

Australia Capital Territory
Not-for-profit Law
Guide

Incorporated association or company limited by guarantee?

A comparison between the two most
common legal structures for not-for-
profit organisations in the Australian
Capital Territory

November 2015

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Introduction

This Guide covers:

- the differences between an incorporated association and a CLG
- key issues to consider when choosing between structures:
- issue 1: where will the group 'operate' or 'carry out activities'?
- issue 2: will the group be a charity?
- issue 3: will the organisation be able to pay initial and ongoing fees?
- issue 4: annual reporting, audits and reviews

The aim of this guide is to help not-for-profit groups in the Australian Capital Territory (ACT) decide whether an incorporated association or a company limited by guarantee (CLG) is a more suitable incorporated structure for them.

While most ACT not-for-profit groups choose between incorporating as an incorporated association or as a CLG, these are not the only forms of incorporation available for not-for-profit groups. For information on other legal structures, see 'Choosing a legal structure' on the [Not-for-profit Law Information Hub](#).

Introduction

An incorporated association is a type of incorporated legal structure made under the *Associations Incorporation Act 1991* (ACT) (**AI Act**). A CLG is another type of incorporated legal structure made under the *Commonwealth Corporations Act 2001* (Cth) (**Corporations Act**). Both are suitable legal structures for not-for-profit groups in the ACT.

Incorporated associations were originally designed to be low cost to register and simpler to run than a CLG. Recent changes to the laws for both incorporated associations and CLGs registered as charities mean that the arguments for choosing to incorporate as an association over a CLG are no longer as compelling.

For groups that are (or hope to be) registered as a charity, the transition of regulation of CLGs that are registered charities from ASIC to the Australian Charities and Not-for-profits Commission (**ACNC**) means that the regulatory approach for charity CLGs is now closer to that of an incorporated association. The ACNC takes a more educative approach as a regulator – meaning it is less likely to impose fines for technical breaches of reporting requirements. Some reporting fees formerly required to be paid to ASIC by CLGs are waived by the ACNC for charities.

This guide addresses some key factors that groups should consider when deciding between incorporating as an incorporated association or a CLG. Once you have read this information sheet and familiarised yourself with your organisation's options, you should seek legal advice from an advisor with experience advising not-for-profit groups. Spending some time (and, if necessary, money) getting

professional advice on legal structure issues before you incorporate is a worthwhile investment in the long-term viability of your newly-forming organisation. Choosing the right legal structure can save your group considerable time, money and legal and administrative headaches further down the track!

Issue 1: Where will the group 'operate' or 'carry out activities'?

When choosing between an incorporated association or CLG structure, it is important to think about where your group plans to operate, both when it starts and in the future.

Where can a company limited by guarantee operate?

A CLG is incorporated under the Commonwealth Corporations Act and can carry out its activities anywhere in Australia.

Where can an incorporated association operate?

The law relating to incorporated associations is state- and territory-based, and each state and territory in Australia has its own laws. A group incorporated as an association under the ACT AI Act can operate anywhere in the ACT. However, it cannot substantially operate in other states without taking further legal steps (discussed below).

Holding one-off or occasional activities in another state (such as a conference) would not count as 'operating', but carrying on more regular or substantial activities might.

If you incorporate as an ACT incorporated association and want to legally operate in other states you will need to consider the options summarised below. As appropriate, you should decide whether any of the options discussed below could work for your organisation, or whether you should incorporate as a CLG from the beginning.

Options for ACT incorporated associations to operate outside the ACT

If your group incorporates as an ACT incorporated association, but wants to operate (undertake more than one-off or occasional activities) outside the ACT, there are two options available to enable it to do so legally. Both of these options may involve costs and increased administration for your organisation. It is also possible for an incorporated association to convert to a CLG if necessary (discussed further below).

For more detailed descriptions of the processes described below, go to the Not-for-profit Law Fact Sheet at our page, [Changing your organisation's structure](#).

Option A – register the group as a Registered Australian Body (RAB) with ASIC

This is the option most commonly recommended (that is, rather than option B below or converting to a CLG). This will mean that your group will be regulated by the Australian Securities and Investments Commission (**ASIC**) as well as by Access Canberra (formerly known as the Office of Regulatory Services) and that extra forms will need to be prepared and lodged by your organisation each year and when certain changes occur. Your group must also display additional information along with its name. Groups that register as RABs that are also charities apply to ASIC to become a RAB but then report to

the ACNC where they would otherwise report to ASIC (and continue to report to Access Canberra as usual).

