

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?
 - ▶ how do we set up a company limited by guarantee?
-

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 keep 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 the *Charities Act 2013* (Cth) may seek registration with the Australian Charities and Not-for-Profit Commission (**ACNC**). The ACNC is the Commonwealth charity regulator responsible for the registration and oversight of registered charities in Australia. The ACNC decides whether an organisation is eligible to be registered as a charity. A registered charity is able to access certain tax concessions.

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 apply in substitution for certain requirements under the Corporations Act to reduce the regulatory burden on registered charities.



Note

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.



Related Not-for-profit Law resources

For more information on choosing a legal structure, see our [choosing a legal structure webpage](#).

An important feature of a CLG is that its members have **limited liability**. The members agree in writing 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.

The Corporations Act is a complex piece of legislation and the provisions that apply to CLGs 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 no longer apply when the CLG becomes a registered charity (see [this page](#) on the ASIC website for a list of sections of the Corporations Act that do not apply to registered charities). 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.



Related resources

For more information on reporting obligations of CLGs, please refer to Not-for-profit Law's fact sheet on [reporting to government](#).

ASIC also provides useful information on this [webpage](#).

CLGs often have a constitution (a document which sets out the rules governing the internal affairs of the company). 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 wants 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 can't use the replaceable rules alone.



Related Not-for-profit Law resources

For more information go to [Not-for-profit Law's webpage on registering as a 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 the company makes 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 and notifying ASIC, but this is not strictly necessary (and does incur a fee payable to ASIC).

How do we set up a CLG?

Depending on your organisation (for example, where your organisation has a particularly complex membership structure), it may be important to seek professional help from a lawyer, accountant, qualified company secretary or some other professional experienced in setting up not-for-profit companies.

At least initially, your organisation may 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 can be significant.

It may be 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 [our tax webpage](#))
 - provisions about the eligibility, election and removal of directors (see [our webpage on the people involved](#)), and
 - 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 should apply for an exemption from including the word 'Limited' or 'Ltd' in its name

This could save your organisation a lot of time, cost, administrative headaches (and possible legal issues) down the track.



Remember

Organisations that are registered as charities, or propose to be registered as charities, must first 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 (rather than ASIC) on an ongoing basis.



Related Not-for-profit Law resource

For more information on how to register as a charity, see our [webpage on registering as a charity](#).



Tip

If your organisation wants to set up a CLG that will also apply 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.

Completing an application for registration as an Australian company

From October 2019, Australian company registrations must be completed online.

You can register a company online using the [Business Registration Service](#) or a private service provider. If you have complications with your application or ASIC requires further information to make a decision about whether to register the company, ASIC may direct you to complete a paper form instead.



Tip

Because the application form is used to register all types of companies, not just CLGs, some questions in the application are irrelevant to not-for-profit organisations.

For this reason, when you are completing the application for company registration online, some of the questions may cause confusion.

Although the form uses the term 'company', you can think of it as your 'organisation'.

Tips to help your not-for-profit organisation complete the application form

Applying for an Australian Business Number and other tax registrations at the same time as company registration

When you apply to register a company online using the [Business Registration Service](#), you may register for an Australian Business Number (ABN) as well as other tax registrations at the same time.

It's useful to at least register for an ABN at the same time as company registration, especially if your organisation intends to apply for charity registration with the ACNC (as an ABN is required for this application).

Note – ABN applications typically require you to have the tax file numbers of all officeholders (including the directors, company secretary and public officer), so it is useful to have this information handy before starting the application.

If you are unsure which tax registrations you should apply for, the Business Registration Service has a [tool](#) to help you decide. It might also be useful to seek advice from an accountant about this.

Note – if you decide to apply for additional tax registrations at the same time as company registration, you will need to provide additional information about your organisation's employees and finances. This is not required for a straight company registration application,



so you may decide to apply for additional registrations at a later date once the company is more established.

Part 1 – Getting started

This part asks for basic information about the company.

Company structure

Type of company

Under 'Type of company', select 'public company'.

Class of company

Under 'Class of company', select 'limited by guarantee'.

Sub-class of company

Under this section, you will be asked to select from the following options:

- unlisted not-for-profit
- unlisted superannuation trustee, or
- unlisted

An unlisted not-for-profit company must be for charitable purposes only. The company must have a constitution and that constitution must:

- require the company to use its income to promote these charitable purposes
- not allow the company to make distributions to its shareholders or pay fees to its directors
- require its directors to approve any payments the company makes to directors or shareholders, and
- satisfy the criteria for a 'special purpose company' in Regulation 3 of the *Corporations (Review Fees) Regulations 2003*

Not-for-profit companies are considered 'special purpose' companies. This means they are set up for a specific purpose only and qualify for lower annual review fees.

