

# Applying for Tax Concession Charity (TCC) endorsement

Legal information for community organisations

## This fact sheet covers:

- what is tax concession charity (TCC) endorsement?
- does TCC endorsement make us a tax deductible gift recipient organisation?

This fact sheet explains TCC endorsement and the application process.

### NOTE

The information contained in this fact sheet is intended as a guide only, and is not legal advice. If you or your organisation has a legal problem you should talk to a lawyer before making a decision about what to do. The information in this fact sheet is written for people and organisations resident in, or affected by, the laws that apply in Australia, and is current at May 2017.



## What is TCC endorsement?

Charities may be eligible for one or more tax concessions. To obtain a tax concession, the charity must be endorsed for that concession by the Australian Taxation Office (ATO). This process is called endorsement as a TCC.

There are a number of tax concessions that may be available to charities. These include:

- income tax exemption
- goods and services tax (GST) concessions
- fringe benefits tax (FBT) rebate
- FBT exemption, and
- a refund of franking credits.

A summary of the tax concessions available for charities and the eligibility requirements are detailed in the table below. The concessions and their eligibility requirements are explored in further detail in the next section of this resource.

Tax concession	ABN	Governing rules requirement	Income and assets requirement	Meets either: 'In Australia', or DGR, or 'prescribed by law' requirement	Registered with the ACNC	ATO endorsement	Notes
Income tax exemption	✓	✓	✓	✓	✓	✓	
FBT exemption	✓	✓	✓	✓	✓	✓ Endorsement not required for certain hospitals and public ambulance services	Only available to charity's that are registered HPCs or PBIs, or certain hospitals and public ambulance services
FBT rebate	✓	✓	✓	✓	✓	✓ Must also be endorsed as income tax exempt in order to be eligible for the FBT rebate	Charity must be an institution
GST concession	✓				✓	✓	
Refund of franking credits	✓	✓	✓	✓	✓	✓ Must also be endorsed as income tax exempt in order to access refund of franking credits	Do not need separate endorsement for refund of franking credits

Apply for TCC endorsement (Cth)

# Is our organisation eligible to be a TCC?

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To be endorsed as a TCC, the common requirements for all of the tax concessions (Income Tax, FBT exemption, FBT rebate, GST concession and refund of franking credits) are that your organisation must have an Australian Business Number (**ABN**) and be registered as a charity with the Australian Charities and Not for Profits Commission (**ACNC**). These two requirements are sufficient to be endorsed for the GST concessions.. Further requirements must also be satisfied in order to access any of the other tax concessions. These requirements are discussed below.

## 1. Applying for an ABN

You can apply online at [www.abr.gov.au](http://www.abr.gov.au) or by phoning the ATO on 1300 130 248 and asking for an application form

Application is free, and the link sets out what information must be supplied as part of your application.

## 2. Registration with the ACNC

To be eligible to be registered as a charity with the ACNC, your organisation must satisfy the following five requirements:

### Not-for-profit

A charity must be not-for-profit. This means it does not operate for the profit or gain of its individual members. Organisations can still make a profit, but profits must be used to further the purposes of the organisation and must not be distributed to owners, members or relatives. For further information on what this means see our fact sheet on 'What does 'not-for-profit' mean?' on the Information Hub at [www.nfplaw.org.au/beforeyoustart](http://www.nfplaw.org.au/beforeyoustart).

### Charitable purposes

A purpose is what your not-for-profit has been set up to achieve or what your activities work toward. Your organisation must carry on only 'charitable purposes'. The *Charities Act 2013* (Cth) lists 12 charitable purposes. These are:

- advancing health
- advancing education
- advancing social or public welfare
- advancing religion
- advancing culture
- promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia
- promoting or protecting human rights
- advancing the security or safety of Australia or the Australian public
- preventing or relieving the suffering of animals
- advancing the natural environment

- promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a state, a territory or another country, and
- other similar purposes 'beneficial to the general public' (a general category).

