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|  | **Name of Item**  CAUL Incorporation Proposal | **Agenda Item**  (office use only) |
| **Paper for CAUL Meeting 2017/2, 21-22 September 2017** | **From:** Diane Costello  **Name of Sponsor:** CAUL Executive | |
| **Recommendation**  *That the CAUL Council*   1. *approves the commencement of processes to incorporate CAUL in the ACT by the end of 2018;* 2. *identifies any barriers in members’ institutions to CAUL’s incorporation.* | | |
| **Issue**  Since first being raised by CAUL members in 1997, the issue of whether or not to incorporate CAUL has been raised (and considered) regularly.  It appears that the time has come. | | |
| **Background**  In their response to the 2016 draft MoU between CAUL and the ANU, CAUL’s legal consultants recommended that CAUL incorporates. Their recommendation was made in the context of considering CAUL’s staffing arrangements and whether CAUL could or should become a direct employer of its staff, rather than outsourcing their employment to a commercial provider (as it then was) or the ANU. The then CAUL President, Heather Gordon, recommended that the Executive reconsider this option.  The Executive had previously considered (and rejected) incorporation under President Alex Byrne in 1997, during the CEIRC program review in 2007/8, and later in 2012 (Executive 2012/3) as part of the Executive’s risk assessment of CAUL. It was agreed that the issue should be revisited every five years.  Since 2007, the Executive has maintained a risk assessment record which includes the advantages and disadvantages of CAUL’s maintaining its unincorporated status.  Rationale for the earlier decisions not to incorporate included:   1. the then AVCC would not support a sub-group of university personnel formalising their existence to this extent; 2. the most obvious rationale for incorporation, protection of the Executive and members from legal/financial challenges arising from their participation in CAUL, was mitigated by members’ institutional legal coverage for activities in their official university role; 3. CAUL’s financial processes were stringent and well-supervised, including via an annual professional audit; 4. the incorporation process was complex, and compliance requirements after incorporation would be a significant impost on CAUL’s (staffing) resources.   CAUDIT’s experience with their incorporation in 2010 provides CAUL with a useful template, covering purpose, process and compliance issues. Specifically, the simplification of the requirements for Associations removed a significant obstacle to CAUL’s potential incorporation. CAUDIT chose to incorporate in NSW because the then CEO (their Public Officer) was resident just outside the ACT and it is a requirement that the Public Officer be resident in the state/territory of incorporation. CAUDIT’s Public Officer is now a NSW-based member of their Executive. | | |
| **Rationale**  Changes to the rationale for earlier decisions are:   1. Universities Australia is comfortable with, and even sponsors, a whole range of similar organisations representing groups of university leaders; 2. the increasing risk-averse nature of members’ institutions, and their potential unwillingness to extend their legal coverage to university librarians in their participation in CAUL activities and decisions; 3. the rules of incorporation for associations (many much smaller than CAUL) have been extensively simplified, compliance (financial as well as reporting) exists but is less onerous.   As considered by the CAUL Executive:  The Hall & Wilcox paper was a very targeted request to the lawyers, in an environment of relatively low risk and not having any current problems, but not a sound principle for not doing anything.  Key issues are around personal liability – for CAUL members, especially those holding office, and CAUL staff. Incorporation should be viewed through the prism of the risk assessment.  The question re incorporation in the ACT seems straightforward. | | |
| **Consultation**  **CAUDIT CEO:**  It is the university that is the member of CAUDIT, represented by “the most senior person working in IT in the institution” (generally, but as targeted by the CAUDIT Executive).  **CAUL Executive 2015/5:**  Following legal advice, Heather Gordon recommends that the Executive reconsiders incorporation, noting that the process is not as onerous as in the past, and that it does provide some protection for CAUL representatives, particularly with respect to CEIRC. (Action: Executive) This should not be construed as a recommendation that CAUL be the employer.  **CAUL Executive 2016/1:**  Resolution: Prepare report of earlier CAUL consideration of its incorporation  **CAUL Executive sub-committee (President, Treasurer, EO):**  A compilation of earlier considerations of incorporation, including background on CAUDIT’s process, was prepared for discussion, … met by videoconference to review previous CAUL advice and decisions, along with the CAUDIT rationale and process for incorporation. It was agree to ask for advice specifically on personal liability for CAUL office-bearers and staff and the benefits of incorporating in the ACT vs NSW.  Hall & Wilcox Lawyers advice 28 February 2017:  CAUL asked for advice specifically on:   * 1. the relevant factors and considerations in determining whether CAUL should become an incorporated association?   2. If CAUL is to incorporate, should CAUL be incorporated in the ACT or NSW?   The response to (a) referred to some issues relevant to CAUDIT but not to CAUL e.g. CAUL has not be limited by its financial institution from opening accounts and conducting its business on behalf of its members. It is registered with ATO and has an ABN.  **CAUL Executive 2017/2:**  Resolution: The Executive noted the advice from Hall & Wilcox Lawyers highlighting advantages and disadvantages of incorporation according to specified parameters, and agreed to investigate the requirements for incorporation in the ACT, with a view to incorporation in the ACT or an alternative jurisdiction by the end of 2018.  A proposal will be prepared for CAUL’s AGM in September. Ralph Kiel will work with Diane Costello to formulate key messages for verbal and written communication, and to consider the potential for further legal advice. (Action: RK, DC)  **CAUL Members**  Following Executive 2017/2, Executive members included this background in their key messages to CAUL members in personal phone calls.  **CAUL Executive 2017/4**:  Supported the proposal to be presented to CAUL Council at the September AGM. To seek members’ approval in principle, and an indication of any barriers to institutional approval prior to starting the official process. | | |
| **Attachments**  In 2016, the CAUL office compiled a series of documents related to previous reviews of the question of incorporation, including extracts of relevant minutes of CAUL and Executive meetings.  CAUDIT has generously shared their documentation, including their proposal to members and their final constitution.  [Memorandum of legal advice - to CAUL from Hall&Wilcox re incorporation](http://www.caul.edu.au/content/upload/files/caul-doc$/incorporation2017advice-hallwilcox.pdf) (28/2/17) [to be included in papers for 2017/2.]  Documentation required for incorporation in the ACT is available from <https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1504/kw/incorporation>  [Notes on the incorporation of CAUL in the ACT](http://www.caul.edu.au/content/upload/files/caul-doc$/caul2017incorporation-notes.docx) (compiled by Diane Costello)  \*[ACT Associations Practice Manual](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2302) (AccessCanberra) \*[Association Constitution & Rules Checklist](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2305) (AccessCanberra) \*[Association Model Rules](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2304) (AccessCanberra) [\*Associations Incorporations Act 1991](http://www.legislation.act.gov.au/a/1991-46/default.asp) \*[Associations Incorporation Regulation 1991](http://www.legislation.act.gov.au/sl/1991-31/default.asp) | | |
| **Requests for Further Information**  Requests may be directed to Diane Costello | | |

CAUL Meeting Proposal/Report pro-forma – updated 26 June 2017