

Establishing your JR governance structure

Starter kit

Disclaimer

This guide provides information on setting up your JR governance structure. 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.

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Introduction



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This document provides advice on the key determinants for implementing good governance within your justice reinvestment (JR) initiative. This includes introducing different options for formalising your organisational and/or cultural governance structures, examples from other First Nations initiatives, along with general information about the regulatory bodies that will oversee the operations and compliance of your JR governance.

As this document is a starter kit, we have also developed deep-dive guides on the key themes and governance structures introduced below to support your community to get started and find the right structure that suits your needs. We encourage you to read this document alongside our starter kit on establishing your JR supporting body to better understand how your community can strengthen the relationships between the governance and operations of your JR initiative. To access these guides, [visit our resources hub](#) on the Justice Reinvestment Network Australia website.

Section 1: Key concepts

Defining governance

What is governance?

How is it defined?

While there is no one universal definition of governance, it is commonly understood as a series of systems, processes, structures and relationships that must work individually and together to progress action towards shared goal(s). This typically includes:

- forming a collective identity (a sense of 'self');
- nominating who in the collective holds power and authority;
- setting collective goals, objectives, and rules;
- mobilising resources; and
- enforcing decisions, including directing actions, overseeing compliance with law and policy, managing risk, resolving disputes, and monitoring and reviewing the effectiveness of all actions taken.

How does it differ from management?

Governance is about setting and reviewing the vision, whereas management is about implementing the actions that support that vision (under the guidance of the governance body). Ultimate authority and accountability will always lay within the governance body, not management.

How do western concepts and First Nations concepts of governance differ?

In the Western context, governance typically refers to a single structure established by an organisation to act as the decision-making and accountability mechanism for its organisation.

In comparison, First Nations governance is rooted in culture. It is a complex, interconnected system made up of shared cultural principles and protocols that inform cultural geographies ('Country'), systems of law and lore, traditions, rules and responsibilities, values and beliefs, structures, relationships and networks, in place/developed over tens of thousands of years.

First Nations peoples and organisations have often reflected that there is a lack of cultural 'fit' between western and First Nations governance systems. They identify this as the cause of governance issues they encounter. These experiences are also well documented in the work of the [Productivity Commission](#) and [Centre for Aboriginal Economic Policy Research](#).

What is two-way governance?

Two-way governance is a term used to describe how First Nations and non-First Nations systems and laws/lores are brought together and interwoven into the governance of First Nations organisations, including when organisations or bodies are established using a Western construct (such as a company). This relationship is the central focus of this resource and will be discussed in more detail throughout.

Figure A: The Australian Indigenous Governance Institute's Two-way Governance Diagram



Defining an Aboriginal and/or Torres Strait Islander Community-Controlled Organisation - including for the purposes of accessing national JR funding

What are the requirements to be recognised as an Aboriginal and/or Torres Strait Islander Community-Controlled Organisation?

An Aboriginal and/or Torres Strait Islander Community-Controlled Organisation (ACCO) is defined under Clause 44 of the [National Agreement on Closing the Gap](#) - agreement between the Coalition of Aboriginal and Torres Strait Islander Peak Organisations and the Australian Government - as follows.

Under this Agreement, an Aboriginal and/or Torres Strait Islander Community-Controlled Organisation delivers services, including land and resource management, that builds the strength and empowerment of Aboriginal and Torres Strait Islander communities and people and is:

- a. incorporated under relevant legislation and not-for-profit*
- b. controlled and operated by Aboriginal and/or Torres Strait Islander people*
- c. connected to the community, or communities, in which they deliver the services*
- d. governed by a majority Aboriginal and/or Torres Strait Islander governing body.*

Under the Grant Opportunity Guidelines for the Commonwealth's Justice Reinvestment Program ([Justice Reinvestment | Attorney-General's Department \(ag.gov.au\)](#)) announced on 13 September 2023 (**National Justice Reinvestment Program**) you must meet the following requirements to be recognised as a type of Aboriginal and/or Torres Strait Islander Organisation.

Figure B: Requirements to be recognised as an Aboriginal and/or Torres Strait Islander organisation

Organisation Type	Requirements
Aboriginal and Torres Strait Islander Community Controlled organisation	<ul style="list-style-type: none"> • Incorporated • Not for profit • At least 51% Aboriginal and Torres Strait Islander owned AND • At least 51% Aboriginal and Torres Strait Islander controlled (Board members or equivalent)
Aboriginal and Torres Strait Islander Operated and Controlled organisation	<ul style="list-style-type: none"> • At least 51% Aboriginal and Torres Strait Islander owned AND • At least 51% Aboriginal and Torres Strait Islander controlled (Board members or equivalent).

Other Aboriginal and Torres Strait Islander organisation	<ul style="list-style-type: none"> At least 50% Aboriginal and Torres Strait Islander owned OR at least 50% Aboriginal and Torres Strait Islander controlled (Board members or equivalent).
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It is worth noting that above definitions aim to give communities the flexibility to establish a variety of different not-for-profit structures (e.g. Company Limited by Guarantee, Incorporated Association, etc.), not just an 'Indigenous Organisation' incorporated through the Office of the Registrar of Indigenous Corporations (ORIC) under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (more information on this is provided below). However, these requirements still prioritise funding opportunities for incorporated bodies.

What if I do not meet the requirements to be recognised as an Aboriginal and/or Torres Strait Islander Community Controlled Organisation?

Many organisations and collaborations led by First Nations communities do not meet the requirements to be recognised as an ACCO and this does not discredit their cultural authority and expertise to be self-determining change in their community. For instance, many of the existing First Nations communities implementing JR do not meet these formal requirements, but their JR initiatives are led and self-determined by the local First Nations community.

In saying that, to be eligible for funding under the National Justice Reinvestment Program, your community will need to be backed by an organisation that is an ACCO or has a plan to become community controlled. As a result, not meeting the requirements to be recognised as an ACCO may be a barrier to receiving funding for JR under the National Justice Reinvestment Program. In these circumstances, communities are encouraged to explore whether a collaboration with an eligible organisation would allow you to retain your cultural ways of governing, whilst enabling you to meet the eligibility requirements for funding. Each of these options are discussed in more detail, along with a tool to support you in assessing what organisation and/or collaboration type is best suited to your needs.

Section 2: Cultural governance

The determinants of good cultural governance

According to a four-year participatory community research project with First Nations communities (known as the *Indigenous Community Governance Project*) the key determinants of good two-way governance are:

- governing institutions (i.e. the structures and processes)
- leadership
- self-determination
- capacity-building

- cultural match (i.e. walking between two worlds)
- resources (including cultural resources)¹

These determinants are explained in further detail below.

Governing institutions

This component focuses on building confidence and support through establishing clear, transparent and accountable systems, processes and mechanisms for governing your JR initiative.

