

Which incorporated legal structure should we choose?

Legal information for Queensland community organisations

This fact sheet covers:

- an overview of four common legal structures that can be used to incorporate a not-for-profit organisation
- some options for changing between legal structures, and
- overseas recognition of different legal structures.

This fact sheet provides general information about the incorporated legal structures available to Queensland community organisations.

What incorporated structures are available for not-for-profits in Queensland?

There are 4 common structures that can be used to incorporate a not-for-profit (NFP) organisation in Queensland:

- an incorporated association
- a company limited by guarantee (CLG)
- a non-trading co-operative , and
- an indigenous corporation .

These are not the only structures available for NFPs, for example, there are also charitable trusts, trade unions and co-operatives. This fact sheet does not cover these structures, but for more information on charitable trusts, go to Not-for-profit Law's overview, [Fundraising Foundations and Charitable Trusts](#).

For information on the meaning of not-for-profit, go to [What does not-for-profit mean?](#).

Key regulators referred to in this fact sheet are:

- [Office of Fair Trading \(OFT\)](#)
- [Australian Securities and Investment Commission \(ASIC\)](#)
- [Australian Charities and Not-for-profits Commission \(ACNC\)](#), and
- [Office of the Registrar of Indigenous Corporations \(ORIC\)](#).

Quick Comparison

Structure	Recommended for...	Not suitable for...
Incorporated Association	<ul style="list-style-type: none"> Locally focused not-for-profit community groups wanting to operate in Queensland. Groups with limited capacity to meet reporting obligations. Groups with limited funds and resources, as costs associated with setting up and running incorporated associations are sometimes (but not always) less than those involved in CLGs. 	<ul style="list-style-type: none"> Groups with less than 7 members. In some cases, groups operating in many states and territories (although note there are options to allow an Incorporated Association to operate in other states).
Company Limited by Guarantee	<ul style="list-style-type: none"> Organisations wanting to operate nationally or in more than one state or territory. Larger not-for-profits, including those that only operate in one state, often use this structure. Charities registered with the ACNC, as CLGs that are charities only report to the ACNC (not also ASIC). Housing and aged care providers (who must be CLGs). Wholly owned subsidiary organisations, as only one member is required (but note three directors are required). 	<ul style="list-style-type: none"> Groups with limited resources, as CLGs reporting to ASIC must meet stricter requirements, and reporting deadlines are more strictly enforced (with higher penalties for non-compliance). <p>Note that CLGs registered as charities will report to the ACNC, not ASIC, and the ACNC will take a more educative regulatory approach than ASIC.</p>
Non-trading co-operative	<ul style="list-style-type: none"> Groups serving their members (eg. a member owned art co-op, ski lodge or a childcare group providing community services to its members). 	<ul style="list-style-type: none"> Co-operatives are run according to co-operative principles (in most cases members have equal voting rights) and may not be suitable for organisations wanting different voting rights to attach to different classes of members, including non-voting members.
Indigenous Corporation	<ul style="list-style-type: none"> Aboriginal and Torres Strait Islander groups. The structure takes into account indigenous customs and traditions. Corporations holding or managing 	<ul style="list-style-type: none"> Non-Aboriginal and Torres Strait Islander groups. More commercial activities where more flexible governance arrangements may be preferable.

Which legal structure should we choose?

	native title under the <i>Native Title Act 1993</i> (Cth) and the <i>Native Title (Prescribed Bodies Corporate) Regulations 1999</i> (Cth) must incorporate as an Indigenous Corporation.	
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Incorporated Associations

Feature	Brief description
Relevant laws	<ul style="list-style-type: none"> • <i>Associations Incorporation Act 1981 (Qld)</i> • <i>Associations Incorporation Regulations 1999 (Qld)</i>
Where an IA can operate?	A group incorporated under the <i>Associations Incorporation Act</i> can operate in Queensland. Any Queensland association that regularly operates ('carries on business') outside Queensland must register under the <i>Corporations Act 2001</i> (Cth) as a 'Registered Australian Body', or incorporate separately in each state.
Government regulator	<p>The Registrar of Incorporated Associations at the Office of Fair Trading. If you are a Registered Australian Body you must also report to ASIC.</p> <p>If you are registered as a charity, you will be registered with the ACNC, and must also report to the ACNC. This means incorporated associations will report to at least two regulators.</p>
Required abbreviation	An incorporated association must use 'Incorporated' or 'Inc.' after its name.
How common?	In Queensland there are over 20,000 incorporated associations.
Description	Incorporated Associations were introduced as a legal structure to provide a simple and inexpensive means of incorporating not-for-profit groups. All States and Territories have their own, slightly different, laws to set up associations.
Suitable for	For most locally-focused not-for-profit groups wanting to operate in Queensland, an Incorporated Association is an appropriate structure. It is often less complex to set up than a CLG, although the incorporation process will take longer and the regulator, the OFT, takes a more educative approach than the regulator of CLGs, ASIC (note that regulation of charity CLGs is transitioning from ASIC to the ACNC). The OFT does not impose late fees when deadlines for reporting are not met.
Not suitable for	This structure is not suitable for groups with less than 7 members or for a parent organisation that wants to set up a wholly owned subsidiary (ie. with the parent organisation as the sole member). Groups wishing to operate outside of Queensland will need to register as an Australian Body with ASIC.

