

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 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: will the organisation be able to meet annual reporting requirements?
 - ▶ other factors for your organisation to consider when choosing between structures
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The aim of this guide is to help Western Australian not-for-profit groups decide whether an incorporated association (IA) or a company limited by guarantee (CLG) is a more suitable incorporated structure for them.

While most Western Australian not-for-profit groups choose between incorporating as an IA or as a CLG, these are not the only forms of incorporation available for not-for-profit groups.



Related Not-for-profit Law resources

For information on whether your group should incorporate and other legal structures available, see Not-for-Profit Law's resources on ['The incorporation decision'](#) and ['Choosing a legal structure'](#).



Note

This guide provides information on incorporating as an incorporated association or a company limited by guarantee in Western Australia. This information is intended as a guide only, and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before making a decision about what to do.

Please refer to the [full disclaimer](#) that applies to this guide.

Regulatory framework for IAs and CLGs

An IA 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 *Corporations Act 2001* (Cth) (**Corporations Act**). Both are suitable legal structures for not-for-profit groups in Western Australia.

IAs were originally designed to be low cost to register, and more simple to run than a CLG. Following changes to the laws for both IAs 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.



Note – whistle-blowers

Charities or not-for-profits structured as CLGs will need a whistle-blower policy if their annual consolidated revenue is \$1 million or more. The policy must be made available to officers and employees.

Charities with annual consolidated revenue of less than \$1million are not required to have a whistle-blower policy. However, from a governance perspective it may be prudent to have a policy for dealing with whistle-blower reports.



Note – registered charities

CLGs that have registered charity status (charity CLGs) are regulated by the Australian Charities and Not-for-profits Commission (**ACNC**). Once registered with the ACNC, some Corporations Act requirements will no longer apply; however, similar provisions under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**) will apply.

See the [Australian Securities and Investments Commission \(ASIC\) website](#) for a list of the Corporations Act sections that will no longer apply (and those that will) to charity CLGs.

CLGs that don't have registered charity status are regulated by ASIC, which imposes more stringent regulatory and reporting requirements. In contrast, the ACNC takes a more educative approach as the regulator and works with organisations to ensure compliance. Although, in the case of serious misconduct (for example, fraud) ASIC, ACNC and the Consumer Protection Division of the Department of Mines, Industry Regulation and Safety (**Consumer Protection**) are all going to be stringent!

IAs in Western Australia:

- with charity status are regulated by Consumer Protection and the ACNC, and
- without charity status are regulated only by Consumer Protection

Tax considerations

From a tax perspective, it's likely to be important that your group is endorsed as both a tax exempt charity and a Deductible Gift Recipient (**DGR**) if it qualifies. The type of legal structure your group adopts will not generally determine whether it qualifies for tax concessions or exemptions. The purposes of your group, the content of its constitution and the nature of its activities will be important to determine whether it qualifies for tax concessions and exemptions.

Your group may apply to the Australian Taxation Office (**ATO**) to be endorsed as a tax exempt charity. If successful, the group will be eligible for tax concessions and exemptions for income tax, fringe benefits tax and goods and services tax. At the same time, the group can also apply to be endorsed as a DGR.

Your group must first be registered with the ACNC before it can apply to the ATO for tax concessions and exemptions, and DGR status. While technically this is a two-stage process, as a practical matter, the applications to the ACNC and the ATO can be prepared together. Once the ACNC has considered the application, it will refer the application to the ATO.



Related Not-for-profit Law resource

For more information about tax concessions and exemptions, see the [tax resources on our website](#).

What next?

This guide addresses some key factors that groups should consider when deciding between incorporating as an IA or a CLG. Once you have read this guide and are familiar with your group's options, you should get legal advice from a professional with experience advising not-for-profit groups.

Spending some time (and, if necessary, money) getting professional advice is a worthwhile investment in the long-term viability of your group. Choosing the right legal structure can save your group considerable time, money and legal and administrative headaches down the track.



Note

We provide free legal advice to eligible organisations. Visit our website for our [eligibility requirements](#), and [make an enquiry online](#).



Issue 1

**Where will the organisation 'operate'
or 'carry out activities'?**

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 group plans to operate, both when it starts and in the future.

Where can each corporate structure conduct its business?

Where can a CLG conduct its business?

A CLG is incorporated under the Corporations Act and can operate anywhere in Australia.

Where can a Western Australian IA operate?

