

Incorporated association or company limited by guarantee? (WA)

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

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Introduction

Introduction

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 Western Australian 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 Western Australian 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 *Western Australian Associations Incorporation Act 2015 (WA)* (**Associations 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 not-for-profit groups in Western Australia.

Incorporated associations were originally designed to be low cost to register, and more simple to run than a CLG. Following changes to the laws for both incorporated associations and CLGs registered as charities with the Australian Charities and Not-for-profits Commission (**ACNC**), which are discussed in this guide, the arguments for choosing to incorporate as an association over a CLG are no longer as compelling.

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 the 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!



New laws for incorporated associations

The *Associations Incorporation Act 2015* (WA) replaced the former *Associations Incorporation Act 1987* (WA) on 1 July 2016.

All associations need to update their rules to comply with the requirements under the new Associations Act (set out in Schedule 1 of the new Associations Act) by 1 July 2019. Other requirements under the new Associations Act apply from 1 July 2016 to all associations, including changes in relation to:

- financial reporting
- governance
- privacy
- becoming incorporated; and
- membership of incorporated associations



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

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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 Western Australian incorporation association operate?

The law relating to incorporated associations is state-based, and each state and territory in Australia has its own laws. A group incorporated as an association under the Associations Act can operate anywhere in Western Australia. 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 Western Australian 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 Western Australian Incorporated associations to operate outside of Western Australia

If your group incorporates as a Western Australian incorporated association, but wants to operate (conduct more than one-off or occasional activities) outside Western Australia, there are two options available to enable it to do so legally. Both of these options may have costs involved 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, [Changing Legal Structure](#), available on the Not-for-profit Law website (Changing or ending your organisation).

Option A – register the group as a Registered Australian Body with ASIC

If you register as a Registered Australian Body (**RAB**) with ASIC, your organisation will be regulated by both the Australian Securities and Investments Commission (**ASIC**) (unless you are a registered charity in which case you will be regulated by the ACNC) and the Western Australian Department of Commerce – Consumer Protection Division (**Consumer Protection**).

Once registered as a RAB, your organisation must display its registered name and other information outside every office and place of business open to the public. You must also display your Australian Registered Body Number on all public documents and negotiable instruments.

For more information about applying to become an RAB see [ASIC's website](#).

Option B – set up separate incorporated associations in each state or territory you wish to operate in

This is sometimes known as a federated model or structure where each of the associations agree to form part of a federation governed by an overarching set of rules.



This structure may be appropriate for your group if there are distinct groups involved in each state and territory that address distinct state-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).

In addition, any Commonwealth tax concessions enjoyed by one 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 concessions and endorsements.



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!

You should seek legal advice before becoming a member organisation of a federated structure and also consider your organisation's long term goals and objectives.

Converting to a company limited by guarantee structure

Incorporated associations can 'convert' or 'transfer' their incorporation from an incorporated association to a CLG.

The Associations Act contains specific provisions allowing an incorporated association to transfer its incorporation to a CLG, which involves passing a special resolution, amending its rules or constitution, lodging an application with Consumer Protection and applying for incorporation as a CLG with ASIC.

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 CLG.

Although converting to a company limited by guarantee 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 or complex funding arrangements.



Tip

If the group is an Indigenous one, it could consider voluntarily transferring its registration to being under the *Commonwealth Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).



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](#)



**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 may impact your choice of legal structure.

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 and territory incorporated associations regimes. This therefore increased the initial and ongoing regulatory burden associated with the incorporated association structure.

Unlike in some other states and territories, these dual reporting requirements have not been 'switched off' in the Western Australia for incorporated associations that register as charities. As a result, incorporated associations who are also registered as charities must still report to Consumer Protection and the ACNC. For example, if an incorporated association amends its constitution or changes its name, it must notify Consumer Protection in the approved form and must also notify the ACNC. For some organisations, this additional compliance requirement may be a reason to establish themselves as a CLG instead.

Aside from this dual reporting issue, 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 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, because when a CLG becomes registered as a charity, a number of the Corporations Act requirements 'switch off' 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

The current landscape for charities means that for groups that intend to be registered charities, the CLG structure is often the most simple to administer and is an attractive structure choice. In addition, some funding bodies (including some government bodies) may prefer or require organisations to be established as a CLG in order to access grants and other forms of financial support.

