

	Proprietary Company	Public Company limited by Shares	Public Company limited by Guarantee	Incorporated Association	Registered Co-operative	Indigenous Corporations
Administrative Requirements						
Administered by	Australian Securities & Investments Commission.	Australian Securities & Investments Commission.	Australian Securities & Investments Commission.	Office of Fair Trading (NSW) or equivalent in other States.	Office of Fair Trading (NSW) or equivalent in other States.	Office of the Register of Indigenous Corporations
Legislation	<i>Corporations Act 2001</i> (Cth) (Corporations Act).	Corporations Act.	Corporations Act.	<i>Associations Incorporation Act 2009</i> (NSW) or equivalent in other States.	<i>Co-operatives National Law (CNL)</i> (Uniform State-based legislation).	<i>Corporations (Aboriginal and Torres Strait Islanders) Act 2006</i> (Cth) (CATSI Act)
Naming Requirements	Must include "Pty Ltd" at end of name (s148).	Must include "Ltd" at end of name (s148).	Must include "Ltd" at end of name (s148) but this may be removed in special circumstances (s150).	Must include "Inc" at end of name (s18).	Must include "Co-operative Ltd" at end of name (s220).	Must include one of the following: <ul style="list-style-type: none"> • "Aboriginal Corporation"; • "Torres Strait Islander Corporation"; • "Aboriginal and Torres Strait Islander Corporation: or • "Indigenous Corporation" (s85.1)
Record keeping	(Same rules apply to all <i>Corporations Act</i> companies) Must keep written financial records that correctly record and explain its transactions, financial position and performance and would enable true and fair financial statements to be prepared and audited (s286). ASIC suggest this includes: <ul style="list-style-type: none"> • general ledger • cash records 			Must keep records that correctly record and explain its financial transactions and financial position. Where gross receipts of the Association exceed \$250,000 in a financial year or its current assets exceed	The CNL uses the same wording as the Corporations Act. We suggest that ASIC's guidance would be equally applicable.	Same rules as for Corporations Act Companies (s322.10)

	Proprietary Company	Public Company limited by Shares	Public Company limited by Guarantee	Incorporated Association	Registered Co-operative	Indigenous Corporations	
				<ul style="list-style-type: none"> debtor and sales records (i.e. receipts) creditor and purchases records wage and superannuation records a register of property, plant and equipment showing transactions and balances in relation to individual items inventory records investment records tax returns and calculations deeds, contracts and agreements. 	<p>\$500,000 (Div 1 Association), the records must be sufficient to enable financial statements to be prepared in accordance with the Australian Accounting Standards (we suggest this is equivalent to the obligation under the <i>Corporations Act</i>)</p>		
Financial Reporting Obligations	<p>Must prepare an annual financial report and a directors report (s292) if two of the following apply:</p> <ol style="list-style-type: none"> revenue is \$25 million or more; the value of assets held is \$12.5 million or more; or it has 50 or more employees. (s45A) 	<p>Must prepare annual financial report and directors report (s292).</p>	<p>Must prepare annual financial report and directors report (s292) unless the company's revenue is less than \$250,000 and it is not endorsed for DGR (s45B).</p>	<p>Must prepare annual financial statements (ss43 & 47).</p>	<p>Must prepare annual financial statements if two or more of the following apply (s270):</p> <ol style="list-style-type: none"> revenue is \$8 million or more; the value of assets held is \$4 million or more; or it has 30 or more employees. (Large Co-operative) (Reg 4). 	<p>Must prepare a "General Report" each year (s330.1).</p> <p>Depending on size and income, may also need to prepare financial and directors reports (s333.1).</p>	
Requirement to have Financial Reports	<p>If it is required to prepare an annual financial report, it must have it audited (s301).</p>	<p>Must have its financial report audited (s301).</p>	<p>A CLBG that is required to prepare financial statements may choose to have its statements reviewed instead</p>	<p>Only a Div 1 Association must have its financial statements audited (ss43 &</p>	<p>If required to prepare financial statements, they must be audited (s276).</p>	<p>Depending on size and income, may also need to have financial and directors</p>	

	Proprietary Company	Public Company limited by Shares	Public Company limited by Guarantee	Incorporated Association	Registered Co-operative	Indigenous Corporations
audited			of audited if its revenue is less than \$1 million, otherwise its statements must be audited (s301).	47).		reports audited (s333.20).
Incorporation Fee (as at 2014-15)	\$457	\$457	\$377	\$124	\$350 (may be reduced to \$100 for some non-distributing co-operatives)).	\$0
Ongoing Fee (as at 2014-15)	\$243 (unless special purpose company, then \$45).	\$1,146 (unless special purpose company, then \$45).	\$1,146 (unless special purpose company, then \$45).	\$53.	\$250 for Large Co-operatives. \$70 for Small Co-operatives.	\$0
Office Holders						
Common name of management body	Board of Directors.	Board of Directors.	Board of Directors.	Management Committee (in most states).	Board of Directors.	Board of Directors
Board Eligibility	(Same rules apply to all <i>Corporations Act</i> companies) An individual is disqualified if they are: under 18 years of age (s201B). are an undischarged bankrupt are subject to a personal insolvency agreement or an arrangement under Part X of the Bankruptcy Act 1966 (Bankruptcy Act) that has not been fully complied with are subject to a composition under Part X of the Bankruptcy Act and final payment has not been made, or have been convicted of various offences such as fraud or offences under company law, such			Committee members must be over 18 years of age (s28).	No express qualifications on directors other than the requirement that a majority be active members. Minors cannot hold office as director: s114.	A majority of directors must be Aboriginal or Torres Strait Islanders (s246.5). The same disqualifications that apply to Corporations Act companies also apply under the CATSI Act with the additional disqualification of individuals convicted of an indictable offence in relation to