'Charitable purposes' are set out in the Charities Act. These 'Charitable purposes' 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
- other similar purposes 'beneficial to the general public' (a general category), and
- promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a state, a territory or another country (where that change furthers or opposes one or more of the purposes above)

If the above requirements are satisfied, your organisation can select the box for 'unlisted not-for-profit' (for example, if you are using the ACNC template constitution and you only have 'charitable purposes', the constitution will have all the relevant clauses that meet the requirements of a special purpose company).

You will then be asked to confirm that the company is not issuing shares for anything other than cash and to declare that the company is a special purpose company as defined in Regulation 3 of the *Corporations (Review Fees) Regulations 2003*.



Part 2- Company name

Choosing a company name

You can choose a name for the CLG or simply use the Australian Company Number that will be allocated to your organisation. If you are using a name, you should check that the name is available by searching [ASIC Connect](#).

Note – certain restricted words and expressions – set out in Part 4 of the [Business Names Registration \(Availability of Names\) Determination 2015](#) – can't be used in a company's name without the consent of a Minister or the Australian Prudential Regulation Authority (APRA) (section 147 of the Corporations Act). See this [ASIC webpage](#) for more information on restricted names.

If you have a company name in mind but don't think you will be ready to submit a company registration application for some time, you can submit a [Form 410 – application for reservation of a name](#) to reserve your proposed name for a period of two months from the date of approval. This can be extended by re-submitting the same form before the reservation expiry date. There is an application fee attached (\$51 as at June 2021).

Note – if you are using a registered business name, you will need to show that the owner of the business name will be a member of the proposed company.

Having 'Ltd' or 'Limited' at the end of the company's name

At this point in the application, you can also select the legal element at the end of the company name. You will be required to select either 'Ltd', 'Ltd.' or 'Limited'.

The Corporations Act requires a CLG to have the word 'Limited' or 'Ltd' at the end of its name. However, once the company is registered as a charity with the ACNC, it doesn't need to use the word 'Limited' or 'Ltd' at the end of its name if the constitution:

- prohibits the company from paying fees to directors for acting as directors, and
- requires the directors to approve all other payments the company makes to directors (ss 150 or 151 Corporations Act)

This means that, while the company's legal name (as registered with ASIC) will still include 'Limited' at the end of the name, the charity doesn't need to use 'Limited' on the company letterhead or on the company's common seal (if it has one).

To change the name officially to remove 'Limited', you will need to apply to ASIC and pay a fee (\$417 as at July 2020). The charity's members must pass a special resolution in favour of the name change and [Form 432 – application to change a company name to omit the word 'Limited'](#) needs to be lodged with ASIC.



Part 3- Company Details

ABN Details

If you are applying for an ABN at the same time as company registration, you will need to state the reason why you need an ABN. For a new organisation, the appropriate selection is 'new business in Australia'.

You will then need to enter the ABN details of the company, including:

- whether all business activity will end within three months of the start date
- whether the company operates an agricultural property
- whether you are an Australian resident for tax purposes
- whether the company is income tax exempt
- whether the entity is owned or controlled by the commonwealth, state, territory or local government, and
- the main business activity of the company (if the organisation will be a registered charity, we suggest selecting 'charity service')

Registered office

A CLG must have a registered office, and this requirement continues if you subsequently decide to register with the ACNC. The only requirement that is turned off for ACNC-registered charities is the requirement to notify ASIC of a change of address for the registered office.

A registered office is the place where official documents, communications or notices to the CLG are left or sent. It can't be a PO Box.

If the CLG doesn't occupy the registered office, they will need to obtain the actual occupier's prior written consent to the CLG's use of those premises as a registered office. A common scenario is a company using its solicitor's or accountant's office as its registered office. You should keep a record of this written consent.

If your organisation operates out of a location that is different to its registered office, it will need to list this address as well. The address can't be a PO box.

Occupier

This is where you nominate if the address is occupied, the occupier's name, and whether the occupier consents to the use of the premises as a place of business.

Office hours

The registered office of a CLG must also be open to the public each business day from at least 10am to 12 noon and at least 2pm to 4pm, or for at least three hours chosen by the CLG between 9am and 5pm each business day. If the CLG chooses its own opening hours from its registration, the opening hours must be specified in the application for registration as a company. If the CLG changes its opening hours after its registration, the CLG must lodge notice of a change in the opening hours of its registered office with ASIC before the day on which a change occurs. Again, this requirement continues if you subsequently decide to register with the ACNC.

