

Setting up a company limited by guarantee

Legal information for CLGs and community organisations

This fact sheet covers:

- ▶ what is a company limited by guarantee?
 - ▶ what laws apply to companies limited by guarantee?
 - ▶ how do we set up a company limited by guarantee?
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A company limited by guarantee (CLG) is a type of incorporated legal structure that may be suitable for some not-for-profit organisations.

The process of setting up a CLG is set out in the *Corporations Act 2001* (Cth) (**Corporations Act**). The Corporations Act also sets out what your organisation must do to maintain its status as a CLG.

The government body responsible for regulating the incorporation and operation of CLGs is the Australian Securities and Investments Commission (**ASIC**). A CLG that meets the requirements of the *Charity Act 2013* (Cth) can seek registration with the Australian Charities and Not-for-Profit Commission (**ACNC**). The ACNC is the Commonwealth charity regulator and is responsible for the registration and oversight of registered charities in Australia and determining whether an organisation is eligible to be registered as a charity. A registered charity is able to access certain tax concessions.

A registered charity must comply with the requirements of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**) and the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth) (**ACNC Regulations**). These requirements apply in substitution for certain requirements under the Corporations Act in order to reduce the regulatory burden on registered charities.

This fact sheet provides information on setting up (incorporating) a CLG. 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 making a decision about what to do.

What is a CLG?

A CLG is a type of incorporated legal structure that may be suitable for some not-for-profit organisations (see Not-for-profit Law's [Choosing a legal structure page](#)).

An important feature of a CLG is that its members have limited liability. The members agree in writing to contribute a nominal amount (known as a 'guarantee' and usually \$10 – \$100) to the assets of the company in the event that the company is wound up and is unable to pay its debts and other liabilities. If the company is wound up, the liability of a member is limited to the nominal amount that the member has guaranteed.

Registration of a CLG creates a legal entity separate from its members. This is an advantage because as a CLG the company has the ability to act under the company name rather than the name of an

individual member. The CLG can hold property, employ staff, enter into contracts and can sue and be sued. The registration of a CLG is recognised Australia-wide and a CLG is entitled to operate throughout Australia. This is different to other types of legal entities, for example, incorporated associations which are registered and operate under the laws of a particular state or territory.

What laws apply to CLGs?

CLGs are registered under the Corporations Act. They are a type of public company and they have to comply with the laws in the Corporations Act that apply to public companies.

Unfortunately, the Corporations Act is a complex piece of legislation and the provisions that apply to CLGs are scattered throughout the Corporations Act and the *Corporations Regulations 2001* (Cth).

A CLG that is registered as a charity with the ACNC must comply with the requirements of both the ACNC and ASIC, although some of the more complicated ASIC requirements no longer apply when the CLG becomes a registered charity. The ACNC then becomes the responsible regulator for most of the reporting obligations of registered charities. The reduction in reporting obligations to ASIC is intended to reduce the regulatory burden on registered charities.

FURTHER READING

For more information on reporting obligations of CLGs, please refer to Not-for-profit Law's fact sheet [here](#).

ASIC also provides useful information [here](#).

CLGs often have a constitution (a document which sets out the rules governing the internal affairs of the organisation). A constitution governs the relationships between a CLG, its members and its directors. However, the Corporations Act also includes some provisions (known as 'replaceable rules') which can be used to govern a company in the absence of its own constitution. If your CLG wishes to register as a charity it will need certain provisions in its constitution (for example, regarding its not-for-profit nature and use of funds), so it cannot use the replaceable rules alone. For more information go to Not-for-profit Law's page on registering as a charity at www.nfplaw.org.au/charity.

A CLG must include the words 'Limited' or 'Ltd' after its name, unless it is registered as a charity with the ACNC and has a constitution that:

- prohibits the CLG from paying fees to its directors, and
- requires its directors to approve all other payments made to a director.

When a CLG is first registered as a company with ASIC, it will not yet be registered as a charity. Therefore, the word Limited must be included in the legal name of the company. However, once it is registered as a charity, it can omit the word Limited whenever it uses its name. Some companies might also go to the trouble of formally changing the legal name by passing a special resolution and notifying ASIC, but this is not strictly necessary (and does incur a fee).

How do we set up a company limited by guarantee?

Depending on your organisation, it may be important that you seek professional help from a lawyer, accountant, qualified company secretary or some other professional with experience setting up not-for-profit companies (for example, where your organisation has a particularly complex membership structure). At least initially, your organisation may also need someone with experience to advise you on the requirements for running a CLG. This is not only because the law in this area is quite detailed, but also because the penalties that ASIC imposes for non-compliance with the law can be significant. Not-for-profit Law's resources provide a lot of information to help you understand these requirements.

