

Co-operatives

Legal information for Australian 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?
- how do we set up a co-operative?

A co-operative is a type of incorporated legal structure that may be suitable for some 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 Australia. 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 an organisation that has formed to benefit its own members (rather than the broader community) through its activities, and is owned and controlled by its members. 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. In a co-operative, all members have equal voting rights. Co-operatives either:

- distribute profits back to members (**distributive co-operatives**); or
- reinvest profits into the co-operative itself (**non-distributive co-operatives**). This type of co-operative is generally more appropriate for a community organisation, and the information in this document is most relevant to non-distributive co-operatives.

What laws regulate co-operatives?

In every State and Territory except Queensland, co-operatives are governed by the Co-operatives National Law (CNL).

When did the CNL come into force?

The CNL commenced on 3 March 2014 in New South Wales and Victoria; 22 May 2015 in South Australia; 1 July 2015 in the Northern Territory; 1 September 2015 in Tasmania; 1 January 2017 in Western Australia; and 1 May 2017 in the Australian Capital Territory. Pre-existing co-operatives will automatically have their registration transferred to the CNL and may continue using their existing rules. However, the CNL will prevail to the extent of any inconsistencies in the existing rules, so it is a good idea to change the rules to the extent that there are any inconsistencies, in order to avoid confusion.

What are the changes under the CNL?

1. A single registration system that standardises financial reporting and allows co-operatives to operate across multiple States and Territories
2. New terminology, redefining **trading co-operatives** as **distributing co-operatives**, and **non-trading cooperatives** as **non-distributing co-operatives**
3. A simplified administrative and reporting framework, based on whether a co-operative is 'small' or 'large', and
4. New governance requirements which resemble those of incorporated entities (such as companies).

Do all co-operatives have to be incorporated?

Your organisation may choose to be incorporated as a co-operative or remain unincorporated (such an organisation is generally referred to as an 'unincorporated association').

A co-operative incorporated under the CNL or the law in Queensland obtains a **separate legal personality**, much like a company or an incorporated association. This means an incorporated co-operative is capable of suing or being sued, entering into contracts or dealing with property in its own name. An incorporated co-operative will also outlive its members (provided it always has a minimum of five members).

An unincorporated association does not have a separate legal personality and is merely a collective of individuals.

What are the differences between the CNL and the law in Queensland?

Co-operatives in Queensland are governed by the *Cooperatives Act 1997* (Qld), and must comply with reporting requirements that differ from those introduced by the CNL. The Queensland law also makes no distinction between 'small' and 'large' co-operatives, and retains the terminology of 'trading' and 'non-trading' co-operatives.

It is important to note the different requirements for registering co-operatives in Queensland. Separate guides for registering co-operatives in each system are provided below.

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

No. Only non-distributing co-operatives, which reinvest profits into the co-operative, are suitable for not-for-profit groups. For more information about the term 'not-for-profit', go to www.nfplaw.org.au/beforeyoustart.

Before setting up a co-operative, ensure it is the most appropriate legal structure for your organisation. Effective co-operatives require **all members to be actively involved**, which may cause problems throughout the co-operative's existence. Certain groups should cautiously consider the suitability of a co-operative structure, such as:

1. Politically fractious organisations

If a co-operative is intended to engage in political activities, there is a risk that strong differences of opinion, factionalism and relationship breakdowns may compromise the group. A co-operative structure may not be suitable for political organisations as all members are required to engage in the activities of the co-operative.

2. Organisations with passive members

Co-operatives require all members to be involved in the activities of the organisation, for members to remain current or vote on the affairs of the co-operative. If your prospective members are unable or unwilling to commit to ongoing activities and responsibilities, then a co-operative structure might be inappropriate.

3. Large organisations

Keeping your members involved may become problematic if your organisation expands significantly. While growth and involvement can be managed by implementing participation requirements, all members must stay involved in the activities of the co-operative. If the organisation is expected to grow rapidly, an alternative structure should be considered.

EXAMPLE 1 – A SUITABLE CO-OPERATIVE

Zoe and her group of friends want to start a not-for-profit organisation in their local neighbourhood, which will sell organic, locally grown foods to the local community at reasonable prices. Around 50 other people have expressed interest in being part of the initiative. They have spoken to restaurant owners in the area, who are willing to supply unused foods to the organisation, and to several locals experienced in similar food initiatives.

