

## Social Enterprise Legal Structures



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## Organisational Theory

- “structure follows strategy”

Chandler, 1962



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## Do you need to set up an organisation

- Options not requiring setting up an organisation
  - Run the enterprise out of your existing organisation
  - Continue unincorporated
  - Join another organisation
  - Auspicing

Justice Connect, 2017



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## Choosing between Not-for-profit & For-profit

Question	Relevance
Where will your funding come from?	Donations and philanthropic funding can generally only be directed to not-for-profits. For-profit entities can seek investors to raise funds. Similarly, not-for-profits can also seek investors to raise funds through impact investment but this can be more complex, and often results in debt.
Where do you want profits to go?	A fundamental characteristic of not-for-profit organisations is that profits are not distributed outside of the organisation – which means no dividends or distributions can be made, and <i>all</i> profits are directed to achieving the organisation's mission. In a for-profit organisation, profits are often distributed to shareholders/investors. In a for-profit social enterprise, profits are normally partially distributed to investors and partially reinvested into the organisation.
Is it important for your enterprise to be perceived as not-for-profit?	Public perception may inform your choice of structure.
Do you want investors/owners or members?	Some structures have investors and/or owners, some have members; these are not the same.
Does your organisation hope to access charitable and other tax concessions?	Only not-for-profits can access the majority of the tax concessions available, and only not-for-profits can be charities.

Justice Connect, 2017



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## Hybrid Structures

- Where two or more entities are used to form the one social enterprise
- Used to harness the benefits of both for-profit and not-for-profit structures

Justice Connect, 2017



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## Not-for-profit Legal Structures

Structure	Benefits	Downsides
Incorporated associations	<ul style="list-style-type: none"> <li>• Less onerous reporting obligations</li> <li>• Regulator takes 'educative' approach to enforcement</li> <li>• Sometimes cheaper to set up</li> </ul>	<ul style="list-style-type: none"> <li>• Groups with less than 5 members cannot use this structure</li> <li>• State-based structure makes it difficult to operate across different states</li> </ul>
Companies limited by guarantee	<ul style="list-style-type: none"> <li>• National regulator</li> <li>• In the case of charities, simpler reporting requirements as reporting is to the ACNC not ASIC</li> </ul>	<ul style="list-style-type: none"> <li>• Can be expensive to set up</li> <li>• If not a charity, complex reporting requirements to a strict regulator (ASIC)</li> </ul>
Non-distributing co-operatives	<ul style="list-style-type: none"> <li>• For organisations passionate about co-operative principles, the structure enshrines co-operative principles.</li> </ul>	<ul style="list-style-type: none"> <li>• Fewer co-operatives in Australia and fewer professionals with co-operatives expertise</li> <li>• Co-operative principles and associated obligations will not suit all social enterprises</li> </ul>
Indigenous corporations	<ul style="list-style-type: none"> <li>• Takes into account Aboriginal and Torres Strait Islander customs and traditions</li> </ul>	<ul style="list-style-type: none"> <li>• Excludes non-Indigenous groups</li> </ul>

Justice Connect, 2017

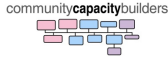


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Model	Dominant legal structure(s)	Dominant economic activity
Meeting unmet consumer needs of excluded groups or locales	Cooperative Company limited by guarantee Company limited by shares Proprietary limited (Pty Ltd) company	Goods and services retail
Advancing charitable or community purpose	Incorporated association Legislation, royal charter or patents letter (charity) Company limited by guarantee Partnership Sole proprietorship	Goods and services retail
Creating opportunities for community participation	Incorporated association Unincorporated association	Goods and services trade between citizens
Providing work integration opportunities for disadvantaged groups	Company limited by guarantee Cooperative Pty Ltd company	Primary production Manufacturing Goods and services retail
Promoting ethical consumption through ethical production and supply	Cooperative Company limited by guarantee Company limited by shares Pty Ltd company Cooperative	Primary production Secondary production Goods and services retail
Strengthening the social economy	Incorporated association Partnership Sole proprietorship Company limited by guarantee	Services retail
Social and environmental innovation	Incorporated association Company limited by guarantee Company limited by shares Pty Ltd company Incorporated association Cooperative Partnership Sole proprietorship	Primar

**Table 1.**  
Social enterprise models, legal forms and economic activity

Barraket et al., 2017



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## References:

- Barraket, J., Douglas, H., Eversole, R., Mason, C., McNeill, J., & Morgan, B. (2017). Classifying social enterprise models in Australia. *Social Enterprise Journal*.
- Chandler, A. D. (1962). *Structure follows Strategy*. Chapters in the History of the industrial Enterprise, Cambridge Mass.
- Justice Connect (2017), *Social Enterprise Guide: Legal issues to consider when setting up a social enterprise*, Australia Not-for-profit Law Guide.



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