

Introduction to Charities Law

Legal information for community organisations

This fact sheet covers:

- what is a charity?
 - regulation of charities
 - tax concessions
 - should your organisation become a charity?
 - what is a charity required to do?
 - how do you register as a charity?
 - using the ACNC Registered Charity Tick
-

There are over 55,000 registered charities in Australia. Any eligible not-for-profit organisation can apply to be registered with the Australian Charities and Not-for-profit Commission (ACNC).

There have been many changes to the laws affecting charities over recent years, including the introduction of the charities regulator, the ACNC, and the statutory definition of 'charity' in the *Charities Act 2013* (Cth) (**Charities Act**).

What is a charity?

The concept of 'charity' has old roots. The formal recognition of modern charities dates back to the Statute of Elizabeth, enacted in the 1600s by Queen Elizabeth I. Since this time, the meaning of 'charity' has evolved and been developed by case law (the common law). This incremental development meant that the definition was not written in one place.

The Charities Act came into effect on 1 January 2014, and it introduced a statutory definition of 'charity' and 'charitable purposes'. These definitions are used by the ACNC to assess whether or not a not-for-profit organisation is eligible to be registered as a charity.

According to the Charities Act, a charity is an entity:

1. which is not-for-profit
2. has purposes that are charitable and for the public benefit (and any non-charitable purposes it has are incidental or ancillary to, and in furtherance or in aid of, its charitable purposes)
3. which does not have any disqualifying purposes, and
4. which is not an individual, political party or government entity.

Organisations that want to register as a charity with the ACNC will be assessed according to the above definition. A more detailed explanation is outlined below.

What organisations are eligible to become charities?

Under the Charities Act, a ‘charity’ means an entity:

1. which is not-for-profit

To become a registered charity, your organisation must be not-for-profit. In a not-for-profit organisation, any profit made can only be used to further the aims or purposes of the organisation. That means all the profits are put back into the organisation to continue to pay for its activities and functions and to achieve its mission. Not-for-profits will need to have appropriate not-for-profit and winding up clauses in their constitutions or rules to demonstrate they are not-for-profit, or have some other way to show that they are not-for-profit (eg. they are a church).

EXAMPLE 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.

EXAMPLE 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 organisation which is not carried on for the profit or gain of its individual members.

NOTE: the other organisation must be charitable.

2. all of whose purposes are ‘charitable purposes’ for the public benefit, or incidental or ancillary to, and in furtherance or in aid of, such purposes

The Charities Act sets out a list of charitable purposes. The list is not exhaustive, so it does not cover every single charitable purpose that exists. But it does list the main charitable purposes, including some that were previously not clearly included in the definition of ‘charity’.

Charitable purposes in the Charities Act	
Advancing health	Promoting or protecting human rights
Advancing education	Preventing or relieving the suffering of animals
Advancing the security or safety of Australia or the Australian public	Advancing the natural environment
Any other purpose beneficial to the general public that may be reasonably regarded as analogous to, or within the spirit of, the above purposes	Advancing social or public welfare (including the relief of poverty, caring for and protecting young people, providing child care services and certain disaster relief activities)
Promoting reconciliation, mutual respect and tolerance between groups of people in Australia	Promoting or opposing a change to any matter established by law, policy or practice in the

	Commonwealth, a State, a Territory or another country, in furtherance or protection of one or more of the above purposes
Advancing religion	Advancing culture

The ACNC will consider if an organisation's purposes are for the 'public benefit'.

According to the Charities Act, an organisation's purpose will be for the public benefit if:

- the achievement of the purpose would be of public benefit, and
- the purpose is directed to a benefit that is available to the members of the general public or a sufficient section of the general public (considering the overall size of that section and the number of people to whom the purpose is relevant).

The following purposes will continue to be presumed to be for the public benefit, as they were under the old law: relieving poverty, distress or disadvantage, the needs of the aged and impotent, advancing education, and advancing religion.

EXAMPLE

A charity with a purpose of providing health services to Aboriginal Australians will have purposes for the public benefit. Although the service is only directed to Aboriginal Australians (rather than the whole Australian public), the section of the public is broad enough to satisfy the public benefit test.



3. which does not have any disqualifying purposes

The ACNC will not register a charity that has a 'disqualifying purpose'. The Charities Act defines a 'disqualifying purpose' as engaging in or promoting activities which are unlawful or contrary to public policy, or promoting or opposing a political party or candidate.

EXAMPLE

An organisation set up to lobby for the election of Liberal politicians in Federal Victorian seats would have purposes that disqualify the organisation from being a charity.