Business associates (the company's officeholders and members)

A CLG must have:

- a minimum of three directors (with at least two who live in Australia)
- at least one secretary (with at least one who lives in Australia – note the secretary doesn't have to be a director)
- at least one member (can be individuals or companies), and
- a public officer (can, but doesn't have to be, a director or secretary; the public officer will be the company's representative to the ATO)

Initial directors

When deciding who to appoint as a director, consider the skills and experience the board requires in order to help the company achieve its purpose.

If the company will be a charity, [ACNC Governance Standard 4](#) requires charities to take reasonable steps to ensure the suitability of directors as 'responsible persons'. To fulfil this obligation you must confirm that the proposed directors are not disqualified from being responsible persons, by checking the [ASIC Disqualified Person Register](#) and the [ACNC Register of Disqualified Persons](#). Each proposed responsible person should also sign a declaration confirming they are not disqualified and they know what it means to be disqualified (this declaration can be included in the consent to act form).

Note – each director must provide their signed written consent to act as a director of the company and the company must keep this as a record.

Directors must also provide an address, which must be their usual current residential address. There are very limited circumstances where an alternative address can be provided (for example, where personal safety may be at risk). If a director or secretary is concerned about



providing a residential address for safety reasons, you should contact ASIC or seek legal advice.

Company secretary

The company can appoint one or more individuals to the position of company secretary. This person can also be a director of the company.

If the company will be a charity, then the company will also need to confirm that the proposed company secretary is suitable to be a 'responsible person' by checking the [ASIC Disqualified Person Register](#) and the [ACNC Register of Disqualified Persons](#). The proposed company secretary should also provide their residential address and their written and signed consent to act in this role for the company.

Members

Members are effectively 'owners' of a company and often have rights to vote on how it is run as well as certain obligations such as complying with the company constitution. Each member of the company will need to agree to the provisions of the company's constitution and to pay the specified amount required to contribute to the property of the company if it is wound up (the members' guarantee). In a CLG, members are not shareholders, unlike members of a company limited by shares.

You must keep the members' undertakings as part of the company's records. You must also set up a register of members to record details of your company's members.

When providing the details of members in the company registration application form, you will need to provide the members' details (name and address). If the member is a company, you will need to provide the company's registered office address.

Public officer

Under section 252(1) of the *Income Tax Assessment Act 1936* (Cth), a company must appoint a public officer within three months of the company starting to carry on business or derive income in Australia. A public officer can be appointed at the same time as incorporating the company.

A public officer acts as an official point of contact and representative of a company to the ATO. They are also responsible for ensuring the company meets its responsibilities under *the Income Tax Assessment Act 1936* (Cth). The appointment of the public officer is only deemed to be effective after written notice of the appointment, specifying the officer's name and address for service is provided to the ATO. The penalties for not doing this within the three month period noted above currently amount to \$110 a day.

Authorised contact

This section requires you to list the contact details of the authorised contact for the company

Part 4- Declaration This part requires you to nominate who is making the declaration, provide all contact details of that person and select that you declare that:

- The information in this application is true and correct.
- This document has been prepared in accordance with information supplied by the entity.
- You have received a declaration in writing from the entity stating that the information is true and correct.
- You are authorised by the entity to give this document to the Commissioner of Taxation and/or Registrar of the Australian Business Register.



Related Not-for-profit Law resource

If your organisation is choosing between incorporating as a CLG or incorporated association, we have prepared a detailed comparison in [our fact sheet 'Incorporated association or company limited by guarantee?'](#).



Resources

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.

Other related resources

ASIC

- ▶ [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.

ACNC

- ▶ [Apply for charity registration](#)

Australian Charities and Not-for-profits Commission (**ACNC**) is the government agency responsible for the regulation of charities.



▶ Template constitution for charitable CLGs

The ACNC has a useful template constitution for charitable CLGs.

Legislation

▶ Corporations Act 2001 (Cth)

This legislation sets out the process for setting up a CLG.

▶ Corporations Regulations 2001 (Cth) and 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 the legislation that regulates charities in Australia.

▶ Australian Charities and Not-for-profits Commission Regulation 2013 (Cth)

These are the regulations under the ACNC Act.

▶ Charities Act 2013 (Cth)

This is the legislation that defines charity and charitable purpose, and for related purposes.