Establishing your JR governance structure
Starter kit

Disclaimer

This guide provides information on setting up your JR supporting body. 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.

Contents

Introduction

This document provides advice on the key determinants for implementing good governance of 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 which 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 in finding the right structure to suit your needs and to guide you in getting started. We also encourage you to read this document alongside our starter kit to establishing your JR supporting body to better understand how the 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 which must work individually and together to progress action towards shared goal(s). This typically includes to:

- form a collective identity (a sense of 'self'); and
- nominate who in the collective holds power and authority
- to set the collective goals, objectives, and rules,
- to mobilise resources, and
- enforce decisions, including to
- direct actions,
- oversee compliance with law and policy,
- manage risk,
- resolve disputes, and
- monitor and review 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 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 that inform cultural geographies ('country'), systems of law, traditions, rules, values and beliefs, structures, relationships and networks which have proven to be effective for 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, and often identify this as the cause of governance issues within their work. 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 are brought together and interwoven into the governance of First Nations organisations. 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

Two-Way Governance

Indigenous Culture, Laws, Rules and Forms of Accountability — Indigenous Organisations — Non-Indigenous Culture, Laws, Rules and Forms of Accountability

Defining an Aboriginal Community-Controlled Organisation

What are the requirements to be recognised as an Aboriginal Community-Controlled Organisation?

An Aboriginal Community-Controlled Organisation (ACCO) is defined under Clause 44 of the *National Agreement on Closing the Gap*, an agreement between the Coalition of Aboriginal and Torres Strait Islander Peak Organisations and the Australian Government. Under this agreement, you must meet the following requirements to be recognised as a type of Aboriginal Organisation:

Figure B: Requirements to be recognised as an ACCO

Organisation Type	Requirements
Aboriginal and Torres Strait Islander Community Controlled organisation	• 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	• 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	• At least 50% Aboriginal and Torres Strait Islander owned OR at least 50% Aboriginal and Torres Strait Islander controlled (Board members or equivalent).

It is worth noting that above definitions aim to allow communities a degree of 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 (more information on this below). However, these requirements still prioritise funding opportunities for incorporated bodies and may not be inclusive of unincorporated community groups.

What if I do not meet the requirements to be recognised as an ACCO?

Many organisations and collaborations led by First Nations communities do not meet the requirements to be recognised as an ACCO and this does not in any way 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 the requirements to be recognised as an ACCO yet continue to be led and self-determined by their local First Nations community.

In saying that, to be eligible for funding under the National Justice Reinvestment Program (grants funded by the Commonwealth Government), your community will need to be backboned by an organisation that is an ACCO or that has a plan to transition to become an ACCO. As a result, not meeting the requirements to be recognised as an ACCO may become a barrier to receiving funding to implement 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 with First Nations communities (known as the *Indigenous Community Governance Project*)[1], 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)

These determinants are explained in further detail below.

Governing institutions

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[1] 'Indigenous 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 building confidence and support through establishing clear, transparent and accountable systems, processes and mechanisms for governing initiative.

Key considerations

- The way governance structures are created (*e.g. is it a single structure? Or multiple? 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 and rules 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 or rules which regulate the behaviour of those leading? Is there a Company 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 and rules that will guide the governance process (*e.g. kinship systems, the role of Country, lore, gender roles/norms*)

Measures of success

The systems, processes and mechanisms to govern your initiative are:

- clearly articulated and understood
- have cultural authority, community support and trust
- have 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

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 attain the community's collective vision.