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), it will be regulated by ASIC, and will be subject to ASIC's stricter regulatory approach, and the full suite of legal requirements for CLGs under the Corporations Act.

**Tip**

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



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

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

The cost of initial and ongoing fees may be a factor in determining whether an incorporated association or CLG is the best structure for your group.

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 Consumer Protection 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 are charities will continue to report to Consumer Protection (and pay the required fees) and to the ACNC.

Initial application fee

The initial application fee for incorporation as a CLG is higher than for an incorporated association (see the incorporation and ongoing fees table below). However, there are significantly lower fees for not-for-profit CLGs that meet the requirements of a 'special purpose company' 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 as a CLG if they:

- they are formed for charitable purposes and are registered under the Australian Charities and Not-for-profits Act (**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

Both ASIC and Consumer Protection can impose penalties and late fees for failure to lodge certain documents or notify of changes within the required time frame.

Consumer Protection does not impose late fees. However, penalties for failure to notify of certain changes to an incorporated association within the time frame specified in the Associations Act can attract penalties.



ASIC imposes penalties for late reporting and is systematic in its collection of late fees. If your group is late lodging documents, ASIC late fees can quickly accumulate.

CLGs that are registered as charities report to the ACNC and not to ASIC. The ACNC does not generally impose late fees or penalties on registered charities for failure to report on time. However, the ACNC may have cause to investigate your organisation if you fail to report information and changes on time and in some circumstances, may deregister your organisation as a charity.

A comparison of the main fees payable by each structure is set out **below**. Fees listed are for the 2018/2019 year and may increase each year.



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 Associations Act (for associations) or the *Australian Charities and Not-for-profit Commission Act 2012* (Cth)

2018/19 incorporation and ongoing fees

For fees for incorporated associations see the [Government of Western Australia website](#)

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	Western Australian incorporated associations	Commonwealth company limited by guarantee Note – these requirements do not apply to CLGs registered as charities	Notes for Charities
Initial application for incorporation	\$152.25 (using 'model' rules) \$189 (using own rules) *additional fee of \$67 if 'other' category is selected	\$488 from 1 July 2018. 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.
Requirement for audited financial statement	'Tier 3'* associations must have their accounts audited by an auditor.	'Tier 3' companies must have their accounts audited by a registered company auditor.	Incorporated associations must report both to Consumer Protection and the ACNC.
(approx. \$2,000 to \$20,000+ per year depending on accounting and auditor fees)	'Tier 2'* associations must have their accounts 'reviewed' by an auditor (lesser standard than full audit) 'Tier 1' associations not required to have reviewed accounts (unless required to do so by members' vote or Consumer Protection direction). *For Tier 2 and 3 associations, the application fee for approval of an auditor or reviewer is \$40.	'Tier 2' companies must have their accounts 'reviewed' by an auditor (lesser standard than full audit). 'Tier 1' companies not required to have audited accounts (unless required to do so by members' direction or ASIC direction)	CLGs which are charities only report to the ACNC. ACNC reporting requirements are based on whether the CLG or association is a small, medium or large registered charity. The thresholds for these categories correspond with Tier 1, Tier 2 and Tier 3 incorporated associations and CLGs. You can read more about charity reporting obligations in Not-for-



			profit Law's fact sheet Financial reporting for charities
Annual fee when lodging financial statement	None	None	<p>There is no fee to lodge financial reporting statements with the ACNC. Incorporated associations do not need to submit financial statements or reports to Consumer Protection unless directed to do so and will therefore only need to report to the ACNC. CLGs registered as charities only need to lodge financial reporting to ACNC.</p>
Late fees when lodging annual statement	N/A	<p>Late lodgement fees will apply if financial statements are not lodged within 4 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 from 1 July 2018 if payment is received within 1 month after the due date • \$329 from 1 July 2018 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>
Annual review fees	N/A	<p>Annual review fees are payable as follows:</p> <ul style="list-style-type: none"> • \$263 (\$1,977 advance payment for 10 years); or 53 (\$370 advance payment for 10 years) for 'special purpose companies' (companies formed for 'charitable purposes', have non-profit and non-distribution clauses in their constitution and certain rules relating to directors) 	N/A
Lodge details of changes to information (eg. addresses, names of officers)*	None (Change of name \$52.50 - \$65.65)	None (Change of name \$403)	<p>The ACNC does not charge to change details. CLGs registered as charities do not need to pay the ASIC change of name fee.</p>
Lodge changes to constitution/rules	\$39.40 - 65.65	None	<p>The ACNC does not charge to change details</p>



