

Incorporated association or company limited by guarantee? (ACT)

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

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Introduction



Introduction

This guide covers:

- ▶ The differences between an incorporated association and a company limited by guarantee (**CLG**)

Key issues to consider when choosing between structures:

- ▶ Issue 1: Where will the organisation 'operate' or 'carry out activities'?
 - ▶ Issue 2: Will the organisation be a charity?
 - ▶ Issue 3: Will the organisation be able to pay initial and ongoing fees?
 - ▶ Issue 4: Annual reporting, audits and reviews, and
 - ▶ Issue 5: Other factors for your organisation to consider
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The aim of this guide is to help not-for-profit organisations in the Australian Capital Territory (ACT) decide whether an incorporated association or a company limited by guarantee is a more suitable incorporated structure for them.

While most ACT not-for-profit organisations choose between incorporating as an incorporated association or as a company limited by guarantee (**CLG**), these are not the only forms of incorporation available for not-for-profit organisations. Please read the related Not-for-profit Law fact sheet: '[Choosing a legal structure](#)', available on the Not-for-profit Law website (see the 'Getting Started' page).

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 *Corporations Act 2001* (Cth) (**Corporations Act**). Both are suitable legal structures for not-for-profit organisations 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 that are registered as charities with the Australian Charities and Not-for-profits Commission (**ACNC**), discussed in this guide, mean that the arguments for choosing to incorporate as an association over a CLG are no longer as compelling.

This guide addresses some key factors that organisations should consider when deciding between incorporating as an incorporated association or a CLG. Once you have read this guide and familiarised yourself with your organisation's options, you should seek legal advice from an advisor with experience advising not-for-profit organisations. Spending some time (and, if necessary, money) obtaining 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 organisation considerable time, money and legal and administrative headaches further down the track!



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



Issue 1: Where will the organisation ‘operate’ or ‘carry out activities’?

When choosing between an incorporated association or CLG structure, it is important to think about where your organisation 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 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. An organisation incorporated as an association under the 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 organisation incorporates as an ACT incorporated association, but wants to operate (i.e. 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 organisation as a Registered Australian Body (RAB) with ASIC

This is the option most commonly recommended (i.e. rather than option B below or converting to a CLG). This will mean that your organisation will be regulated by the Australian Securities and Investments Commission (ASIC) as well as by Access Canberra and that extra forms will need to be prepared and lodged by your organisation each year and when certain changes occur. Your organisation must also display additional information along with its name. Organisations 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. ACNC will share information from reports made by to it by incorporated associations with Access Canberra.

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 organisation if there are distinct groups involved in each state and territory that address distinct state or territory-specific issues, which can be very difficult to administer for a single organisation (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 the relevant 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 (e.g. you expand from operating just in ACT, to operating across Australia), your organisation can convert or migrate from an incorporated association to a CLG. The AI Act refers to this process as voluntary transfer of incorporation.



Tip

If the organisation is an Indigenous organisation, it could consider voluntarily transferring its registration to being under the *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 may be 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 Not-for-profit Law resource

For more information about changing legal structure more generally, go to the Not-for-profit Law fact sheet on '[Changing your organisation's structure](#)'.



Tip

Although converting to a CLG 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.

In summary, incorporating as a CLG may be more appropriate to support an organisation intending to operate on a larger scale geographically than an incorporated association, which is only appropriate if the majority of the organisation's activities take place in the ACT. While it is always possible to reassess the appropriateness of a chosen structure, converting or reorganising at a later stage can be complex. As such, it is valuable to take time at the outset to reflect on your organisation's intended reach and future goals and plan accordingly.



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

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 organisation.

After the ACNC's establishment in December 2012, charities that became registered with the ACNC that were incorporated associations, rather than CLGs, became subject to dual reporting requirements under the ACNC regime and the relevant state or territory incorporated associations regime. This therefore increased the initial and ongoing regulatory burden associated with the incorporated association structure.

However, amendments to the AI Act that commenced in July 2017 removed the dual annual reporting requirements that, since the ACNC's establishment, had applied to registered charities that were incorporated in the ACT as associations under the AI Act (as opposed to being incorporated as CLGs under the Corporations Act).

The regulatory analysis about which structure best suits your organisation now depends significantly on whether it intends, after it is incorporated, to register as a charity or not.

CLGs registered as charities

The main regulator for a CLG that registers with the ACNC as a charity will be the ACNC rather than ASIC (although applications for incorporation as a CLG and to deregister a CLG are still required to be made to ASIC, as are notifications regarding a change of name of the CLG and removal of the auditor).

