

# Incorporated association or company limited by guarantee? (TAS)

A comparison between the two most common legal structures for not-for-profit organisations in Tasmania

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# Introduction

# Introduction

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## This guide covers:

- ▶ the differences between an incorporated association and a company limited by guarantee

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
  - ▶ issue 5: Other factors to consider
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**The aim of this guide is to help Tasmanian not-for-profit groups decide whether an incorporated association or a company limited by guarantee is a more suitable incorporated structure for them.**

While most Tasmanian not-for-profit groups 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 groups. 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 1964* (Tas) (**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 Tasmanian not-for-profit groups.

Incorporated associations were originally designed to be low cost to register and simpler to run than a CLG. 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, it is noteworthy that the primary regulator is the Australian Charities and Not-for-profits Commission (**ACNC**), whereas prior to the introduction of the ACNC, the primary regulator of all CLGs was the Australian Securities and Investments Commission (**ASIC**).

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 guide 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'?**

# 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 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 a Tasmanian 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 AI Act can operate anywhere in Tasmania. 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 a Tasmanian 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 Tasmanian incorporated associations to operate outside Tasmania

If your group incorporates as a Tasmanian incorporated association, but wants to operate (undertake more than one-off or occasional activities) outside Tasmania, 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 ASIC as well as by the Tasmanian Office of Consumer Affairs and Fair Trading (CAFT) 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 CAFT 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 it has distinct parts 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 (eg. 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 concession.



### 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 Tasmania, to operating across Australia) your group can apply to the Commissioner for Corporate Affairs (**Commissioner**) to become incorporated as a prescribed body corporate, such as a CLG. The AI Act refers to this process as a voluntary transfer of incorporation. The application form that is lodged with the Commissioner must be accompanied by:

- a special resolution at a general meeting of the members of the incorporated association resolving to become a CLG; and
- a statement that is signed by all the committee members of the incorporated association that, in their opinion, the association's creditors are not likely to be materially prejudiced by the conversion and that sets out their reasons for that opinion

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.



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



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

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

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, in 2016, the IA Act was amended to remove the dual annual reporting requirements that, since the ACNC's establishment, had applied to registered charities that were incorporated in Tasmania as associations under the IA Act (as opposed to being incorporated as CLGs under the Corporations Act).

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

This is because the main regulator for a CLG that registers with the ACNC as a charity will be, after the CLG's incorporation, 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).

Further, different and less complex laws apply to CLGs that are charities than to other CLGs. That is because when a CLG or other body corporate (such as a proprietary company limited by shares or RAB) becomes registered as a charity, certain Corporations Act requirements in relation to directors and members' meetings 'switch off' and are replaced with corresponding, but less onerous, requirements under the ACNC regime. 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 charities are much more complex and prescriptive.


Prior to the amendments to the IA Act in 2016, Tasmanian incorporated associations that were also registered as charities were required to lodge annual returns with CAFT. However, now a Tasmanian incorporated association that is registered and complying with the ACNC regime does not have to submit financial statements to the Commissioner. However, the Commissioner can still request a copy of the information that the incorporated association has supplied to the ACNC. If the incorporated association fails to lodge a return with the ACNC, the Commissioner will require it to comply with the Tasmanian annual reporting requirements. In addition, if the incorporated association ceases to be registered with the ACNC, the annual reporting requirements that apply to incorporated associations under the IA Act will be re-activated.

**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). 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 groups 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 groups 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 full suite of legal requirements that apply to CLGs under the Corporations Act. If your organisation incorporates as an incorporated association in Tasmania but is not a registered charity (or loses its charitable registration), its main regulator will be CAFT.



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

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

**The amount of money your group 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.

Groups 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 CAFT does for incorporated associations. Your group 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).

Incorporated associations that register as charities will remain subject to the reporting requirements and lodgement fees imposed by CAFT.

### 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 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 website](#).

### 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, CAFT.



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. 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 organisations 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 or 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 Australian Charities and Not-for-profit Commission Act 2012 (Cth) (ACNC Act).

## 2018/19 incorporation and ongoing fees

For fees for incorporated associations the Tasmanian Government [website](#) and the webpage [fees for incorporated associations](#).

For payments and fees for CLGs see the [ASIC website](#).

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

Type of fee	Tasmanian incorporated associations (from 1 July 2018)	Commonwealth company limited by guarantee (from 4 July 2018)	Type of fee
		<b>Note – these requirements do not apply to CLGs registered as charities</b>	
<b>Initial application for incorporation</b>	\$158	\$403  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 CAFT or ASIC to incorporate (as either an incorporated association or a CLG).
<b>Requirement for audited financial statement</b> <b>(approx. \$2,000 to \$20,000+ per year)</b>	All incorporated associations must have their accounts audited unless their annual revenue is less than \$250,000 or another exemption is approved by the Commissioner.  The association must have their accounts audited by:  a registered company auditor, or	'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	Incorporated associations that are charities must report both to CAFT and the ACNC (ACNC tiers are the same as for CLGs, although Deductible Gift Recipient (DGR) status is not relevant).  CLGs that are charities only report to the ACNC.