Would a co-operative be an appropriate structure for Zoe's organisation?

Yes. Zoe's organisation (a food co-op) is a well-established example of a successful co-operative. Its intended membership is quite small, is located in a small geographical area, and it both involves and benefits its own members in the local community. The activities of their organisation are not controversial or likely to cause friction between members, and the initiative of gathering and selling food can involve members in lots of ways (supply, delivery, sales, staffing). A co-operative would be an appropriate structure for her organisation.

EXAMPLE 2 – AN UNSUITABLE CO-OPERATIVE



Sonya intends to create an organisation for fans of sport which will raise funds for members to attend various sporting events across Australia. Membership is open to those who have played a sport for more than 10 years. Sonya intends to be the sole director and central decision-maker of the organisation, and will retain the power to determine how the co-operative's money is distributed. In order to raise money, Sonya intends for the organisation to do bake sales, fundraising dinners and to seek donations from sponsors.

Would a co-operative be an appropriate structure for Sonya's organisation?

No. Sonya's organisation would not operate effectively as a co-operative. First, as it would be raising money to be distributed to members, Sonya's co-operative would not be a not-for-profit organisation. Membership is also too large and exclusive, and does not have a community focus or democratic control. Its range of activities is wide and not defined by any common interest amongst members beyond the broad interest of 'sport'. By way of comparison, if the organisation was intended for young professionals in one suburb to hire out the local soccer field and hold matches for its members after work, a co-operative structure would be more appropriate.

How do we set up a co-operative under the CNL?

To register a co-operative under the CNL, a co-operative must:

1. Select a name

The name must include the word 'Co-operative' (or the abbreviation 'Co-op') and end in the word 'Limited' (or the abbreviation 'Ltd'). It must not be misleading, or too similar to an existing co-operative or business name. You can search the [ASIC Register](#) for business names.

2. Prepare draft rules (and Disclosure Statement if necessary)

There are a number of matters that must be included in the draft rules of a co-operative. These matters are set out in Schedule 1 of the CNL and are provided for in the model rules. Some of these matters are:

- the name of the co-operative
- active membership provisions – these require the rules to set out the primary activity or activities of the co-operative and what the member has to do to be an active member
- how to admit new members and any requirements that must be met (such as payment) before the member can exercise their rights
- whether fines can be charged for breaking the rules, and the amount of the fines (there is a maximum amount prescribed by the Regulations)
- grievance procedures
- the number of directors, the qualification of directors, the way of electing, remunerating and removing directors and filling a vacancy, the period for which directors are to hold office, whether directors are to retire by rotation or otherwise, and the holding of annual elections the quorum for and the procedure at meetings of the board.

The rules of a non-distributing co-operative must also state that there will be no return or distribution of surplus or share capital to members other than the nominal value of shares (if any) at winding up. It must also provide how surplus property will be distributed at winding up.

Specifying the requirements for 'active membership' in the rules is important, as only active members are able to vote and remain as members of the co-operative. Co-operatives must identify in the rules the manner and extent to which a member must use or support an activity to maintain a relationship with the co-operative, as well as procedures to ensure correct identification of active and inactive members at any point in time. The rules of a non-distributing co-operative may provide that the regular payment of a subscription fee is sufficient to establish active membership.

Model rules are accessible at the CNL registries in each State or Territory (see links provided below).

Is a Disclosure Statement necessary?

A Disclosure Statement contains the information necessary to ensure that prospective members of the co-operative understand the financial obligations and liabilities involved in co-operative membership.

- Distributing co-operatives **must** prepare a Disclosure Statement.
- Non-distributing co-operatives need not prepare a Disclosure Statement, **unless** specifically required to by the Registrar in your State or Territory.

3. Apply to the Registrar in your State or Territory to have the proposed name and draft rules approved

Discuss the draft rules with prospective members and decide on changes before submitting them to the Registry for approval. You will have to fill out a form, pay a fee and comply with certain procedural requirements (which are set out on each State and Territory's website listed at the end of this sheet).