Different and less complex laws apply to CLGs that are charities than to other CLGs. This is because when a CLG or other body corporate (such as a proprietary company limited by shares or a RAB) becomes registered as a charity, certain Corporations Act requirements in relation to directors and members' meetings 'switch off'. A good example is the Governance Standards that apply to charities under the ACNC regime. These provide a more flexible framework around holding meetings, accountability to members and other matters. The Governance Standards:

- establish a minimum level of outcomes for the practices and procedures expected of charities that are registered with the ACNC, and
- are 'principles-based' in that they specify the outcome the registered charity should achieve, not the means of achieving it. Accordingly, the manner by which registered charities can comply with the Governance Standards will vary according to a charity's particular circumstances, such as its legal structure, size and geographical reach, sources of funding and existing governance systems and processes

In addition, the Corporations Act requirements in relation to:

- directors and members' meetings, and
- preparing financial and directors' reports and distributing those reports to members,

that apply to CLGs that are not registered as charities are much more complex and prescriptive.

Incorporated associations registered as charities

Prior to July 2017, an incorporated association in the ACT that registered as a charity was required to comply with the ACNC regime as well as Access Canberra's regime for incorporated associations. This duplicative reporting system was a significant disadvantage of incorporated associations and a key argument for favouring a CLG structure.

However, as of July 2017, an incorporated association that is registered as a charity is exempt from Part 5 of the AI Act (which addresses accounts, audit and annual returns) and from reporting to Access Canberra. Such organisations benefit from streamlined information sharing systems, which involves reporting to the ACNC, which shares the information it receives with Access Canberra on the organisation's behalf. This eliminates significant administrative burden as well as the fees that were previously payable in connection with such reporting.



Tip

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

It is important to consider that incorporated associations in the ACT must still fulfil other duties under the AI Act relating to the incorporation and management of associations.

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

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). The difference in the approaches to regulatory enforcement that are adopted by the ACNC and ASIC have therefore removed some of the concerns that unincorporated organisations intending to register as charities had about having a stricter regulatory compliance burden if they chose to adopt a CLG structure rather than an incorporated association structure. As a result, the CLG option has become a more accessible option for those organisations also intending to register as charities after their incorporation.

However, if your organisation incorporates as a CLG but is not a registered charity (or loses its charitable registration), its main regulator will be ASIC, and will therefore be subject to ASIC's more stringent regulatory approach, and the legal requirements that apply to CLGs under the Corporations Act. Likewise, if your organisation is an incorporated association but is not a registered charity (or loses its charitable registration), its main regulator will be Access Canberra.


Charitable collections licensing

It is important to note that there is a difference between registration as a charity and holding a charitable collection licence. Charitable collection licences in the ACT are issued by Access Canberra, and are governed by the *Charitable Collections Act 2003* (ACT). Changes introduced on 1 July 2017 mean that organisations that are registered as charities with the ACNC do not need to hold an ACT charitable collections licence.



Related resource

For more information about charitable collections licensing, go to Access Canberra's [Guide to Charitable Collections in the ACT](#).



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

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

As already mentioned, registered charities that are incorporated as CLGs will largely report to the ACNC, not ASIC (although CLGs still incorporate with ASIC). Currently, the ACNC does not generally exercise its power to impose filing fees or to impose late fee penalties. However, this may change in the future and charities will be liable to pay a penalty for late lodgement of documents. In addition, in some circumstances, failing to lodge documents when required can be grounds for the ACNC to revoke a charity's registration.

For organisations that do not intend to register as charities and so will have ASIC as their main regulator should be aware that, in general, ASIC charges CLGs higher filing fees and imposes harsher penalties than Access Canberra charges incorporated associations. Your organisation will need to be realistic about the resources it has (or is going to have), and how diligent it is going to be about keeping information up-to-date and paying fees on time (to avoid late fees – which can be significant for CLGs regulated by ASIC).

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, the fees for not-for-profit CLGs that meet the requirements of a 'special purpose company' are lower than the fees for CLGs that do not.



Note for charities

Many charities that are CLGs will meet the definition of 'special purpose company' and will only need to pay the lower incorporation fee and ongoing filing fees as a CLG if:

- they are formed for charitable purposes and are registered under the *Australian Charities and Not-for-profit Commission Act 2012 (Cth)* (**ACNC Act**) as a charity, and
- their constitutions:
 - prohibit the CLG from making distributions to its members and paying fees to its directors, and
 - require the directors to approve all other payments the CLG makes to directors



Related resource

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 (e.g. 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 organisation 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 2018/2019 year and are indexed (go up) each year.