Key considerations

- The way governance structures are created (*e.g. is it a single structure of a governing Board or multiple - where a council of Elders, for example, may sit alongside the Board? who determines this?*)
- The way leaders are chosen (*e.g. are they self-nominated or elected by community? Do they have to meet certain requirements? Who determines this?*)
- What are the formal mechanisms, rules and protocols that will guide the governance process (*e.g. what is the collective vision? Who determines this and how is it documented? Are there any internal policies, rules or protocols that guide the behaviour of those leading? Is there a Constitution or terms of reference to determine the power/role/scope/limitations of those leading?*)
- What are the cultural or informal (i.e. undocumented) mechanisms, rules and protocols that will guide the governance process (*e.g. kinship systems, the role of Country, lore, women's/men's business*)

Measures of success: governing institutions

The systems, processes and mechanisms that govern your initiative are likely to be successful if they:

- are clearly articulated and understood;
- have cultural authority, community support and trust;
- give leaders the power to make and implement decisions;
- are accountable to the community;
- can resolve disputes and respond to emerging issues; and
- ensure leaders have the capacity to govern (e.g. given adequate time, resources, access to relevant knowledge and information, etc).

Leadership

¹Indigenous Community Governance Project: Two Year Research Findings' by Jon Altman et al, Australian National University.

https://www.aph.gov.au/~media/wopapub/senate/committee/indig_ctte/submissions/sub25_attachment_5_pdf.ashx

This component focuses on the process by which collective decisions are made, particularly the process by which those appointed as leaders work with the community to progress the community's collective vision.

Key considerations

How will leaders:

- contribute to and gain the respect and trust of community;
- centre decisions on the needs and interests of community;
- act with integrity and remain accountable to community;
- grow their skills and expertise to make better decisions (*e.g. using data, attending training and development opportunities, etc*); and
- build pathways for emerging leaders and the younger generation to mitigate key person risk and ensure the knowledge and skills remain in place for community.

Measures of success: leadership

Leaders are in place with strong skills in how to communicate, understand, build trusted relationships, critically analyse, negotiate, balance interests, resolve issues, advocate, be accountable and authentically make decisions that centre the needs and interests of their community.

Self-determination

This component focuses on ensuring First Nations communities have the right and ability to determine their own priorities and design their own instruments of governance.

Key considerations

While self-determination may be achieved in part through the other determinants, it is worth including as a stand-alone consideration to ensure it is embedded in every aspect of your governing systems and processes. This includes considering how First Nations people will:

- be represented in leadership positions (*e.g. will there be a minimum number of First Nations leaders governing this work? What support (if any) is needed to ensure these positions are accessible and their participation sustainable?*)
- be provided with authority and power to make and lead decisions (*e.g. who currently holds power and how will this power be transferred to First Nations people if it isn't held by them already? What is needed to facilitate this? How will this be protected to ensure it is sustained long-term?*)
- be represented in non-leadership positions (*e.g. how are you bringing in other First Nations voices from your community - for instance, through community engagement activities, collecting community data, engaging community/youth advisory groups and when recruiting to operational roles?*)
- be supported to share and use their customary practices and culture during the governing process? (*e.g. through the roles of men and women, the roles of Elders, the role of Country, ceremonies, language, etc*).

- be supported to have diversity of opinions represented and fairly balanced? (*e.g. is there a need to represent each family group? How will the voices of Elders, youth and emerging leaders be represented and balanced? Will certain voices be prioritised e.g. Elders? Is there a need to translate between different languages?*)
- be compensated for their invaluable experience and expertise (*e.g. sitting fees*)
- have their sovereignty protected (*e.g. establishing governance principles and protocols, especially around data*)

Measures of success: self-determination

First Nations peoples have the power and support to lead and be represented in every step of the initiative using their protected sovereign data and ways to inform better justice outcomes for their community. As a result, the work remains grounded in culture and continually centred on the local knowledge and expertise of First Nations peoples in the community, with decision-making always accountable back to the community.

Capacity-building

This component focuses on continually growing the knowledge and skills of community leaders to support them in leading better outcomes for their community.

Key considerations

While communities and their leaders already have the knowledge and skills to understand their own interests, needs and solutions, investing in ongoing training and development will provide benefit to the whole community, helping to grow and strengthen the initiative and its outcomes. It can also help communities to more easily 'live in two worlds' and navigate foreign Western systems and processes. Some of the ways you can invest in capacity-building for your initiative include:

- supporting leaders to attain formal qualifications and/or to attend training and development opportunities (*e.g. workshops, forums, conferences, fellowships etc*)
- developing leadership pathways, investing in mentorships and/or traineeships to support emerging leaders
- investing in community-to-community learning (*e.g. connecting community leaders with First Nations leaders from other communities/initiatives to facilitate two-way sharing of knowledges, resources and worldviews around good governance*)

Measures of success: capacity-building

Your initiative is investing in its leaders to support them in continually growing their knowledge and skills to make better decision on behalf of your community.

Cultural match

This component focuses on establishing and supporting your governance to walk between two worlds, balancing between First Nations and Western ways of knowing, doing and being.

Key



considerations

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Systems Change

There is often an underlying power imbalance stemming from colonisation that can prevent or hinder First Nations communities' ability to achieve self-determination in the truest sense. This is because when First Nations communities seek to self-determine an instrument of governance that authentically operates in alignment with their customary practices, they must also consider how this system can operate within the constraints of the broad 'external' Western governing systems and rules over which they generally have little power or control.

For many communities, navigating and balancing this cultural mismatch towards a more suitable and sustainable cultural match will involve deeper thinking and planning around their work in advocating for and creating systems change. This can include exploring opportunities to build more reciprocal relationships with key decision-makers and bodies that influence and contribute to outcomes in their community - for example, through collaboration agreements or by creating a cross-sector partnership group with representatives from within government, key service providers and other stakeholders. These arrangements can work alongside your initiative's core governance to support better outcomes for your community.

Outside the box thinking

By building your knowledge and understanding of the broad 'external' governing systems and rules, you can begin exploring and identifying opportunities to work with these systems alongside your unique cultural practices, interests and needs. For instance, this can include learning about the different types of governing structures that can support your initiative, along with learning from the experiences shared by other First Nations communities about which of these structures worked for them when navigating their own cultural match. In the sections below, we have collated some material to support you in finding the right match for your community.

Measures of success: cultural match

You have established a governance structure and system that allows your community to self-determine its work in alignment with customary practices and culture. Your community has strengthened its reciprocal relationships with key decision-makers and stakeholders to support a broader shift in how decisions outside your initiative are made to be better aligned to the collective vision of your community.

Resources

This component focuses on securing the economic, cultural, social and natural resources, and information technology that will support your JR initiative.

Key considerations

A core aspiration or expectation of any JR initiative is to secure sustainable long-term funding and to see the reinvestment of funds (including those formerly spent on criminal justice) being reinvested back into community resources and community-led activity. Some key considerations in how to get there include:



- Diversifying your income (*e.g. acquiring/generating more than one revenue stream to provide more secure and sustainable investment*)
- Building stronger, more reciprocal relationships with funders and key decision-makers to support progress towards systems change, including around reinvestment (*e.g. establishing partnership principles, formalising collaboration agreements and/or engaging regularly through a cross-sector leadership/partnership group*)
- Conducting asset mapping to identify the different resources available to your community (*including cultural resources and other local assets*) and using what you learn to develop a plan about how to shift investment in your community
- Exploring innovative ways to generate sovereign revenue streams (*e.g. progressing economic and business opportunities that enable revenue to be reinvested back into community initiatives*)

Measures of success: resources

Your community is informed about the spectrum of economic, cultural, social and natural resources, and information technology that enable your initiative and is actively working locally and systemically to shift the investment of these resources towards community-identified priorities and outcomes.