It is not a disqualifying purpose if an organisation's purpose is to distribute information, or advance debate, about the policies of political parties or candidates.

EXAMPLE

An organisation with purposes of advancing health care for aged Australians that included a purpose of scrutinising the health policies of political parties would not have a disqualifying purpose.



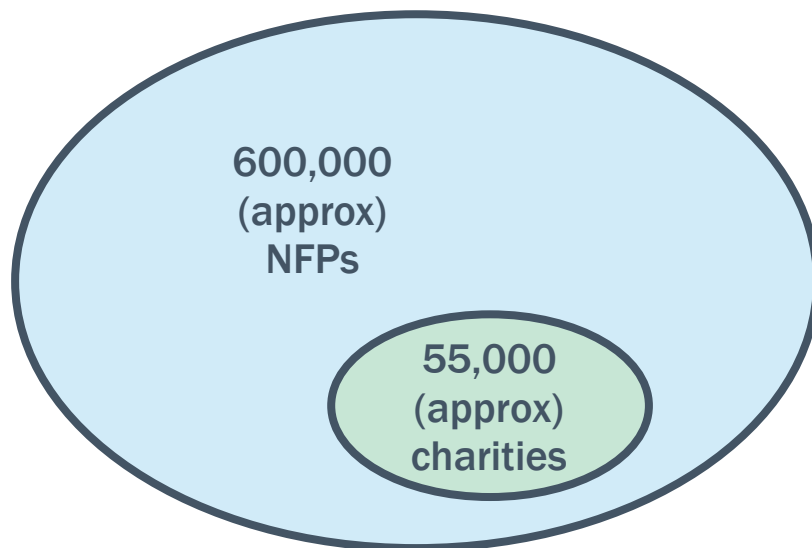
4. which is not an individual, political party or government entity

Simply put, a charity cannot be one person, a political party or a government body or organisation. Charities are most commonly incorporated not-for-profits like companies limited by guarantee or incorporated associations, or are trusts or funds. Charities do not have to be incorporated, but remember that groups must be able to establish that they are not-for-profit (which would often require some kind of documentation like rules or a trust deed).

The difference between charities and not-for-profit organisations

It is important to understand that being a not-for-profit and being a charity are not the same thing. There are many more not-for-profits than charities. Charities are a special subset of not-for-profit organisations. All charities are not-for-profit organisations, but not all not-for-profit organisations are charities.

The key benefit of being a charity is eligibility to apply for access to charitable tax concessions as well as benefits associated with the public's perception and trust of registered charities.



Regulation of charities

The ACNC

The ACNC is the regulator of Australian charities. Charities must apply to be registered with the ACNC (if they are not already registered) and then must report to the ACNC in one way or another, depending on their size. The ACNC is responsible for:

- assessing whether a group is a 'charity'
- registering charities on the charities register, and
- ensuring registered charities comply with all their obligations, such as:
 - meeting charity reporting requirements
 - complying with governance standards, and
 - complying with external conduct standards.

NOTE

Registration with the ACNC is voluntary, but it is necessary to access charitable tax concessions.

The ACNC takes an educative approach to enforcing charity law and making sure charities comply with all their obligations. It reserves taking enforcement action for only serious cases of misconduct.

The ACNC also maintains a public national charities register. You can search the register on the [ACNC's website](#).

Reporting

The ACNC is a federal government body, and it operates under federal laws. Reporting will be discussed in part 6 of this guide. However, it should be noted that organisations incorporated under state legislation, such as incorporated associations, are generally required to report to both their state regulator (such as Consumer Affairs Victoria) and the ACNC if they are a charity. Companies limited by guarantee, incorporated under federal legislation, generally only need to report to the ACNC if they are a registered charity.

Organisations accessing charitable tax concessions have always (and continue to) report to the Australian Taxation Office (**ATO**) in relation to the tax concessions.

RELATED RESOURCES

For more information about reporting obligations of charities, go to the Reporting to government page on the Not-for-profit Law Information Hub at www.nfplaw.org.au/reporting.



Responsible persons

Charities must provide the details of the 'responsible persons' of the charity when they register with the ACNC. These are normally the trustees, directors or committee members. Once registered, 'responsible persons' have obligations to the charity and to the ACNC, and their names are listed on the ACNC register. These obligations relate particularly to the governance standards that apply to charities.

FURTHER READING

The ACNC has more information on responsible persons [here](#).