Company limited by guarantees (CLG)

Feature	Brief description
Relevant laws	<i>Corporations Act 2001 (Cth), Corporations Regulations (various)</i>
Where can a CLG operate?	A CLG can operate (that is, carry on activities) anywhere in Australia.
Government regulator	ASIC. ASIC is an independent Commonwealth government body that regulates CLGs and also for-profit companies. In 2013, regulation of CLGs that are registered charities transitioned to the ACNC (so that charity CLGs only report to one regulator).
Required abbreviation	Must use the word 'Limited' or 'Ltd' after its name (although charities that meet certain requirements can become a 'special purpose company' and can apply for an exemption from this requirement).
How common?	In Australia there are approximately 11,000 CLGs.
Description	Although we often think of a 'company' as being a business, a CLG is a special type of company structure for not-for-profit groups all across Australia. Just like a business company, it has 'directors', but unlike a business, has 'members' instead of 'shareholders'. Some of the provisions of the Corporations Act (eg. directors' duties and penalties) that apply to 'for-profit' companies also apply to CLGs.
Most commonly used for	NFPs wanting to operate across Australia, or in multiple states, often consider becoming a CLG. Larger NFPs, including those that only operate in one state, also often use this structure. Some legislation requires this structure for certain types of organisations (eg. registered housing and aged care providers). A CLG structure is also suitable for a wholly owned subsidiary organisation, as it can be set up with just one member (but does need to have three directors).
Comment	CLGs can be more costly to establish than incorporated associations. For more information on these requirements, go to Not-for-profit Law's page on Setting up the organisation . The penalties for non-compliance with reporting requirements and directors duties are higher than for incorporated associations, and tend to be more strictly enforced. However, for CLGs that are registered as charities, as the regulation of CLGs transitions to the ACNC, this position may change.

Co-operatives

Feature	Brief description
Relevant laws	<i>Cooperatives Act 1997 (Qld)</i> Note that reforms are currently being considered to nationalise the regulation of co-operatives.
Where can a co-operative operate?	A group incorporated under the <i>Cooperatives Act</i> can operate (that is, carry on its activities) in Queensland. However, there are also a number of ways that co-operatives can register to be (concurrently) recognised in other States and Territories.
Government regulator	The Queensland Office of Fair Trading.
Required abbreviation	Must include the word 'Co-operative' in its name and the word 'Limited' or 'Ltd' at the end of its name.
How common?	There are approximately 177 co-operatives in Queensland and most have been established for a long time. Currently it is not common to initiate a co-operative.
Description	A co-operative is an organisation that is concerned with providing for the needs of its members. The co-operative structure is based on certain co-operative values, including self-help, self-responsibility, democracy, equality, equity and solidarity. There are both trading and non-trading co-operative structures. Only a co-operative which has rules to prevent surpluses or profits from being distributed to members is suitable as a not-for-profit structure.
Suitable for	Co-operatives are generally set up for the mutual benefit of members (for example, for a community childcare co-operative). They can be a suitable not-for-profit structure for providing community services to members, and in some cases can provide services to others on a contractual basis.
Not suitable for	Co-operatives are run according to co-operative principles. In most cases, members have equal voting rights, and the organisation cannot have different classes of members. Therefore, cooperatives are not suitable for organisations hoping to have different types of members.