Your organisation's rules or constitution must state what charitable objects your organisation wants to achieve and your organisation's activities must reflect this. It is important that your organisation's purposes and activities are all charitable, with the exception of ancillary or incidental activities that are not charitable. For example, some social clubs and neighbourhood houses undertake a mix of charitable and non-charitable activities (such as running social events and also running a soup kitchen) and although these organisations do some charitable work, the ACNC is unlikely to accept them as charitable.

Your organisation is not a charity if it:

- for sporting, recreational or social purposes
- for providing private benefits (more than minor or incidental)
- providing services to its members only (ie. a membership club), or
- a government entity

Your organisation is also not a charity if it has any disqualifying purposes

- engaging in, or promoting activities that are unlawful
- engaging in, or promoting activities that are contrary to public policy, or
- promoting or opposing a political party or candidate for political office.

For more information about what is a charity, and examples of organisations that are and are not charities, see the ACNC's guidance as well the information listed in the Related Resources section at the end of this document.

### **Public benefit**

Your organisation's charitable purpose must be for the public benefit. There are many ways your purpose can benefit the public. Examples include the provision of goods, services, education, counselling or spiritual guidance to members of the public. Improving the environment is another example. Some types of charitable purpose (such as advancing education, relieving poverty, or advancing religion) are presumed to be for the public benefit.

Charities do not have to benefit everyone in a community, but they cannot be too restrictive in who can receive benefits.

### **Governance standards**

Charities must meet a set of governance standards to maintain registration with the ACNC. The standards are a set of core, minimum standards that deal with how charities are run (their governance). The governance standards require the charity to:

- be not-for-profit, work towards their charitable purpose, be able to demonstrate this and provide information about their purpose to the public
- be accountable to their members
- comply with Australian laws
- ensure its responsible persons are suitable persons, and

- ensure its responsible persons understand and carry out specified duties.

### Not disqualified from registration

Your organisation cannot be registered as a charity if it is:

- an individual or a partnership
- a political party
- a 'government entity', or
- engaging in or supporting terrorist or other criminal activities.

## What other requirements does out organisation need to satisfy to access the other (non-GST) tax concessions?

### 1. Income tax exemption

In addition to having an ABN and being registered as a charity, your organisation must satisfy two conditions and one of three tests in order to be endorsed for income tax exemption.

#### Conditions (you must meet both)

- Governing rules condition

Your charity must operate in a way that complies with its own governing rules – that is, the rules that authorise the policy, actions and affairs of your charity. Breaches of simple procedural requirements (e.g. missing a required lodgement date) will not necessarily prevent your charity from meeting this requirement, but acting in a manner inconsistent with the stated purpose of your charity, or in a manner inconsistent with a not-for-profit clause, is likely to cause this condition not to be met.

- Income and assets condition

Income and assets of the charity must only be used for the purpose for which the charity was established. If your charity is new, it will meet this requirement if it intends to apply its income and assets solely for the purpose for which it was established.

#### Tests (you must meet one of the three below)

- In Australia test

Your charity will meet this test if it:

- has a physical presence in Australia (for example, an office, a clinic, a centre), and
- to the extent that it has a physical presence in Australia, incurs its expenditure and pursue its objectives principally in Australia.

For example, if a charity runs a clinic in Australia and another clinic offshore the two clinics are run independently, and Australian expenditure and activity relates to the Australian clinic only, the test will be satisfied. In the same example, if the charity funds both clinics and the the offshore clinic is funded

#### RELATED RESOURCES

You can find out if your organisation could be eligible for income tax exemption, or remain eligible (if already accessing the income tax exemption) by using our app which you can access here:

[www.nfplaw.org.au/incometax](http://www.nfplaw.org.au/incometax).

from Australia it may not meet the test. However, if charity funds the offshore clinic and the amount of funding does not exceed the amount of gifts/fundraising activities and government grants the charity received the test could still be met.

### DGR test

This test is met if either:

- your charity (and not just a fund, authority or institution your charity operates) has been endorsed as a deductible gift recipient (DGR), or
- your charity is listed by name in the tax legislation as a DGR.

