

Co-operatives

Legal information for Australian community organisations

This fact sheet covers:

- ▶ what is a co-operative?
 - ▶ what laws regulate co-operatives?
 - ▶ are all types of co-operatives suitable for not-for-profit groups?
 - ▶ how do you set up a co-operative?
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Disclaimer

This fact sheet provides information on setting up (incorporating) a group as a co-operative in 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 deciding what to do.

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

What is a co-operative?

A co-operative is an organisation that has formed to benefit its own members (rather than the broader community) through its activities.

The purpose of a co-operative is to deliver its mission to, and serve the interests of, its members, rather than maximising return to shareholders. For example, its purpose may be to provide particular goods or services to its own members, or to pursue community-based objectives that will benefit all its members equally.

Co-operatives carry on businesses in all sectors but are commonly used by trading and agricultural groups, including in the dairy, rice and fishing industries.



A case study

In 1993, a group of growers in Western Australia formed the [Sweeter Banana Co-operative](#).

The co-operative was formed in response to competition from larger tropical bananas being brought into Western Australia which consumers bought in preference to the smaller Carnarvon Sweeter Banana. The co-operative's purpose was to create a recognisable brand so that Perth consumers could easily identify and purchase the Carnarvon Sweeter Banana.

The Sweeter Banana Co-operative banded together and used the distinctive features of the Carnarvon Sweeter Banana as its selling point. The banana is small enough to fit into a child's lunchbox and has a sweet and creamy taste.

The co-operative is now owned and operated by 18 family-run farms who pack, market and grow bananas in Carnarvon and distribute them across the state, where they have a loyal following.

The Business Manager, Doriana Mangili, said:

Farming can be quite a lonely business; you're generally stuck on your own farm. You don't have colleagues, work colleagues like people do in offices. So, the co-op gives everybody the opportunity to get together and talk to someone else about the common issues that you have in your business. Whether it's water, whether it's a pest or whether it's the weather or whatever it is. It gives you that sense of community within the community.

For more information, watch [Co-operative Farming's interview with Ms Mangili](#).

Do all co-operatives have to be incorporated?

A co-operative is a type of incorporated legal structure that may be suitable for some not-for-profit organisations.

Your organisation may choose to incorporate as a co-operative or remain unincorporated (such an organisation is generally referred to as an 'unincorporated association').



More information

For more information, see our webpages on:

- [the meaning of incorporation and whether you should incorporate](#), and
- [choosing a legal structure](#)

A co-operative incorporated under the Co-operatives National Law (**CNL**) obtains a **separate legal personality**, much like a company or an incorporated association. This means an incorporated co-operative can sue or be sued, enter into contracts or deal with property in its own name. An incorporated co-operative will also outlive its members (provided it always has a minimum of five members).

An unincorporated association doesn't have a separate legal personality and is merely a collective of individuals.

Decision-making and control

A co-operative is owned and controlled by its members.

There must be a minimum of five members, with all members having equal voting rights, regardless of shareholding. All members must comply with the active membership requirements or their membership will be cancelled.

A co-operative is governed by a board of elected directors. Directors and other officers, including the secretary, owe legal duties to the co-operative and are also subject to standards of care and diligence, honesty, and must not make improper use of information.

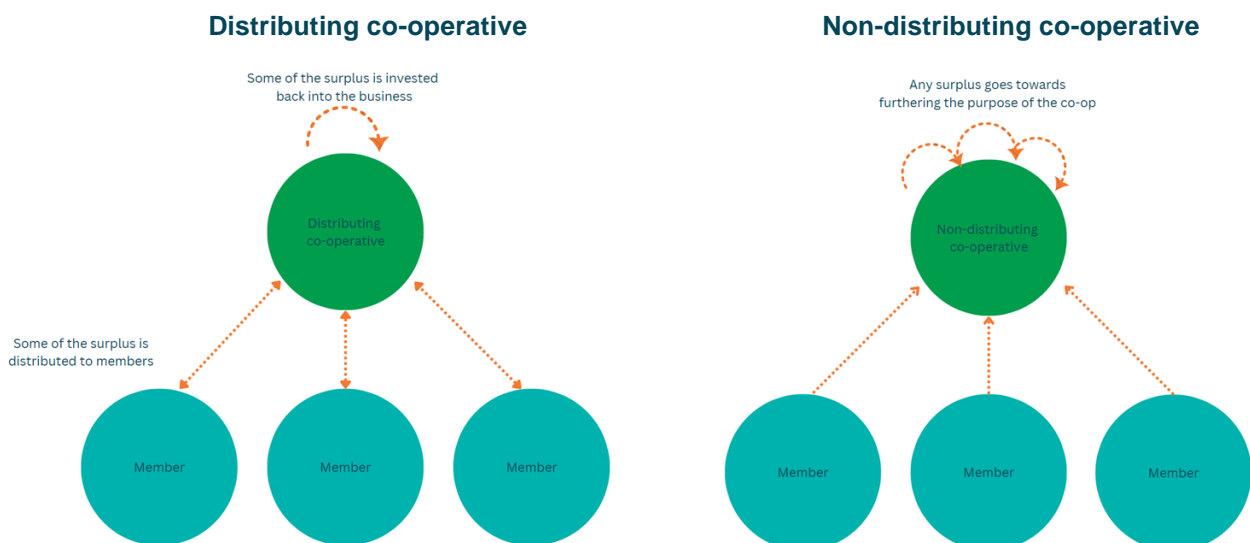
All co-operatives must comply with statutory obligations, including:

- preparation of annual audited accounts and reports
- keeping minutes of board meetings
- notification of changes in directors and officers
- maintaining registers of members, directors, shares, loans, securities, debentures, deposits, capital units, and fixed assets

Types of co-operatives

Co-operatives either:

- distribute profits back to members (**distributing co-operatives**), or
- reinvest profits into the co-operative itself (**non-distributing co-operatives**)



A non-distributing co-operative is generally more appropriate for a community organisation as they are primarily controlled and operated by people who wish to use their facilities or provide community services or benefits, rather than focusing on commercial returns or investments.

The information in this fact sheet is most relevant to non-distributing co-operatives.

What laws regulate co-operatives?

As of 1 December 2020, in every state and territory, co-operatives are governed by the Co-operatives National Law (CNL). Each state and territory has its own regulations under the CNL.



When did the CNL come into force?

The CNL came into force on the following dates:

- 3 March 2014 in New South Wales and Victoria
- 22 May 2015 in South Australia
- 1 July 2015 in the Northern Territory
- 1 September 2015 in Tasmania
- 1 January 2017 in Western Australia
- 1 May 2017 in the Australian Capital Territory
- 1 December 2020 in Queensland

Pre-existing co-operatives automatically had their registration transferred to the CNL and could continue using their existing rules. However, the CNL prevails to the extent of any inconsistencies in the existing rules, so it's a good idea to change the rules (to the extent that there are any inconsistencies) to avoid confusion.

What are the key features under the CNL?

- A **single registration system** that standardises financial reporting and allows co-operatives to operate across multiple states and territories
- A **simplified administrative and reporting framework**, based on whether a co-operative is 'small' or 'large'
- **Governance requirements** which resemble those of incorporated entities (such as companies)
- **Seven fundamental principles** which apply to all co-operatives –

Voluntary and open membership

Membership must be open to all persons able to use their services and willing to accept the responsibilities of membership

Democratic member control

The co-operative must be a democratic organisation controlled by its members, who actively participate in setting policies and making decisions. Elected representatives are accountable to the membership. Members have equal voting rights

Member economic participation

Members contribute equitably to, and democratically control, the co-operative's capital

Autonomy and independence

The co-operative is an autonomous, self-help organisation controlled by its members

Education, training and information

The co-operative:

- provides education and training for members, elected representatives, managers and employees so they can contribute effectively to the development of the co-operative, and
- informs the general public of the nature and benefits of co-operation

**Co-operation among co-operatives**

Co-operatives serve members most effectively and strengthen the co-operative moment by working together through local, national, regional and international structures

Concern for the community

While focusing on member needs, the co-operative works for the sustainable development of its communities through policies accepted by its members

**Can a non-distributing co-operative also register as a charity?**

A non-distributing co-operative may also apply to register as a charity under the Australian Charities and Not-for-profits Commission (**ACNC**). See [our webpage 'Should your group register as a charity?'](#) for more information.

Are all types of co-operatives suitable for not-for-profit groups?

No. Only non-distributing co-operatives, which reinvest profits into the co-operative, are suitable for not-for-profit groups.

**More information**

For more information about the term 'not-for-profit', see our webpage '[What does not-for-profit mean?](#)'

**Tip**

Before setting up a co-operative, make sure this is the most appropriate legal structure for your organisation.

Effective co-operatives require **all members to be actively involved**, which may cause problems throughout the co-operative's existence.