	<p>such other person as approved by the Commissioner having regard to the complexity of the financial affairs of the association.</p>	<p>so by members' direction or ASIC direction).</p> <p>The tier classifications are explained below in more detail.</p>	<p>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> <p>You can read more about charity reporting obligations in Not-for-profit Law's fact sheet <a href="#">Financial reporting for charities</a>.</p>
<p><b>Fee when lodging financial statement/annual fees</b></p>	<p>The fee will be:</p> <p>\$63.20 when lodged within 6 months after the end of the association's financial year.</p> <p>\$71.10 when lodged within 6-7 months after the end of the association's financial year.</p> <p>\$86.90 when lodged more than 7 months after the end of the association's financial year.</p>	<p>There is no fee to lodge financial statements with ASIC. However, annual review fees are payable as follows:</p> <p>\$1,224 (\$9,374 advance payment for 10 years); or</p> <p>\$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>	<p>There is no fee to lodge financial reporting statements with the ACNC.</p> <p>Incorporated associations that are registered as charities and categorized as medium or large need to lodge with both the Commissioner for Corporate Affairs (including a fee) and ACNC (no fee).</p> <p>Medium and large CLGs registered as charities only need to lodge financial reporting to ACNC (no fee).</p>
<p><b>Late fees when lodging annual statement</b></p>	<p>Late fees may apply (see above).</p>	<p>Late lodgement fees will apply if financial statements are not lodged after 4 months from the end of the relevant financial year.</p> <p>Late payment of the annual review will incur late fees as follows:</p> <p>\$79 if payment is received within 1 month after the due date</p> <p>\$329 if payment is received more than 1 month after the due date</p>	<p>The ACNC may charge late fees both to incorporated associations and CLGs that are registered as charities.</p>
<p><b>Lodge details of changes to information (eg. address, names of officers)</b></p>	<p>None.</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>



<b>Lodge changes to constitution or rules</b>	None.	None.	The ACNC does not charge to change details.
<b>Failure to lodge changes of details within required period (i.e. address, names of officers, change to rules or constitution)</b>	No fee payable.	Fees are as follows: \$79.00 first month late, and \$329.00 for more than a month	The ACNC may charge late fees.



**Caution**

If you choose to be a CLG or other body corporate (such as a RAB) and are not a registered charity, your organisation will be regulated by ASIC, a body that 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 that are structured as CLGs, has taken a more educative and ‘lighter touch’ approach to regulation, which may change in the future.



# **Issue 4: Annual reporting, audits and reviews**



## Issue 4: Annual reporting, audits and reviews

**Generally, the regime for incorporated associations under the AI Act is more straightforward than the regime for 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 group 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, CLGs 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 groups 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 DGR status) need to fully audit their accounts. Incorporated associations with an annual revenue of \$250,000 or more also need you to have an annual financial audit, unless exempt. Note that prior to amendments to the AI Act on 1 October 2016, all incorporated associations, regardless of size, were required to have their accounts audited. As a result, to take advantage of the \$250,000 threshold, incorporated associations may need to review their constitutions and, if required, change the constitution by special resolution if it contains a requirement for an annual audit for any year the association has revenue of less than \$250,000.

An independent audit may cost between \$2,000 and \$20,000+, depending on the size of your 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' with different auditing requirements. The table below briefly sets out the tiers and the corresponding requirements for financial reporting and under the Corporations Act.

	Definition of CLG category	Reporting and auditing requirements
<b>Tier 1 (known as 'small companies')</b>	CLGs with annual revenue less than \$250,000, and which 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).
<b>Tier 2 (known as 'medium companies')</b>	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. Members to be notified of annual reports (rather than automatic distribution)
<b>Tier 3 (known as 'large companies')</b>	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.



### 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. Note that for registered charities, in contrast to CLGs regulated by ASIC, being endorsed as a DGR will not trigger higher tier reporting requirements.



### Related Not-for-profit Law resources

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

## Tasmanian incorporated associations

Unless they are subject to an exemption (discussed below), all Tasmanian incorporated associations with an annual with revenue over the \$250,000 threshold must prepare an income and expenditure statement, supported by an auditor's report confirming the accuracy of the statement, and lodge this documentation with CAFT.



### Related resource

The form to apply for an exemption can be found at the [CAFT 'Forms and fees' page](#).

The accounts must be audited by either a person who is a registered company auditor within the meaning of the Corporations Act, or such other person as approved by CAFT, having regards to the complexity of the financial affairs of the association. The form to have an auditor approved may be found at the [CAFT 'Forms and fees' page](#).