Common models for cultural governance

Determining a suitable model for cultural governance begins with a common understanding of what defines your collective sense of ‘community’ and ‘place’. For instance, is it based on ancestral connections to a particular clan group(s) or living in a particular discrete community or postcode or a wider geographical region? Once this has been identified you might also consider:

- the different voices that comprise your community (*e.g. Elders, young people, Aboriginal and/or Torres Strait Islander Community Controlled organisations, mothers/women/aunties, men/fathers/uncles, family and clan groups etc*);
- how each of these voices can be fairly represented within your governance model to ensure the work remains centred on your communities’ interests and needs.

This process may include considering whether certain voices (such as Elders) should be prioritised within your governance model to fulfil customary obligations and if so, how.

Below we provide information on four of the common governance models that First Nations communities adopt. These are:

- The family model
- The hub and spoke model
- Equal representation model
- Working



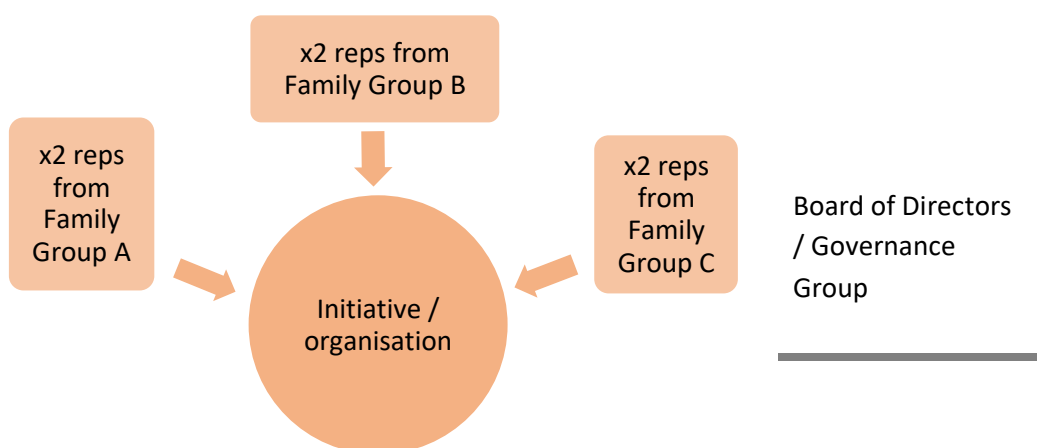
group model

While these options provide a good starting point, there are a *near limitless* number of options that can be developed to best represent your community, with many of these models being adaptable to meet the rules and regulations of the different not-for-profit structures available to facilitate your initiative (see Section 3 below).

The family model

This approach will usually include developing a central organisation, with membership of the organisation's Board being based on kin relationships and extended family ties. For regional approaches, this can also include representation from different clan groups.

Figure C: The family model

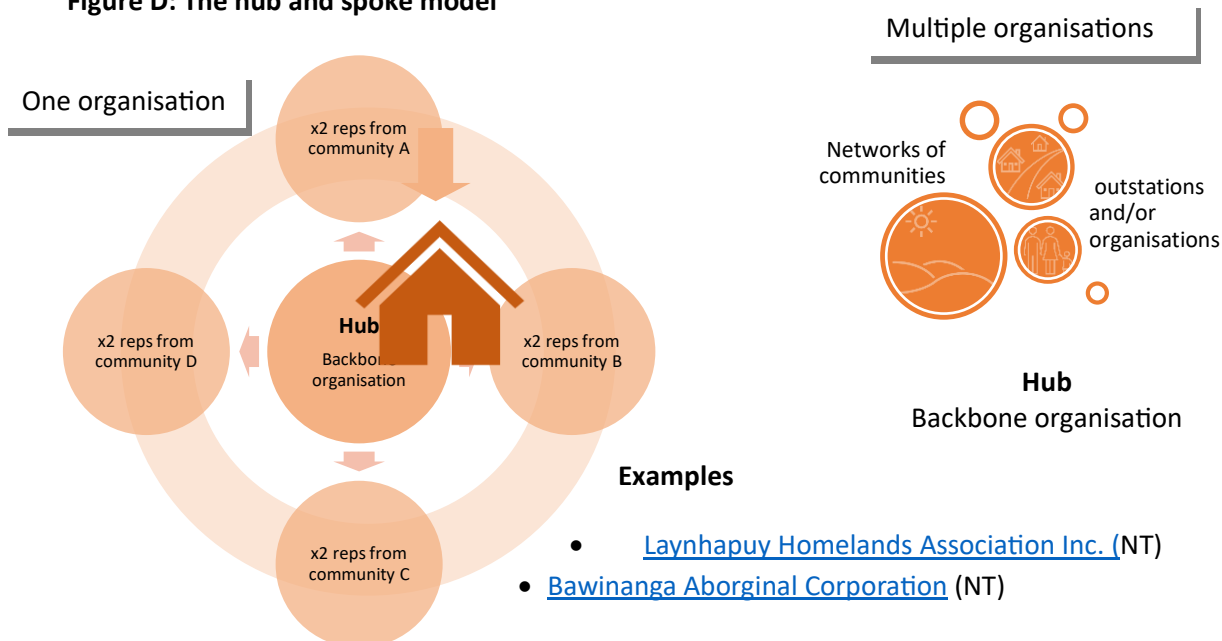


Examples:

- [Bourke Tribal Council](#), as part of the Maranguka JR initiative (NSW)
- [Bunuba Dawangarri Aboriginal Corporation](#) (WA)

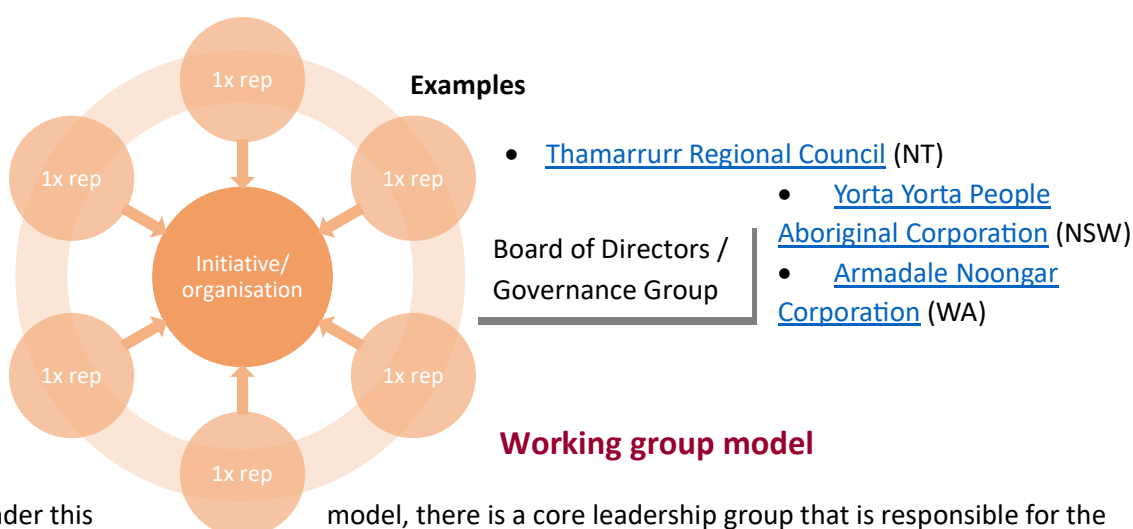
The hub and spoke model

This model is often adopted in regional approaches where there are people living in multiple smaller communities that are linked together via a central hub (sometimes this will be several clans that belong to a larger nation group, or other times it includes several remote communities that commonly transient in and out of a larger 'service' town). Under this approach the 'hub' is made up of representatives from the different communities (known as the 'spokes'). The hub centralises resources and is responsible for delivering services/support to the smaller communities.

