

Which incorporated legal structure should we choose?

Legal information for Queensland community organisations

This fact sheet covers:

- ▶ an overview of four common legal structures that can be used to incorporate a not-for-profit organisation
 - ▶ some options for changing between legal structures, and
 - ▶ international recognition of different legal structures
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This fact sheet provides general information about the incorporated legal structures available to Queensland community organisations.

What incorporated structures are available for not-for-profits in Queensland?

There are four common structures that can be used to incorporate a not-for-profit organisation in Queensland:

- an incorporated association
- a company limited by guarantee (**CLG**)
- a non-trading (or non-distributing) co-operative, and
- an indigenous corporation

These are not the only structures available for not-for-profits, for example, there are also charitable trusts, trade unions and co-operatives. This fact sheet does not cover these structures, but for more information on charitable trusts, go to Not-for-profit Law's fact sheet, [Fundraising Foundations and Charitable Trusts](#).

Key regulators referred to in this fact sheet are:

- [Office of Fair Trading \(Qld\) \(OFT\)](#)
- [Australian Securities and Investment Commission \(ASIC\)](#)
- [Australian Charities and Not-for-profits Commission \(ACNC\)](#), and
- [Office of the Registrar of Indigenous Corporations \(ORIC\)](#)



Not-for-profit Law resource

For information on the meaning of not-for-profit, read our fact sheet [What does not-for-profit mean?](#)

Quick comparison

Structure	Recommended for ...	Not suitable for ...
Incorporated Association	<ul style="list-style-type: none"> Locally (Queensland) focused not-for-profit community groups, Groups with limited capacity to meet the more extensive reporting obligations (and costs) of some other structures 	<ul style="list-style-type: none"> Groups with less than seven members 'For profit' businesses Groups from interstate or operating across many states and territories in addition to Queensland
Company Limited by Guarantee (CLG)	<ul style="list-style-type: none"> Organisations that want to operate nationally or in more than one state or territory Larger not-for-profit organisations Wholly owned subsidiaries 	<ul style="list-style-type: none"> Non-ACNC registered groups without the resources to comply with ASIC's more extensive and costly operational and reporting
Co-operative	<ul style="list-style-type: none"> Groups serving their members where each member is willing to share in the investment and operational risks (eg. a member owned art co-op, ski lodge or a childcare group providing community services to its members) Groups that wish to follow the co-operative principles 	<ul style="list-style-type: none"> Groups that: <ul style="list-style-type: none"> don't want to function under co-operative principles want different classes of members or different voting rights want to benefit a wider range of people than the members
Indigenous Corporation	<ul style="list-style-type: none"> Aboriginal and Torres Strait Islander groups. The 'Rule Book' can accommodate Indigenous customs and traditions Must be used by those holding or managing native title under relevant legislation 	<ul style="list-style-type: none"> Non-Aboriginal and Torres Strait Islander groups

Now we look at each of these structures in a bit more detail.



