

Introduction to Charities Law

Legal information for community organisations

This fact sheet covers:

- ▶ what is a charity?
 - ▶ the difference between not-for profit organisations and charities
 - ▶ how are charities regulated?
 - ▶ tax concessions available to charities
 - ▶ should your organisation register as a charity?
 - ▶ how do you register as a charity?
 - ▶ what must a charity do to keep its ACNC registration?
 - ▶ using the ACNC Registered Charity Tick
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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).

Since 2013, Australia has had a specialist charities regulator, the ACNC, and a federal statutory definition of 'charity' in the *Charities Act 2013* (Cth) (**Charities Act**).

What is a charity?

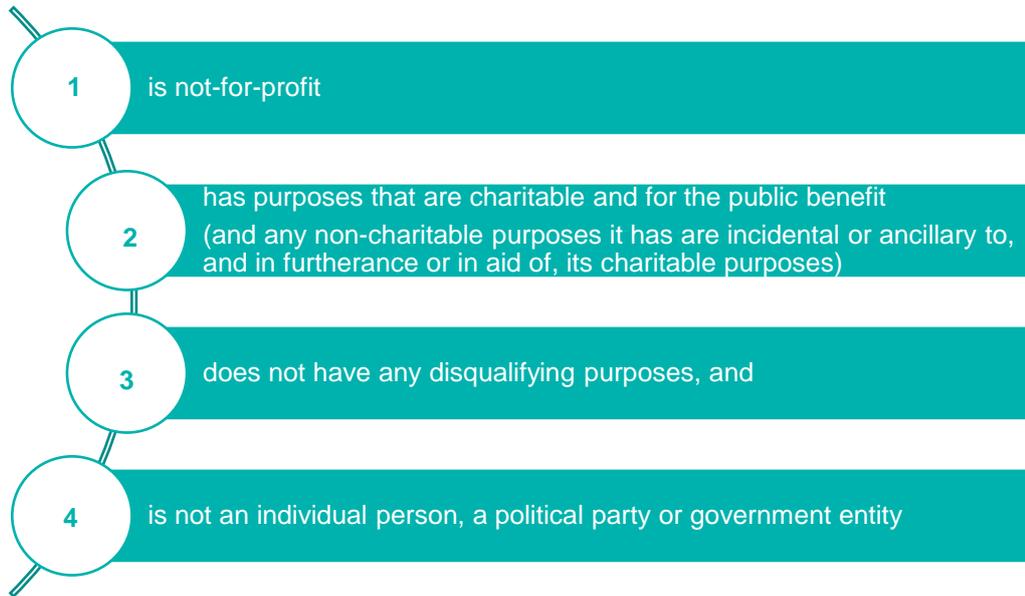
The concept of 'charity' has deep roots.

The formal recognition of modern charities dates back to the Statute of Elizabeth, a law passed in the 1600s by Queen Elizabeth I. Since this time, the meaning of 'charity' has been developed by case law (the common law). Because of this incremental development, the definition of charity has not been consistent, nor written in one place.

The Charities Act came into effect on 1 January 2014. This federal act introduced statutory definitions for 'charity' and 'charitable purposes'.

The ACNC uses these definitions to decide whether a not-for-profit organisation qualifies to be registered as a charity.

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



Organisations that want to register as a charity with the ACNC are assessed according to this definition. We explain this in more detail below.

How does an organisation qualify to register as a charity?

Under the Charities Act, a 'charity' means an entity (group or organisation):

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. It can't be shared between shareholders or members. 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 must have suitable 'not-for-profit' and winding up clauses in their constitutions or rules to show they are not-for-profit, or have some other way to show that they are not-for-profit (for example, they are a church).



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.

Example of a winding up clause

If, upon the winding up or dissolution of the company after the satisfaction of all its debts and liabilities, there remains any property, this property must not be paid to or distributed among the members. Instead, this property must be given or transferred to some other organisation or organisations having:

- *objects similar to the objects of the company, and*
- *a constitution which prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the company under this constitution*

(The winding up clause example is taken from Justice Connect's constitution)



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 doesn't 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 case law definition of 'charity'.

Charitable purposes in the Charities Act:

- advancing health, education, religion, culture or the natural environment
- 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)
- advancing the security or safety of Australia or the Australian public
- promoting or protecting human rights
- preventing or relieving the suffering of animals
- 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 Australia or another country, in furtherance or protection of one or more of the above purposes, and
- any other purpose beneficial to the general public that may be reasonably regarded as analogous to, or within the spirit of, the above purposes

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

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

- achieving the purpose would be of public benefit, and
- the purpose is directed to a benefit that is available to members of the general public or to 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 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.