The law relating to IAs 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 can't 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 your group incorporates as an IA in Western Australian, but wants to operate in other states, to do this legally in those other states, you should consider:

- the options summarised below, or
- incorporating as a CLG instead

Options for Western Australian IAs 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:

- Option A – register the IA as a Registrable Australian Body (**RAB**), or
- Option B – set up separate IAs in each state or territory in which you want to operate

Both options involve costs and will increase your administration.

A third option is to convert the IA to a CLG (discussed below).



Related Not-for-profit Law resource

For more information on the processes described below, see our [changing structure fact sheet](#).



Option A – register the IA as a Registrable Australian Body with ASIC

If you register as a Registered Australian Body (**RAB**) with ASIC, your group 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 Consumer Protection.

Once registered as a RAB, your group 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.



Related resources

For more information about registering as a RAB, go to our [changing your organisation's structure](#) webpage on our website. See also the Australian Registrable Body page on the [ASIC website](#).

Option B – set up separate IAs 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 IA 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), and
- maintain its own tax concessions and endorsements – this is because any Commonwealth tax concessions enjoyed by one IA (for example, income tax exemption and Deductible Gift Recipient (**DGR**) endorsement) can't be transferred to or shared by any other association in another state within the same group



Caution

Incorporation in multiple states can be difficult to manage. You may end up having to comply with multiple state and territory laws and report to multiple regulators. This will be more administratively burdensome than Option A.

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 an IA to a CLG

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

The Associations Act contains specific provisions allowing an IA 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 IA to a CLG does not affect the identity of the group. Any contracts or agreements that the association had (including employment contracts) will continue to have effect after the association's transfer to a CLG.

**Tip**

If the group is an Indigenous organisation, it could transfer its registration to be registered under the *Commonwealth Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth). These corporations are regulated by the Office of the Registrar of Indigenous Corporations.

**Related Not-for-profit Law resource**

For more information, see our [changing legal structure webpage](#).

**Tip**

Converting to a CLG has some significant legal and administrative requirements which can be costly and time consuming. Before making this decision, we recommend you get legal advice about what conversion would involve for your organisation, especially if it has a large membership base.

Conducting business overseas

If your group wants to pursue its purposes by carrying on its business overseas, you will need to get legal advice about the requirements under the laws of the country in which you want to operate.

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 the Corporations Act. Many other countries will have similar requirements, even if your group is operating as a not-for-profit.

Generally, a CLG structure will be a more readily understood and recognised legal structure in other countries, compared with other structures such as an IA.



Issue 2

Will the organisation seek to become registered as a charity?



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 your choice about the best legal structure for your organisation.

Implications of charity status for each legal structure

Legal structure	Implications of charity status
CLG	<p>A Charity CLG's main regulator is the ACNC rather than ASIC (although applications for incorporation will still be made to ASIC, and applications for Commonwealth tax concessions are still decided by the ATO).</p> <p>Different and less complex laws apply to charity CLGs than to other CLGs. When a CLG is registered as a charity, most Corporations Act requirements 'switch off'. For example, the ACNC governance standards prescribe a more flexible framework around holding meetings, directors' duties, annual reporting and record keeping. The Corporations Act requirements for CLGs that are not charities are more complex and prescriptive.</p> <p>A charity CLG is no longer required to:</p> <ul style="list-style-type: none"> • lodge changes to its constitution with ASIC – instead it must provide this information to the ACNC • send a copy of its constitution to members who request a copy – it will be available for free via the ACNC online register • notify ASIC of a change to its address details – instead it must provide this information to the ACNC • notify ASIC of the appointment, resignation or retirement of directors, secretaries and alternate directors or submit personal details of directors and secretaries – instead it must provide this information to the ACNC, and • review their details – a charity CLG is not sent an annual statement each year for review, or • pay an annual review fee – however, if the last annual review date was before registration with the ACNC, the company must pay the annual review fee to ASIC <p>Generally speaking, for groups that intend to be registered charities, the CLG structure is often the simplest to administer and an attractive structure choice.</p>
IA	<p>From 30 June 2020, an IA registered as a charity with the ACNC, is only required to submit the Annual Information Statement (AIS) to the ACNC and does not need to provide copies of financial reports to Consumer Protection.</p> <p>Note – this change is not retrospective, so IAs are required to report to Consumer Protection and the ACNC for financial years ending before 30 June 2020.</p> <p>Note also the review and auditing requirements of Consumer Protection for charities:</p> <ul style="list-style-type: none"> • Small charities (those that earn less than \$250,00 in annual revenue) are no longer required to complete a review or audit of their financial report to Consumer Protection. • Medium charities (those that earn more than \$250,000, but less than \$1,000,000 in annual revenue) may choose to complete either a review or an audit of their financial report for Consumer Protection.