Incorporated Associations

Feature	Brief description
Relevant laws	<ul style="list-style-type: none"> • <i>Associations Incorporation Act 1981 (Qld)</i> • <i>Associations Incorporation Regulations 1999 (Qld)</i>
Where can an IA operate?	A group incorporated under the <i>Associations Incorporation Act 1981 (Qld)</i> can operate in Queensland. Any Queensland association that conducts business outside Queensland must also register with ASIC as a Registered Australian Body under the <i>Corporations Act 2001 (Cth)</i> or incorporate separately in each relevant state.
Government regulator	<p>The Queensland Office of Fair Trading. If you are a Registered Australian Body you must also report to ASIC.</p> <p>If you are registered as a charity, you will be registered with the ACNC, and must report to the ACNC. This means incorporated associations that are charities will report to at least two regulators.</p>
Name requirements	An incorporated association must have the word 'Incorporated' or 'Inc.' at the end of its name.
How common?	In Queensland, in 2019, there were over 21,500 incorporated associations.
Description	<p>The incorporated association legal structure provides a simple and inexpensive means of incorporating not-for-profit groups and representing important facets of our community. All States and Territories have their own, slightly different, laws to set up incorporated associations, and most (including Queensland) have a set of model rules that can be used by an incorporated association as its own internal rules.</p> <p>An incorporated association is a legally separate body that has most of the same powers, benefits and responsibilities as a person. There are similarities with the laws for a company, eg. the legal duties of the members of the governing body of an incorporated association are virtually the same as those of company directors.</p>
Suitable for	For most locally focused not-for-profit community and industry groups, sporting clubs, social or hobby-based activities and cause-related groups wanting to operate in Queensland, an Incorporated Association is an appropriate structure. It can be less complex to set up than a CLG.
Not suitable for	This structure is not suitable for groups with less than seven members (as having this is a minimum requirement) or for a parent organisation that wants to set up a wholly owned subsidiary (ie. with the parent organisation as the sole member). Businesses that aim to make a profit also can't be incorporated associations. Incorporated associations wishing to operate outside Queensland will need to register as a Registered Australian Body with ASIC or incorporate in each other relevant state or territory, so a different structure such as a CLG may be more suitable for them.



Companies limited by guarantee (CLG)

Feature	Brief description
Relevant laws	<i>Corporations Act 2001</i> (Cth) <i>Corporations Regulations</i> (various)
Where can a CLG operate?	A CLG can operate (that is, carry on activities) anywhere in Australia.
Government regulator	ASIC is the independent Commonwealth government body that regulates corporations, including CLGs. However, CLGs that are registered charities are regulated by the ACNC and generally report to the ACNC, not ASIC. They only have to report to ASIC in some limited situations (eg. if they change their name). This is because registered charity CLGs are exempt from some of the obligations applying to public companies under the <i>Corporations Act 2001</i> (Cth).
Name requirements	Must use the word 'Limited' or 'Ltd' after its name (although charities that meet certain requirements can apply for an exemption from this requirement).
How common?	CLGs are a commonly used structure. There are well over 15,000 CLGs in Australia.
Description	Although we often think of a 'company' as being a business, a CLG is a special type of company structure most commonly used for not-for-profit or charitable groups all across Australia. Just like a business company, it has 'directors' and 'members' (analogous to 'shareholders'). The liability of the company's members is limited to the amount the members undertake to contribute to the property of the company if it is wound up (usually a nominal amount such as \$1). Some of the provisions of the <i>Corporations Act</i> (eg. directors' duties and penalties) that apply to 'for-profit' companies also apply to CLGs.
Most commonly used for	Not-for-profits wanting to operate across Australia, or in multiple states, often consider becoming a CLG. Larger not-for-profits, including those that only operate in one state, also often use this structure. It is a common structure for registered housing and aged care providers because of their size and complexity. A CLG structure is also suitable for a wholly owned subsidiary organisation, as it can be set up with just one member (but does need to have three directors and a secretary).
Comments	CLGs can be more costly to establish and operate than incorporated associations, as they are generally required to be incorporated and run as a public company, including being required to hold an annual general meeting once every calendar year and (for CLGs over a certain size) to have their financial accounts independently audited. These requirements do not apply to CLGs registered as charities, which instead have to comply with the ACNC's Governance Standards. As a general statement, the penalties for non-compliance with reporting requirements and directors duties may be higher for CLGs than for incorporated associations and may be more strictly enforced (again, this is different for CLGs registered as charities, which fall under the ACNC regime).