See also the [ACNC Commissioner Interpretation Statement on Indigenous Charities](#).

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 Party politicians in Federal Victorian seats would have purposes that disqualify the organisation from being a charity.

It's 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, to support its main purpose of advancing health care for aged Australians, may also have a purpose of scrutinising the health policies of political parties. The scrutinising purpose would not be a disqualifying purpose.

4. Which is not an individual person, a political party or government entity

A charity can't be one person, a political party or a government body or organisation. Charities are usually incorporated not-for-profits (such as companies limited by guarantee or incorporated associations), trusts or funds. Charities don't have to be incorporated, but remember that groups must be able to show 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

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 being eligible to apply for charitable tax concessions, as well as benefits associated with the public's perception and trust of registered charities.





How are charities regulated?

The ACNC

The ACNC is the regulator of Australian charities. Charities must apply to be registered with the ACNC if they want to access federal government charitable tax benefits, concessions or exemptions.

Once registered, a charity must report to the ACNC. The reporting required depends on a charity's size. The ACNC is responsible for:

- assessing whether a group is a 'charity'
- registering charities on the ACNC charities register, and
- making sure registered charities meet 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 federal government charitable tax concessions.

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

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



Note

ACNC charity determination does not bind state and territory governments. So an organisation may be considered to be a charity under the federal definition of 'charity' in the Charities Act, but might not meet the definition of charity under a state or territory law. This may have implications for an organisation – for example, in relation to state or territory tax laws. For information see Not-for-profit Law's fact sheet on [state tax exemptions](#).

Reporting

The ACNC is a federal government body, and it operates under federal laws. However, organisations incorporated under state legislation, such as incorporated associations, are in certain cases required to report to both their state regulator and the ACNC if they are a charity.

The ACT, New South Wales, the Northern Territory, South Australia, Tasmania and Victoria have simplified (or are in the process of simplifying) these reporting requirements. In these states and territories, incorporated associations generally only have to report to the ACNC. In Queensland and Western Australia, incorporated associations must still report to both the state regulator and the ACNC. See the ACNC's website for more information on [state and territory reporting requirements](#).

Companies limited by guarantee, incorporated under federal legislation, generally only need to report to the ACNC if they are a registered charity. See the ACNC's website for more information on the [reporting requirements of companies limited by guarantee](#).

Organisations accessing charitable tax concessions must report to the Australian Taxation Office (**ATO**) about tax concessions.



Related Not-for-profit Law resource

For more information about reporting obligations of charities, go to our [reporting to government page](#).

Responsible persons

Charities must provide details of the charity's 'responsible persons' when they register with the ACNC.

'Responsible persons' are normally 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.



Related resource

For more information on responsible persons, go to [the ACNC's website](#).

Tax concessions

A number of tax concessions from federal and state governments are available to organisations. Many tax concessions require an applicant organisation to be registered as a charity with the ACNC (although some concessions are available to certain non-charities). But a charity doesn't have to be registered with the ACNC to access state government tax concessions (for example, exemption from land tax). Not every charity qualifies for every concession. Many charitable tax concessions require that an organisation meets other tests rather than simply being registered with the ACNC.



Related resources

Our website's [Tax pages](#) explain the different concessions and eligibility in more detail. See also the [ATO webpage on tax exemptions for charities](#).

The ACNC decides if your organisation qualifies for registration as a charity, but the ATO decides if your organisation qualifies for federal tax concessions. If your organisation is registering for the first time, you 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.



Note

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

Common tax concessions or exemptions are:

- income tax exemption: if an organisation qualifies, it is exempt from income tax and doesn't have 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

**Note**

While registering as a charity is generally not a difficult process, getting access to charitable tax concessions can be a more difficult and lengthy process – in particular applying for Deductible Gift Recipient endorsement.

Should your organisation register as a charity?

Consider whether to register your organisation as a charity with the ACNC carefully. Even if your organisation qualifies as a charity, the benefits of registration might not outweigh the obligations that come with being a registered charity. In these circumstances, you may choose not to register your organisation as a charity.

Registration as a charity is often required before an organisation can access charitable tax concessions (as discussed above). And 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, extra reporting obligations come with registration as a charity. However, for companies limited by guarantee registered as charities, reporting is less complex once registered with the ACNC.

Things to consider include:

- your organisation's particular circumstances
- whether the benefits of charity registration are important to its operation, and
- whether your organisation will be able to comply with 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 may 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 ACNC governance standards) and ability to use the ACNC charity 'tick' logo (see below)	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 must a charity do to keep its registration?