It may be worth getting some professional advice at the start, on issues such as:

- the drafting of a constitution with:
 - an objects clause, non-profit and winding up clause and relevant funding clauses that will comply with the requirements for taxation and other concessions available to not-for-profit companies (see Not-for-profit Law's [tax pages](#))
 - provisions about the eligibility, election and removal of directors (see Not-for-profit Law's [People involved page](#))
 - provisions about voting rights and proxies
- whether your company may be a special purpose company and under the *Corporations (Review Fees) Regulations 2003* (Cth) eligible for reduced ASIC fees, and
- whether your company should apply for an exemption from including the word 'Limited' in its name.

This could save your organisation a lot of time, cost, administrative headaches (and possible legal issues) further down the track.

Remember, organisations that are registered as charities, or will seek to be registered as charities, must initially apply to ASIC for registration, then register as a charity with the ACNC, following which it will become regulated in many respects by the ACNC (rather than ASIC) on an ongoing basis.

FURTHER READING

For more information on how to get registered as a charity go to Not-for-profit Law's [Registering as a charity](#) page.

TIP

If your organisation wants to set up a CLG that will also seek to be a registered charity with the ACNC, you may want to consider using the ACNC's template constitution. It has accompanying guidance and can help save time and money for smaller organisations in the process of setting up a CLG charity. You can access it [here](#).



TIP – COMPLETING FORM 201

You can register your organisation directly with ASIC by using [Form 201 – Application for registration as an Australian company](#).

Some of the questions in Form 201 may cause confusion (when you are trying to complete it). Keep in mind that the form is used to register all types of companies, not just CLGs, which means that some questions on the form are irrelevant to not-for-profit organisations. Although the form uses the term ‘company’, you can think of it as your ‘organisation’.

The following tips may help your not-for-profit organisation address the parts in the form:

Lodgement details

Provide details of who ASIC can contact if they have queries about the form. This might be the applicant who is filling out the form, a person who has consented to becoming a director or secretary or member of the CLG, or an agent for the CLG (this is someone who has authority to act on behalf of the CLG, such as the organisation’s lawyer).

Part 1 – State/territory of registration

Nominate the state or territory in which your CLG will be registered (this is usually where your organisation has its main/registered office).

Part 2 – Details of the company

This part asks for basic information about the company.

Proposed Name

You can choose a name for the CLG or simply use the Australian Company Number that will be allocated to your organisation. If you are using a name, you should check that the name is available. Include the name reservation number if you previously applied to reserve the name.

Legal Elements

A CLG is a company *limited* by guarantee, therefore either the ‘Ltd.’ or ‘Limited’ box should be ticked. Whether a CLG wants to have Ltd or Limited in a name is a matter for the directors to decide.

Registered Business Name

You will need to check whether the name you are proposing is the same as a name on the National Business Register.

Type and Class of Company

Under ‘Type of company’ and ‘Class of company’, you should tick ‘public company’, and ‘limited by guarantee’.

Special purpose company

A special purpose company is a company that is created for a set reason, not just general business. A category that may be relevant to community organisations is a ‘charitable purposes only’ company.

Your organisation will meet the requirements for a ‘charitable purposes only’ company if its constitution:

- requires it to pursue charitable purposes only and to apply its income in promoting those purposes,
- prohibits the company from making distributions to its members, and
- prohibits the company from paying fees to its directors, and requires its directors to approve all other payments the company makes to them.

‘Charitable purposes’ are set out in the Charities Act. The ACNC has [guidance](#) on what types of purposes are ‘charitable purposes’.

If the above requirements are satisfied, your organisation can tick the box for ‘charitable purposes only’ (eg. if you are using the ACNC template constitution and you only have ‘charitable purposes’, the constitution will have all the relevant clauses that meet the requirements of a special purpose company).

Crowd-sourced funding

This section is only applicable to public companies limited by shares intending to make a crowd-sourced funding offer. This type of funding is unavailable to CLGs. Therefore, you can leave the box blank.

Remember that crowd-sourced funding is different to crowd funding, where individuals, businesses, not-for-profits or charities can set a fundraising target via a crowd funding website, such as GoFundMe, mycause and Chuffed. The website enables people to donate money towards the fundraising target or particular

project. The ACNC has further information on [crowd funding and charities](#).

Governance of a public company

If you are a 'charitable purposes only' CLG (see above under 'special purpose company'), you must have a constitution and lodge it with ASIC.

This section also requires you to record the amount of a member's guarantee, which each member must agree to in writing.

Registered office

A CLG must have a registered office, and this requirement continues if you subsequently decide to register with the ACNC. The only requirement that is turned off for ACNC-registered charities is the requirement to notify ASIC of a change of address for the registered office.

A registered office is the place where official documents, communications or notices to the CLG are left or sent. It cannot be a PO Box.