Key considerations

How 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 made better decisions (*e.g. using data, attending training and development opportunities, etc*)

- build pathways for emerging leaders to mitigate key person risk and ensure the knowledge and skills remain in place for community

Measures of success

Leaders have 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 on 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 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? 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 or engaging community/youth advisory groups?*)
- be enabled to share and use their customary practices and culture during the governing process? (*e.g. the roles of men and women, the role of Country, ceremonies, language, etc*).
- have the 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*)

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Measures of success

First Nations peoples have the power and support to lead and be represented in every step of the initiative using their protected sovereign data 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 remaining 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 and needs, investing in ongoing training and development will provide rich benefit to the whole community, helping to grow and strengthen the initiative and its outcomes. 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 less experienced leaders with more experiences First Nations leaders from other communities/initiatives to support them in developing better governance practices)

Measures of success

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

Systems Change

There is often an underlying power imbalance which 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 also operate within the constraints of the broad 'external' governing systems and rules for which they have no power to 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 the 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 leadership 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 first building your knowledge and understanding of the broad 'external' governing systems and rules for which you have no power to control, you can begin exploring and identifying opportunities to work these systems together with 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 of this research for you to support you in finding the right match for your community.

Measures of success

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 also 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 enable your initiative.

Key considerations

A core aspiration of any JR initiative is to secure sustainable long-term funding and to see the reinvestment of funds formerly spent on criminal justice being reinvested back into community resources and community development activities. 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 (*e.g. establishing partnership principles, formalising collaboration agreements and/or engaging regularly through a cross-sector leadership group*)
- Conducting asset mapping to identify the spectrum of resources available to your community (*including cultural resources and other local assets*) and using these findings to develop a plan about how to shift investment in your community

Measures of success

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, living in a particular postcode or a wider geographical region? Once this has been identified you will also need to consider the different voices that comprise your community (e.g. Elders, young people, ACCOs, mothers, men, etc). Along with 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 adopted by First Nations communities, 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. These options will be discussed in more detail in the subsequent sections.

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
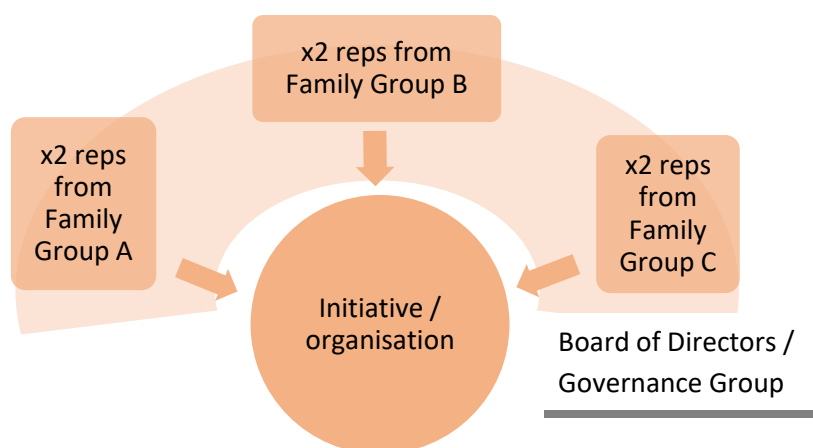
Examples:

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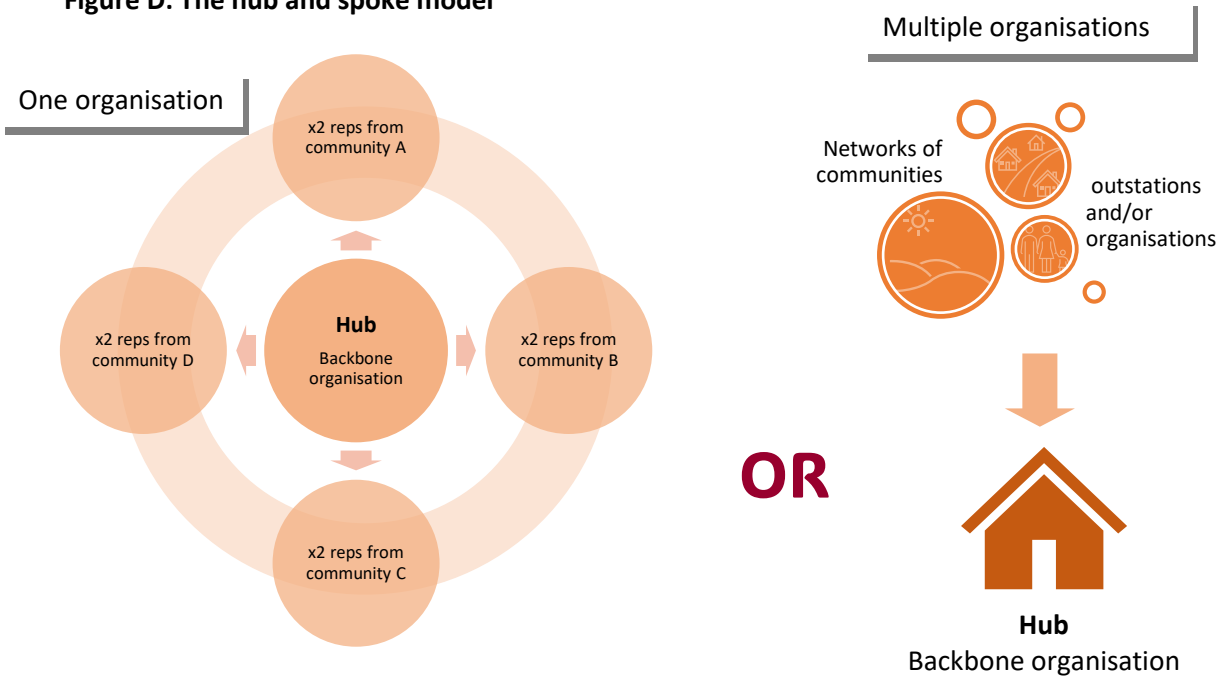- Bunuba Dawangarri Aboriginal Corporation (WA)

The hub and spoke model

This model is often adopted for regional approaches where there are people living in multiple smaller communities that are all commonly linked by a central hub (sometimes this will be several clans which belong to a larger nation group, or other times it can be made up of several remote communities that commonly transient a larger 'service' town). Under this approach the 'hub' is made up of   representatives from the

different communities (known as the 'spokes'). The hub will then centralise resources and be responsible for delivering services/support to the smaller communities.
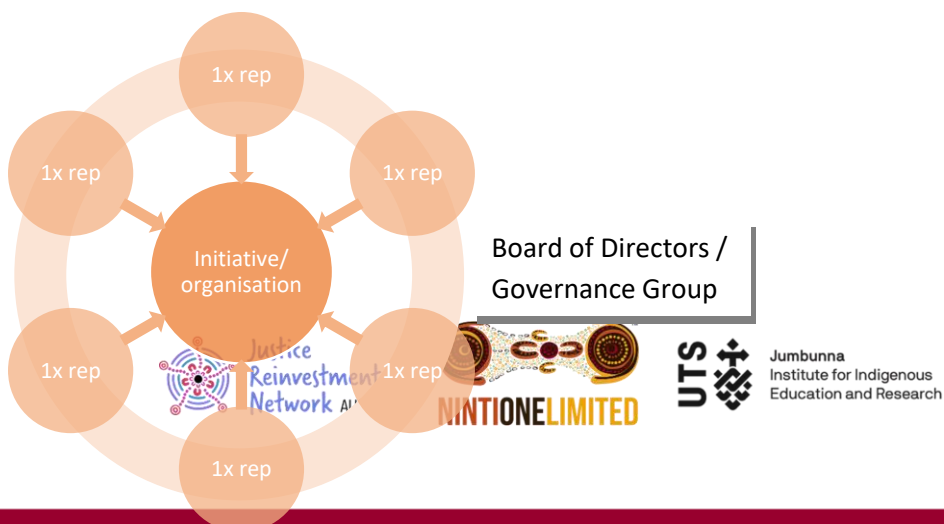
Figure D: The hub and spoke model

One organisation

Multiple organisations

x2 reps from community A

Hub Backbone organisation

x2 reps from community B

x2 reps from community D

x2 reps from community C

Networks of communities

outstations and/or organisations

OR

Hub Backbone organisation

Examples

- [Laynhapuy Homelands Association Inc. (](#)NT)
- [Bawinanga Aborginal Corporation](#) (NT)

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

1x rep

1x rep

1x rep

Initiative/ organisation

1x rep

1x rep

1x rep

Board of Directors / Governance Group

Examples

- [Thamarrurr Regional Council](#) (NT)
- [Yorta Yorta People Aboriginal Corporation](#) (NSW)
- [Armadale Noongar Corporation](#) (WA)

