

# Which incorporated legal structure should you choose? (NSW)

Legal information for New South Wales community organisations

## This fact sheet covers:

- ▶ four common legal structures to incorporate a not-for-profit organisation
- ▶ options for changing between legal structures, and
- ▶ overseas recognition of different legal structures



## Disclaimer

This fact sheet provides general information about the incorporated legal structures available to New South Wales community organisations. 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 incorporated structures are available for not-for-profits in NSW?

Four common structures can be used to incorporate a not-for-profit organisation in New South Wales:

- an incorporated association
- a company limited by guarantee (**CLG**)
- a non-distributing (formerly known as non-trading) co-operative, and
- an Indigenous corporation

Key regulators referred to in this fact sheet are:

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



### Note

These are not the only structures available for not-for-profits. For example, there are also charitable trusts, trade unions and companies limited by shares (although these are usually used for for-profit businesses).

This fact sheet doesn't cover these structures, but for more information on charitable trusts, see our fact sheet on [Fundraising Foundations and Charitable Trusts](#).



### More information

For information on the meaning of not-for-profit, go to [What does not-for-profit mean?](#)

## Quick comparison

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

We will now look at each of these structures in more detail.



## Incorporated association

Feature	Brief description
<b>Relevant laws</b>	<ul style="list-style-type: none"> <li>• <a href="#">Associations Incorporation Act 2009 (NSW)</a> (<b>Associations Act</b>)</li> <li>• <a href="#">Association Incorporation Regulation 2022 (NSW)</a></li> </ul>
<b>Where can an incorporated association operate?</b>	An association incorporated under the Associations Act can operate in NSW. Any NSW association that conducts business outside NSW must also register with ASIC as a 'Registrable Australian Body' under the <i>Corporations Act 2001</i> (Cth), or incorporate separately in each relevant state and territory.
<b>Government regulator</b>	<p>The government regulator is NSW Fair Trading. If your association is a 'Registrable Australian Body', you must also report to ASIC.</p> <p>If your association is registered as a charity with the ACNC, you must report to the ACNC and are not required to report to NSW Fair Trading (if all the necessary information is provided to the ACNC in the Annual Information Statement).</p>
<b>Name requirements</b>	An incorporated association must have the word 'Incorporated' or 'Inc.' at the end of its name.
<b>How common?</b>	Consistent with other states, incorporated associations are likely to be the most common not-for-profit structure in NSW. There are approximately 38,000 incorporated associations in NSW.
<b>Description</b>	<p>The incorporated association legal structure provides a simple and inexpensive means of incorporating not-for-profit groups.</p> <p>All states and territories have their own, slightly different, laws to set up incorporated associations. Most (including NSW) 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 – for example, the legal duties of the members of the governing body of an incorporated association are virtually the same as those of company directors.</p>
<b>Suitable for</b>	<p>This structure is suitable for most small-scale locally focused not-for-profit community and industry groups, sporting clubs, social or hobby-based activities and cause-related groups that want to operate in NSW.</p> <p>NSW Fair Trading takes the view that organisations with over \$5 million in income, \$5 million in total assets, or \$2 million in current assets would not be small-scale.</p> <p>It can be less complex to set up an incorporated association than a CLG.</p>
<b>Not suitable for</b>	<p>This structure is not suitable for groups with less than five members (as this is a minimum requirement) or for a parent organisation that wants to set up one or more wholly owned subsidiaries (ie. with the parent organisation as the sole member).</p> <p>Businesses that aim to make a profit also can't be incorporated associations.</p> <p>Incorporated associations that want to operate outside NSW will need to register as a 'Registrable 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.</p>



## Company limited by guarantee

Feature	Brief description
<b>Relevant laws</b>	<ul style="list-style-type: none"> <li>• <i>Corporations Act 2001</i> (Cth)</li> <li>• <i>Corporations Regulations</i> (various)</li> </ul>
<b>Where can a CLG operate?</b>	A CLG can operate (that is, carry on activities) anywhere in Australia.
<b>Government regulator</b>	<p>ASIC is the independent Commonwealth government body that regulates corporations, including CLGs.</p> <p>However, CLGs that are registered charities are regulated by the ACNC and mostly report to the ACNC, not ASIC. They only have to report to ASIC in some limited situations (for example, if they change their name). This is because registered charity CLGs are generally exempt from some of the obligations applying to public companies under the <i>Corporations Act 2001</i> (Cth) (<b>Corporations Act</b>).</p>
<b>Name requirements</b>	A CLG must use the word 'Limited' or 'Ltd' after its name (although CLGs that meet certain requirements can apply for an exemption from this requirement).
<b>How common?</b>	CLGs are a popular structure.
<b>Description</b>	<p>Although we often think of a 'company' as being a business, a CLG is a special type of company structure most often used for not-for-profit or charitable groups across Australia.</p> <p>Just like a business company, it has 'directors' and 'members' (analogous to 'shareholders').</p> <p>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> (for example, directors' duties and penalties) that apply to 'for-profit' companies also apply to CLGs.</p>
<b>Most commonly used for</b>	<p>Not-for-profits that want to operate across Australia, or in multiple states and territories, often consider becoming a CLG. Larger not-for-profits, including those that only operate in one state, also often use this structure. It's a common structure for registered housing and aged care providers because of their size and complexity.</p> <p>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).</p>
<b>Comments</b>	<p>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 don't apply to CLGs registered as charities, which instead have to comply with the ACNC's Governance Standards.</p> <p>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).</p>