Legal structure	Implications of charity status
	<ul style="list-style-type: none"> Large charities (those that earn more than \$1,000,000 in annual revenue) are still required to have their financial reports audited. <p>The ACNC has approved a transition period for the 2020 and 2021 reporting periods to help charities adjust to the modified requirements. However, the dual reporting requirements continue to exist for charities that change their contact details, Principal Executive Officer and appointed auditors or reviewers.</p> <p>Aside from this dual reporting issue, the decision 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.</p> <p>See the ACNC website for information about IAs registered as charities that still have to report to both ACNC and Consumer Protection.</p>



Note

A RAB that is a registered charity is regulated by both ASIC and the ACNC – it applies to ASIC to become a RAB, but then reports to the ACNC where it would otherwise report to ASIC. For more information, see [FAQs: Registrable Australian Bodies and the ACNC on the ACNC website](#).



Tip

The ACNC and ASIC websites also have helpful resources, including:

- a template constitution for charitable CLGs – see the template at the [ACNC website](#)
- a table summarising when, and in relation to what matters. Charity CLGs should contact the ACNC or ASIC – see the table at the [ASIC website](#), and
- a table summarising the reporting obligations of companies and registered bodies also registered with the ACNC – see the table at the [ASIC website](#)

Obligations to the ACNC

Registered charities have ongoing obligations to the ACNC. They must:

- meet ACNC governance standards (more information on these is below)
- keep records that correctly document and explain their net wealth, performance and operations
- submit an Annual Information Statement (and, for medium and large sized charities, a financial report) every year
- maintain their eligibility to be registered by remaining not-for-profit, pursuing their charitable purpose and otherwise complying with the ACNC Act, and
- notify the ACNC of changes, including to charity details, and of any breach of the ACNC Act, including governance standards

The governance standards focus on the management of charities and deal with matters such as their processes, activities and relationships. There is some flexibility in how to comply with the governance standards, however your organisation must:

- show accountability to members and provide members with the chance to raise concerns about how the charity is governed
- follow Australian laws and not commit any serious offences or those that could lead to a fine of 60 penalty units or more (approximately \$13,320)



- take reasonable steps to make sure all responsible people in the organisation (such as the board or committee members) are not disqualified from managing a corporation under the Corporations Act or disqualified from being a responsible person of a registered charity by the ACNC Commissioner (if a person does not meet this standard, your organisation must remove that person from their position), and
- take reasonable steps to make sure responsible people understand and carry out the duties set out in the governance standards

In the absence of fraud or serious or persistent wrongdoing, the ACNC takes an educative regulatory approach. This means the ACNC uses a range of measures to help organisations meet 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). Unless your organisation is requested to do so, it is not required to submit evidence that it meets the governance standards to the ACNC.



Note

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 subject to both ASIC's stringent regulatory approach and the full suite of legal requirements for CLGs under the Corporations Act.



Issue 3

**Will the organisation be able to pay
initial and ongoing fees?**

Will the organisation be able to pay initial and ongoing fees?

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

In general, ASIC charges CLGs higher fees and penalties than Consumer Protection charges IAs. Your group will need to be realistic about the resources it has (or is going to have), and how organised 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).

Groups that are charities and incorporated as CLGs will largely report to the ACNC, not ASIC (although, as noted above, CLGs still incorporate with ASIC), and the ACNC does not charge fees for lodging reporting and notifications. However, the ACNC can charge penalties when charities don't lodge information in time.

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

An overview of the different types of fees payable by each structure is set out below, followed by a table comparing the fee amounts.

Initial application fee

The initial application fee for incorporation as a CLG is higher than for an IA (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 significantly lower than those for CLGs that don't.



Note for charities

A charity will meet the definition of 'special purpose company' and will be eligible to pay the reduced annual review fees if it:

- applies its income in promoting its charitable purposes
- has non-profit and non-distribution clauses in its constitution (prohibiting distributions to members and directors)
- has certain rules relating to directors, and
- meets other requirements under the *Corporations (Review Fees) Regulations 2003*



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 generally impose late fees. However, penalties for failure to notify of certain changes to an IA 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 organisation 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 is able to impose penalties for failure to report on time, however the ACNC does not generally impose late fees or penalties on registered charities for this. 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.