	Proprietary Company	Public Company limited by Shares	Public Company limited by Guarantee	Incorporated Association	Registered Co-operative	Indigenous Corporations
	as a breach of your duties as a director or insolvent trading. If you have been convicted of one of these offences you must not manage a company within five years of your conviction. If imprisoned for one of these offences, you must not manage a company within five years after your release from prison.					an Indigenous Corporation (s279.5).
Board Size	At least one director (s201A)	At least three directors (s201A) and one secretary (s204A)	At least three directors (s201A) and one secretary (s204A)	At least three committee members (s28)	At least three directors (s172)	At least three directors (s77.5) Must not have more than 12 Directors (s243.5)
Independent Directors	Yes, Directors are not required to be shareholders.	Yes, Directors are not required to be shareholders.	Yes, Directors are not required to be members.	Yes, committee members are not required to be members (although the constitution almost always provides for committee members to be elected from members)	Yes, however a majority of Directors must be active members (s174).	Yes, however it must be expressly included in the Constitution and a majority of directors must not be employees and a majority must be members (s246.5).
Directors' Fees	Yes	Yes	Yes	Yes	Yes	No (s252.1)
Members						
Minimum number of members	One (s114)	One (s114)	One (s114)	Five (s6)	Five	Five (s77.5)
Maximum number of members	A maximum of 50 non-employee shareholders are permitted (s45A).	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited

	Proprietary Company	Public Company limited by Shares	Public Company limited by Guarantee	Incorporated Association	Registered Co-operative	Indigenous Corporations
Liability of members upon winding up	Limited to any unpaid amounts on their shares (s516).	Limited to any unpaid amounts on their shares (s516).	Limited to the amount of the guarantee specified in the Constitution (may be nominal amount) (s517).	Limited to any unpaid amounts owing to the association (such as entrance or annual fees) (s26).	Limited to any unpaid amounts owing to the Co-op (such as amounts on shares, entrance or annual fees) (s121).	Limited to the extent that the Constitution requires members to contribute (s147.1)
Obligation/Qualification of members	As specified in the Constitution (if any).	As specified in the Constitution (if any).	As specified in the Constitution (if any).	As specified in the Constitution (if any).	Rules must contain "Active Membership Requirements". Members who do not comply with AMR are not entitled to exercise their membership rights (such as voting at AGMs) and members who are inactive for an extended period must have their membership cancelled.	At least 51% of members must be Aboriginal or Torres Strait Islander people (s29.1).
Members' meetings	Not required to hold an Annual General Meeting. Must hold a meeting if requisitioned by 5% of members (s249D). Must give at least 21 days' notice of meeting (s249H).	Must hold an AGM within 5 months of the end of the financial year (s250N). Must hold a meeting if requisitioned by 5% of members (s249D). Must give at least 21 days' notice of meeting (s249H).	Must hold an AGM within 5 months of the end of the financial year (s250N). Must hold a meeting if requisitioned by 5% of members (s249D). Must give at least 21 days' notice of meeting (s249H).	Must hold an AGM within 6 months of the end of the financial year (s37). Notice period must be specified in the Constitution.	Must hold an AGM within 5 months of the end of the financial year (s252). Must hold a meeting if requisitioned by 20% of members (s257). Must give at least 14 days' notice (s254).	Must hold an AGM within 5 months of the end of the financial year (s201.150). Must hold a meeting if requisitioned by 5 members or 10% of members (which ever is greater) (s201.5). Must give at least 21 days' notice (s201.20).

