

Co-operatives

Legal information for Australian community organisations

This fact sheet covers:

- ▶ what is a co-operative?
- ▶ laws that regulate co-operatives
- ▶ when co-operatives are recommended
- ▶ setting up a co-operative under the Co-operatives National Law
- ▶ the roles, duties and responsibilities of directors of a co-operative



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.

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



For more information on whether to incorporate, see our webpages on:

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

What is a co-operative?

A co-operative is a democratic organisation that is owned and controlled by its members and 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 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 will have a separate legal identity from its members and so 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.



A case study – the Sweeter Banana Co-operative

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.

Laws that regulate co-operatives

The Co-operatives National Law (CNL) was implemented as a staged process, with each state and territory starting when its legislation and supporting arrangements were put in place.

As of 1 December 2020, in every state and territory, co-operatives are governed by the CNL.

Each state and territory has its own legislation under the CNL, all comprising four laws:

- their enabling Act
- the CNL
- the Co-operatives National Regulations, and
- their Local Regulations.



When did the CNL come into force in each state and territory?

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.

Key features of co-operatives 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 movement 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.

Co-operatives are either classified as 'small' or 'large'.

A co-operative is 'small' if it satisfies two of the following criteria:

- the consolidated revenue is less than \$8 million for the financial year
- the value of the consolidated gross assets is less than \$4 million at the end of the financial year, or
- the co-operative has fewer than 30 employees at the end of the financial year

Co-operatives that do not meet the above criteria are considered 'large'.



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

A non-distributing co-operative may 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.

When co-operatives are recommended

Not all types of co-operatives are suitable for not-for-profit groups. Only non-distributing co-operatives, which reinvest profits into the co-operative, are suitable for not-for-profit groups.



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.

Co-operatives are less well known and more difficult to form and run than other legal structures (such as companies limited by guarantee and incorporated associations).

Co-operatives are recommended for organisations that anticipate an active and involved membership and operate for the benefit of their members.

Effective co-operatives require all members to be actively involved, which may cause problems for organisations with passive members.

Co-operatives are not suitable for organisations that:

- will not require an active membership
- do not understand the principles and application of the CNL
- want different classes of membership with different voting rights, and
- wish to benefit a broader range of people than the members

A co-operative structure may therefore 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
- **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. 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 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. Sonya's organisation would not operate effectively as a co-operative because:

- it would be raising money to be distributed to members (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'

Setting up a co-operative under the Co-operatives National Law



Tip

The steps and forms required to set up a co-operative may differ in each state and territory. Check the legislation in the relevant state or territory.

Generally, 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.

The Registrar in your state or territory can provide a sample disclosure statement.

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



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 (in NSW, [Form C1 – application to approve co-operative rules and formation disclosure statement](#)), pay a fee and comply with certain procedural requirements. The form is used to obtain approval of the rules and disclosure statement (if necessary) before the formation meeting.

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 (in NSW, [Form C4 – application to register 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.

The roles, duties and responsibilities of directors of a co-operative

The directors of a co-operative are responsible for managing the affairs of the co-operative in accordance with the rules and relevant legislation.

Generally, the role of directors include:

- planning the long-term business and financial strategies
- determining and implementing policies
- assessing business and financial performance
- ensuring compliance with statutory reporting and other obligations under the CNL, and
- ensuring operation as set out in its rules.

The following legal obligations keep directors accountable to the co-operative:

- Directors must act with reasonable care and diligence (this includes the duty to prevent insolvent trading).
- Directors must act in good faith in the best interests of the co-operative.
- Directors must not misuse their position, or information obtained as a result of their position, to gain a benefit for themselves, someone else or to cause harm to the co-operative.
- Directors must disclose and manage conflicts of interest relating to the affairs of the co-operative.

Directors must also ensure the co-operative is compliant with all obligations under the CNL, which include:

- keeping financial records
- notifying the relevant Registrar in the applicable state or territory of changes to the co-operative
- maintaining registers and making them available for inspection as required
- reporting to members in a timely manner
- lodging annual returns, and
- complying with the co-operatives rules



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.

- New South Wales – [NSW Fair Trading, Registry Service](#)
- South Australia – [Consumer and Business Services SA](#)
- Victoria – [Consumer Affairs Victoria](#)
- Northern Territory – [Licencing NT](#)
- Western Australia – [Department of Energy, Mines, Industry Regulation and Safety](#)
- Australian Capital Territory – [Access Canberra](#)
- Tasmania – [Consumer, Building and Occupational Services](#)
- Queensland – [Registration Services Unit](#)



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](#)