Note for charities

The ACNC has the power to impose filing fees and penalties for late reporting, although to date, it has not exercised this power regularly. Registered charities will no longer undertake financial reporting to ASIC (for CLGs) or Access Canberra (for incorporated associations), and therefore the fees listed below do not apply.



Tip

Remember that some organisations may be required to have audited accounts because of another requirement (e.g. 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.

2018/2019 incorporation and ongoing fees

For fees for incorporated associations see the [Access Canberra website](#).

For payments and fees for companies limited by guarantee see the [ASIC website](#).

For penalties for charities that fail to lodge documents on time with the ACNC see the [ACNC's resource on penalties](#).

Type of fee	ACT incorporated associations (from 1 July 2018)	Commonwealth company limited by guarantee (from 1 July 2018)	Notes for charities
Initial application for incorporation	\$193	\$403 An additional fee applies to register without the word 'limited' in the name. These fees apply to CLGs regardless of charity registration.	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)	'Tier 1' No audit required however, financial statements showing income, expenditure, assets and liabilities must be reviewed 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' The accounts are required to be audited by a person who is a member of the Institute of Chartered Accountants, the Institute of Public Accountants, or CPA Australia or registered as	'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 are not required to have audited accounts unless required to do so by members' direction or ASIC direction (however must appoint an auditor within one month of registering as a CLG).	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.



Type of fee	ACT incorporated associations (from 1 July 2018)	Commonwealth company limited by guarantee (from 1 July 2018)	Notes for charities
	<p>an auditor under the Corporations Act.</p> <p>'Tier 3' The accounts are required to be audited by a person who is a registered company auditor under the Corporations Act.</p>		
Fee when lodging Financial Statement or annual return/annual fees	<p>No fee is payable if the organisation lodges its annual return within 6 months of the end of the financial year.</p>	<p>There is no fee to lodge financial statements with ASIC. However, annual review fees are payable as follows:</p> <ul style="list-style-type: none"> \$1,224 (\$9,374 advance payment for 10 years), or \$49 (\$366 advance payment for 10 years) for 'special purpose companies' (companies formed for 'charitable purposes' and registered as charities, have non-profit and non-distribution clauses in their constitution and certain rules relating to directors). 	<p>There is no fee to lodge financial reporting statements with the ACNC. As discussed above, both registered charities (whether incorporated associations or CLGs) are only required to report to the ACNC.</p>
Late fees when lodging annual return/ annual statement	<p>\$84 late fee will be incurred if lodged more than six months after the end of the financial year.</p> <p>If annual returns are not lodged for two years, Access Canberra may cancel the organisation's incorporation and seize its assets.</p>	<p>Late lodgement fees will apply if financial statements are not lodged within four 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"> \$79 if payment is received within 1 month after the due date; and \$329 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>
Lodge details of changes to information (e.g. address, names of officers)	<p>\$43 fee for changing the organisation's name.</p> <p>No fee to change committee, public officer or registered office particulars.</p>	<p>None, except for change of name, for which a \$403 fee applies.</p>	<p>The ACNC does not charge to change details.</p>
Lodge changes to constitution or rules	<p>\$43 if lodged within 1 month of change.</p>	<p>No fee.</p>	<p>The ACNC does not charge to change details.</p>



Type of fee	ACT incorporated associations (from 1 July 2018)	Commonwealth company limited by guarantee (from 1 July 2018)	Notes for charities
Failure to lodge changes of details within required period (i.e. address, names of officers, change to rules or constitution)	For changes to the rules or constitution an \$84 late fee applies.	The fees are as follows: <ul style="list-style-type: none"> • \$79 if lodged one month late; and • \$329 if lodged more than a month late 	The ACNC may charge late fees.



Caution

If you choose to set up a CLG or other body corporate (such as a proprietary company limited by shares or RAB) and are not a registered charity, your organisation will be regulated by ASIC, which is systematic in imposing late fines and can be 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. To date, the ACNC as the main regulator for charities, has taken a more educative and 'lighter touch' approach to regulation. This may change in the future.



Issue 4: Annual reporting, audits and reviews



Issue 4: Annual reporting, audits and reviews

A tiered approach to regulation applies to incorporated associations under the AI Act and to CLGs under the Corporations Act.

If you wish to incorporate as a CLG and do not intend to register as a charity with the ACNC, your organisation will need ongoing help from a person who has a good understanding of running a company, or access to professional legal and/or accounting advice.