Option B – set up separate incorporated associations in each state or territory you wish to operate in

This is sometimes known as a ‘federated structure’. This may be appropriate for your group if there are distinct groups involved in each state and territory that address distinct state/territory-specific issues, which can be very difficult to administer for a single group (especially if there are more than two separate associations required). Each incorporated association will be a separate legal entity and will need to comply with the requirements of that state or territory’s legislation (including having a separate committee of management, financial records and reporting, etc.). In addition, any commonwealth tax concessions enjoyed by one such separately incorporated association (e.g. income tax exemption and deductible gift enforcement) cannot be transferred to or shared by any of the other sister/brother associations in another state. Instead, each association will need to seek and maintain its own tax concessions.

CAUTION

Incorporation in multiple states can be difficult to manage and you may end up having to comply with multiple state and territory laws and report to multiple regulators!



Converting to a company limited by guarantee structure

If you incorporate as an incorporated association, and the circumstances of your organisation change (for example you expand from operating just in ACT, to operating across Australia) your group can convert or migrate from an incorporated association to a CLG.

TIP

If the group is an Indigenous one, it could consider voluntarily transferring its registration to being under the *Commonwealth Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).



Transferring from an incorporated association to a CLG does not affect the identity of the organisation. Any contracts or agreements that the association had (including employment contracts) will continue to have effect after the association’s transfer to a company. However, there are significant costs and administrative processes involved in converting your organisation’s incorporated structure, so you should give careful consideration to the implications of taking this approach.

RELATED RESOURCES

For more information about changing legal structure more generally, go to the Not-for-profit Law Fact Sheet [Changing your organisation’s structure](#).



TIP

Although converting to a company limited by guarantee is an option commonly considered by incorporated associations, there are significant legal and administrative requirements involved. We recommend that you seek legal advice about what is involved for your particular organisation, especially if your organisation has a large membership base.



Issue 2: Will the organisation seek to become registered as a charity?

If your organisation intends to register as a charity, or is already registered, this significantly affects the choice to be made about the best legal structure for your group.

The ACNC was established in 2013. Prior to this, the differences between incorporating as a CLG and incorporating as an incorporated association were much greater for charities. The analysis about which structure best suits your group now depends significantly on whether it intends to register as a charity or not.

This is because if an organisation incorporates as a CLG and is a charity, its main regulator becomes the ACNC rather than ASIC (although applications for incorporation will still be made to ASIC, and applications for Commonwealth tax concessions are still decided by the Australian Taxation Office). Further, different and less complex laws apply to CLGs that are charities than to other CLGs, because when a CLG becomes registered as a charity, most Corporations Act requirements 'switch off'. A good example are the Governance Standards for charities, which provide a flexible framework around holding meetings, accountability and other matters. The Corporations Act requirements for non-charitable CLGs are much more complex and prescriptive.

If your organisation is an incorporated association that is registered as a charity, it will need to comply with both the ACNC regime *and* continue to comply with the regime for incorporated associations administered by Access Canberra. The ACNC is currently advocating for states to similarly 'switch off' their regulatory regime for incorporated associations that register as charities, however so far only South Australia has indicated it may go down this path.

Altogether, the new landscape for charities means that for groups that intend to be registered charities, the CLG structure is often the simplest to administer, and an attractive structure choice.

TIP

The ACNC has published a template constitution for charitable CLGs. To read the template see the [ACNC website](#).



Finally, the ACNC aims to take an educative regulatory approach, meaning it will use a range of measures to help organisations comply with their legal obligations, rather than taking a strict approach (as is generally taken by ASIC, which regularly issues fines for failing to meet reporting deadlines). This also addresses the previous concern organisations had about incorporating as CLGs and meeting ASIC's more stringently enforced requirements.

If your organisation incorporates as a CLG but is not a registered charity (or loses its charitable registration), it will be regulated by ASIC, and will be subject to ASIC's stricter regulatory approach, and the full suite of legal requirements for CLGs under the Corporations Act.

Issue 3: Will the organisation have capacity to pay fees?