Working group model

Under this model, there is a core leadership group that is responsible for the overall governance of the initiative, often including ultimate decision-making authority over the initiative. Smaller 'working groups' are then created in key priority areas (e.g. education, mental health, data, finance, etc) with the membership of each working group being comprised of individuals with relevant skills, experience and/or interest in that area. Members of each working group can include members of the core leadership group and/or be members of the broader community/public. Members of each working group are often responsible for progressing work in their key priority area and will report into/advise the core leadership group with 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 be 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 a strictly advisory role.

Figure F: Working group model
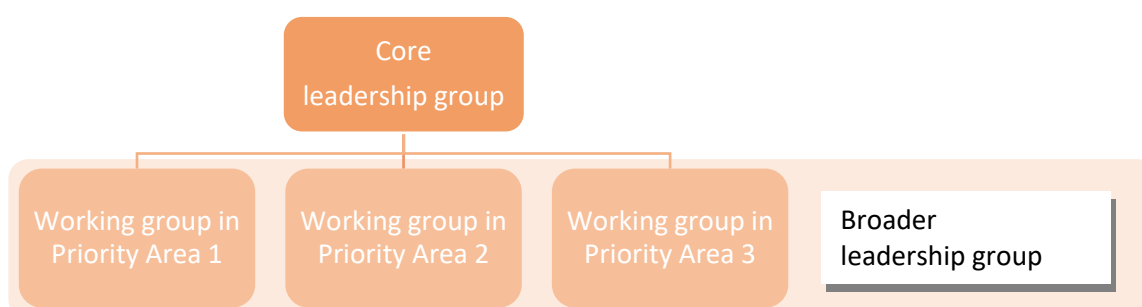
Examples

- [Maranguka JR initiative](#) (NSW)

- [Moree JR initiative](#) (NSW)

Good cultural governance 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 resouces 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 Yolngu 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, and so are the ways in which these systems are interwoven into the formal governance structures of First Nations organisations. As such, it is useful to first unpack the different types of not-for-profit structures available for building and supporting your JR initiative, including information on how to establish them and your obligations under Australia's legal and tax systems once established. This discussion will then support you to assess which structure might work best for your community (if any) and the models available for interweaving these structures 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. They can also 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 association.

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 which oversee and guide their governance structure and operations, sometimes referred to as 'rules' or a 'constitution'. These governing documents can also support an unincorporated association 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, many important benefits flow from incorporation, such as, 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, 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 more long-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 continues to bring together a group of people and/or organisations that have come together 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 state and/or territory legislation in which they operate and cannot operate outside of this jurisdiction unless they are registered with 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)

The *Corporations Act* is administered by the ASIC 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 NFP 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)

By being 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 which do not apply to not-for-profits that are registered with the 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 they contributed to the company (this is 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:

- They cannot pay dividends
- They cannot issue shares – and as a result, no one can profit from selling shares or obtain a controlling interest
- Every member of the company is entitled to one vote
- Typically will use a company constitution to outline the specific rules that govern their internal affairs (they can use the replaceable rules that are contained in the *Corporations Act*, however, their 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 other directors of registered public companies are subject to. These are the director liabilities, responsibilities and duties that are contained within the *Corporations Act*
- Will hold an Annual General Meeting (AGM)

Companies (registered under the CATSI Act)

First Nation 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 they have rules to prevent surpluses or profits being distributed to members.

The role of ORIC and the *CATSI Act* is intended to be a special measure 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. The key differences between companies established under the *CATSI Act*, in comparison to the *Corporations Act* are described here. These include requirements on 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 Registar), on behalf of ORIC such as appointing an examiner to examine potential financial or governance issues, the power to change a corporation's rule book, call a general meeting or AGM, act for members in certain circumstances or appoint a special administrator in the event of company is not performing as intended.