Tax concessions

There are a number of tax concessions available to organisations from the federal and state governments. Many of these tax concessions require an applicant organisation to be registered as a charity with the ACNC (although some concessions are available to certain non-charities as well as registered charities). A charity does not need to be registered with the ACNC to access state government tax concessions, eg. exemption from Land Tax. Not every charity is eligible for every concession. Many charitable tax concessions require a group to meet further tests than simply being registered with the ACNC.

The ACNC determines if your group is eligible to be a charity, but it is the ATO that determines if your group is eligible for federal tax concessions. If you are registering for the first time, your organisation can submit one application to the ACNC that includes an application for tax concessions, which the ACNC will pass to the ATO. If you are already registered with the ACNC, you can apply for tax concessions directly to the ATO at any time.

Common tax concessions/exemptions are:

- income tax exemption: if an organisation is exempt, it does not need to lodge income tax returns
- fringe benefits tax (FBT) exemption and rebates: some charities can be exempt from paying FBT, or receive a rebate of 49% of the gross FBT payable (subject to a threshold)
- GST concessions: registered charities can be eligible to receive GST concessions, and
- deductible gift recipient status: some registered charities can be endorsed by the ATO as Deductible Gift Recipients (DGR), which means donors to the organisation can claim income tax deductions for their gifts or donations.

FURTHER READING

The Not-for-profit Law Information Hub's [Tax pages](#) explain the different concessions and eligibility in more detail. See also the [ATO webpage on tax exemptions for charities](#).

NOTE

Not-for-profit organisations that are not registered charities may still be eligible for tax exemptions.

Note that while obtaining registration as a charity is generally not a difficult process, gaining access to charitable tax concessions can be a more difficult and lengthy process, in particular applying for Deductible Gift Recipient endorsement.

Should your organisation become a charity?

Whether or not your organisation registers as a charity with the ACNC is a matter for careful consideration. Even if it qualifies as a charity, it may choose not to register if the benefits of registration do not outweigh the additional obligations that come with being a charity.

An organisation registering as a charity is often required to access charitable tax concessions (as discussed above). There are other benefits to registering as a charity, such as being listed on the public register of charities, which can improve public trust and confidence in your organisation.

In general, being registered as a charity does come with extra reporting obligations. However, for Companies Limited by Guarantee registered as charities, reporting is less complex once registered.

Consider your organisation's particular circumstances, whether the benefits of registration are important to its operation and whether it will be able to comply with the charity reporting and other obligations.

Benefits	Extra obligations
Access to more tax concessions, and therefore access to incentives and in some cases extra funding (some funders can only provide grants to DGRs)	State incorporated structures like incorporated associations and trusts not previously required to report will have extra or duplicated reporting obligations
Reputation and standing in the community (due to being listed on the public register, and being required to comply with Governance Standards)	Requirement to comply with the ACNC's governance standards
Simpler reporting for companies limited by guarantee	Need for 'responsible persons' and listing on public register of 'responsible persons'

What is a charity required to do?

Reporting and notification

Charities are required to report to the ACNC each year. The type of report/s that must be submitted depends on the size of the charity. The ACNC has [guidance on determining the size of your charity](#).

- Small charities are required to submit an Annual Information Statement once each year, and can submit an annual financial report if they choose (which does not have to be audited). Annual Information Statements should not take organisations too long to complete. The ACNC has more information [here](#).
- Medium and large charities are required to submit audited financial reports each year as well as an Annual Information Statement.

NOTE

Charity size is decided by income.

- **Small charity** – annual revenue is less than \$250,000
- **Medium charity** – annual revenue is \$250,000 or more, but less than \$1 million
- **Large charity** – annual revenue is \$1 million or more



Charities also need to notify the ACNC when certain things change, including:

- changes to the legal name
- address for service (where legal documents can be sent)
- change to the 'responsible persons' (people who are members of your charity's governing body including directors or committee members, or its trustees), and
- Changes to the governing documents (such as its constitution, rules or trust deed).

Governance standards

Registered charities need to meet the ACNC's five governance standards, which are a set of minimum requirements for governance. A charity must meet the governance standards when it applies to the ACNC for registration, and must continue to meet the governance standards to maintain its registration.

The governance standards apply to all charities, except for 'basic religious organisations'.