The amount of money your group has to pay, both in initial and ongoing fees, may be a factor in determining whether an incorporated association or CLG is the best structure for it.

In general, ASIC charges CLGs higher fees and penalties than Access Canberra charges incorporated associations. Your group will need to be realistic about the resources it has (or is going to have), and how organised it is going to be about keeping information up-to-date and paying fees on time (to avoid late fees – which are significant for CLGs regulated by ASIC).

Groups that are charities and registered as CLGs will largely report to the ACNC, not ASIC (although CLGs still incorporate with ASIC), and the ACNC does not charge fees for lodging reporting and notifications. The ACNC can charge late fees where charities do not lodge information within required timeframes. For charities, the difference in fees between incorporated associations and CLGs is far less significant. Incorporated associations that are charities will continue to report to Access Canberra (and pay the required fees to Access Canberra) and must also report to the ACNC.

Initial application fee

The initial application fee for incorporation as a CLG is higher than that for an incorporated association (see the incorporation and ongoing fees table below). However, there are significantly lower fees for not-for-profit CLGs that meet the requirements of a ‘special purpose company’.

Note for charities: Many charities will meet the definition of ‘special purpose company’ and will only be need to pay the lower incorporation fee as a CLG if they:

- are formed for charitable purposes
- have non-profit and non-distribution clauses in their constitutions, and
- have certain rules relating to directors.

FURTHER READING

For more information about special purpose companies, go to ASIC’s resource:

<http://asic.gov.au/for-business/starting-a-company/how-to-start-a-company/special-purpose-companies>



Penalties and late fees

The late fees for not complying with legal requirements (for example to lodge documents or pay fees etc.) are generally higher for a CLG than for an incorporated association.

ASIC, the regulator of CLGs not registered as charities, imposes penalties for late reporting and is rigorous in its collection of late fees. If your group is late lodging documents, ASIC late fees can

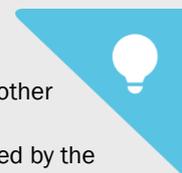
quickly accumulate. Late fees may be payable in some circumstances by incorporated associations to the regulator of incorporated associations, Access Canberra.

A comparison of the main fees payable by each structure is set out on the next page. Fees listed are for the 2015/2016 year and are indexed (go up) each year.

Note for charities: There are late fees for charities reporting to the ACNC, although they are not frequently applied. CLGs registered as charities will no longer undertake financial reporting to ASIC, and therefore the ASIC fees listed below do not apply.

TIP

Remember that some organisation may be required to have audited accounts because of another requirement (eg. because it is in a funding agreement with the government, or because the members/committee of management believe it is good practice), even though it is not required by the Corporations Act (for companies) or the AI Act (for associations) or the ACNC Act.



2015/2016 incorporation and ongoing fees

For fees for incorporated associations see: www.accesscanberra.act.gov.au.

For payments and fees for companies limited by guarantee see: www.asic.gov.au.

For penalties for charities that fail to lodge documents on time with the ACNC see: https://www.acnc.gov.au/ACNC/Publications/Policy_PDFs/Penalties.aspx.

Type of fee	ACT incorporated associations	Commonwealth company limited by guarantee note that many of these requirements do not apply to CLGs registered as charities	Notes for Charities
Initial application for incorporation	\$172.	\$382. An additional fee applies to register without the word 'limited' in the name. These fees apply to CLGs registering and not registering with the ACNC.	No application fee to become registered as a charity, but must pay fee to Access Canberra or ASIC to incorporate (as either an incorporated association or a CLG).
Requirement for audited financial statement (approx. \$2,000 to \$20,000+ per year)	All incorporated associations must have their accounts audited. The audit requirements vary depending on which tier the incorporated association falls within. 'Tier 1' The accounts must be audited by a person who is not an officer of the association and who has not prepared or assisted with	'Tier 3' companies must have their accounts audited by a registered company auditor. 'Tier 2' companies must have their accounts 'reviewed' by an auditor (lesser standard than full audit). 'Tier 1' companies not required to have audited accounts (unless required to do so by members' direction or ASIC direction)	Incorporated associations that are charities must report both to Access Canberra and the ACNC (ACNC tiers are the same as for CLGs, although DGR status is not relevant). CLGs that are charities only report to the ACNC. The ACNC Act specifies that only medium and large charities need to provide financial reporting to the ACNC, however from 2014 onwards the Annual Statement has included basic financial questions.