Since 1 October 2016, incorporated associations with an annual revenue below \$250,000 must prepare and submit financial statements, however the annual financial audit requirement has been removed. These associations should review their constitution and either take advantage of the \$250,000 threshold and remove the annual audit requirement by changing the constitution by special resolution or elect to continue



to have audited statements or add the requirement into the constitution.



### Note for charities

The same tiers apply under the ACNC Act as under the Corporations Act and similar reporting requirements apply for charitable CLGs, however reports are submitted to the ACNC rather than to ASIC. Incorporated associations registered as charities will need to report to CAFT, 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 or committee of management believe it is good practice) even though it is not required by the Corporation Act (for small and medium companies) or the AI Act (for associations with an annual revenue below \$250,000) or the ACNC Act.



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

## 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
<b>Flexibility of rules or constitution</b>	<p>The Corporations Act also 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). There is greater flexibility in the contents of the constitution if your CLG is registered as a charity (and therefore reports to the ACNC).</p> <p>The AI Act is reasonably flexible in relation to an association's rules. However, incorporated associations are required to address certain matters in their constitutions. The association may either adopt the Model Rules as prescribed by the <i>Associations Incorporation (Model Rules) Regulations 2017</i>, or may adopt its own rules. In either case the adoption of the rules must be approved by a special resolution of the members (three-quarter majority of the members present at a meeting) and lodged with CAFT at the time of incorporation. Changes to an association's rules must also be submitted to CAFT and will not take effect until CAFT's approval has been obtained.</p>
<b>Directors (board member) and office holder duties</b>	<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 director's duties under the Corporations Act. However, the criminal penalty provisions and the duty to prevent insolvent trading under the Corporations Act still apply. In addition, directors of CLGs registered with the ACNC are still subject to directors' duties arising at common law and in equity as these have not been not 'turned off'.</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.</p> <p>For more information about the duties of board and committee members, see Not-for-profit Law's page on <a href="#">governance</a>.</p>
<b>Number of members</b>	<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>Tasmanian incorporated associations are not required to have a minimum number of members. It is possible for the sole member to also act as the public officer.</p>
<b>Speed of incorporation</b>	<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</p>



applying for a licence to omit the word 'limited' from the name of the organisation, it will take longer).

CAFT may take longer to approve an application for incorporation of an association, particularly where the organisation submits its own rules, rather than using the Model Rules contained in the Regulations.

### Rights of members

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 is 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).

S22A of the AI Act provides that a general meeting of an incorporated association may be called by not less than 10% of the members of the association entitled under the rules to vote at a general meeting.

There are no similar mandatory requirements for Tasmanian incorporated associations to allow for voting by proxy. 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.

See the '[Members' Rights](#)' fact sheet on the Not-for-profit Law website for more information.

### 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

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.

For an incorporated association, only the details of the Public Officers need to be provided to the Commissioner at CAFT.

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.

### Flexibility for amalgamation

The Corporations Act does not provide for amalgamation and therefore usually requires that either one or both amalgamating entities to wind up their existence (with the possibility of termination of employment etc.) and then incorporate a new company.

The AI Act makes provision for one Tasmanian incorporated association to amalgamate with another Tasmanian incorporated association, with all of the property of the amalgamating associations vesting in the association created by the amalgamation without the need for winding up. The amalgamation does not prejudice any right of any creditor of, or rights or any person having a claim against, any of the amalgamated associations, and any such right or claim may be enforced against the association created by the amalgamation.

For more information see the [Amalgamation and Mergers](#) page of the Not-for-profit Law website.

### 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**





# Conclusion

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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

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## Related Not-for-profit Law resources

▶ [Getting started](#)

This page sets out the things you need to consider when deciding whether to start a not-for-profit organisation, including links to helpful resources.

▶ [Before you start](#)

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

▶ [The incorporation decision](#)

This page gives guidance to not-for-profits deciding whether to formally incorporate or remain as an unincorporated group.

▶ [Choosing a legal structure](#)

This page lists the various types of not-for-profit legal structures, so you can work out the best structure for your group.

## Legislation

▶ [\*Associations Incorporation Act 1964 \(Tas\)\*](#)

▶ [\*Associations Incorporation \(Model Rules\) Regulations 2007 \(Tas\)\*](#)

▶ [\*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, which 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**

- ▶ [Enhancing not-for-profit annual and financial reporting \(2013\)](#)
- ▶ [A guide for charities reporting under the ACNC Act 2012 \(Cth\)](#)

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.

## **Office of Consumer Affairs and Fair Trading**

- ▶ [Incorporated associations](#)

This page within the CAFT website summarises the requirements for Tasmanian incorporated associations.