Figure D: The hub and spoke model

Equal representation model

Some governance models are based on equal representation of the community based on certain criteria (e.g. landownership, language, clan or family groups, genders, ages, etc).

Figure E: Equal representation model

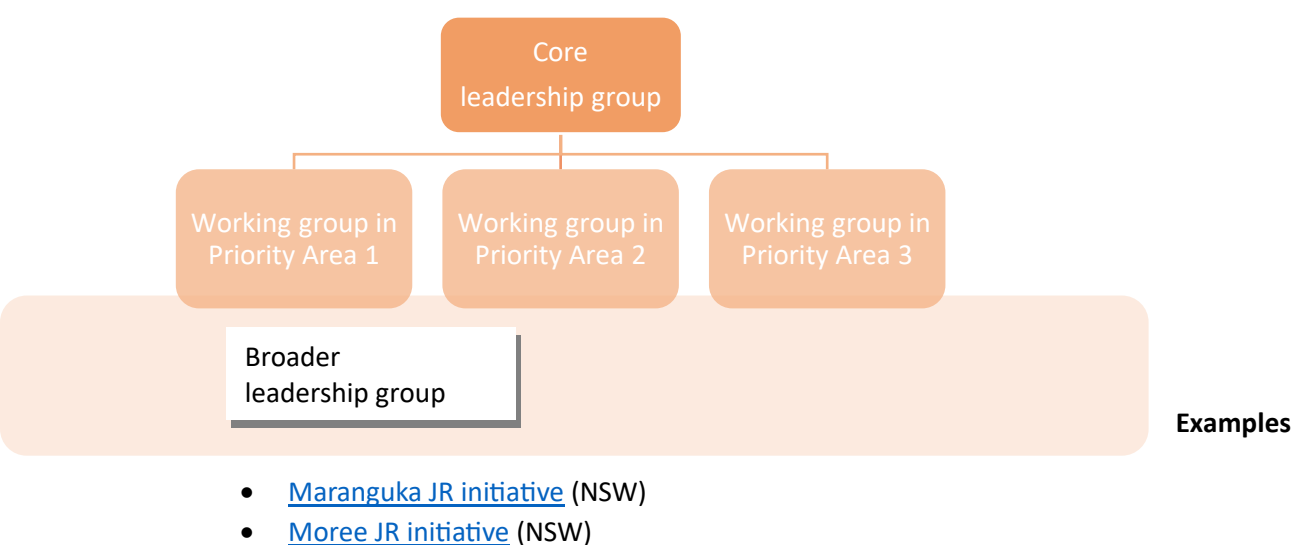
Under this model, there is a core leadership group that is responsible for the overall governance of the initiative, often holding ultimate decision-making authority. Smaller 'working groups' are then created in key priority areas (e.g. data, education as a driver or contact with the justice system, etc.) with the membership of each working group comprised of individuals with relevant skills, experience and/or interest in that area drawn from the core leadership group and/or the broader community/public.

Members of each working group are often responsible for progressing work in their key priority area and will report to/advise the core leadership group about regular updates on their work. Commonly,

each working group, along with members of the core leadership group, will come together on a semi-regular basis for broader governance discussions and/or updates on the work being done in each priority area.

Several variations of this model also exist. For instance, in some cases the core leadership group is the Board of Directors of the organisation coordinating the initiative. In these cases, working groups may be solely comprised of members of the Board of Directors (sometimes referred to as ‘sub-committees’ of the Board of Directors). In other cases, the core leadership group may be independent of the Board of Directors, providing cultural governance and advice to the initiative. In these circumstances, the cultural governance group would not hold decision-making power over the initiative and would instead hold an advisory role.

Figure F: Working group model



Good cultural governance in practice

This section discusses what good cultural governance around the country looks like in practice. We want to acknowledge that the following examples have been drawn from:

- The Steering Committee for the Review of Government Service Provision’s Report *Overcoming Indigenous disadvantage: key indicators*, [available here](#).
- Publicly available information shared by various First Nations communities across Australia.

Decision-making

- Engaging members quarterly to inform the Organisation's strategic direction and policies
Napranum Preschool PaL Group

- Rotating Board positions every 2 years to bring in new skills, perspectives, and connections
- Utilising tools and resources such as decision-making matrix and the International Principles of Governance

North Coast Aboriginal Corporation for Community Health

- Embedding decision-making processes in the Constitution
- All Directors having one vote and decided based on the majority
- Always providing Directors a briefing before decisions are made and engaging specialist consultants for advice as needed

Danila Dilba Health Service

Self-determination

Controlled by Yolgnu communities, their governance hierarchy reflects the traditional law and leadership, incorporates ceremonial responsibilities and provide a forum of Laynhapuy Homeland Mala Leaders (in addition to formal corporate structures), ensuring their involvement in decision making, plans and strategic pathways.

Laynhapuy Homelands Association

Establishing a governance structure based on Yiwarra Kutjarra (a framework of two distinct ways of governance) and incorporating practices and values pertinent to local First Nations Women's Law into the policies and procedures of the Organisation.

Kapululangu Aboriginal Women's Association.

Growing community knowledge

Supporting Yolngu members of the homeland communities through programs such as maintenance and protection of country and culture, employment, training, economic development opportunities, advocacy and social justice services. They advocate for service delivery and opportunities on country that can contribute to building the capacity of Yolngu people.

Laynhapuy Homelands Association

Building community leaders

Upon election, new members are provided set trained in all areas of governance including roles and responsibilities, organisational policies and frameworks, strategic planning etc.

Danila Dilba Health Service

- Succession planning where older members work with emerging leaders
- Two-day annual governance training

Winnunga Nimmityjah
Aboriginal Health Service

Training at the Institute for
Company Directors
Noongar Mia Mia Pty Ltd

Developing in house training facility that focusses on developing community member's skills for both organisational and cultural governance e.g. finance and administration, traditional knowledge recording, traditional cultural practices and language maintenance, cultural heritage management, cross-cultural awareness and project management.

Girringun Aboriginal Corporation

Training at the Cape York
Institute for Policy and
Leadership invests in
the social, emotional
and personal domains of
learning to grow
emerging leaders

Various community
leaders

including young leaders

- Supporting young mob to attend conferences, speaking engagements, leadership courses, board meetings and meetings with government and other stakeholders.
- Creating career pathways for children leaving school.