	<p>preparation of the accounts.</p> <p>'Tier 2' The accounts are required to be audited by a person who is a member of the Institute of Chartered Accountants, the Institute of Public Accounts, or CPA Australia or registered as an auditor under the Corporations Act.</p> <p>'Tier 3' The accounts are required to be audited by a person who is registered as an auditor under the Corporations Act.</p>		<p>You can read more about charity reporting obligations in Not-for-profit Law's fact sheet Financial reporting for charities.</p>
<p>Fee when lodging Financial Statement or annual return/annual fees</p>	<p>No fee is payable where the organisation's revenue is less than \$5,000 for the financial year.</p> <p>A fee of \$39 applies where the organisation's revenue is more than \$5,000 for the financial year.</p>	<p>There is no fee to lodge financial statements with ASIC. However annual review fees are payable as follows: \$1,161 (\$8,891 advance payment for 10 years); or \$46 (\$347 advance payment for 10 years) for 'special purpose companies' (companies formed for 'charitable purposes', have non-profit and non-distribution clauses in their constitution and certain rules relating to directors)</p>	<p>There is no fee to lodge financial reporting statements with the ACNC. Incorporated associations that are registered as charities and categorized as medium or large need to lodge with both Access Canberra (including a fee) and ACNC (no fee). Medium and large CLGs registered as charities only need to lodge financial reporting to ACNC (no fee).</p>
<p>Late fees when lodging annual return/ annual statement</p>	<p>\$75 late fee will be incurred if financial statements are not lodged within 6 months after the end of the relevant financial year.</p> <p>\$75 late review fee will be incurred where a change to the annual statement is required up to 1 month late, or \$312 if more than 1 month late.</p>	<p>Late lodgement fees will apply if financial statements are not lodged within 4 months of the end of the relevant financial year.</p> <p>Late payment of the annual review will incur late fees as follows:</p> <ul style="list-style-type: none"> • \$75 if payment is received within 1 month after the due date • \$312 if payment is received more than 1 month after the due date 	<p>The ACNC may charge late fees both to incorporated associations and CLGs that are registered as charities.</p>
<p>Lodge details of changes to information (eg. address, names of officers)</p>	<p>\$39 fee for changing the organisation's registered office or name.</p> <p>No fee to change committee or public officer particulars if lodged within 1 month</p>	<p>None, except for change of name, for which a \$382 fee applies.</p>	<p>The ACNC does not charge to change details.</p>

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	of change. \$30 late fee will apply if lodged after 1 month.		
Lodge changes to constitution/rules	\$39	No fee.	The ACNC does not charge to change details.
Failure to lodge changes of details within required period (ie. address, names of officers, change to rules/constitution)	\$39 fee for late lodgement of change of public officer or committee particulars. For changes to the rules/constitution a \$75 fee applies.	The fees are as follows: <ul style="list-style-type: none"> • \$75.00 first month late • \$312.00 for more than a month 	The ACNC may charge late fees.

CAUTION

If you choose to be a company and are not a registered charity, your organisation will be regulated by ASIC, a body that is systematic in imposing late fines and is inflexible in relation to waiving fines.

If you forget or are late or did not realise that you had to file documents or notify ASIC of certain changes, ASIC late fees can quickly accumulate. The ACNC that regulates CLG charities is likely to take a more educative approach to regulation.



Issue 4: Annual reporting, audits and reviews

Generally speaking, the regulatory regime for incorporated associations under the ACT AI Act is more straightforward than the regime for CLGs under the Corporations Act.

If you wish to incorporate as a CLG that is not a registered charity, your group will need ongoing help from a person who has a good understanding of running a company, or access to professional legal or accounting advice.

However, as discussed under Issue 2, CLGs that are registered as charities have different and less complex obligations under the *Australian Charities and Not-for-profit Commission Act 2012* (Cth) (**ACNC Act**), and reporting fees are also lower (waived entirely in many cases). Therefore, concerns about the complexity of the Corporations Act and reporting to ASIC are not as relevant to groups who are or will be charities.

FURTHER READING

For more information about reporting to government for incorporated associations, CLGs and charities, see the [Reporting to Government page](#) on the Information Hub.