	Proprietary Company	Public Company limited by Shares	Public Company limited by Guarantee	Incorporated Association	Registered Co-operative	Indigenous Corporations
	Purpose and Operations					
Asset Lock	<p>The Corporations Act does not provide for any form of asset lock. There may be a number of different mechanisms to achieve that effect indirectly, for example:</p> <ol style="list-style-type: none"> 1. establishment of trusts over the company's shares or business assets; 2. constitutional provisions; or 3. by giving stakeholders voting rights in the company. <p>The most effective asset lock for your social enterprise is likely to depend on your specific business model rather than vary according to any of the legal models laid out in this table.</p>			<p>The objects of the Association must be specified in the application for registration and Fair Trading has discretion to refuse registration on the grounds that the objects are not appropriate (s7).</p> <p>The indirect mechanisms set out for Corporations Act Companies may also apply to an Incorporated Association.</p>	<p>The Co-op's Rules must identify the principal activities of the Co-op. Amendments to the principal activities need to be approved by the Regulator because the active membership rule relates to the principal activities. (s60)</p> <p>The indirect mechanisms set out for Corporations Act Companies may also apply to a Co-operative.</p>	<p>The CATSI Act does not provide for any form of asset lock. The indirect mechanisms set out for Corporations Act Companies may also apply to a CATSI Corporation.</p>
Charity registration and tax concessions	Rarely granted.	Rarely granted.	Available with appropriate purpose and not-for-profit provisions in Constitution.	Available with appropriate purpose and not-for-profit provisions in Constitution.	Available to Co-ops without shares with appropriate purpose and not-for-profit provisions in Constitution.	Available with appropriate purpose and not-for-profit provisions in Constitution.
Dividends	Dividends may be paid to shareholders out of a company's profits (s254T).	Dividends may be paid to shareholders out of a company's profits (s254T).	Dividends must not be paid to members (s254SA).	An association must not conduct its affairs so as to provide pecuniary gain for its members (s40).	A distributing Co-operative may provide profits to members. A non-distributing co-operative may not (ss 18 & 19). All cooperative types can provide members with rebates.	May distribute property to members (although it is not called a dividend under the CATSI Act) (s96.1)
Distribution	Subject to the Constitution,	Subject to the Constitution,	Subject to the Constitution,	Surplus assets must not be	For distributing co-operatives,	Subject to the Constitution,

	Proprietary Company	Public Company limited by Shares	Public Company limited by Guarantee	Incorporated Association	Registered Co-operative	Indigenous Corporations
of surplus to members on winding up.	after paying all liabilities, any surplus assets on winding up can be distributed to members.	after paying all liabilities, surplus assets on winding up can be distributed to members.	after paying all liabilities, surplus assets on winding up can be distributed to members.	distributed to members. Members may pass a special resolution deciding how surplus property is distributed, typically to a similar organisation. This resolution must be approved by Fair Trading (s65).	surplus assets may be distributed to members. For non-distributing co-operatives, the Rules must prohibit distribution of surpluses to members (s19).	after paying all liabilities, surplus assets on winding up may be distributed to members (s526.25-30)
Limitation on trading	Nil	Nil.	Nil.	Fair Trading NSW (for example) has a policy that it will not register an Association where the nature or extent of the association's activities exceeds \$2 million in income, assets or expenditure.	Nil.	Nil.
Area of operation	Australia-wide.	Australia-wide.	Australia-wide.	Limited to state of registration.	Australia wide.	Australia-wide.
Fundraising Options						
Member's fees	Membership attaches to shares. Accordingly membership fees are generally not applicable.	Membership attaches to shares. Accordingly membership fees are generally not applicable.	May charge membership fees.	May charge membership fees.	For Co-operatives with shares, shares attach to membership, membership fees may be required under the rules in addition to shares. Co-operatives without shares	Must not charge members fees unless the constitution permits otherwise (s144.15).

	Proprietary Company	Public Company limited by Shares	Public Company limited by Guarantee	Incorporated Association	Registered Co-operative	Indigenous Corporations
					may charge membership fees.	
Loans from members	Yes (either through loan agreements or redeemable preference shares).	Yes (either through loan agreements or redeemable preference shares).	Yes (only through loan agreements).	Yes, under loan agreements, although the prohibition on conducting affairs for the profit of members limits the interest rates that may be charged.	Yes (either through loan agreements or using Co-operative Capital Units (CCUs)).	Yes (only through loan agreements).
Loans from financial institutions	Yes (may be subject to the organisations ability to provide adequate security or director guarantees).	Yes (may be subject to the organisations ability to provide adequate security or director guarantees).	Yes (may be subject to the organisations ability to provide adequate security or director guarantees).	Yes (may be subject to the organisations ability to provide adequate security or director guarantees).	Yes (may be subject to the organisations ability to provide adequate security or director guarantees).	Yes (may be subject to the organisations ability to provide adequate security or director guarantees).
Personal offers of shares/equity	Yes (although note disclosure obligations under Chapter 6D of the Corporations Act).	Yes (although note disclosure obligations under Chapter 6D of the Corporations Act).	No.	No.	Co-operative with share capital only (although individuals taking up shares must become “active” members. Alternatively, CCUs can be structured in a similar way to shares).	No.
Public offers of shares/equity	Yes (although note disclosure obligations under Chapter 6D of the Corporations Act)	Yes (although note disclosure obligations under Chapter 6D of the Corporations Act)	No	No	Yes, CCUs may be structured as shares (but note disclosure obligations under the CNL the Corporations Act).	No.

NB – Section references are to the relevant governing legislation.