Co-operatives

Feature	Brief description
Relevant laws	<p><i>Cooperatives National Law Act 2020</i> (Qld)</p> <p><i>Cooperatives National Law Regulation 2020</i> (Qld)</p> <p>Note: The above legislation, which was adopted on 1 June 2020, implements the Co-operatives National Law (CNL) in Queensland and brings cooperatives law in Queensland in line with all other Australian states and territories. It replaces the previous Queensland cooperatives legislation, the <i>Cooperatives Act 1997</i> (Qld) and the <i>Cooperatives Regulation 1997</i> (Qld). The information provided in this table reflects the new laws, which are due to commence on 1 December 2020.</p>
Where can a co-operative operate?	A group incorporated under the CNL (or under the old <i>Cooperatives Act 1997</i> (Qld), which will be taken to be registered under the CNL once the new laws come into force) can operate (that is, carry on its activities) in Queensland. However, co-operatives can register to be (concurrently) recognised so that they can operate in other States and Territories.
Government regulator	The Queensland Office of Fair Trading. Co-operatives that are registered charities also need to report to the ACNC.
Name requirements	Must include the word 'Co-operative' or 'Co-op' in its name and the word 'Limited' or 'Ltd' at the end of its name.
How common?	There are approximately 177 co-operatives in Queensland, with over 70 being distributing co-operatives in the agricultural, fishing, retail, transport, water and wholesale trade industries and more than 100 non distributing co-operatives in the accommodation and hospitality, arts and recreation, education, training, health care, housing and social services industries. Most co-operatives have been established for a long time and it is uncommon to start a new co-operative, although in recent years there has been a movement towards using non-distributing co-operatives for social enterprise and community buy-outs (eg. Hepburn Wind , Australia's first community-owned wind farm).
Description	<p>A co-operative is an organisation that is concerned with providing for the needs of its members. The co-operative structure is based on certain co-operative principles set out in the CNL. These are voluntary and open membership, democratic member control, member economy participation, autonomy and independence, education training and information, cooperation among co-operatives and concern for the community.</p> <p>There are both distributing and non-distributing co-operative structures (known as trading and non-trading co-operatives prior to Queensland's adoption of the CNL). Only a co-operative that has rules to prevent surpluses or profits from being distributed to members is suitable as a not-for-profit structure.</p>
Suitable for	Co-operatives are generally run by, and set up for, the mutual benefit of members (for example, a community childcare co-operative). The members share the investment and operational risks, all the benefits and any losses, and they have equal voting rights. A non-distributing co-operative can be a suitable not-for-profit structure for providing community services to members (such as employee-member or client-member health services co-operatives), and in some cases can provide services to others on a contractual basis. At least five proposed members are required to form a co-operative, with each member having one vote each.
Not suitable for	A non-distributing co-operative structure is not suitable for organisations looking to make a profit, hoping to have different types or classes of members, or hoping to benefit a wider range of people than the organisation's membership base (eg. most charities, as charities usually provide benefit to a wider group of people than their own members).



Co-operatives are also not suitable for groups that don't want to function under the co-operative principles or that do not have resources to manage active membership requirements.

Indigenous corporations

Feature	Brief description
Relevant laws	<p><i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth)</p> <p><i>Corporations (Aboriginal and Torres Strait Islander) Regulation 2017</i> (Cth)</p> <p><i>Corporations (Aboriginal and Torres Strait Islander) Determination 1/2014</i></p>
Where can an indigenous corporation operate?	Can operate (carry on activities) anywhere in Australia.
Government regulator	Office of the Registrar of Indigenous Corporations (ORIC).
Name requirements	Must have the words 'Aboriginal Corporation', 'Torres Strait Islander Corporation' (or a number of allowable combinations) in its name.
Number	In 2018 there were over 3,000 indigenous corporations across Australia.
Description	<p>The structure of an Indigenous corporation is somewhat similar to a company limited by guarantee, in that it is an incorporated, separate legal entity, which can offer its members the benefit of limited liability.</p> <p>Indigenous corporations can, but do not have to be, 'not-for-profit'. Indigenous corporations that want to be not-for-profit must have a 'rule book', which prevents surpluses or profits from being distributed to members. An Indigenous corporation's rulebook can accommodate Aboriginal or Torres Strait Islander customs and traditions.</p> <p>Only Aboriginal and Torres Strait Islander organisations can incorporate using this structure and registered corporations can access ORIC's advice and support services.</p>
Most suitable (or required) for	The Indigenous corporation structure is designed to meet the needs of Aboriginal and Torres Strait Islander groups and can accommodate indigenous customs and traditions. Corporations holding or managing native title under the <i>Native Title Act 1993</i> and the <i>Native Title (Prescribed Bodies Corporate) Regulations 1999</i> must incorporate as this structure.
Not suitable for	Non-Aboriginal and Torres Strait Islander groups, or Aboriginal or Torres Strait Islander groups that would prefer to be regulated by a State regulator, ACNC or ASIC (for example, Indigenous organisations might choose to form a co-operative). For commercial activities to be undertaken for the benefit of the Indigenous people, particularly if holding Native Title rights, it could be more preferable to use the Prescribed Body Corporate structure (a corporation that is set up to manage or hold native title).