Tip

Remember that some organisations may be required to have audited accounts because of another requirement (for example, because it is in a funding agreement with the government, or because the members or committee of management believe it's 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)* (**ACNC Act**).



Note for charities

The ACNC will not charge lodging and notification fees. However, it may still charge penalties for late lodgement of documents. The size of the penalty will depend on the size of the charity. Charity CLGs no longer report financial information to ASIC, so the ASIC fees listed below do not apply.

A comparison of the main fees payable by each structure is set out **below**. Fees listed are accurate for IAs from 1 July 2019 (when the Western Australian rates were updated) and for CLGs from 1 July 2020 (when ASIC rates were updated).



Table of 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	\$160 (using 'model' rules) \$198 (using own rules) *additional fee of \$70.50 if 'other' category is selected	\$417 from 1 July 2020. 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 (cost approx. \$2,000 to \$20,000+ per year depending on accounting and auditor fees)	'Tier 3'* associations must have their accounts audited by an auditor. '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 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 not required to have audited accounts (unless required to do so by members' direction or ASIC direction)	Incorporated associations must report both to Consumer Protection and the ACNC. 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	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.
Late fees when lodging annual statement	N/A	Late lodgement fees will apply if financial statements are not lodged within four months of the end of the relevant financial year. Late payment of the annual review will incur late fees as follows:	The ACNC may charge late fees both to incorporated associations and CLGs that are registered as charities.



		<ul style="list-style-type: none"> • \$82 from 1 July 2020 if payment is received within 1 month after the due date • \$340 from 1 July 2020 if payment is received more than 1 month after the due date 	
Annual review fees	N/A	Annual review fees are payable as follows: <ul style="list-style-type: none"> • \$1,267 (\$9,707 advance payment for 10 years); or \$51 (\$379 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 \$55 - \$69)	None, except for change of name, for which a \$417 fee applies.	The ACNC does not charge to change details. CLGs registered as charities do not need to pay the ASIC change of name fee.
Lodge changes to constitution/rules	\$41.50 - \$69	None	The ACNC does not charge to change details
Failure to lodge changes of details within required period (ie. address, names of officers, change to rules/constitution)	\$49.50	\$82 if payment is received within 1 month after the due date. \$340 if payment is received more than 1 month after the due date.	The ACNC may charge late fees.
Application to request additional time to hold Annual General Meeting	\$49.50	N/A	N/A
Application to wind up or cancel incorporation	None (if the association has no surplus property) \$82.50 (if the association has surplus property)	No application fee for winding up. \$42 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 incorporate as a CLG and are not a registered charity, your organisation will be regulated by ASIC, a body that imposes late fines and is inflexible in 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 accumulate quickly and be crippling for small groups.

Consumer Protection, the regulator for associations can also impose late fees and penalties.



Issue 4

Will the organisation be able to meet annual reporting, audits and review requirements?

Will the organisation be able to meet annual reporting, audits and review requirements?

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 organisation 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 organisations who are or will be charities.



Related Not-for-profit Law resource

For more information about reporting to government for IAs, CLGs and charities, see our [Reporting to Government webpage](#).

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 IAs (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's important to appoint an auditor who has experience in dealing with your type of not-for-profit organisation.



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 sets out the tiers and the corresponding requirements for financial reporting and auditing under the Corporations Act for CLGs that are not registered as charities. See the [ASIC website](#) for further details.

	Definition of CLG category	Reporting and auditing requirements
Tier 1 'small'	CLGs with annual (consolidated) revenue less than \$250,000 and no Deductible Gift Recipient (DGR) status (during the relevant financial year)	The company is not required to prepare a financial report, director's report, notify members of annual reports 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 the votes can direct the CLG to prepare a financial statement or director's report and can require either a review or audit)
Tier 2 'medium'	CLGs with annual (consolidated) revenue between \$250,000 and \$1 million and no DGR status or CLGs with annual revenue less than \$1 million and DGR status	The company must: <ul style="list-style-type: none"> • prepare a financial report and have the report reviewed or audited. A review is not as comprehensive or expensive as a full audit. A review doesn't need to be done by a registered company auditor, but it must be done by a member of and holding a practicing certificate issued by either Chartered Accountants Australia and New Zealand, CPA Australia, or the Institute of Public Accountants • prepare a directors' report, and • give annual reports to any member who chooses to receive them
Tier 3 'large'	Annual (consolidated) revenue over \$1 million, whether DGR status or not	The company must: <ul style="list-style-type: none"> • prepare a financial report • have the financial report fully audited by a registered company auditor • prepare a directors' report, and • give annual reports to any member who chooses 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. In contrast to CLGs regulated by ASIC, being endorsed as a DGR will not trigger higher tier reporting requirements by the ACNC. The ACNC Act specifies that only medium and large charities need to provide financial reporting to the ACNC. The Annual Information Statement (an ACNC document), which all charities (other than Indigenous organisations registered and reporting to the Office of the Registrar of Indigenous Corporations) must provide the ACNC, includes basic financial questions. Some charities (including basic religious charities and non-government schools) only need to answer part of the Annual Information Statement.