However, as discussed under Issue 2, organisations that are registered as charities have different and less complex obligations under the ACNC Act, and reporting fees are also lower (waived entirely in many cases to date). Therefore, concerns about the complexity of the Corporations Act and reporting to ASIC are not as relevant to organisations who are or will be charities.

Some incorporated associations and some CLGs must have their accounts independently audited or reviewed each year. For CLGs and incorporated associations, 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. Essentially, the larger the scale of the organisation, the more onerous the regulatory obligations that it must satisfy.

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.



Related Not-for-profit Law Resource

For more information about reporting to government for incorporated associations, CLGs and charities, see the [Reporting to Government page](#) on the Not-for-profit Law website.

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 and 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 less than \$250,000.00 that are a DGR OR with an annual review of between \$250,000.00 and \$1,000,000.00 (whether or not they are DGR).	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 'streamlined' directors' report.



	Definition of CLG category	Reporting and auditing requirements
		Members to be notified of annual reports (rather than automatic distribution).
Tier 3	CLGs with 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. Must give annual reports to any member who elects to receive them.



Caution

Although 'small CLGs' (including CLGs registered as charities with the ACNC) are not required to have their financial reports audited, under the Corporations Act they must appoint an auditor within one month of registering as a CLG. ASIC has advised that where the directors of a 'tier 1' or 'tier 2' CLG believe that the organisation's financial reports will be reviewed, instead of audited, they do not need to appoint a registered company auditor.



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 Not-for-profit Law resource

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

Incorporated associations that are not registered charities 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 (to occur within five months of the end of the financial year) 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.




	Definition of IA category	Auditing requirements
Tier 2	<p>An ACT incorporated association which:</p> <ul style="list-style-type: none"> • has gross receipts exceeding \$400,000 (but less than \$1 million) for a financial year, or • has gross assets exceeding \$400,000 at the end of the financial year, or • has more than 1,000 members, or • holds a licence under the <i>Liquor Act 2010</i> 	The accounts are required to be audited by a person who is a member of the Institute of Chartered Accounts, the Institute of Public Accounts, or CPA Australia or registered as an auditor under the Corporations Act.
Tier 3	An ACT incorporated association with gross receipts exceeding \$1 million for a financial year.	The accounts are required to be audited by a person who is registered as an auditor under the Corporations Act.



Tip

Remember that some organisations may be required to have audited accounts because of another requirement (e.g. 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.



**Issue 5: Other factors
for your organisation
to consider**

Issue 5: Other factors for your organisation to consider

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

However, there are some other important factors that may affect your organisation'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 organisation'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 straight-forward. 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's Governance Standards instead of the civil directors' duties under the Corporations Act. However, criminal penalty provisions under the Corporations Act still apply. Directors of CLGs that are registered with the ACNC are still subject to directors' duties arising at common law and in equity as these have not been 'switched off'.</p> <p>Committees and public officers of incorporated associations also have statutory duties.</p> <p>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 an organisation wanting to retain a higher degree of control (however, this type of company still requires three directors) or, where the organisation is to be a subsidiary of another organisation.</p> <p>In contrast, 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 (e.g. 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>



Feature	Brief description
	<p>At July 2018 Access Canberra has committed to incorporating an association within five working days if the model rules are used, or otherwise within 10 working days.</p>
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 Not-for-profit Law website for more information.</p>
Legislation requiring a particular form of incorporation	<p>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.</p>
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 kept up to date. 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, the details of the public officers, committee and committee members need to be provided to Access Canberra and kept up to date (these details may be made available to the public for a fee). 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) – e.g. 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 be wound up (with the possibility of termination of employment etc.) before incorporating 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 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 Not-for-profit Law website.</p>
Operating overseas	<p>If your organisation 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</p>



Feature	Brief description
	<p>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 organisation is operating as a not-for-profit.</p> <p>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.</p>



Conclusion



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 organisation.

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

Not-for-profit Law resources

- ▶ [Getting started](#)

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](#)

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

- ▶ [The incorporation decision](#)

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](#)

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

- ▶ [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 on the ACNC website provides an overview of the reporting requirements for registered charities, according to their size.

- ▶ [Registering as a charity](#)

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

- ▶ [Starting a company](#)

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



▶ [Special purpose companies](#)

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

Chartered Accountants Australia and New Zealand

▶ [Financing not-for-profit annual and financial reporting \(2016\)](#)

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](#)

Access Canberra

▶ [Incorporated associations](#)

This page on the Access Canberra website summarises the requirement for ACT incorporated associations.

▶ [Incorporated associations in the ACT Guide \(2017\)](#)

This guide by Access Canberra outlines processes for the life cycle of an incorporated association, including application for, management of, and closing an association.