It is worth noting that the CATSI Act has had mixed reviews from First Nations communities and representative bodies. While some have found benefit in the additional assistance offered by ORIC, others have criticised the functions and powers of the Registrar for being 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 which 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 from state to state, you should visit the website of the relevant state or territory authority to learn more about the specific requirements in your jurisdictions, these are linked below:

- 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 also be noted that xooperatives incorporated in states that have enacted the *Cooperatives National Law* can operate freely across borders, without requiring separate registration and

reporting in those states.

Social enterprises

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 aim being directed at furthering a particular social cause. As they operate under convention business structures, they must comply with the legal requirements applicable to those structures. They 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 business 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. The entity that applies for and administers the funding is known as the auspicor, and the entity that undertakes the project activities is known as the auspicee.

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 contract, 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 should be the drafting of the written agreement that sets out the rights and obligations of each party to the joint 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
- 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 to twenty parties go into business together. 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.

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 regulations, liability and tax.

To find more information, please access our partnerships guide, available here.

Association

As described above, an association (either incorporated or incorporated can provide a vehicle for collaborating between different members.

Setting up a not-for-profit

Once you have decided on the governance model that best suits your intended activities, it is time to set up your 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 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, however, not all groups will be eligible. To receive an ABN you must demonstrate your intent to operate a not-for-profit. There is no single test to determine if you're carrying on a business. Features of a business include:

- the activity 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

- 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
- registered with the correct entity type (legal structure).

Registering your name

Unincorporated entities

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
- Intending to make a profit

If your group decides to register their 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 at a later date.

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 have created will determine the minimum requirements your not-for-profit must satisfy, the process for registration, along with 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

Typically, incorporation of a not-for-profit organisation will occur through the relevant state or territory authority. As legislation varies from state to state, 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 also 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	• Address • Contact person
Intended legal structure	• As registered with the ABR (e.g. company limited by guarantee, incorporated association, etc.)

Your organisation's governing documents	• [See detailed requirements for different legal structures here](#)
Date of establishment	• Incorporated entities = date of incorporation • Unincorporated association = date of governing document coming into effect
Date of registration	• Date your organisation was eligible for registration or date registration was requested
Operating locations	• This can be anywhere in Australia or overseas, however, it is worth noting different requirements and obligations apply for each jurisdiction. See here for more information on [operating within Australia](#), and [operating overseas](#).
Charity sub-type	• Categories that reflect a charity's charitable purpose (i.e. the reason it is being set up). [See here for more information](#).
Activities	• You need to describe how the organisation's activities work towards the charity subtypes that you selected. • 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	• 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	• You need to provide the name and details of all the organisation's responsible peoples, this may look different depending on your legal structure. [See here for more information](#). • You will also need to determine if your responsible people need a director identification number. [See here for more information](#).
Financial information	• estimated revenue for the current financial year

	• a description of where your organisation will get its revenue in the current financial year • a description of where your organisation intends to get its revenue from in the future
Governance	• Charities 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	• 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	• 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 remains responsible for managing tax, including being responsible for deciding whether to endorse charities for tax concessions. More information on the available tax concessions for each not-for-profit is included below:

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 income tax exemption, removing 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 their 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 a 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
- 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 specific 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 during the life of your JR initiative. Good budgeting for nonprofit organisations is critical to success, 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, they are the things that could go wrong or cause issues. All projects have risks, so it is important to identify and respond to these 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 then 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 continue to lay at the heart of the purpose guiding not-for-profits and other community-led initiatives, it is worth considering ethics as a standalone item when considering how to govern your JR initiative.

This process should include a 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 the establishment of a supporting body to work 'behind the scenes' of the community and JR governance structure you have developed, working to facilitate collaboration and to operationalise the community's vision into action. These bodies can employ staff and oversee/facilitate day-to-day operations.

To support your organisation in approaching staffing and operations for its JR initiative, we have developed a supporting body starting kit, available here and summary of key position descriptions, 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 of the major 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 advice in how to establish yours 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.

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	• 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	• 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	• Self-assessment tools • Research and advice • Practical tools for directors
Resource hub	JR Partner via JRNA	• Resources on establishing your JR initiative, including different project governance structures and your supporting body