## Co-operative

Feature	Brief description
<b>Relevant laws</b>	<ul style="list-style-type: none"> <li>• <a href="#">Cooperatives (Adoption of National Law) Act 2012 (NSW) (CNL)</a></li> <li>• <a href="#">Co-operatives National Regulation 2013 (NSW)</a></li> <li>• <a href="#">Co-operatives (New South Wales) Regulation 2014 (NSW)</a></li> </ul>
<b>Where can a co-operative operate?</b>	A group incorporated under the CNL can operate (that is, carry on its activities) in NSW. However, co-operatives can register to be (concurrently) recognised so that they can operate in other states and territories.
<b>Government regulator</b>	The government regulator is NSW Fair Trading. Co-operatives that are registered charities must also report to the ACNC.
<b>Name requirements</b>	A co-operative must include the word 'Co-operative' or 'Co-op' in its name and the word 'Limited' or 'Ltd' at the end of its name.
<b>How common?</b>	Most co-operatives have been established for a long time and it's uncommon to start a new co-operative, although in recent years there has been a movement towards using non-trading co-operatives for social enterprise and community buy-outs (for example, <a href="#">Hepburn Energy</a> , Australia's first community-owned wind farm).
<b>Description</b>	<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 principles 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. 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>
<b>Suitable for</b>	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.
<b>Not suitable for</b>	<p>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 co-operative's membership base (for example, most charities, as charities usually provide benefit to wider groups of people than their own members).</p> <p>Co-operatives are also not suitable for groups that don't want to function under the co-operative principles or that don't have resources to manage active membership requirements.</p>



### More information

For more information, see the [Business Council of Co-operatives and Mutuals website](#)



## Indigenous corporation

Feature	Brief description
<b>Relevant laws</b>	<ul style="list-style-type: none"> <li>• <a href="#">Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)</a></li> <li>• <a href="#">Corporations (Aboriginal and Torres Strait Islander) Regulations 2017 (Cth)</a></li> <li>• <a href="#">Corporations (Aboriginal and Torres Strait Islander) Determination 1/2014</a></li> </ul>
<b>Where can an Indigenous corporation operate?</b>	An Indigenous corporation can operate (carry on activities) anywhere in Australia.
<b>Government regulator</b>	The government regulator is the Office of the Registrar of Indigenous Corporations ( <b>ORIC</b> ).
<b>Name requirements</b>	An Indigenous corporation must have the words 'Aboriginal Corporation', 'Torres Strait Islander Corporation' (or allowable combinations) in its name.
<b>Number</b>	In 2023, there are over 3,500 Indigenous corporations across Australia.
<b>Description</b>	<p>The structure of an Indigenous corporation is somewhat similar to a company limited by guarantee, in that it's an incorporated, separate legal entity, which can offer its members the benefit of limited liability.</p> <p>Indigenous corporations can, but don't have to be, 'not-for-profit'.</p> <p>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 rule book 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>
<b>Most suitable (or required) for</b>	<p>The Indigenous corporation structure is designed to meet the needs of Aboriginal and Torres Strait Islander groups and can accommodate Indigenous customs and traditions.</p> <p>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.</p>
<b>Not suitable for</b>	<p>This structure is 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, some Indigenous organisations might choose to form a co-operative).</p> <p>For commercial activities to be conducted for the benefit of Indigenous people, particularly if holding Native Title rights, it could be preferable to use the Prescribed Body Corporate structure (a corporation that is set up to manage or hold native title).</p>



### More information

For more information, see the [Registrar of Indigenous Corporations website](#), including the webpages on [registration options](#) and the [rule book](#).

## Incorporated association or CLG?

This fact sheet considers the key features of an incorporated association, a company limited by guarantee, a non-distributing co-operative, and an Indigenous corporation.

Most groups in NSW choose between incorporating as an incorporated association or a CLG.



### More information

For a more detailed comparison of an incorporated association and a CLG, see our guide, [‘Incorporated association or company limited by guarantee?’](#)

## Changing between legal structures

It's 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.

To avoid having to change your structure down the track, think about your group's future needs when deciding which legal structure to incorporate.

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

- ‘transferring’, ‘converting’ or ‘migrating’ from an incorporated association into a CLG (this is possible with member approval if other requirements for a CLG are met), 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 2006* (Cth)



### More information

For more information, go to our [webpage on changing your structure](#).

## 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 country) because of internationally recognised co-operative principles.