Laynhapuy Homelands Association and Kapululangu
Aboriginal Women's Association

Cultural match

Their work remains flexible and responsive to changing law and culture demands and obligations. For example, board meetings may be rescheduled if sorry business or other cultural responsibilities make a meeting impossible.

Kapululangu Aboriginal Women's Association

Decision making process respects cultural norms. For example, cultural protocols may not allow the female director of the corporation to make decisions regarding a male artist. In this case, the male chairperson will be consulted to make the appropriate decision.

Warlayirti Artists
Aboriginal Corporation

Their Parents and Learning Program, was developed from community need and directly reflects the cultural norms and values of its members, ensuring First Nations participation and consultation in all stages of the program.

Napranum Preschool PaL
Group

Resources

Avoiding reliance on any one primary source of revenue has enabled them to become financially self-sufficient and sustainable. Their funding is sourced from both philanthropic and government institutions and includes 'backbone' support for general operations (e.g. salaries, rent, etc), support for each community/site, along with project-based grants funding (e.g. to implement programs, or develop a business plan).

Napranum Preschool
PaL Group

The Larrakia Development Corporation train and employ local Aboriginal people to run profit-producing business ventures (such as property development and mini bus services). Half of their profits are reinvested back into the business to self-fund and grow their business ventures. The other half are invested in the Larrakia Development Trust (which operates to coordinate community projects for the Larrakia people). This mode; demonstrates the power of establishing a commercial corporate body with profit motives to support the charitable objectives of an First Nations community trust. It also highlights that good governance practices are attractive to commercial lending institutions.

Larrakia Development
Corporation

Their operations are self funded by the commissions from artwork sales.

Warlayirti Artists Aboriginal Corporation

Section 3: Operational governance

Types of not-for-profit structures

First Nations cultural governance systems are unique to each community, as are the ways in which these systems are interwoven into the formal governance structures of First Nations organisations. As such, it is useful to unpack the different types of not-for-profit structures available for building and supporting your JR initiative. This includes considering information on how to establish each structure and your obligations under Australia's legal and tax systems once established. This section will support you to assess which structure might work best for your community (if any) and to consider the models available for interweaving your chosen structure with your unique cultural governance systems.

To find more information, about what not-for-profit means, [visit the not-for-profit law hub](#). For more detailed information about the governance requirements and obligations for each type of structure, refer to our 'setting up a not-for-profit' section below and/or read our individual guidance document on each type of structure.

Unincorporated structures

Unincorporated association

An unincorporated association refers to a group of people and/or organisations that have come together to pursue a common purpose without forming a separate legally recognised structure. Unincorporated associations can continue operating regardless of changes to membership. Sometimes this can be referred to informally as a community group, collaboration, consortium/consortia or partnership.



Partnership refers to a specific legally recognised structure and should be avoided as an informal term for an unincorporated

The governance structure and operations of an unincorporated association can remain informal, with very little constraints on how members self-determine their activities, with the exception of financial management and paying tax. Under tax law, an unincorporated association is considered an entity and treated as a company for income tax purposes. Although not required under law, many unincorporated associations find value in developing rules that oversee and guide their governance structure and operations, sometimes referred to as 'rules' or a 'constitution'. These governing documents can support an unincorporated association to prepare towards incorporation, if and when they decide to do so.

For many groups operating on a voluntary basis it can seem easier and cheaper to remain unincorporated. However, there are important benefits of incorporation such as a body continuing independently of the founders (unless it is wound up), the ability to employ paid staff, seek funding and enter contractual arrangements with other organisations. Further, an unincorporated association has no separate legal status from its members and therefore,

members have unlimited liability for activities carried out by the group, making it a potentially risky structure to operate under.

For these reasons, an unincorporated association is usually seen as a starting point for developing a JR initiative, with a need to establish a longer-term structure as the size and nature of the activities grow. There are many options for this outlined below. For instance, it might include developing interim structures to support the transition process, such as collaboration or auspice arrangements with other organisations. Alternatively, it may include merging into an existing organisation or establishing a new incorporated body or social enterprise to continue pursuing your purpose.

To find more information, please access our unincorporated association guide available [here](#).

Incorporated structures

Incorporated Association

An incorporated association, much like an unincorporated association, brings together a group of people and/or organisations to pursue a common purpose, and can continue operating regardless of changes to membership. However, by virtue of incorporation, this structure offers important rights, benefits and protections for its members. This includes creating a separate legal identity from its members, therefore reducing the liability of its members to what is known as ‘limited liability’. This means in the event the company is wound up, a member’s liability to the incorporated association is limited to the amount they contributed to the company (this is outlined in the company’s constitution and is generally nominal). It also offers the ability to employ paid staff, seek funding and enter contractual arrangements with other organisations.

Associations are always incorporated under the legislation in the state/territory in which they operate and cannot operate outside of this jurisdiction unless they are registered with Australian Securities and Investments Commission (ASIC) as a registrable Australian body under the *Corporations Act 2001* (Cth).

As legislation varies between jurisdictions, you need to visit the website of the relevant state and/or territory authority to learn more about the specific requirements for incorporated associations within the jurisdiction(s) you intend to operate in. These are linked below:

- [ACT - Australian Capital Territory Office of Regulatory Services – Associations](#)
- [Vic - Consumer Affairs Victoria – Incorporated associations](#)
- [NSW - New South Wales Fair Trading – Associations](#)
- [NT - Northern Territory Department of Business – Incorporated associations](#)
- [Qld - Queensland Office of Fair Trading - Associations](#)
- [SA - South Australian Consumer and Business Services – Incorporated associations](#)
- [Tas - Tasmanian Department of Justice, Consumer Affairs and Fair Trading – Incorporated associations](#)
- [WA - Western Australian Department of Commerce – Associations](#)

To find more information, please access our association guide [available here](#).

Companies (registered under the Corporations Act)



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ASIC administers the *Corporations Act* and regulates the following types of not-for-profit organisations:

- public companies limited by guarantee (this is the most common type of company structure for not-for-profit organisations registered with ASIC)
- proprietary companies limited by shares (e.g. a business that is wholly owned by a charity that has a similar charitable purpose)
- registered Australian bodies (e.g. an incorporated association registered under a state act and registered with ASIC if it carries on business outside the state or territory in which it is registered)
- foreign companies (e.g. a charity formed or incorporated outside Australia but registered to carry on business in Australia)

When registered under the *Corporations Act*, companies must comply with the sections of the Act that apply to their legal structure type, with the exception of some reporting obligations that do not apply to not-for-profits that are registered with the Australian Charities and Not-for-profits Commission (ACNC).

As a company limited by guarantee (CLG) is the most common type of not-for-profit company incorporated under the *Corporations Act* it is the only one we will discuss in more detail in this document. Further information on the other types of corporations can be [found on the ASIC website](#).

Company limited by guarantee

A company limited by guarantee (CLG) is a public company, where, in the event the company is wound up, a member's liability to the company is limited to the amount outlined in the company's constitution and is generally nominal. Under the *Corporations Act*, the company's annual revenue will determine the extent and nature of the CLG and its members ongoing obligations to ASIC.