Reporting and notification

Charities must report to the ACNC each year. The type of report that a charity must submit depends on the charity's size. The ACNC website has [guidance on working out the size of your charity](#).

- Small charities must submit an Annual Information Statement (**AIS**) once a year, and can submit an annual financial report if they choose (this doesn't have to be audited). It shouldn't be onerous to prepare an AIS. For more information go to the [ACNC's website](#).
- Medium and large charities must submit audited financial reports each year, as well as an AIS



Note

ACNC 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:

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

Governance standards

The ACNC has five governance standards, which are a set of minimum requirements for governance of registered charities. A charity must meet the governance standards when it applies to the ACNC for registration, and must continue to meet the governance standards to keep its registration.

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

The five governance standards are:

Standard 1	Charities must be not-for-profit and work towards their charitable purposes. They must be able to demonstrate this and provide information about their purposes to the public.
Standard 2	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.
Standard 3	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 \$12,600) or more.
Standard 4	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 by the ACNC Commissioner from being a 'reasonable person' of a registered charity. Charities must take reasonable steps to remove a responsible person who does not meet these requirements. Charities should ensure that their 'responsible persons' sign a declaration relating to disqualifying offences.
Standard 5	Charities must take reasonable steps to make sure that 'responsible persons' understand and carry out the duties set out in this standard. These duties are: <ul style="list-style-type: none"> • 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 while it's insolvent



Note – a proposed new governance standard

In an [announcement on 27 November 2020](#), the Federal Government outlined its plan to give the Australian Charities and Not-for profits Commission (**ACNC**) the power to deregister a charity which doesn't take reasonable steps to participate in the National Redress Scheme (**Scheme**). This will be done by creating an additional governance standard in the Australian Charities and Not-for-profits Commission Regulation 2013 (Cth).

The Scheme was created in response to [recommendations](#) by the [Royal Commission into Institutional Responses to Child Sexual Abuse](#). For more information about the Scheme, see the [National Redress Scheme website](#).

This new governance standard will require registered charities to take all reasonable steps to become a participating non-government institution in the Scheme if a claim has been, or is likely to be, made against them under the Scheme.

Treasury will be seeking submissions on the proposed new governance standard during the period 7 December 2020 to 8 January 2021.



Related resources

For more information, see our [Duties Guide](#) and the ACNC's [Governance for Good Guide](#).



Note

Although the governance standards apply to the 'responsible persons' (such as directors, trustees, committee members or board members), it's the charity itself that is responsible for taking reasonable steps to make sure it's '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. Unlike the governance standards, basic religious charities are not exempt from the external conduct standards.



Note

The external conduct standards are new – they apply from 1 July 2019. If your organisation sends money overseas or participates in activities overseas, you should make sure you are compliant. See the ACNC website for more information about [the external conduct standards](#).

There is some guidance about how the ACNC will apply the conduct standards, but there are also many areas that still need to be clarified.

Summary of key obligations for maintaining registration



Key obligations for charities



Make sure the purposes and activities of the charity remain for charitable purposes according to the Charities Act



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



Keep records, including financial and operational records



Comply with all the ACNC's reporting requirements



Continue to comply with the governance standards and external conduct standards



Related resources

For more information on the ongoing obligations of charities, see the [ACNC's website](#), and our [charities reporting page](#).

How do you register as a charity?

To qualify to be registered by the ACNC as a charity, your organisation must meet the definition of charity in the Charities Act and have an Australian Business Number (**ABN**).

You can complete and lodge your application online on [the ACNC's website](#).



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 encourages use of the '[Registered Charity Tick](#)', to 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 may use the tick. For these charities, the tick is available for download via the [Charity Portal](#). The way charities may use the tick is governed by terms and conditions which a charity must agree to before they download it.

Charities may 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 charity's listing on the Charity Register.

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





Resources

Related Not-for-profit Law Resources

- ▶ [Getting Started](#)

This page includes information on the different not-for-profit legal structures and 'What does not-for-profit mean'?

- ▶ [Governance](#)

Our governance page covers how not-for-profits are governed and includes a Duties Guide.

- ▶ [Tax](#)

Our tax pages outline different charitable tax concessions.

- ▶ [Reporting to Government](#)

This section covers situations where community organisations may be required to report to government, including reporting to the ACNC.

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

- ▶ [ACNC homepage](#)

- ▶ [ACNC's Governance for Good Guide](#)

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

- ▶ [Tick of Charity Registration](#)

Australian Taxation Office (ATO)

- ▶ [Not-for-profit section](#)

Legislation

- ▶ [Charities Act 2013 \(Cth\)](#)