Incorporated associations and some CLGs must have their accounts independently audited or reviewed each year. For CLGs, the type of audit or review required will depend on which of three 'tiers' your organisation falls into. Only larger CLG organisations (as well as CLGs of any size with Deductible Gift Recipient (**DGR**) status) need to fully audit their accounts, however all incorporated associations must do so, regardless of size.

An independent audit may cost between \$2,000 and \$20,000+, depending on the size of your organisation (or group). Therefore the requirement for audited accounts needs to be considered carefully.

TIP

Many organisations may need to undertake audits for other reasons as well, including being required to do so under a funding agreement.



Reporting tiers for CLGs

There are three categories or 'tiers' of CLG based on the organisation's annual revenue. Each tier has different reporting and auditing requirements. The table below briefly sets out the tiers and the corresponding requirements for financial reporting and auditing under the Corporations Act.

	Definition of CLG category	Reporting/auditing requirements
Tier 1 (known as "small CLGs")	CLGs with annual revenue less than \$250,000 and who do not have DGR status.	Not required to prepare financial report, directors' report, or have accounts audited or reviewed unless required to do so under ASIC direction or members' direction (any group of members that make up at least 5% of members can direct the CLG to prepare a financial statement or directors' report and can require either a review or audit).
Tier 2	CLGs with annual revenue between \$250,000 and \$1 million and no DGR status; or annual revenue less than \$1 million and DGR status.	Must prepare financial report and have report 'reviewed'. This is not as comprehensive or expensive as a full audit (however CLGs can choose to have report 'audited' nonetheless). Must also prepare a directors' report.
Tier 3	Annual revenue over \$1 million, whether DGR or not.	Must have accounts fully audited by a person who is registered as an auditor under the Corporations Act and must also prepare a director's report.

Note for charities: The same tiers apply under the ACNC Act, and similar reporting requirements apply with financial reports submitted to the ACNC rather than ASIC. In contrast to CLGs regulated by ASIC, being endorsed as a DGR will not trigger higher tier reporting requirements.

RELATED RESOURCES

You can read more about the reporting obligations of charities in Not-for-profit Law's fact sheet [Financial reporting for charities](#).



ACT incorporated associations reporting requirements

All ACT incorporated associations must prepare financial statements of their association's accounts in relation to the most recently ended financial year. The audited financial statements must be presented at their annual general meeting and lodged with Access Canberra,

For incorporated associations in the ACT, there are three categories known as 'tiers'. The tier that an organisation falls under depends on a range of measurements including gross receipts, assets, membership and whether or not the organisation holds a liquor licence. Each tier has different reporting and auditing requirements. The table below briefly sets out the tiers and the corresponding requirements for auditing under the AI Act.

	Definition of IA category	Auditing requirements
Tier 1	All ACT incorporated associations which do not fall within Tier 2 or Tier 3.	The accounts must be audited by a person who is not an officer of the association and who has not prepared or assisted with preparation of the accounts.
Tier 2	An ACT incorporated association which:	The accounts are required to be audited by a person who is a member of the Institute of Chartered Accounts, the Institute of Public

	<ul style="list-style-type: none"> • has gross receipts exceeding \$400,000 (but less than \$1,000,000) for a financial year, or • has gross assets exceeding \$400,000 at the end of the financial year, or • has more than 1000 members, or • holds a licence under the Liquor Act 2010. 	Accounts, or CPA Australia or registered as an auditor under the Corporations Act.
Tier 3	An ACT incorporated association with gross receipts exceeding \$1,000,000 for a financial year.	The accounts are required to be audited by a person who is registered as an auditor under the Corporations Act.

Note for charities: The same tiers apply under the ACNC Act as under the Corporations Act (outlined above), and similar reporting requirements apply for charitable CLGs, however reports are submitted to the ACNC rather than ASIC. Incorporated associations registered as charities will need to report to Access Canberra, and report again to the ACNC.

TIP

Remember that some organisations may be required to have audited accounts because of another requirement (eg. because this is in a funding agreement with the government, or because the members/committee of management believe it is good practice) even though it is not required by the Corporations Act (for companies) or the AI Act (for associations) or the ACNC Act.



RELATED RESOURCES

You can read more about the reporting obligations of charities in Not-for-profit Law's fact sheet [Financial reporting for charities](#).