The key features of a CLG include:

- It cannot pay [dividends](#).
- It cannot issue shares and as a result, no one can profit from selling shares or obtain a controlling interest.
- Every ordinary member of the company is entitled to one vote.
- It will typically have a company constitution that outlines the specific rules that govern internal affairs (the [replaceable rules](#) that are contained in the *Corporations Act* can be used; however, the constitution will prevail over any rules that conflict with it).
- Directors of the company are typically subject to the same legal liabilities, responsibilities and [duties that](#) other directors of registered public companies are subject to. These are the director liabilities, responsibilities and duties that are contained within the *Corporations Act*.
- It holds each year an [Annual General Meeting](#) (AGM).

There are other features that are required for the organisation to be registered as charity, to be exempt from paying income tax and be eligible to receive donations which are deductible to the donor including rules to prevent surpluses or profits being distributed to members.

Companies (registered under



the CATSI Act)



First Nations organisations can apply to be registered as a separate legal entity with [Office of the Registrar of Indigenous Corporations](#) (ORIC) under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (*CATSI Act*). This entity type is only suitable as a not-for-profit if it has rules to prevent surpluses or profits being distributed to members.

The ORIC and the *CATSI Act* were said to be intended as special measures for the advancement and protection of First Nations peoples by providing a mechanism to consider and respond to the relevant differences between First Nations and Western contexts. There are key differences between companies established under the *CATSI Act*, in comparison to the *Corporations Act*: [described here](#). These differences include requirements for the minimum number of First Nations directors, the type of activities and services that can be undertaken/offered and access to regulatory assistance. It also includes the unique powers afforded to the Registrar of Indigenous Corporations (the Registrar) on behalf of ORIC such as the ability to:

- appoint an examiner to examine potential financial or governance issues; and
- change a corporation's rule book;
- call a general meeting or AGM;
- act for members in certain circumstances; and
- appoint a special administrator in the event of company is not performing as intended.

It is worth noting the *CATSI Act* has had mixed reviews from First Nations communities and representative bodies. While some have found benefit in the additional assistance potentially available through ORIC, others have criticised the functions and powers of the Registrar as inappropriate, ineffective and inadequate at meeting the needs of First Nations communities. Some of these criticisms are discussed in the [AIATSIS Submission Review of the CATSI Act: Phase Two](#).

Co-operative

A cooperative is a type of entity that exists for the benefit of its members. It is only suitable as a not-for-profit legal structure if it has rules to prevent surpluses or profits being distributed to members. This is referred to as 'non-distributing' or 'non-trading cooperatives'.

As legislation varies across jurisdictions, you should visit the relevant state or territory website to learn more about the specific requirements in your jurisdiction:

- [Vic - Consumer Affairs Victoria – Co-operatives](#)
- [NSW - New South Wales Fair Trading – Co-operatives](#)
- [NT - Northern Territory Co-operatives Act and Regulations](#)
- [Qld - Queensland Office of Fair Trading – Cooperatives](#)
- [SA - South Australian Consumer and Business Services – Co-operatives](#)
- [Tas - Tasmanian Department of Justice, Consumer Affairs and Fair Trading – Co-operatives](#)
- [WA - Western Australian Department of Commerce – Co-operatives](#)

It should be noted that cooperatives incorporated in jurisdictions that have enacted the *Cooperatives National Law* can operate freely across borders, without requiring separate registration and reporting in those states.

Social enterprises



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Social enterprises in contrast to charities do not have a legal definition. As a result, there are no legal requirements specific to social enterprises. Instead, social enterprises employ conventional business structures, with some or all of their aims generally directed at furthering a particular social cause. As social enterprises operate under conventional business structures, they must comply with the legal requirements applicable to those structures. Social enterprises can be operated to generate profits to fund charitable causes, or alternatively the business itself can be the charitable or community cause (or both).

Common examples of social enterprises include:

- For-profit businesses developed as a method of providing employment or training to people in need.
- For-profit or not-for-profit businesses designed purely to benefit the local community.
- For-profit or not-for-profit businesses created to provide access to financial products or services to people who find it difficult to access mainstream products or services.
- An income-generation arm of a not-for-profit.

To find more information, please access the [social enterprise guide available here](#).

Collaboration structures

Auspice arrangement

An auspice arrangement is a form of sub-contracting. It is a legally binding arrangement where one entity provides support, sponsorship and/or guidance to another entity. Most commonly it occurs when one entity applies for and administers funding (and often other forms of support) on behalf of another entity. The entity that applies for and administers the funding is known as the auspisor, and the entity that undertakes the project activities is known as the auspice.

An auspice arrangement is used when an entity requires support to undertake its activities. This can include a wide variety of circumstances. For instance, this could include financial-only support to host a one-off community event, or more involved support such as providing an unincorporated community group access to the operational services, infrastructure, technical advice, and expertise of a larger Not for Profit Organisation (NFP) to support them to incorporate into their own NFP.

To find more information, please access our auspice arrangement guide, [available here](#).

Joint venture

A joint venture is an agreement between two or more parties to work together and pool resources for the purpose of completing a specific task or project, usually for a specific amount of time.

Under Australian law, it does not have a specific definition ascribed to it. As a result, it can be formed using a variety of incorporated or unincorporated legal structures. These include through contracts and the establishment of a corporation, association, or other business entity. Regardless of the structure used to form the joint venture, the most important factor in its establishment is the drafting of a written agreement that sets out the rights and obligations of each party to the venture. Although not necessary, this document will determine and regulate the entitlements, liabilities and

other obligations placed on the parties involved.

Joint ventures can be created for a wide range of reasons, including to:

- share resources (e.g. funding, infrastructure, expertise, relationships, etc.);
- reduce costs; and
- expand reach (by virtue of more resources and reduced costs).

To find more information, please access our joint venture guide, [available here](#).

Partnership

Although the term ‘partnership’ is often used by community groups and organisations to describe a wide variety of relationships between two organisations, the term refers to a specific type of legal relationship and as such will attract specific legal and tax obligations on its parties.

According to the strict legal definition, partnership is when two or more people carry on a business in common with a view to a profit. Under this arrangement all parties (known as partners) own and control the business, with all income belonging jointly to the partners. The defining characteristics of a partnership include that it is not a separate legal entity, that partners have unlimited liability for the debts of the business and that each partner is joint and severally liable for the actions of another. Ordinarily the partnership is governed by a partnership agreement signed by each of the partners.

The key difference between a joint venture and a partnership is that a joint venture is typically created for a single task or project, whereas a partnership is typically formed with the intention of continual business. The three main differences between joint ventures and partnerships are related to regulations, liability and tax.

To find more information, please access our partnerships guide, [available here](#).

Assessing what not-for profit structure is right for your community

The best way to assess what not-for profit structure is right for your community is by seeking legal advice that is tailored to your community’s unique needs and circumstances. Some law firms may offer this support to you for no cost as part of their pro bono legal work.

As a starting point, we also discuss the different types of not-for-profit structures, including providing some advice about how to establish your structure in our Supporting Body Starter Kit, [available here](#).

