

Co-operatives

Legal information for New South Wales community organisations

This fact sheet covers:

- what is a co-operative?
- what laws regulate co-operatives?
- are all types of co-operatives suitable for not-for-profit groups? and
- how do we set up a co-operative in New South Wales?

A co-operative is a type of incorporated legal structure that may be suitable for some New South Wales not-for-profit organisations (see Not-for-profit Law's page on [Choosing a legal structure](#)).

This fact sheet provides information on setting up (incorporating) a group as a co-operative in New South Wales. This information is intended as a guide only, and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before making a decision about what to do.

NOTE

There are laws regulating charities and a current regulator for charities - the Australian Charities and Not-for-profits Commission (**ACNC**). If your co-operative is planning to operate as a charity and apply for charitable tax concessions it will need to register with the ACNC. For more information go to www.nfplaw.org.au/charity



What is a co-operative?

A co-operative is a group of people that has formed to benefit its own members (rather than the broader community) through its activities. For example, its purpose may be to provide particular goods or services to its own members or to pursue community-based objectives that will benefit all its members equally.

There are 7 main principles by which cooperatives run, which are:

1. **voluntary and open membership**
2. **democratic member control**
3. **member economic participation**
4. **autonomy and independence**
5. **education, training and information for members and others**
6. **co-operation among cooperatives, and**

7. concern for the community.

What laws regulate co-operatives?

New South Wales and Victoria were the first states to adopt the new uniform set of national laws for co-operatives pursuant to the Australian Uniform Co-operatives Law Agreement entered into by all of the states and territories in Australia in 2012.

The Co-operatives National Law (which commenced on 2 March 2014 in New South Wales and Victoria) aims to streamline the co-operatives registration process by providing for a single registration which enables co-operatives to operate in numerous states or territories. The Co-operatives National Law also simplifies various administrative and reporting requirements imposed by earlier state and territory based legislation and implements corporate governance requirements similar to those imposed on other incorporated entities (such as companies).

In New South Wales, a co-operative can be (but does not have to be) incorporated under the Co-operatives National Law which requires equal, active and open participation by all the members of the co-operative.

Certain provisions of the *Corporations Act 2001* (Cth) also apply to registered co-operatives as set out in the Co-operatives National Law.

If a co-operative is not incorporated, then it is essentially an unincorporated group.

If a co-operative is incorporated under the Co-operatives National Law then (similarly to a company and an incorporated association) it has its own legal personality that is separate from the personalities of its members. A co-operative therefore has rights, responsibilities and liabilities of its own and its members have limited liability. And because an incorporated co-operative is a legal entity in its own right, it can also outlive its members (that is, it can continue even if members die or leave, so long as it always has at least five members).

Are all types of co-operatives suitable for not-for-profit groups?

No. Co-operatives can be structured so that the profits are put back into the co-operative ('non-distributing co-operatives') or distributed to members ('distributing co-operatives'). Only non-distributing co-operatives that are structured so that the profits are put back into the co-operative itself (rather than distributed to members) are suitable for not-for-profit groups (for more information about the term 'not-for-profit', go to www.nfplaw.org.au/beforeyoustart).

How do we set up a co-operative in New South Wales?

In order to register a co-operative under the Co-operatives National Law a co-operative must:

1. Prepare draft Rules and have the draft Rules approved by the Registrar of Co-operatives.

Model Rules are available from NSW Fair Trading for this purpose. The draft Rules must set out the primary activities of the co-operative and the requirements imposed on members of the co-operative to support its activities.

2. Hold a formation meeting to formally adopt the Rules, and

3. File an application to register the co-operative with the Registrar of Co-operatives.

Before setting up as a co-operative, make sure it is the most appropriate legal structure for your organisation. A co-operative is not the most common legal structure so you should be sure of why it best suits the particular needs of your group. The principles of co-operatives require that all members be involved and this sometimes causes difficulties if an organisation grows.

FURTHER READING

There are resources to help co-operatives to set up on the [NSW Fair Trading website](#). It includes information on penalties and fees and forms.



Resources

Related Not-for-profit Law Resources

▶ [Getting started](#)

This page contains information on different legal structures, what 'not-for-profit' means and how to incorporate.

▶ [Registering as a charity](#)

This page contains information about deciding whether to register, the definition of 'charity' and how to register.

▶ [Running the organisation](#)

This page contains resources to assist those running not-for-profit organisations to understand and comply with legal requirements.

NSW Fair Trading – incorporating regulator

▶ [About Co-operatives](#)

This page provides information about the requirements for forming and running a co-operative in New South Wales.

Australian Charities and Not-for-profits Commission (ACNC) – charities regulator

▶ [Register my charity](#)

ACNC is the government agency responsible for the regulation of charities.

Legislation

▶ [Co-operatives \(Adoption of National Law\) Act 2012 \(NSW\)](#)

This legislation governs the setting up and running of co-operatives in New South Wales.

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

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