Incorporated association or company limited by guarantee (CLG)

The tables above outline the key features of the four structures covered in this fact sheet. Most groups in Queensland choose between incorporating as an incorporated association or a CLG. For a more detailed comparison of these two structures, go to the Not-for-profit Law Guide, 'Incorporated association or company limited by guarantee?' on the [Legal Structure page](#).

Changing between legal structures

It is usually possible for your group to change its legal structure, but there can be legal and administrative costs involved, and making the change can be time consuming. It is a good idea to think about your group's future needs when deciding which legal structure to incorporate in the first place to avoid having to change your structure down the track.

Where organisations do need to change structures, some common transitions are:

- 'converting' or 'migrating' from an incorporated association into a CLG. This is possible with member approval if other requirements for a CLG are met (for more information, go to Not-for-profit Law's [Changing Legal Structure page](#)), or
- if the group is an Indigenous one, transferring its registration as an Incorporated Association or a CLG to an indigenous corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act*

Overseas recognition

If your group wants to operate overseas, you will need to seek legal advice about what the laws of the other relevant countries require. Using Australia as an example, any overseas (foreign) company that wants to 'carry on business' (conduct activities) in any part of Australia must register with ASIC under the *Corporations Act 2001* (Cth).

In general, a CLG structure may be a more internationally recognised structure than an incorporated association. Co-operatives may also be able to operate overseas (depending on the particular country) because of internationally recognised co-operative principles

OK, so what next?

Having read this fact sheet, you might already have an idea of which structure would work well for your group.

Most Queensland not-for-profit groups wanting to incorporate choose between becoming an incorporated association or a CLG. What is best for your group will depend on your particular circumstances and the future plans of your group.

Co-operatives and Indigenous corporations are quite specialised. If your group would like to set up as one of these legal structures, we have provided links to websites with further information about these in the Resources section below.



Resources

Not-for-profit Law resources

- ▶ [Getting started](#)

This page of the Not-for-profit Law website contains links to resources and information produced to assist groups in their initial stages.

- ▶ [The incorporation decision](#)

Resources on deciding which is the best legal structure for your organisation.

- ▶ [Setting up your organisation](#)

Resources on how to set up your organisation.

Legislation

- ▶ [*Associations Incorporation Act 1981*](#)

- ▶ [*Associations Incorporation Regulations 1999*](#)

- ▶ [*Corporations Act 2001 \(Cth\)*](#)

- ▶ [*Cooperatives Act 1997 \(Qld\)*](#)

- ▶ [*Cooperatives National Law Act 2020 \(Qld\)*](#)

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

Office of Fair Trading (OFT)

- ▶ [Set up an incorporated association](#)

This page of the OFT website contains information on Queensland incorporated associations.

- ▶ [Co-operatives](#)

This page of the OFT website contains information on co-operatives.



Australian Charities and Not-for-profit Commission

- ▶ [Who can register with the ACNC \(as a charity\)](#)
- ▶ [Ongoing obligations for registered charities](#)

Office of the Registrar of Indigenous Corporations

- ▶ [Registration options](#)

Other Resources

- ▶ [Get Mutual Website](#)
Offers information, a constitution builder and other tools for co-operatives