If the CLG does not occupy the registered office, they will need to obtain the actual occupier's written consent to the CLG's use of those premises as a registered office. A common scenario is a company using its solicitor's or accountant's office as its registered office. You should keep a record of this written consent.

Office hours

The registered office of a CLG must also be open to the public each business day from at least 10am to 12 noon and at least 2pm to 4pm, or for at least 3 hours chosen by the CLG between 9am and 5pm each business day. Again, this requirement continues if you subsequently decide to register with the ACNC.

Principal place of business

This is where your organisation mainly conducts its business. The CLG's registered office does not need to be the same as its principal place of business. The address cannot be a PO Box.

Part 3 – Appoint officeholder

A CLG must have a minimum of three directors and one secretary (referred to as 'office holders'). Each must give a signed consent to their appointment (which the company must keep). The address must be their usual current residential address. There are very limited circumstances where an alternative address can be provided (for example, where personal safety may be at risk). If a director or secretary is concerned about providing a residential address for safety reasons, you should contact ASIC or seek legal advice.

Part 4 – Identify ultimate holding company

A CLG can leave this part blank. A CLG cannot have a holding company as it does not have shares and the very nature of an ultimate holding company is that it owns or controls shares in the subsidiary.

Part 5 – Share structure table

A CLG does not have shares and can therefore leave this part blank.

Part 6 – Details of members

A CLG must have at least one member, and the member must have given consent to becoming a member. In a CLG, members are not shareholders, unlike members of a company limited by shares.

The form asks for member details and shareholding. Given that the members are not shareholders, it is sufficient to complete the member details (name and address details) and leave 'share class code' blank.

Overall, it may be helpful for a CLG to attach a cover letter as an annexure explaining that as a CLG, some parts of the form have been left blank since they do not apply.

The completed and signed form must be mailed to ASIC along with the fee in cheque or money order (the fee was \$395 for CLGs at January 2018). If you are a 'charitable purposes only' company, you will also need to lodge your constitution with the form.

Once your application has been processed, ASIC will give your organisation an Australian Company Number (ACN), register your company and send you a certificate of registration. After your organisation has been registered with ASIC as a CLG, you may apply to the ACNC to register as a charity.

For further information on Form 201, contact ASIC at 1800 300 630.

FURTHER READING

If your organisation is choosing between incorporating as a CLG or incorporated association, Not-for-profit Law has a detailed comparison in its fact sheet called “Incorporated association or company limited by guarantee?” at www.nfplaw.org.au/legalstructure.



Resources

Related Not-for-profit Law Resources

✔ [Registering as a charity](#)

This page contains information about deciding to register, definition of 'charity' and how to register.

✔ [Running the organisation](#)

This page contains resources to assist those running not-for-profit organisations to understand and comply with legal requirements.

Australian Securities and Investments Commission (ASIC) – incorporating regulator for companies

✔ [ASIC homepage](#)

This is a link to ASIC's homepage - information about setting up can be found in the 'For Companies' section although much of this information has been written for different types of companies (like private, for profit companies)

✔ [Registering not-for-profit and charitable organisations](#)

This ASIC overview page provides an outline of the requirements for setting up a company limited by guarantee.

✔ [Special purpose companies](#)

This ASIC overview page provides an outline of the requirements for setting up a company limited by guarantee as a special purpose company (to get reduced fees).

✔ [Registrable Australian Bodies](#)

This ASIC page provides basic information on what is required to register an incorporated association under the *Corporations Act*.

✔ [How to register a company](#)

This ASIC page provides basic information on the process for registering a company. It is not specifically written for not-for-profit companies.

✔ [Reporting obligations of CLGs](#)

This ASIC page provides basic information on the reporting obligations for the three tiers of CLGs. It is not specific to not-for-profit companies.

✔ [Application to change a company name to omit the word Limited](#)

This ASIC page provides basic information on the process of making an application to ASIC in order to remove the word 'Limited' or 'Ltd' from CLGs that are registered charities.

Australian Charities and Not-for-profits Commission (ACNC) – charities regulator

✔ [Register my charity](#)

ACNC is the government agency responsible for the regulation of charities.

✔ [Template constitution CLGs](#)

ACNC has a useful template constitution for CLGs.

Legislation

✔ [Corporations Act 2001 \(Cth\)](#)

This legislation sets out the process for setting up a CLG.

✔ [Corporations Regulations \(various\)](#)

There are a number of Corporations Regulations covering various topics.

✔ [Australian Charities and Not-for-profits Commission Act 2012 \(Cth\)](#)

This is a link to the legislation that regulates charities in Australia.

✔ [Australian Charities and Not-for-profits Commission Regulation 2013 \(Cth\)](#)

This is a link to the regulations under the ACNC Act.

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au. Justice Connect Not-for-profit Law acknowledges the generous support of our funders and supporters. Find out more at www.nfplaw.org.au

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