A co-operative structure may not be suitable for certain groups, such as::

- **politically fractious organisations** - if a co-operative intends to engage in political activities, there is a risk that strong differences of opinion, factionalism and relationship breakdowns may compromise the group
- **organisations with passive members** - co-operatives require all members to be involved in the activities of the organisation, for members to remain current or vote on the affairs of the co-operative
- **large organisations** - keeping your members involved may become problematic if your organisation expands significantly; while growth and involvement can be managed by implementing participation requirements, all members must stay involved in the activities of the co-operative



Example 1 – a suitable co-operative

Zoe and her group of friends want to start a not-for-profit organisation in their local neighbourhood, which will sell organic, locally grown foods to the local community at reasonable prices. Around 50 other people have expressed interest in being part of the initiative. They have spoken to restaurant owners in the area, who are willing to supply unused foods to the organisation, and to several locals experienced in similar food initiatives.

Would a co-operative be an appropriate structure for Zoe's organisation?

Yes. Zoe's organisation (a food co-op) is a well-established example of a successful co-operative. Its intended membership is quite small, is in a small geographical area, and it both involves and benefits its own members in the local community. The activities of their organisation are not controversial or likely to cause friction between members, and the initiative of gathering and selling food can involve members in lots of ways (supply, delivery, sales, staffing). A co-operative would be an appropriate structure for her organisation.



Example 2 – an unsuitable co-operative

Sonya wants to start an organisation for fans of sport which will raise funds for members to attend various sporting events across Australia. Membership is open to those who have played a sport for more than 10 years. Sonya intends to be the sole director and central decision-maker of the organisation, and will retain the power to determine how the organisation's money is distributed. To raise money, Sonya plans for the organisation to hold bake sales, fundraising dinners and to seek donations from sponsors.

Would a co-operative be an appropriate structure for Sonya's organisation?

No. For the following reasons Sonya's organisation would not operate effectively as a co-operative:

- it would be raising money to be distributed to members, so the organisation would not be not-for-profit
- membership is too large and exclusive, and doesn't have a community focus or democratic control
- its range of activities is wide and not defined by any common interest among members beyond the broad interest of 'sport'

By way of comparison, if the organisation was intended for young professionals in one suburb to hire out the local soccer field and hold matches for its members after work, a co-operative structure would be more appropriate.

What are the steps to set up a co-operative under the CNL?

To register a co-operative under the CNL, take the following steps:

Select a name



The name must include the word 'Co-operative' (or the abbreviation 'Co-op' or 'Coop') and end in the word 'Limited' (or the abbreviation 'Ltd').

It must not be misleading, or too similar to an existing co-operative, body corporate or business name. You can search the [ASIC Register](#) for business names.

Prepare draft rules (and Disclosure Statement if necessary)



Matters that must be included in the draft rules of a co-operative are set out in Schedule 1 of the CNL and are provided for in the model rules.

Some of these matters are:

- the name of the co-operative
- active membership provisions – these require the rules to set out the primary activity or activities of the co-operative and what the member must do to be an active member
- how to admit new members and any requirements that must be met (such as payment) before the member can exercise their rights
- whether fines can be charged for breaking the rules, and the maximum amount of the fines (there is a maximum amount prescribed by the Regulations)
- grievance procedures
- the number of directors, the qualification of directors, the way of electing, remunerating and removing directors and filling a vacancy, the period for which directors are to hold office, whether directors are to retire by rotation or otherwise, and the holding of annual elections the quorum for and the procedure at meetings of the board.

The rules of a non-distributing co-operative must also state that there will be no return or distribution of surplus or share capital to members other than the nominal value of shares (if any) at winding up. It must also provide how surplus property will be distributed at winding up.

Specifying the requirements for 'active membership' in the rules is important, as only active members can vote and remain as members of the co-operative. Co-operatives must identify in the rules the manner and extent to which a member must use or support an activity to maintain a relationship with the co-operative, as well as procedures to ensure correct identification of active and inactive members at any point in time. The rules of a non-distributing co-operative may provide that the regular payment of a subscription fee is sufficient to establish active membership.

Model rules are accessible at the CNL registries in each state or territory (see links provided below). A co-operative may adopt all or any of the provisions of the model rules.

Is a Disclosure Statement necessary?

A Disclosure Statement contains the information necessary to ensure that prospective members of the co-operative understand the financial obligations and liabilities involved in co-operative membership.

- Distributing co-operatives **must** prepare a Disclosure Statement.
- Non-distributing co-operatives need not prepare a Disclosure Statement, **unless** specifically required to by the Registrar in your state or territory.

Apply to the Registrar in your state or territory to have the



Discuss the draft rules with prospective members and decide on changes before submitting them to the Registry for approval. You will have to fill out a form, pay a fee and comply with certain procedural requirements (which are set out on each state and territory's website listed at the end of this fact sheet).