Failure to lodge changes of details within required period (ie. address, names of officers, change to rules/constitution)	\$47.25	\$78.00 if payment is received within 1 month after the due date. \$323.00 if payment is received more than 1 month after the due date.	The ACNC may change late fees.
Application to request additional time to hold Annual General Meeting	\$47.25	N/A	N/A
Application to wind up or cancel incorporation	None (if the association has no surplus property) \$78.75 (if the association has surplus property)	No application fee for winding up. \$40 to apply for voluntary deregistration.	A registered charity must notify the ACNC if it no longer exists. There is no fee.



Caution

If you choose to be a company and are not a registered charity, your organisation will be regulated by ASIC, a body that is systematic in imposing late fines and is 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. Consumer Protection, the regulator for associations can also impose late fees and penalties.



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

Issue 4: Annual reporting, audits and reviews

Generally, the regulatory regime for incorporated associations under the Associations Act is more straightforward than the regime for CLGs under the Corporations Act.

If you wish to incorporate as a CLG that is not a registered charity, your group will need ongoing help from a person who has a good understanding of running a company, or access to professional legal 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.

Depending on your organisation's annual revenue, you may be required to have your accounts independently audited or reviewed each year, regardless of whether you are a CLG or an incorporated association. Audit and review costs for incorporated associations and CLGs are similar.

Only larger CLGs and incorporated associations (those with annual revenue of or exceeding \$1 million) must have their accounts audited (see below). However, some organisations may still be required to conduct audits of their financial accounts as a result of other legislation which they are governed by, or as an obligation under a contractual arrangement, most commonly funding contracts. Your organisation may also choose to have its financial accounts audited as a matter of best practice.

An independent audit may cost between \$2,000 and \$20,000+, depending on the size of your organisation. Therefore the requirement for audited accounts needs to be considered carefully. It is important to appoint an auditor who has experience in dealing with your type of not-for-profit organisation.



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.



Tip

Many organisations may need to undertake audits for other reasons as well, including being required to do so under a funding agreement.

Reporting tiers for CLGs

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 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; no DGR status.	Not required to prepare financial report, director's 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 director's 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 revenue of between \$250,000.00 and \$1,000,000.00 (whether or not they are DGR).	<p>Must:</p> <ul style="list-style-type: none"> • prepare financial report and have the report 'reviewed'. This is not as comprehensive or expensive as a full audit (however CLGs can choose to have report 'audited' nonetheless); • prepare a director's report; and • give annual reports to any member who elects to receive them
Tier 3	Annual revenue of \$1 million or more, whether DGR or not.	<p>Must:</p> <ul style="list-style-type: none"> • prepare a financial report; • have accounts fully audited by a qualified company auditor; • prepare a director's report; and • 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 resource

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

Tiers for Western Australian incorporated associations

For Western Australian incorporated associations, there are also three categories or 'tiers' with different auditing requirements. The table below briefly sets out the tiers and corresponding requirements for financial reporting and auditing under the Associations Act.



Note for charities

The same tiers apply under the ACNC Act, and similar reporting requirements apply. Incorporated associations do not need to provide annual financial reports to Consumer Protection, but must provide reports to members. Financial reports must be provided to the ACNC.



	Definition of incorporated association category	Reporting and auditing requirements
Tier 1	Incorporated associations with annual revenue less than \$250,000.	No review or audit of financial statements required (unless majority of members vote for a review or audit at a general meeting or Consumer Protection directs association to undertake a review or audit).
Tier 2	Incorporated associations with annual revenue over \$250,000 but less than \$1 million.	Required to have financial statements 'reviewed' (unless the majority of members or Consumer Protection directs associations to undertake an audit).
Tier 3	Incorporated associations with annual revenue of \$1 million or more.	Required to have financial statements audited by auditor prior to submission to AGM (note the definition of auditor is broader for incorporated associations than for CLGs).