Issue 5: Other factors for your group to consider

The issues discussed above ('where' your group is going to operate; the skills or expertise available to your group; whether your group will be a registered charity; and its financial capacity) are four of the main factors for groups to consider when choosing their legal structure.

However, there are some other important factors that may affect your group's decision whether to incorporate as an incorporated association or CLG. The table below lists a number of factors which may be relevant to your group's aims, activities or circumstances.

Feature	Brief description
Flexibility of rules or constitution	<p>The Corporations Act provides some flexibility in a company's constitution, and ASIC is unlikely to reject a proposed constitution. Changes to the constitution of a CLG take effect from the date passed by the members (unless otherwise set out). Flexibility is even greater if your CLG is registered as a charity (and therefore reports to the ACNC).</p> <p>The AI Act requires 11 different topics to be addressed in an organisation's rules, however these requirements are reasonably straightforward. Alternatively, an association may adopt the model rules as prescribed by the <i>Associations Incorporation Regulations 1991</i> (ACT)). Changes to an association's rules must be notified to Access Canberra together with a declaration attesting to the fact that the changes have been approved by special resolution of the incorporated association.</p>
Directors (board member) and office holder duties	<p>The potential liabilities of CLG board members are more serious under the Corporations Act than for committee members and other office holders of an incorporated association. There are significant penalties for directors of CLGs who breach their duties. CLGs registered with the ACNC are required to comply with the ACNC governance standards instead of the civil directors' duties under the Corporations Act. However, criminal penalty provisions under the Corporations Act still apply (but are rarely imposed).</p> <p>Incorporated associations have office holders' duties set out in legislation. The common law (i.e. judge-made) duties and liabilities of board members are similar for both structures. For more information about the duties of board and committee members, see Not-for-profit Law's page on governance.</p>
Number of members	<p>Groups wanting to incorporate as a CLG need only one member. This may suit a not-for-profit organisation wanting to retain a higher degree of control (but remember, this type of company still needs 3 directors) or, where the organisation is to be a subsidiary of another organisation.</p> <p>In contrast, ACT incorporated associations must have a minimum of five members. In general, members will have voting rights and be able to call meetings and exercise some control in the organisation (for example, to remove committee of management members).</p>
Speed of incorporation	<p>In general, ASIC often approves an application for incorporation of a CLG within 24-48 hours of paperwork being filed online (but if it includes applying for a licence to omit the word 'limited' from the name of the organisation, it will take longer).</p>

	At January 2015 Access Canberra has committed to incorporating an association within 5 working days if the model rules are used, or within 10 working days if the models rules are not used.
Rights of members	<p>CLGs are entitled to appoint a member or a non-member as a proxy (a person to vote at meetings on their behalf). Also, for CLGs not registered as a charity, a small percentage of members are able to force a members' meeting to be called (members with at least 5% of the votes that may be cast at a general meeting may call and hold a general meeting, but must meet procedural requirements and pay any expenses).</p> <p>There are no similar mandatory requirements for ACT incorporated associations. For associations, the rights and liabilities of members - for example, the rights of members to vote and call meetings - must be written into the association's rules.</p> <p>See the 'Members' Rights' fact sheet on the Information Hub for more information.</p>
Legislation requiring a particular form of incorporation	In limited circumstances, there are laws that require organisations that are undertaking specific activities to adopt a particular legal structure. Your organisation should seek advice about any laws that might apply to the field you are working in.
Availability of information about the organisation to the public	<p>For a CLG, the name, date and place of birth of each director must be provided to ASIC and these details are available to the public (for a small fee). Further, a company is required to keep a register containing the details of members of the organisation, and is required to make this available to all members for free, and to the public for a fee.</p> <p>For an incorporated association, only the details of the Public Officers need to be provided to Access Canberra (which is then available to the public for a fee). Committee details are also required to be submitted to Access Canberra at the time of incorporation. An association must keep a register of members' details and make it available to members of the organisation, with a few exceptions.</p> <p>Certain details about registered charities (both incorporated associations and CLGs) are available on the ACNC Register (the register of charities maintained by the ACNC) – eg. governing rules, names of directors, annual statements etc.</p>
Flexibility for amalgamation	<p>The Corporations Act does not provide for amalgamation and therefore usually requires that either one or both amalgamating entities to wind up (with the possibility of termination of employment etc.) and then incorporate a new company.</p> <p>The AI Act makes provision for one ACT incorporated association to amalgamate with another ACT incorporated association, without the need for winding up. On incorporation of the new association, each of the original amalgamating associations is taken to have been dissolved and to have had its incorporation cancelled.</p> <p>On incorporation:</p> <ul style="list-style-type: none"> • any property or proprietary or other right that was vested in the amalgamating associations are taken to be vested in the new association • any liability, obligation or penalty that could have been enforced against or recovered from an amalgamating association is enforceable against or recoverable from the new association, and • any investigation, legal proceeding or remedy that could have been instituted, continued or enforced against the amalgamating association can be instituted, continued or enforced against the new association. <p>For more information see the Amalgamation and Mergers page of the Information Hub.</p>

