

Setting up a company limited by guarantee

Legal information for 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 of CLGs is the Australian Securities and Investments Commission (**ASIC**). If a CLG is also a charity, it must be registered with the Australian Charities and Not-for-Profit Commission (**ACNC**) and must comply with the requirements of the ACNC, while certain ASIC requirements 'switch off'.

The ACNC is the Commonwealth charity regulator and is responsible for registering charities in Australia and determining whether an organisation is a charity.

This fact sheet provides information on setting up (incorporating) a group as 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 is suitable for some not-for-profit organisations (see Not-for-profit Law's [Choosing a legal structure page](#)).

In a CLG, the members of the company have limited liability. The members agree in writing (known as a 'guarantee') to pay a nominal amount (usually \$20 - \$100) to the property of the company. If the company is wound up, the liability of the members is limited to the nominal amount that they have guaranteed.

Registration of a CLG creates a legal entity separate from its members. The CLG can hold property and can sue and be sued. The registration of a CLG is recognised Australia wide and a CLG is entitled to operate throughout Australia.

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 Act (and Regulations).

A CLG that is registered as a charity with the ACNC must comply with the requirements of the ACNC and ASIC, and certain, more complicated ASIC requirements 'switch off'. Therefore, a CLG that is registered as a charity will not need to be as concerned with the complexity of regulation as a CLG that is not planning to register as a charity.

CLGs often have a constitution (a document which sets out the rules governing the internal affairs of the organisation - previously called a Memorandum and Articles of Association). 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 a tailored constitution. If your group wishes to be a charity it will need certain clauses, so cannot use the replaceable rules alone. For further information go to our 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 a registered charity and exempted from using the words under the Corporations Act.

A CLG that wishes not to use the words 'Limited' or 'Ltd' after its name must be registered with the ACNC and must have a constitution that:

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

CLGs must apply for an exemption from using the word 'Limited' in their names.

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.

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 reporting page](#))

FURTHER READING

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

- 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 is able 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, groups that will seek to be registered as charities, must apply to ASIC for initial incorporation registration, then register with the ACNC and will become regulated in many respects by the ACNC on an ongoing basis.

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 Incorporated association or company limited by guarantee? Guide at www.nfplaw.org.au/legalstructure.



ACNC template constitution for CLGs

The ACNC recently published a template constitution for CLGs aiming to register as a charity. It has accompanying guidance and can help save time and money for smaller groups in the process of setting up a CLG charity.

RELATED RESOURCES

Visit the [ACNC website](#) for its template constitution guide.

Resources

Related Not-for-profit Law Resources

✔ [Registering as a charity](#)

This page contains information about deciding whether to register, the 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.

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.

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

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