**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 impact 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
<p>Flexibility of rules or constitution</p>	<p>The Associations Act requires an association to address certain matters in its rules. Consumer Protection reviews the rules submitted by an association wishing to incorporate to ensure that all matters are addressed.</p> <p>Changes to the rules of an incorporated association (excluding changes to the name or objects of an association) take effect after the changes have been lodged with Consumer Protection. Changes to the name or objects of an association will take effect once approved by Consumer Protection.</p> <p>In contrast, the Corporations Act provides for much more flexibility in a company’s constitution, and ASIC is far less likely to reject a proposed constitution.</p> <p>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>Directors (board member) and officer holder duties</p>	<p>The Associations Act imposes similar duties and liabilities on committee members (also referred to as board members) and office holders of incorporated associations to directors and officers of CLGs.</p> <p>Civil penalties of up to \$10,000 can be imposed on board members of incorporated associations who fail to comply with their duties.</p> <p>Board members of incorporated associations also registered as charities must also comply with the ACNC governance standards.</p> <p>Directors of a CLG not registered as a charity who fail to comply with their duties can be guilty of a criminal offence with penalties of up to \$200,000 or imprisonment for up to 5 years as well as civil penalties of up to \$200,000.</p> <p>CLGs registered with the ACNC are required to comply with the ACNC Governance Standards instead of the individual directors being required to comply with directors’ duties under the Corporations Act. However, the criminal penalty provisions and the duty to prevent insolvent trading under the Corporations Act still apply to individual directors of CLGs registered with the ACNC. 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 ‘turned off’.</p> <p>Board members and directors of incorporated associations and CLGs who do not fulfil their duties can be removed as board members and directors and prevented from acting as a board member or director of another organisation.</p> <p>For more information about the duties of board and committee members, see Not-for-profit Law’s page on Governance and legal duties of office holders.</p>
<p>Number of members</p>	<p>Groups wanting to incorporate as a CLG only need one member. This may suit a not-for-profit organisation wanting to retain a higher degree of control (but remember, this</p>



	<p>type of company still needs 3 directors) or, where the organisation is to be a subsidiary of another organisation.</p> <p>In contrast, Western Australian incorporated associations must have a minimum of six members with full voting rights. In general, members will have voting rights and be able to call meetings and exercise some control in the organisation (for example, 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> <p>In contrast, Consumer Protection generally takes up to two months 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 Associations Incorporation Regulations 2016 (WA).</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>Members of Western Australian incorporated associations can also appoint proxies (if the association's rules provide for it) and members with at least 20% of votes that can be cast at a general meeting may call and hold a general meeting.</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. For example, laws that require organisations which provide housing services to the public and want to become a 'registered housing association' to be a CLG. There are also requirements for organisations wishing to provide aged care services to adopt a particular structure. Your organisation should seek advice about any laws that might apply to the field you are working in.</p> <p>In addition, funding bodies may require that your organisation have a particular legal structure.</p>
Availability of information about the organisation to the public	<p>In 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.</p> <p>For an incorporated association, details of the board members and office holders must be provided to Consumer Protection but are not made publicly available. The association must also keep a register of members which includes the name and contact method/address for each member. Again, this is not available to the public but must be available to members in certain circumstances on certain conditions.</p> <p>Certain details are available about registered charities (both incorporated associations and CLGs) 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 Associations Act provides for one incorporated association to amalgamate with another, with all of the assets, liabilities and staff automatically transferred across to the amalgamated association without the need for winding up or termination of employment.</p> <p>The Corporations Act does not have a similar provision for amalgamation and therefore the methods for implementing an amalgamation may be more complex and may vary depending on the particular circumstances.</p>



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' (i.e. conduct activities) in any part of Australia must register with ASIC under the 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

As highlighted in this guide, a number of factors will influence a group's decision about whether to incorporate as an incorporated association or a CLG.

Organisations should weigh up the various factors to determine which structure is the most appropriate for their circumstances having regard to their activities, resources and direction of the group.

It is important to remember that as a result of recent 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 before 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 group.

- ▶ [Governance](#)

This page provides information about how the organisation should be run, including information about directors' duties.

Relevant laws and regulations

- ▶ [*Associations Incorporation Act 2015 \(WA\)*](#)

- ▶ [*Associations Incorporation Regulations 2016 \(WA\)*](#)

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

- ▶ [Registering as a charity](#)

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

- ▶ [Starting a company](#)



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

▶ [Special purpose companies](#)

This page within 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.

Consumer Protection Western Australia

▶ [Running an incorporated association](#)

This Consumer Protection webpage summarises the key requirements that an incorporated association must comply with.