4. Prepare for the formation meeting

Once the rules have been approved, a formation meeting must be held. Prior to the meeting:

- a) Notify proposed members of the date, time and place of the formation meeting.
- b) Prepare 2 copies of the approved rules for signing.
- c) Prepare a copy of any Disclosure Statement for signing.
- d) Prepare the Application to register as a co-operative. Some information may not be known at this time.
- e) Prepare the Application for membership form for prospective members. The forms should include space for the prospective member's full name and address, number of shares and face value of shares (if any), the amount paid on the shares and the member's signature.

You should also prepare enough copies of the proposed rules and Disclosure Statement (if any) for the formation meeting, to ensure that proposed members can have access to these documents at the meeting.

5. Hold a formation meeting to formally adopt the rules

A minimum of **five prospective members** must attend the formation meeting. These prospective members must be adults and meet any membership requirements in the proposed rules. Also, it must be reasonable to believe that these prospective members will be active members of the co-operative.

At the formation meeting, the following should occur:

- a) **Elect a chair** to run the formation meeting and a secretary to keep a written record of the formation meeting. These positions are only for the formation meeting.
- b) **Read the Disclosure Statement** to proposed members (if a distributing co-operative or if directed by the Registrar to prepare a Disclosure Statement).
- c) **Register the proposed members** by having each member fill out an application form.
- d) **Pass the approved rules** by a two-thirds majority of the proposed members.
- e) **Elect the directors** by following the method prescribed in the rules approved at step 4.
- f) **Appoint someone (a contact person) to finalise the application** (usually a director). This person will communicate with the Registry and lodge the co-operative's forms.
- g) **Sign the formation documents** – the chair and secretary of the meeting must sign two copies of the rules, and a copy of the Disclosure Statement (if any).
- h) **Fill in and sign the application to register the co-operative.** The application must be signed by at least 5 members, including 2 directors elected at the meeting. While this can be done after the formation meeting, it may be convenient to finalise the application at the meeting, if all of the information required in the form is known at that time.

6. File an application to register the co-operative with the Registrar.

Within 2 months of the meeting, a completed application to register a co-operative must be sent to the Registrar in your State or Territory. The two signed copies of the rules approved at the formation meeting, a copy of the signed Disclosure Statement (if any) and the application fee stated on the form must be lodged. The application must include the name, address, occupation, place and date of birth of each director, and the address of the co-operative's registered office and other contact details. If successful, the Registrar will register the co-operative and issue a certificate of registration.

For further information on how to register a co-operative under the CNL, please consult [NSW Fair Trading](#), [Consumer Affairs Victoria](#) or the equivalent website in your State or Territory.

CONTACTING YOUR REGISTRAR

New South Wales

NSW Fair Trading, Registry Services
 PO Box 22
 Bathurst NSW 2795
 Telephone: (02) 6333 1400
 Freecall: 1800 502 042
 Email: registryinquiries@finance.nsw.gov.au
 Web: http://www.fairtrading.nsw.gov.au/ftw/Cooperatives_and_associations/Registering_a_cooperative.page

Victoria

Consumer Affairs Victoria
 GPO Box 4567

Rosny TAS 7018
 Telephone: 1300 654 499
 Email: registration.services@justice.tas.gov.au
 Web: www.consumer.tas.gov.au/registrations/co-operatives

South Australia

Consumer and Business Services SA
 GPO Box 1719
 Adelaide SA 5001
 Telephone: 131 882
 Email: associations@agd.sa.gov.au
 Web: www.cbs.sa.gov.au/wcm/licensing-and-registration/co-operatives/



Melbourne VIC 3001
Telephone: 1300 55 81 81
Email: cav.registration.enquiries@justice.vic.gov.au
Web: www.consumer.vic.gov.au/co-operatives

Western Australia

Department of Commerce, Consumer Protection
Division
Locked Bag 14
Cloisters Square
Perth WA 6850
Telephone: 1300 304 074
Email: consumer@dmirs.wa.gov.au
Web:
<https://www.commerce.wa.gov.au/consumer-protection/register-co-operative>

Tasmania

Consumer Affairs and Fair Trading
Department of Justice
PO Box 56

Northern Territory

Licensing NT
Level 3, NAB House
71 Smith Street
Darwin NT 0800
Phone: (08) 8999 1800
Email: GLSAdministration@nt.gov.au
Web:
<https://nt.gov.au/industry/licences/cooperatives>

Australian Capital Territory

Access Canberra
GPO Box 158
Canberra City ACT 2601
Telephone: 13 22 81 or (02) 6207 3000
Email: accesscanberra.bil@act.gov.au
Web:
https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2102/~/_/co-operative-registration#ltabs-2

How do we set up a co-operative in Queensland?