You can also use [Justice Connect’s ‘Getting Started Tool’](#), a free tool which supports communities to begin thinking about how to set up their not-for-profit, along with a wide variety of tools from the [Australian Indigenous Governance Institute](#) which can help you learn more about, explore, assess and refine your governance practices and structures.



Setting up a not-for-profit

Once you have decided on the governance model and organisational structure that best suits your intended activities, there are other steps you will need to take to apply to be a not-for-profit. General guidance on the key steps in this process are summarised below. However, it is important to remember that the process looks different for each organisation and community, so the best course of action is to seek legal advice that is specific to your circumstances.

Applying for an Australian Business Number (ABN)

An Australian Business Number (ABN) is a unique 11-digit number that identifies your business or organisation to the government and community. To apply for an ABN, you must register an application with the Australian Business Register (ABR). Both incorporated and unincorporated entities may be eligible to apply for an ABN but not all groups are eligible.

To receive an ABN, you must demonstrate your intent to operate a 'business'. There is no single test to determine if you're carrying on a business. Features of a business include:

- the activity you will carry out is a significant commercial activity, involving commercial sales of products or services, and is of a reasonable size and scale;
- there is an intention to make a profit from the activity as demonstrated by a business plan – unlike with a hobby;
- the activity is repeated;
- the activity is systematic, organised and carried on in a business-like way and records are kept;
- the activity is carried on in a similar way to that of other businesses in the same or similar industry; and
- the entity has relevant knowledge or skill.

For information on the eligibility requirements and the ABN application process, [visit the ABR's guide for not-for-profit organisations](#).

The key things to be mindful of when registering an ABN for the purposes of operating a not-for-profit are to ensure the ABN is:

- your organisation's ABN (not that of an individual or sole trader);
- registered with the same name as stated in your organisation's [governing document](#); and
- registered with the correct [entity type](#) ([legal structure](#)).

Registering your name

Unincorporated entities



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Unincorporated entities (e.g. unincorporated associations) are not required to register their organisation's name with ASIC, unless the group 'carries on business' under that name. Typically, this would include:

- registering an ABN under a name other than your personal name;
- conducting business activities for 12 months or more;
- conducting repetitive business activities;
- keeping and maintaining books and records; and
- intending to make a profit.

If your group decides to register its name, it is always important to remember that the business will have no separate legal status to its members. This means individual members will be liable for the activities of the group and a member of the group will have to register the business name on behalf of the group.

Groups should also be aware that registration of a business name will not grant ownership of that name, but it may provide some protection against the name subsequently being used by others. Registration of a business name also prevents that same name from being registered as a business name by another organisation.

Incorporated entities

Incorporated entities (e.g. companies, incorporated associations, etc.) are required to register their organisation's name with ASIC. The type of incorporated structure you create will determine the minimum requirements your not-for-profit must satisfy, the process for registration, and the ongoing reporting requirements you may be obligated to satisfy. To determine which rules will apply to you, [visit ASIC's guide for not-for-profit organisations](#).

Incorporation under state or territory legislation

Typically, incorporation of a not-for-profit organisation will occur through the relevant Commonwealth, state or territory authority. If you intend to incorporate under state or territory legislation (and not under Commonwealth legislation for a company limited by guarantee under the Corporations Act or a CATSI under the CATSI Act), you need to visit the website of the relevant state and/or territory authority to learn more about the requirements for different types of business structures within the jurisdiction(s) you intend to operate in. This list has been extracted from ASIC below.

Figure G: State and territory authorities for incorporating

State/territory	Authority	Link
Australian Capital Territory	Access Canberra	www.accesscanberra.act.gov.au

New South Wales	Office of Fair Trading	https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations
Northern Territory	Consumer and Business Affairs	www.justice.nt.gov.au
Queensland	Office of Fair Trading	www.fairtrading.qld.gov.au
South Australia	Consumer and Business Services	http://www.cbs.sa.gov.au/
Tasmania	Office of Consumer Affairs & Fair Trading	www.consumer.tas.gov.au

It is worth noting that in addition to state and territory regulations, all incorporated structures registered with the ASIC are regulated in accordance with the *Corporations Act* and must comply with the sections of the Act that apply to them, under the administration of the ASIC.

To find more information, about [what incorporation means](#) or how to [choose which corporate structure if right for you](#), visit the not-for-profit law hub.

Registering as a not-for-profit

If your organisation (incorporated or not) wishes to register as a not-for-profit organisation, it will need to register with the ACNC. To register, you will need to include the following information:

Inclusion	Details
Provide contact details	<ul style="list-style-type: none"> • Address • Contact person
Intended legal structure	<ul style="list-style-type: none"> • As registered with the ABR (e.g. company limited by guarantee, incorporated association, etc.)
Your organisation's governing documents	<ul style="list-style-type: none"> • See detailed requirements for different legal structures here

Date of establishment	<ul style="list-style-type: none"> Incorporated entities = date of incorporation Unincorporated association = date of governing document coming into effect
Date of registration	<ul style="list-style-type: none"> Date your organisation was eligible for registration or date registration was requested
Operating locations	<ul style="list-style-type: none"> This can be anywhere in Australia or overseas; however, different requirements and obligations apply for each jurisdiction. See here for more information on operating within Australia, and operating overseas.
Charity sub-type	<ul style="list-style-type: none"> Categories that reflect a charity's charitable purpose (i.e. the reason it is being set up). See here for more information.
Activities	<ul style="list-style-type: none"> You need to describe how the organisation's activities work towards the selected charity subtypes. Do not simply restate the organisation's purposes or objects as written in its governing document. You should provide details about the types of activities that your organisation undertakes to achieve its charitable purpose.
Beneficiaries	<ul style="list-style-type: none"> You need to identify your organisation's main group of beneficiaries – who your organisation aims to help. You can also select additional beneficiaries if your organisation helps more than one main group.
Responsible People	<ul style="list-style-type: none"> You need to provide the name and details of all the organisation's responsible people; this may look different depending on your legal structure. See here for more information. You will need to determine if your responsible people need a director identification number. See here for more information.
Financial information	<ul style="list-style-type: none"> Estimated revenue for the current financial year A description of where your organisation will get its revenue in the current financial year

	<ul style="list-style-type: none"> • A description of where your organisation intends to get its revenue from in the future
Governance	<ul style="list-style-type: none"> • A charity must describe how it meets the ACNC Governance Standards to be, and remain, registered with the ACNC. The Governance Standards are a set of core, minimum standards that deal with how charities are run (including their processes, activities and relationships) – their governance.
Tax concessions from the ATO	<ul style="list-style-type: none"> • The Australian Taxation Office (ATO) is responsible for administering charity tax concessions and we touch on this in more detail below. In the ACNC charity registration application, you can select the tax concessions that your organisation wants to apply for, and the date from which they will apply (if approved by the ATO).
Deductible gift recipient (DGR) – if applicable	<ul style="list-style-type: none"> • DGR endorsement enables entities to receive donations that are tax deductible for donator. There are only a select few charity types that are eligible for DGR endorsement. The ATO is responsible for DGR endorsement. The ACNC will pass on this information to the ATO for assessment. • In the charity application, you can indicate that your charity is seeking DGR endorsement. You will need to provide additional details based on the DGR category you are applying for.