Related Not-for-profit Law resource

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

Tiers for Western Australian IAs

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.

	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 organisation to consider

Other factors for your organisation to consider

The issues discussed above are four of the main factors for your group to consider when choosing its legal structure.

However, there are some other important factors that may impact your group's decision whether to incorporate as an IA or CLG. The table below lists some factors which may be relevant to your group's aims, activities or circumstances.

Feature	Brief description
Flexibility of rules or constitution	<p>IA: 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>CLG: 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). Changes to the constitution generally must be notified to ASIC within 14 days or late fees will apply. Flexibility is even greater if your CLG is registered as a charity (and therefore reports to the ACNC).</p>
Directors (board member) and officer holder duties	<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>Board members and directors of IAs 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 group.</p> <p>IA: Civil penalties of up to \$10,000 can be imposed on board members of IAs who fail to comply with their duties.</p> <p>Board members of IAs also registered as charities must also comply with the ACNC governance standards.</p> <p>CLG: 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 five 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>For more information about the duties of board and committee members, see our webpage on governance.</p>
Number of members	<p>IA: Western Australian IAs 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 group (for example, to remove committee of management members).</p> <p>CLG: In contrast, groups wanting to incorporate as a CLG only need one member. This may suit a not-for-profit group wanting to retain a higher degree of control (but remember, this type of company still needs three directors) or, where the group is to be a subsidiary of another group.</p>
Speed of incorporation	<p>IA: Consumer Protection generally takes up to two months to approve an application for incorporation of an association, particularly where the group submits its own rules, rather than using the 'model' rules contained in the Associations Act.</p> <p>GLG: 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 group, it will take longer).</p>
Rights of members	<p>IA: Members of Western Australian IAs 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>CLG: 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>See our 'Members' Rights' fact sheet for more information.</p>
Legislation requiring a particular form of incorporation	<p>In limited circumstances, there are laws that require groups that are undertaking specific activities to adopt a particular legal structure. For example, laws that require groups which provide housing services to the public and want to become a 'registered housing association' to be a CLG. There are also requirements for groups wishing to provide aged care services to adopt a particular structure.</p> <p>In addition, funding bodies may require that your group have a particular legal structure.</p> <p>Your group should get 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>IA: For an IA, 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 or 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>CLG: 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>Certain details are available about registered charities (both IAs and CLGs) on the ACNC Register (the register of charities maintained by the ACNC) – for example, governing rules, names of directors, annual statements</p>
Flexibility for amalgamation	<p>IA: The Associations Act provides for one incorporated association to amalgamate with another, with all of the assets, liabilities and staff automatically transferred across to</p>



the amalgamated association without the need for winding up or termination of employment.

CLG: 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.

For more information see our [Amalgamation and Mergers webpage](#).

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' (ie. 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 IA or a CLG. There is no quick and easy answer, but considering these factors will help you work out which structure best suits the activities, circumstances, direction and resources of your group.

Remember this analysis will change as laws are amended. Access our updates and alerts by [subscribing to the Not-for-profit Law Update](#).



Note

Remember, the main issues are:

- charity status, and
- where the organisation will conduct business in pursuit of its purposes

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 group, including links to helpful resources.

▶ [Before you start](#)

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

▶ [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 group 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.

▶ [Regulation of charities in Western Australia](#)

Update on regulation of charities in Western Australia from 30 June 2020.

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 groups 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.

▶ [Inc: A Guide for Incorporated Associations in Western Australia](#)

This Consumer Protection guide was developed to assist associations in managing their group effectively.

▶ [Associations Online](#)

Online platform created by Consumer Protection to allow associations incorporated in Western Australia manage their registration and obligations, without needing to print and post paper forms.

▶ [Associations fees, forms and online transactions](#)

Provides a list of all applicable fees and links to the relevant forms.

▶ [Associations Online](#)

Consumer Protection notice about the updated reporting requirements for incorporated associations from 30 June 2020.

