

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? and
 - ▶ 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 charity law (the *Charity Act 2013* (Cth)) can seek registration with the Australian Charities and Not-for-Profit Commission (**ACNC**). 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 (under the ACNC Act and Regulations) apply in substitution for certain requirements under the Corporations Act in order to reduce the regulatory burden on registered charities.

The ACNC is the Commonwealth charity regulator and is responsible for the registration and oversight of charities in Australia and determining whether an organisation is eligible to be registered as a charity. A registered charity will be able to access certain tax concessions.

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 (known as a 'guarantee') 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 companies limited by guarantee 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 become excused. 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. Therefore, a CLG that is registered as a charity will not need to be as concerned with the complexity of the Corporations Act and Regulations as a CLG that is not planning to register as a charity.

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 further 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, but this is not strictly necessary.

How do we set up a company limited by guarantee?

We recommend that your organisation seek professional help from a lawyer, accountant, qualified company secretary or some other professional with experience setting up not-for-profit companies. 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 are quite significant.

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.

It is 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 needs to 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 on an ongoing basis.

TIP

If your organisation is wanting 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](#).

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.

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