

Indigenous corporations

Legal information for community organisations

This fact sheet covers:

- ▶ what is an Indigenous corporation?
 - ▶ what legislation governs the setting up of an Indigenous corporation?
 - ▶ what are the advantages of incorporating as an Indigenous corporation?
 - ▶ are all Indigenous corporations not-for-profit? and
 - ▶ how do we set up a not-for-profit Indigenous corporation?
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An Indigenous corporation is a type of incorporated legal structure that may be suitable for some not-for-profit organisations.

This fact sheet provides information on setting up (incorporating) a group as an Indigenous corporation. 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.

What is an Indigenous corporation?

An Indigenous corporation is an incorporated legal structure only available for Aboriginal and Torres Strait Islander organisations (it is not available for non-Indigenous organisations). However, it may not necessarily be the most suitable legal structure for Indigenous organisations, and Indigenous organisations are free to choose another more suitable structure (like an incorporated association, company limited by guarantee, co-operative etc).

Like companies limited by guarantee, Indigenous corporations are incorporated under Commonwealth law and are able to operate anywhere in Australia. Members of an Indigenous corporation can choose to have limited liability.

What legislation governs the setting up of an Indigenous corporation?

As mentioned, the Indigenous corporation structure is made available under a Commonwealth law. The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (**the Act**) is the Act which regulates how Aboriginal and Torres Strait Islander organisations set up and run an Indigenous corporation.

Indigenous corporations were previously governed by the *Aboriginal Councils and Associations Act 1976* (Cth), however the Act replaced this legislation from 1 January 2007 and all existing Indigenous corporations are (automatically) regulated by the new Act.

The government office responsible for regulating Indigenous corporations is the Office of the Registrar of Indigenous Corporations (**ORIC**).

What are the advantages of incorporating as an Indigenous corporation?

Some of the advantages of incorporating as an Indigenous corporation (over other forms of incorporation) are:

- the rules/constitution for the company (known as the rule book) can take into account Indigenous customs and traditions
- registration is free (unlike for incorporated associations and companies limited by guarantee)
- sometimes (especially if it is small) a company may be exempted from producing annual reports
- Indigenous corporations deal with a specialist regulator (ORIC) rather than the Australian Securities and Investments Commission (**ASIC**)
- ORIC have a broader role than pure regulation (enforcement) – they can provide more specialist support, for example, face-to-face training in remote areas, a dispute resolution service, telephone advice etc., and
- Indigenous corporations can access free legal advice on a variety of legal issues through the 'LawHelp' service operated by ORIC.

Are all Indigenous corporations not-for-profit?

No. An Indigenous corporation can be structured so that the profits are put back into the corporation or distributed to members. Only Indigenous corporations that are structured so that the profits are put back into the corporation are suitable for not-for-profit groups (for more information about the term 'not-for-profit', see our page ['Before you start'](#)).

How do we set up a not-for-profit Indigenous corporation?

The Act sets out a number of basic requirements for registration as an Indigenous corporation which include:

- an Indigenous corporation must have at least 5 members (unless a request is made for an exemption on one of the grounds set out in the Act)
- at least 51% of members must be 'Aboriginal and Torres Strait Islander persons' (as defined in the Act) who are over 15 years of age
- having a Constitution (which complies with the Act) to govern the activities of the Indigenous corporation, and
- having as part of its name the words 'Aboriginal corporation', 'Torres Strait Islander corporation', 'Aboriginal and Torres Strait Islander corporation', 'Torres Strait and Islander corporation' or 'Indigenous corporation'.

ORIC has developed a step-by-step guide to setting up an Indigenous corporation for organisations that meet the criteria. See the Resources section below for relevant links.

To be considered a not-for-profit organisation, you should make sure that your organisation's rule book includes rules that prohibit the distribution of profit or assets to members or board members, either while the corporation is operating or when it ends/winds up.

FURTHER READING

For more information read the fact sheet 'What does not-for-profit mean?' on the ['Before you start' page](#) of the Information Hub.



Resources

Related Not-for-profit Law Resources

▶ [Getting Started](#)

Not-for-profit Law's Getting Started page on the Information Hub has information on incorporating and choosing an appropriate legal structure, and the meaning of 'not-for-profit'.

Office of the Registrar of Indigenous Corporations (ORIC)

▶ [ORIC Homepage](#)

This link is the landing page for the website of ORIC, the government body responsible for regulating indigenous corporations.

▶ [ORIC - Steps to register](#)

This page provides information on the steps when starting an Indigenous corporations.

▶ LawHelp www.oric.gov.au/free-services-through-oric/lawhelp

This is a link to information about the LawHelp service accessible by Indigenous corporations.

Reconciliation Australia

▶ [Reconciliation Australia - Indigenous Governance Toolkit](#)

This is a link to a toolkit which provides guidance and information about governance for Indigenous corporations.

Australian Charities and Not-for-Profit Commission

▶ [ACNC Homepage](#)

The ACNC is the government agency responsible for the regulation of charities

Legislation

▶ [Corporations \(Aboriginal and Torres Strait Islander\) Act 2006 \(Cth\)](#)

This is a link to the legislation that regulates Indigenous corporations in Australia.

▶ [Corporations \(Aboriginal and Torres Strait Islander\) Regulations 2007 \(Cth\)](#)

This is a link to the Regulations which set out the details and applicable fees for indigenous corporations in Australia.

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

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