### Prescribed by law test

This test is met if your charity is prescribed by name in the income tax regulations, and either:

- it is located outside Australia and is tax exempt in its country of residence, or
- it has a physical presence in Australia but incurs expenditure and pursues its objectives outside Australia.

## 2. FBT exemption

Fringe Benefits Tax is a tax payable by employers for benefits paid to an employee (or an employee's associate e.g. a family member) in place of salary or wages. This is separate to income t

ax and is calculated on the taxable value of the fringe benefits provided.

An exemption from employers having to pay FBT on certain fringe benefits provided to employees (but not, for example, car parking benefits or entertainment-related benefits) is available to:

- public and not-for-profit hospitals (unless controlled by a society or association that is a charity) and public ambulance services, without endorsement being required. The exemption is currently capped at \$17,000 of fringe benefits per employee. Any excess benefits provided to an employee are subject to FBT
- public and not-for-profit hospitals that are controlled by a society or association that is a charity (note the controlling charity must be registered with the ACNC and the charity must be endorsed for the FBT rebate (refer below)). The same \$17,000 cap (as above) per employee applies
- registered public benevolent institutions and registered health promotion charities, provided they are endorsed to access the FBT exemption. A \$30,000 cap per employee currently applies.

#### NOTE

Further information explaining what Fringe Benefits Tax is can be accessed on the ATO website [here](#).

Information on the FBT Exemption from the ATO is available [here](#)

### 3. FBT rebate

A FBT rebate is an entitlement to a rebate equal to a percentage of the gross FBT payable, subject to a capping threshold.

rebate on FBT on fringe benefits provided to employees is only available to registered charities that are endorsed to access the income tax exemption (refer above), provided the charity is an institution (which means it must be more than a fund, and must not have a small membership with limited activities); and is not:

- a government institution, or
- a registered public benevolent institution or registered health promotion charity, in which case the FBT exemption is relevant (and so the FBT rebate is not applicable).

#### NOTE

Further information explaining what Fringe Benefits Tax is can be accessed on the ATO website [here](#).

Information on the FBT Rebate from the ATO is available [here](#).

### 4. Refund of franking credits

Franking credits arise when certain Australian resident companies pay income tax on their taxable income and distribute their after-tax profits by way of a franked dividend. The franked dividends have franking credits attached.

A not-for-profit organisation will be entitled to a refund of franking credits where the organisation has an ABN and is one of the following:

- a registered charity endorsed by the ATO as income tax exempt
- endorsed by the ATO as a DGR, or
- specifically named as a DGR in the *Income Tax Assessment Act 1997* (Cth).

#### NOTE

Further information explaining what Fringe Benefits Tax is can be accessed on the ATO website [here](#).

Information on the FBT Rebate from the ATO is available [here](#).

## Do we need to make any changes to the rules or constitution to be eligible for TCC?

The ACNC will require that your charitable purpose be expressed in your constitution or governing rules. Therefore, you may need to make changes to your rules or constitution in order to satisfy the ACNC registration requirements. Both the ACNC and the ATO will also require that your rules or constitution demonstrate that you are not for profit – both whilst in operation and when winding up. It is therefore common that both the ACNC and ATO will require your rules or constitution to contain a ‘not-for-profit clause’ and a ‘winding up clause’. These are explained below.

If your organisation would like to apply for Deductible Gift Recipient (**DGR**) status it may need further clauses, and these should be added at the same time. For more information on DGR status see the Related Resources section at the end of this guide.

## Not-for-profit clause

You will need to include a clause (paragraph) stating that your organisation is not-for-profit. The law does not prescribe the words that a not-for profit clause should contain. However, the ATO and ACNC both agree that the following example clause will be considered appropriate, so long as the other clauses within the constitution do not contradict the not-for-profit clause and so long as the charity behaves consistently with the not-for-profit clause.