Prepare for the formation meeting



Once the rules have been approved, a formation meeting must be held. Before the meeting:

- notify proposed members of the date, time and place of the formation meeting
- prepare two copies of the approved rules for signing
- prepare a copy of any approved Disclosure Statement for signing
- prepare the application to register as a co-operative. Some information may not be known at this time
- prepare the application for membership form for prospective members. The forms should include space for the prospective member's full name and address, number of shares and face value of shares (if any), the amount paid on the shares and the member's signature

You should also prepare enough copies of the proposed rules and Disclosure Statement (if any) for the formation meeting, to make sure proposed members can have access to these documents at the meeting.

Hold a formation meeting to formally adopt the rules



A minimum of **five prospective members** must attend the formation meeting. These prospective members must be adults and meet any membership requirements in the proposed rules. Also, it must be reasonable to believe that these prospective members will be active members of the co-operative.

At the formation meeting, the following should occur:

- **elect a chair** to run the formation meeting and **a secretary** to keep a written record of the formation meeting. These positions are only for the formation meeting
- **read the approved Disclosure Statement** to proposed members (if a distributing co-operative or if directed by the Registrar to prepare a Disclosure Statement)
- **register the proposed members** by having each member fill out an application form
- **pass the approved rules** by a two-thirds majority of the proposed members
- **elect the directors** by following the method prescribed in the approved rules
- **appoint someone (a contact person) to finalise the application** (usually a director). This person will communicate with the Registry and lodge the co-operative's forms
- **sign the formation documents** – the chair and secretary of the meeting must sign two copies of the rules, and a copy of the Disclosure Statement (if any)
- **fill in and sign the application to register the co-operative.** The application must be signed by at least five members, including two directors elected at the meeting. While this can be done after the formation meeting, it may be convenient to finalise the application at the meeting, if all the information required in the form is known at that time.

File an application to register the co-operative with the Registrar

Within two months of the meeting, a completed application to register a co-operative must be sent to the Registrar in your state or territory.

The two signed copies of the rules approved at the formation meeting, a copy of the signed Disclosure Statement (if any) and the application fee stated on the form must be lodged. The application must include the name, address, occupation, place and date of birth of each director, and the address of the co-operative's registered office and other contact details.

If successful, the Registrar will register the co-operative and issue a certificate of registration.



More information

For further information on how to register a co-operative under the CNL, please consult [NSW Fair Trading](#), [Consumer Affairs Victoria](#) or the regulator website in your state or territory.

Contacting your registrar

New South Wales

[NSW Fair Trading, Registry Services](#)
PO Box 22
Bathurst NSW 2795
Telephone: (02) 6333 1400
Freecall: 1800 502 042
Email: registryinquiries@finance.nsw.gov.au

South Australia

[Consumer and Business Services SA](#)
GPO Box 1719
Adelaide SA 5001
Telephone: 131 882
Email: associations@agd.sa.gov.au

Victoria

[Consumer Affairs Victoria](#)
GPO Box 4567
Melbourne VIC 3001
Telephone: 1300 55 81 81
Email:
cav.registration.enquiries@justice.vic.gov.au

Northern Territory

[Licencing NT](#)
Level 3, NAB House
71 Smith Street
Darwin NT 0800
Phone: (08) 8999 1800
Email: GLSAdministration@nt.gov.au

Western Australia

[Department of Commerce, Consumer Protection Division](#)
Locked Bag 14
Cloisters Square
Perth WA 6850
Telephone: 1300 304 074
Email: consumer@dmirs.wa.gov.au

Australian Capital Territory

[Access Canberra](#)
GPO Box 158
Canberra ACT 2601
Telephone: 13 22 81
Email: accesscanberra.bil@act.gov.au

Tasmania

[Consumer, Building and Occupational Services](#)
Department of Justice
PO Box 56
Rosny Park TAS 7018
Telephone: 1300 654 499
Email: registration.services@justice.tas.gov.au

Queensland

[Registration Services Unit](#)
Office of Fair Trading
GPO Box 3111
Brisbane QLD 4001
Telephone: 13 74 68
Fax: 07 3405 0731



More information

The Business Council of Co-operatives and Mutuals (**BCCM**) provides resources for groups forming non-distributing and distributing co-operatives, including:

- [Business Planning for co-ops](#): resources on preparing a co-op business plan
- a manual to assist communities in Australia to use the co-operative model to raise capital - [Community investment for Australian co-operatives: A Handbook](#)