

## This fact sheet covers:

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- 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 Victoria?
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A co-operative is a type of incorporated legal structure that may be suitable for some Victorian 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 Victoria. 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 be a charity it will need to register with the ACNC. For more information go to [www.nfplaw.org.au/charity](http://www.nfplaw.org.au/charity)



## What is a co-operative?

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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?

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Victoria and New South Wales 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 3 March 2014 in 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 Victoria, 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. Co-operatives previously registered under the old *Co-operatives Act 1996* (Vic) will automatically have their registration transferred to the new Co-operatives National Law.

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?

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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](http://www.nfplaw.org.au/beforeyoustart)).

# How do we set up a co-operative in Victoria?

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

- 1. Select a name for the co-operative** which must include the word 'Co-operative' (or the abbreviation 'Co-op') and end in the word 'Limited' (or the abbreviation 'Ltd').
- 2. Prepare draft Rules** which must set out the primary activities of the co-operative and the requirements imposed on members of the co-operative to support its activities. Model Rules are available from Consumer Affairs Victoria for this purpose.
- 3. Prepare a draft Disclosure Statement** which contains information necessary to ensure prospective members of the co-operative understand the financial obligations and liability of membership. An example Disclosure Statement is available from Consumer Affairs Victoria for this purpose.
- 4. Apply to Consumer Affairs Victoria** to have the proposed name, draft Rules and draft Disclosure Statement approved by the Registrar of Co-operatives.
- 5. Hold a formation meeting** with all prospective members to formally adopt the proposed name, draft Rules and draft Disclosure Statement which have been approved by Consumer Affairs Victoria. At the meeting prospective members should apply for membership and the directors of the co-operative should be elected.
- 6. File an application with the Registrar of Co-operatives** to register the co-operative utilising the name, Rules and Disclosure Statement approved by Consumer Affairs Victoria and adopted by the members.

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. Setting an appropriate meeting quorum can assist in managing this issue.

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

# Resources

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## Related Not-for-profit Law Resources

### ✔ [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.

## Consumer Affairs Victoria (CAV) – incorporating regulator

### ✔ [Co-operatives](#)

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

## 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 National Law Application Act 2013 \(Vic\) and the Co-operatives National Law \(Victoria\) Local Regulations 2014 \(Vic\)](#)

This legislation and regulations govern the setting up and running of co-operatives in Victoria.

A Not-for-profit Law Information Hub resource. Access more resources at [www.nfplaw.org.au](http://www.nfplaw.org.au)

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