### EXAMPLE OF A NOT-FOR-PROFIT CLAUSE

*The assets and income of the organisation shall be applied solely to further its objects and no portion shall be distributed directly or indirectly to the members of the organisation except as genuine compensation for services rendered or expenses incurred on behalf of the organisation.*



## Winding up clause

You will need to include a clause stating that, on the winding up of the organisation (that is, when it ceases to operate), any remaining property will be distributed to another organisation or fund which is also charitable and also not-for-profit. The ACNC has a sample clause.

### EXAMPLE OF A WINDING UP CLAUSE

*In the event of the organisation being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another charitable organisation which is not carried on for the profit or gain of its individual members.*



The Not-for-profit Law Information Hub has resources on drafting and changing governing documents at [www.nfplaw.org.au/constitution](http://www.nfplaw.org.au/constitution).

## How to apply

You may need some help from a lawyer or an accountant in making your application to be a TCC, especially if you need to change your rules. Here are the application steps:

### 1. Finalise rules or constitution with not-for-profit winding up clauses

If you need to change your rules to insert the appropriate clauses, this may take some time as the members of your organisation will need to approve the changes (for most organisations this means holding a general meeting where over 75% of eligible votes cast are in favour of the changes).

### 2. Apply for an Australian Business Number (ABN)

You can apply online at [www.abr.gov.au](http://www.abr.gov.au) or by phoning the ATO on 1300 130 248 and asking for an application form.

### 3. Fill out the ACNC application form, including the TCC section

The ACNC has a checklist to help your organisation gather all the information it will require before starting the ACNC application process. Once you complete the ACNC application form, it will forward the application for TCC to the ATO.

If your organisation is already registered with the ACNC and it is not already a TCC (this can be checked on the ABR), a TCC application must be submitted directly to the ATO using the ATO application form, available on the [ATO website](#).

#### TIP

When making an application to the ACNC, to register as a charity you can also apply for multiple tax concessions at the same time. When making an ACNC application you will need:

- your ABN
- details about your organisation
- to know the charitable purpose that applies to your organisation
- financial information about your organisation
- details of directors, trustees or committee members
- to know what charity tax concessions you are applying for, and
- an electronic copy or scanned copy of your governing documents (such as a constitution, trust deed or rules).

#### 4. Provide any further information to the ATO or ACNC, as requested.

The ACNC or ATO may write back to you, seeking further information about your objects, activities and committee members, before making a decision on your endorsement.

## Does TCC endorsement make us a tax deductible gift recipient organisation?

No. To be able to receive tax deductible donations your organisation needs to be endorsed as a DGR. For more information about how to obtain DGR status see the Related Resources at the end of this document.

# Resources

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## Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub at [www.nfplaw.org.au](http://www.nfplaw.org.au) has further resources on the following relevant topics:

- ✔ What does not-for-profit mean? – [www.nfplaw.org.au/beforeyoustart](http://www.nfplaw.org.au/beforeyoustart)
- ✔ Deductible Gift Recipient endorsement – [www.nfplaw.org.au/DGR](http://www.nfplaw.org.au/DGR)
- ✔ Registering as a charity – [www.nfplaw.org.au/charity](http://www.nfplaw.org.au/charity)
- ✔ Income tax exemptions – [www.nfplaw.org.au/incometax](http://www.nfplaw.org.au/incometax)
- ✔ Tax generally – [www.nfplaw.org.au/tax](http://www.nfplaw.org.au/tax)
- ✔ Setting up your organisation – [www.nfplaw.org.au/settingup](http://www.nfplaw.org.au/settingup)

## Legislation

- ✔ [Income Tax Assessment Act 1997 \(Cth\)](#)

## Government

- ✔ Australian Charities and Not-for-Profits Commission – [www.acnc.gov.au](http://www.acnc.gov.au)
- ✔ Australian Taxation Office – [www.ato.gov.au](http://www.ato.gov.au) – [Application for endorsement as a tax concession charity](#)

A Not-for-profit Law Information Hub resource. Access more resources at [www.nfplaw.org.au](http://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](http://www.nfplaw.org.au)

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