – but seek advice to check this constitution does not need any amendments for your purposes



- Church will generally require some start-up funds to make this option viable; otherwise, (otherwise it may need to begin its life an activity of the “mother church” and seek incorporation at a later stage after a period of growth and development)
- More expensive option but no duplication of costs, and no cost in extricating a plant which starts as part of the mother church;
- Where the plant is incorporated, the leaders do have the protection of the “corporate veil”, however they will still be required to comply with the provisions of the ACNC Act and ACNC Governance Standards

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- Mother church can still act as controller of plant (if desired) by becoming the sole controlling member of the plant company
- Church able to lease Premises or become the registered owner of Premises
- Good model for a larger startup congregation that wants permanent premises
- If you plan on expanding your church plant's ministry to eventually including a school or care arm, corporate structuring is easier with companies limited by guarantee.



- What about a church plant as an unincorporated church
  - Unincorporated churches are becoming less desirable in the current climate of risk
  - May still be the best option if the church plant cannot come under the umbrella of the Mother Church legally, but lacks the resource to incorporate in the short to medium term.
  - Be wary of high risk activities and ensure child safety policies and procedures are up to date and regularly reviewed
  - Will be suitable where the church intends to hire premises for use. Leasing or purchasing premises will require incorporation.
  - Still requires constitution, charity registration, and tax concession charity endorsement.



- Not a legal person – can't hold property, enter contracts (such as leases for church premises and halls), and cannot sue or be sued in its own name
- Risk lies with leaders, and possibly members – but risk may be small if church activities are limited
- Unincorporated church still must obtain an ABN, charity registration and tax endorsements
- Can obtain public liability insurance and enter into rental agreements for halls
- Can obtain officers insurance





- Can usually engage employees under the ABN of the unincorporated church
- Can open bank account
- Requires constitution (ACC Unincorporated Church Constitution) – but seek advice to check this constitution does not need any amendments
- Cheapest set up option – but you will need to duplicate some of your legal costs when the church grows and needs to incorporate
- Church's options in terms of premises are limited (legal entity required for lease or purchase)
- Church will not be able to borrow in its own right



# Member Models for Church Plant

## Open Model

- Board & Leaders = Senior Pastor & at least two others (elders, leaders)
- Members = members of the congregation in good standing and who otherwise satisfy the membership criteria determined by the Board
- Members responsible for Board elections at AGM, responsible to approve changes to constitution, removal of Board members, can also reserve rights to the Members regarding land purchases and borrowings
- Can choose whether the Board OR Members responsible for Member appointment (or can qualify (eg Members appoint on nomination from the Board, Board appoints on nomination from a Member)



## Open Model

- Can make decision making problematic and slow
- Can increase 'church politics'
- Increased accountability for Board
- Can increase buy-in from congregation



CHURCH MEETINGS ARE BRILLIANT



## **Closed Model**

- Board/Leaders = Senior Pastor & at least two others (elders, leaders)
- Members = Senior Pastor, elders, small group of leaders OR Mother Church as sole corporate member
- Smaller membership responsible for Board elections at AGM, responsible to approve changes to constitution, removal of Board members
- Can choose Board OR Members responsible for Member appointment
  - Can add “qualifiers” such as Members are appointed on nomination from the Board, or the Board appoints on nomination from a Member



## Closed Model

-Ease of decision making

-Can be problematic to transition from an open model to a closed model – so if this is preferred better to start this way!

-Sole corporate member model solidifies link between Mother church and plant



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