

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?
 - ▶ 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.

What is an Indigenous corporation?

An Indigenous corporation is an incorporated legal structure only available for Aboriginal and Torres Strait Islander organisations. It's not available for non-Indigenous organisations.

However, it may not necessarily be the most suitable legal structure for your organisation and Indigenous organisations are free to choose another more suitable structure (like an incorporated association, company limited by guarantee or co-operative).

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?

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (**the Act**) 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). 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**). The Act is being reviewed by the [National Indigenous Australians Agency \(NIAA\)](#).



What are the advantages of incorporating as an Indigenous corporation?

Advantages of incorporating as an Indigenous corporation (over other forms of incorporation) include:

- the rules or constitution for the company (known as the rule book) can take into account Aboriginal or Torres Strait Islander customs and traditions
- registration is free (unlike for incorporated associations and companies limited by guarantee)
- sometimes (especially if it's small) ORIC may be exempt an Indigenous corporation from producing annual reports
- Indigenous corporations deal with a specialist regulator (ORIC) rather than the Australian Securities and Investments Commission (**ASIC**)
- ORIC can provide more specialist support (for example, face-to-face training in remote areas, a dispute resolution service, telephone advice), and
- Indigenous corporations can access free legal advice on a variety of legal issues through the ['LawHelp' service](#) operated by ORIC

Indigenous corporations can also meet their governance responsibilities more flexibly in unexpected circumstances. For example, the COVID-19 pandemic has restricted many organisations' ability to meet and make decisions. Under the Act, ORIC can approve ['special rules'](#) permitting a corporation to meet virtually, postpone or cancel meetings or pass resolutions without meeting.

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:

- the Indigenous corporation must have at least five members (unless a request is made for an exemption on one of the grounds set out in the Act)
- the majority 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.

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



Not-for-profit Law resource

For more information read Not-for-profit Law's fact sheet ['What does not-for-profit mean?'](#).

Resources

Not-for-profit Law resources

- ▶ [Getting started](#)

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

Other related resources

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](#)

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.