Please see here the ACNC's [guide on what to consider before registering as a not-for-profit organisation](#), along with their [Governance Standards](#).

Applying for tax concessions

Not-for-profits can be eligible for tax concessions, both from the Australian Taxation Office (ATO) and from relevant state and territory governments. While the ACNC registers organisations as charities for Commonwealth purposes, the ATO is responsible for managing tax, including deciding whether to endorse charities for tax concessions. More information on the available tax concessions for each not-for-profit is included below. Among other requirements your constitution or rule book will need to include certain provisions to be eligible for certain tax concessions.

All registered not-for-profits

All charities registered with the ACNC can apply for the following tax concessions.

1. Income tax exemptions and franking credits

Income tax applies to any taxable income received by organisations. However, not-for-profits may apply for an [income tax exemption](#).



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This removes the obligation to pay income tax or lodge income tax returns, unless the ATO specifically requests it.

If endorsed by the ATO as exempt from income tax, and your organisation holds shares in a company that provides franked dividends, you can also apply to access [refunds on franking credits](#).

2. Goods and services tax concessions

Goods and services tax (GST) is a tax on transactions. When goods and services are sold, the amount received for the sale may be subject to GST at a rate of 10%. Similarly, where goods and services are purchased, the purchaser may be able to claim a GST credit for the GST included in the amount paid. Registered charities can apply for [GST concessions](#).

3. Fringe benefits tax rebates

Fringe benefits tax (FBT) is a tax paid on any benefits that an employer provides to their employees outside of their salary or superannuation e.g., the use of a work car, a work phone, or other expense-related benefits. Registered charities can [apply for an FBT rebate](#).

Selected registered not-for-profits

The following tax concessions are available to selected charities registered with the ACNC.

4. Fringe benefits tax exemption

While all registered charities can apply for an FBT rebate, only certain charities can [apply for an FBT exemption](#), including [Public Benevolent Institutions](#) (PBIs), [Health Promotion Charities](#) (HPCs), not-for-profit hospitals and, in some cases, charities advancing religion (subject to [certain conditions](#)).

For more on FBT exemption, see the [ATO's guidance for not-for-profits](#).

5. Deductible gift recipient (DGR)

Being a deductible gift recipient (DGR) allows donors to make tax-deductible donations to your charity. This means that donors can deduct the amount of their donation from their own taxable income when they lodge their tax return. For more on how this works for a donor, see the ATO's guidance on [making tax deductible gifts and contributions](#).

For more information on tax concessions more broadly, read the [ATO's guidance on charity tax concessions for not-for-profits](#).

State and territory registrations

Charities' reporting requirements and responsibilities can vary in each state/territory in relation to:

- legal structure;
- fundraising;
- state taxes;
- local government permits and permissions; and



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- further general obligations (including employment, trading, occupational health and safety and anti-discrimination requirements).

For information about the regulation of charities and fundraising in each state and territory, visit the [ACNC's guidance on state and territory regulators](#).

Ongoing obligations

It is important to note that each body you register with may have its own obligations regulating how you govern, operate and report on the activities of your organisation. It is important to check these obligations directly with the body itself to ensure that your organisation and its activities remain legally compliant. You should always seek legal advice that is specific to your organisation's circumstances before proceeding to establish a not-for-profit organisation.

Other considerations when setting up a not-for-profit

Budgeting

A budget is a way to balance income, expenses and financial goals to better monitor expenditure for your JR initiative. Good budgeting is critical to the success of non-profit organisations, as not-for-profits typically have stretched resources, fluctuating funding, and/or heavy reliance on specific funding sources. A well-formulated operating budget supports not-for-profits to track total income from various funding sources, monitor overall financial health, and re-evaluate the performance of key activities.

To support your organisation in budgeting for its JR initiative, we have developed a budgeting guide, [available here](#) and budget template, [available here](#). We also encourage you to review the [ACNC's guide for responsible people managing money](#).

Risk Management

A risk is anything that could potentially impact your project's timeline, performance or budget. In other words, risks are the things that could go wrong or cause issues. All projects have risks, so it is important to identify and respond to potential risks to avoid and/or reduce their potential to negatively affect your project. This process is called Risk Management.

The Risk Management process usually begins during the planning phase of a project with a Risk Management Plan often included as part of an application for project funding. The Risk Management Plan is reviewed and updated regularly (ideally every three or six months) and will often be included in regular reports to the project funder and/or project governance team.

To support your organisation in developing a risk management plan for its JR initiative, we have developed a risk management guide, [available here](#).

Ethics

While ethical considerations have been addressed throughout this document and always sit at the heart of the purpose guiding not-for-profits and other community-led initiatives, it is worth considering ethics as a standalone issue in thinking how to govern your JR initiative.

This process should include self-reflection and assessment of the opportunity to embed better ethical practices within all aspects of your JR work. While this process can be self-led, you may find it a useful starting point to access the Australian Community Workers Association's [ethics self-assessment tool, available here](#).

Staffing and operations

Many JR initiatives rely on a supporting body that is established to work 'behind the scenes' of the community and the JR governance structure to facilitate collaboration and operationalise the community's vision into action. These bodies can employ staff and oversee/facilitate day-to-day operations.

To support your organisation around staffing and operations for JR, we have developed a supporting body starting kit, [available here](#) and summary of key position descriptions, [available here](#).

Section 4: Project governance

How to embed cultural governance into your not-for-profit structure

Project governance often refers to the ways in which you bring together your cultural and organisational governance to ensure your work is led by and centred on the First Nations people living in your community. This includes the formal and informal systems, processes, structures and relationships which continue to inform, guide and oversee your work.

As each initiative organically forms from a different place and under a different set of circumstances, project governance is almost always unique. Some examples of how other communities have approached project governance are included in pages 107-133 of Dr Diane Smith's Report to the Aboriginal Peak Organisations of the Northern Territory's Aboriginal Governance and Management Program, [available here](#).

More information

There are a wide variety of resources which discuss options for developing a two-way governance structure, including examples from First Nations initiatives across Australia. We have included a non-exhaustive list of those we consider most useful below:

Title	Source	Inclusions
Organising Aboriginal Governance: Pathways to Self-determined Success in the Northern Territory, Australia	The Centre for Aboriginal Economic Policy Research	<ul style="list-style-type: none"> Information on the role, success and challenges of implementing good governance in a First Nations context 11 case studies from First Nations organisations 14 models for First Nations governance (based on real examples from First Nations organisations) Factors that support good governance
Indigenous Governance Toolkit	Australian Indigenous Governance Institute	<ul style="list-style-type: none"> Information on the role, success and challenges of implementing good governance in a First Nations context Tools to assess and build leadership and the systems and plans that support good governance Case studies from First Nations organisations
Resource hub	Australian Institute of Company Directors	<ul style="list-style-type: none"> Self-assessment tools Research and advice Practical tools for directors
Resource hub	JR Partner via JRNA	<ul style="list-style-type: none"> Resources on establishing your JR initiative, including different project governance structures and your supporting body