In summary, the five governance standards are:

1. Charities must be not-for-profit and work towards their charitable purpose. They must be able to demonstrate this and provide information about their purpose to the public. Charities that have members must take reasonable steps to be accountable to their members and provide their members with adequate opportunity to raise concerns about how the charity is governed.
2. Charities must not commit a serious offence (such as fraud) under any Australian law or breach a law that may result in a penalty of 60 penalty units (currently \$10,200) or more.
3. Charities must check that their responsible persons (such as board or committee members or trustees or directors) are not disqualified from managing a corporation under the Corporations Act or disqualified from being a reasonable person of a registered charity by the ACNC Commissioner.
4. Charities must take reasonable steps to remove any responsible person who does not meet these requirements. Charities should ensure that their 'responsible persons' sign a declaration relating to disqualifying offences.
5. Charities must take reasonable steps to make sure that responsible persons understand and carry out the duties set out in this standard 5. The duties are:
 - the duty to act with reasonable care and diligence
 - the duty to act honestly in the best interests of the charity and for its charitable purposes

- the duty not to misuse their position as a responsible person
- the duty not to misuse information they gain in their role as a responsible person
- the duty to disclose conflicts of interests
- the duty to make sure the financial affairs of the charity are managed responsibly, and
- the duty not to allow the charity to operate whilst it is insolvent.

FURTHER READING

For more information, see our [Duties Guide](#) on the Not-for-profit Law Information Hub and the ACNC's [Governance Standards Guidance](#).

The governance standards apply to the 'responsible persons' of registered charities, such as directors, trustees, committee members or board members. It is important to understand that, despite the governance standards applying to the 'responsible persons', it is the charity itself that is responsible for taking reasonable steps to make sure its responsible persons are complying with the governance standards.

External conduct standards

The external conduct standards are a set of minimum standards that regulate registered charities when they send money or participate in activities outside Australia. Like the governance standards, charities must comply with these external conduct standards to be registered, and remain registered, with the ACNC.

NOTE

The external conduct standards are still in development. If your organisation sends money overseas or participates in activities overseas, you should monitor the ACNC's website carefully and make sure that, as soon as the external conduct standards apply, you are compliant.



Summary of key obligations for maintaining registration

<input checked="" type="checkbox"/>	Key obligations for charities
<input type="checkbox"/>	Make sure the purposes and activities of the charity remain for charitable purposes according to the Charities Act
<input type="checkbox"/>	Notify the ACNC of certain changes to your organisation, such as changes to your organisation's legal name, address for service, directors or committee members, and governing documents
<input type="checkbox"/>	Keep records, including financial and operational records
<input type="checkbox"/>	Comply with all the ACNC's reporting requirements
<input type="checkbox"/>	Continue to comply with the governance standards and external conduct standards

FURTHER READING

For more information on the ongoing obligations of charities, see the [ACNC's website](#), and the charities reporting page on the Not-for-profit Law Information Hub at www.nfplaw.org.au/charityreporting.



How do you register as a charity?

To be eligible to be registered by the ACNC as a charity, your organisation should check that it meets the definition of charity in the Charities Act and make sure it has an Australian Business Number.

You can complete and lodge your application online [here](#).

TIP

The ACNC has a [registration checklist](#), and [application guide](#) to help you prepare for the application process.



The ACNC Registered Charity Tick

The ACNC has introduced the use of a 'Registered [Charity Tick](#)', which it hopes will give registered charities a simple way to display their charity registration status and give donors confidence they are giving to a registered and regulated charity.

Only charities registered with the ACNC are eligible to use the tick. For those charities, it is available for download via the [Charity Portal](#). The use of the tick is governed by [terms and conditions](#) which the charity must agree to before downloading the tick.

Charities will be able to use the Registered Charity Tick on their website, at events, on their social media accounts, letterheads and other marketing materials. Where it is displayed electronically, it should be hyperlinked to the relevant charity's listing on the Charity Register.

For more information about the Registered Charity Tick, go to the ACNC [website](#).



Resources

Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub at www.nfplaw.org.au has the following related resources:

➤ Getting Started – www.nfplaw.org.au/gettingstarted

This section of the Information Hub includes information on the different not-for-profit legal structures and ‘What does not-for-profit mean’?

➤ Governance – www.nfplaw.org.au/governance

The Governance page of the Information Hub features a Duties Guide and the ACNC governance standards guidance.

➤ Tax – www.nfplaw.org.au/tax

Our tax pages provide an outline of different charitable tax concessions.

➤ Reporting to Government – www.nfplaw.org.au/reporting

This section covers the several situations where community organisations may be required to report to government.

Australian Charities and Not-for-profits Commission (ACNC)

➤ [ACNC homepage](#)

➤ [Checklist: Before you start a charity](#)

➤ [Tick of Charity Registration](#)

Australian Taxation Office (ATO)

➤ [Not-for-profit section](#)

Legislation

➤ [Charities Act 2013 \(Cth\)](#)

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

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