Operating overseas

If your group wants to operate overseas it will need to seek legal advice about what the laws of the relevant country might require. Using Australia as an example, any overseas (foreign) company that wants to 'carry on business' (conduct activities) in any part of Australia must register with ASIC under our Corporations Act. Many other countries will have similar requirements, even if your group is operating as a not-for-profit.

As a general comment, a CLG structure will be a more readily understood and recognised legal structure in other countries, compared with other structures such as an incorporated association.

Conclusion

As highlighted in this guide, a number of factors will influence a group's decision about whether to become an incorporated association or a CLG. There is no quick and easy answer, but weighing the various factors will help you to determine which structure best suits the activities, circumstances, direction and resources of your particular group.

It is important to remember that as a result of changes in the law at both state and federal levels, as well as changes to the regulation of charities by the ACNC, this analysis will continue to change. You can keep in touch with us and access updates and alerts by subscribing to the Not-for-profit Law Update [here](#).

Resources

Related Not-for-profit Law Resources on the Information Hub

- ✔ Getting started - www.nfplaw.org.au/gettingstarted

This page sets out the things you will need to take into consideration when deciding on whether to establish a not-for-profit organisation, including links to helpful resources.

- ✔ Before you start - www.nfplaw.org.au/beforeyoustart

This page includes specific matters to address prior to setting up a not-for-profit organisation.

- ✔ The incorporation decision - www.nfplaw.org.au/incorporationdecision

This page gives guidance to those not-for-profits grappling with the decision to either formally incorporate, or remain as an unincorporated group.

- ✔ Choosing a legal structure - www.nfplaw.org.au/legalstructure

This page lists the various types of not-for-profit legal structures, allowing you to determine the best structure for your group.'

- ✔ Governance - www.nfplaw.org.au/governance

This page provides information about how the organisation should be run, including information about directors' duties.

Legislation

- ✔ [Associations Incorporation Act 1991 \(ACT\)](#)
- ✔ [Associations Incorporation Regulation 1991 \(ACT\)](#)
- ✔ [Corporations Act 2001 \(Cth\)](#)
- ✔ [Australian Charities and Not-for-profits Commission Act 2012 \(Cth\)](#)

Australian Charities and Not-for-profits Commission (ACNC)

- ✔ [Reporting to the ACNC](#)

This page within the ACNC website provides an overview of the reporting requirements for registered charities, according to their size.

- ✔ [Registering as a charity](#)

This page within the ACNC website provides a summary of the steps to take should you wish to register your not-for-profit as a charity.

Australian Securities and Investments Commission (ASIC)

- ✔ [Reporting obligations of companies limited by guarantee](#)

This page within the ASIC website provides an overview of the reporting requirements for companies limited by guarantee that are not charities.

- ✔ [Starting a company](#)

This page within the ASIC website gives guidance on how to start a company, whether for-profit or not-for-profit.

✔ [Special purpose companies](#)

This page within the ASIC website provides information about special purpose companies (which will include some CLGs).

Chartered Accountants Australia and New Zealand

✔ [Enhancing not-for-profit annual and financial reporting \(2013\)](#)

This guide provides information that may assist not-for-profit organisations in preparing annual financial reports.

✔ [A guide for charities reporting under the ACNC Act 2012](#)

Chartered Accountants Australia and New Zealand has published a helpful guide and a recent update for not-for-profit organisations relating to financial reporting obligations.

Access Canberra

✔ [Incorporated associations](#)

This page within the Access Canberra website summarises the requirements for ACT incorporated associations.





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