To register a co-operative in Queensland, a co-operative must:

1. Select a name for the co-operative

The name must include the word 'Co-operative' (or the abbreviation 'Co-op') and end in the word 'Limited' (or the abbreviation 'Ltd'). It must not be misleading, or too similar to an existing co-operative or business name. You can search the [ASIC Register](#) for business names.

2. Prepare draft rules (and Disclosure Statement if necessary)

There are a number of matters that must be included in the draft rules of a Queensland co-operative. These matters are set out in Schedule 1 of the *Cooperatives Act 1975* (Qld) and are generally the same as those set out in Schedule 1 of the NCL. See Step 2 for Setting up a NCL co-operative for information on some of these requirements.

Alternatively, **standard rules** may be adopted, which are available at the website below.

Is a Disclosure Statement necessary?

Only trading co-operatives (referred to as 'distributing co-operatives' under the CNL) **must** prepare a Disclosure Statement. A Disclosure Statement contains the information necessary to ensure that prospective members of the co-operative understand the financial obligations and liabilities involved in co-operative membership.

3. Apply to the Queensland Registration Services Unit to have the proposed name, draft rules and draft Disclosure Statement (if any) approved

Discuss the draft rules (and any Disclosure Statement) with prospective members and decide on changes before submitting them to the Registry for approval. These should be submitted at least 28 days before the formation meeting is due to be held.

4. Hold a formation meeting to formally adopt the rules

Once the rules have been approved, you must hold a formation meeting. A minimum of **five prospective members** must attend the formation meeting. These prospective members must be adults and meet any membership requirements in the proposed rules. Also, it must be reasonable to believe that these prospective members will be active members of the co-operative.

The order of the formation meeting should be as follows:

- a) **Elect a chair** to run the formation meeting and a secretary to keep a written record of the formation meeting. These positions are only for the formation meeting.
- b) **Identify the members** by having anyone who intends to be a member put their name and signature on a list of voting members. Only people who sign this document can vote at the meeting.
- c) **Read the Disclosure Statement** to proposed members (if a trading co-operative).
- d) **Register your prospective members** by having each proposed member fill out an application form.
- e) **Pass the approved rules** by a two-thirds majority of members.
- f) **Elect the directors** by following the method prescribed in the rules approved at step 5.
- g) **Appoint someone to finalise the application** (usually a director). This person will communicate with the Registry, and both fill out and lodge the co-operative's forms.
- h) **Sign the formation documents** – the chair and secretary of the meeting must sign two copies of the rules, and a copy of the Disclosure Statement (if any).
- i) **Fill in and sign the application to register the co-operative.** The application must be signed by at least 5 members, including 2 directors elected at the meeting. While this can be done after the formation meeting, it may be convenient to finalise the application at the meeting, if all of the information required in the form is known at that time.

5. File an application to register the co-operative with the Registration Services Unit.

After the meeting, an auditor should be appointed within 1 month of registration. The application should be sent to the Registration Services Unit within 2 months of the meeting. Details on the documents you are required to send can be found at the Registry website below. If successful, the Registrar will register the co-operative and issue a certificate of registration.

For further information on how to register a co-operative in Queensland, please consult the [Queensland Government website](#).

CONTACTING YOUR REGISTRAR



Queensland

Registration Services Unit

Office of Fair Trading

GPO Box 3111

Brisbane QLD 4001

Telephone: 13 74 68

Fax: 07 3405 0731

Email: RegistrationServices@justice.qld.gov.au

Web: <https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/cooperatives/registering-a-cooperative>

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.

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

▶ The following pages contain the relevant legislation for each State and Territory:

[New South Wales](#)

[Victoria](#)

[Western Australia](#)

[South Australia](#)

[Tasmania](#)

[Northern Territory](#)

[Australian Capital Territory](#)

[Queensland](#)

It should be noted that each State and Territory has its own regulations under the Co-operatives National Law.

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

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