Indigenous corporations

Feature	Brief description
Relevant laws	<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth) (began on 1 July 2007, replacing the <i>Aboriginal Councils and Associations Act 1976</i> (Cth))
Where can an indigenous corporation operate?	Can operate (carry on activities) anywhere in Australia.
Government regulator	Office of the Registrar of Indigenous Corporations (ORIC) - a national body.
Required abbreviation	Must have the words 'Aboriginal Corporation', 'Torres Strait Islander Corporation' (or a number of allowable combinations) in its name.
Number	Approximately 2,600 across Australia.
Description	<p>The structure of an indigenous corporation is somewhat similar to a company limited by guarantee, although ORIC has some additional powers to those of ASIC, including the power to call meetings of members and appoint special administrators.</p> <p>Indigenous corporations can, but do not have to be, 'not-for-profit'. Indigenous corporations that want to be not-for-profit must have a 'rule book' which prevents surpluses or profits from being distributed to members.</p> <p>Only Aboriginal and Torres Strait Islander organisations can incorporate using this structure.</p>
Most suitable (or required) for	The indigenous corporation structure is designed to meet the needs of Aboriginal and Torres Strait Islander groups, and attempts to take into account indigenous customs and traditions. Corporations holding or managing native title under the <i>Native Title Act 1993</i> and the <i>Native Title (Prescribed Bodies Corporate) Regulations 1999</i> must incorporate as this structure.
Not suitable for	Non-Aboriginal and Torres Strait Islander groups, or Aboriginal or Torres Strait Islander groups that would prefer to be regulated by a State regulator or ASIC. For commercial activities to be undertaken for the benefit of the indigenous persons, particularly if holding Native Title rights, it may be preferable to use another structure for those activities, which is controlled by the PBC.

Incorporated Association or CLG

The tables above outline the key features of the four structures covered in this fact sheet. Most groups in Queensland choose between incorporating as an incorporated association or a CLG. For a more detailed comparison of these two structures, go to the Not-for-profit Law Guide, 'Incorporated association or company limited by guarantee?' on the [Legal Structure page](#).

Changing between legal structures

It is usually possible for your group to change its legal structure, but there can be legal and administrative costs involved, and making the change can be time consuming. It is a good idea to think about your group's future needs when deciding which legal structure to incorporate under to avoid having to change your structure down the track.

Where organisations do need to change structure, some common transitions are:

- 'converting' or 'migrating' from an incorporated association into a company limited by guarantee. This is possible with member approval if other requirements for a CLG are met. For more information, go to Not-for-profit Law's [Changing structure page](#)
- transferring a CLG or a co-operative to an incorporated association, or
- if the group is an indigenous one, transferring its registration as an Incorporated Association or a CLG to being under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

Overseas recognition

If your group wants to operate overseas it will need to seek legal advice about what the laws of the other relevant country/ies 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 the Commonwealth *Corporations Act*. Many other countries will have similar requirements, even if your group is operating as a not-for-profit.

In general, a CLG structure (that is, incorporation under the *Corporations Act*) will be a more recognised structure in other countries, compared with other structures such as an incorporated association or co-operative.

OK, so what next?

Having read the brief profiles, you might already have an idea of which structure would work well for your group.

Most Queensland not-for-profit groups wanting to incorporate choose between becoming an incorporated association and a CLG. What is best for your group will depend on the particular circumstances and future plans of your group.

Co-operatives and indigenous companies are quite specialised. If your group would like to set up as one of these legal structures we have provided links to websites with further information about these in the Resources section below.

Resources

Not-for-profit Law Resources

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

This page of the NFP Law website contains links to resources and information produced to assist groups in their initial stages.

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

Resources on deciding which is the best legal structure for your organisation

- Setting up the organisation - www.nfplaw.org.au/settingup

Legislation

- [Associations Incorporation Act 1981 \(Qld\)](#)

This is the legislation that governs the setting up and running of an incorporated association in Queensland.

- [Associations Incorporation Regulations 1999 \(Qld\)](#)

This is a link to the regulations which govern the setting up and running of an incorporated association in Queensland.

- [Corporations Act 2001 \(Cth\)](#)

This is a link to the legislation which govern the setting up and running of a CLG.

- [Cooperatives Act 1997 \(Qld\)](#)

This is a link to the regulations which govern the setting up and running of a co-operative in Queensland.

- [Corporations \(Aboriginal and Torres Strait Islander\) Act 2006 \(Cth\)](#)

This is a link to the legislation which govern the setting up and running of an Indigenous Corporation.

Office of Fair Trading (OFT)

- [Register as an incorporated association](#)

This page of the OFT website contains information on Queensland incorporated associations.

- [About co-operatives](#)

This page of the OFT website contains information on co-operatives.

Australian Securities and Investment Commission

- [For companies – an overview](#)

This page contains an overview of starting, running and closing a company and contains information relevant to CLGs.

- [Registrable Australian Bodies](#)

This information sheet sets out the steps involved in registering an Australian body.

Australian Charities and Not-for-profit Commission

▀ [Obligations for registered charities](#)

Office of the Registrar of Indigenous Corporations

▀ [Start a corporation](#)

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

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