

Not for Profit Organisations(NFP)

Checklist

Matters for consideration before you start a charity:

Take some time to do some planning before you go ahead and start a charity – it will help in achieving your goals, as well as identifying possible challenges or risks. This is a list of things you'll need to consider.

1) Do some background research

Focus on what you want to achieve. Is setting up a new charity the best way to achieve your goals? There may be an existing charity or not-for-profit that already does what you want to do or that may take on your idea as a project that it can support.

You can [search the ACNC Register](#) to find registered charities that you could support or work on a project with. There are also other not-for-profit resources you can search for online.

NFP organisations fall within two broad categories:

- charities, and
- other NFP organisations that are not charities, for example: most sporting and recreational clubs, community service organisations, professional and business associations and social organisations.

Charities must register with the Australian Charities and Not-for-profits Commission (ACNC) before they can be endorsed by the ATO for tax concessions or apply for certain categories of deductible gift recipient (DGR) status.

Other NFP organisations that are not charities may be able to self-assess whether they are income tax exempt or taxable and whether they will have access to other tax concessions. They will need to be endorsed by the ATO to obtain DGR status.

About tax concessions

Depending on the type of NFP organisation, different tax concessions are available and the process for accessing each concession varies. Charities must be endorsed by the ATO to access charity tax concessions.

Other NFP organisations can generally self-assess – that is, work out for themselves – whether they are entitled to tax concessions.

The tax concessions NFPs may be entitled to access include:

- income tax exemption
- fringe benefits tax (FBT) exemption or rebate
- goods and services tax (GST) concessions
- deductible gift recipient (DGR) endorsement
- refund of franking credits.

To access various concessions and comply with your organisation's tax obligations, your organisation may need to register for an Australian business number (ABN), AUSkey, GST, FBT, pay as you go (PAYG) withholding, fuel tax credits or other taxes.

In addition to tax registrations, your organisation may need other licences, permits or registrations to operate.

We recommend you review your organisation's entitlement to tax concessions on an annual basis and whenever there is a change in your structure or operations.

Registration process

To register your NFP organisation follow these steps:

1. Determine / understand your legal structure.
2. Determine if you're an NFP.
3. Register your organisation with the Australian Government to obtain an Australian Business Number (ABN). At the same time you can also register for Goods and Services Tax (GST), Fringe Benefit Tax (FBT), Pay As You Go (PAYG) withholding and AUSKey (your government login for business) if your organisation requires it.

Endorsement process in brief

Endorsement is the approval process charities must follow if they want to access tax concessions. Also, specific types of charities and other NFP organisations, and some funds, authorities and institutions operated by NFP organisations, may be endorsed as deductible gift recipients (DGRs).

Charities

1. If you have charitable purposes you must apply to register as a charity with the Australian Charities and Not-for-profit Commission (ACNC) to access charity tax concessions.
2. Apply for endorsement for charity tax concessions and/or apply to the ATO to be endorsed as a DGR. You can apply for charity tax concessions and DGR status when you apply for charity registration with the ACNC, they will forward the application to the ATO.
3. If you are not eligible to be registered as a charity with the ACNC you may still be eligible for some tax concessions, including income tax and FBT concessions, through self-assessment.
4. If you are unhappy with the ATO response (for example, if they refuse your DGR endorsement or endorsement as a tax concession charity) you can object.

Other NFPs that are not charities

1. Determine if you are entitled to self-assess your eligibility for tax concessions, including income tax and FBT concessions. Not all NFP organisations are eligible for tax concessions.
2. Determine if you can apply to be endorsed as a DGR. There are a limited number of categories for non-charitable DGR's.

2) Outline your purpose

Consider and write down in detail what you want to achieve with your charity, and what your timelines are. This helps work out how you may wish to set it up. Ask:

- What will your charity try to achieve?
- What will its main activities be?
- What programs or services will you provide?
- Who is your target audience?
- Who will benefit from the charity's activities and programs?
- Why is there a need for this new charity?
- How long will your charity last? Will it be for a one-off short-term project or an ongoing long-term venture?

If you want to set up a charity, make sure it only has A [charitable purposes](#).

Charitable purpose

To be registered as a charity, your organisation must have a charitable purpose or purposes.

A charitable purpose (also called a mission or object) is the reason a charity has been set up and what its activities work towards achieving.

All charities registered with the ACNC must have a charitable purpose. This purpose is usually set out in the charity's governing document. A charity may have one charitable purpose, or it may have more than one charitable purpose.

The purpose clause in a charity's governing document must reflect the charity's activities. It helps the people running the charity and others (such as volunteers, donors and government agencies) to understand why the charity does what it does.

How to decide if your purposes are charitable

When you apply to register your organisation as a charity, you need to demonstrate its charitable purpose. Generally, the ACNC will decide what your organisation's purposes are by looking at:

- your organisation's governing documents (for example, its constitution, rules or deed) – these usually set out its purpose or 'objects'
- other types of evidence, such as your organisation's activities, annual reports, financial statements and corporate documents.

Some activities may not seem to be charitable, but are appropriate if they are to further a charitable purpose. For example, your organisation may have activities designed to raise money so it can pursue its charitable purposes.

Example: An organisation that provides accommodation for homeless youth operates a recycled clothing shop, where the profits raised are used to provide this accommodation.

What is recognised as charitable purposes

'Charitable purpose' has a special legal meaning, developed over the years by the courts and parliament. The courts have recognised many different charitable purposes, and as society changes new charitable purposes are accepted.

The *Charities Act 2013* (Cth) lists twelve charitable purposes:

- 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
- 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), and
- other similar purposes 'beneficial to the general public' (a general category).

Example 1

The [organisation] is established to be a charity whose purpose is to relieve poverty by undertaking any of the following activities:

- operating a night hostel for homeless people so that they don't have to sleep on the street
- providing parcels of food and other essential grocery items to homeless people and others who cannot afford to buy basic food and groceries for themselves, and
- providing clothing to people who are homeless and others who cannot afford to buy clothing for themselves.

Example 2

The [organisation] is established to be a charity whose purpose is to relieve poverty by providing funding for disadvantaged young people to obtain an education in Australian primary school, secondary school or tertiary educational institution.

Example 3

The [organisation] is established to be a charity whose purpose is to advance social or public welfare by:

- operating residential care facilities for elderly people who are unable to care for themselves;
- providing activities to the residents in the residential care facilities to promote their physical and mental health, and

Example 4

The [organisation] is established to be a charity whose purpose is to advance social or public welfare by providing:

- money and goods to people who have lost their homes due to bushfires or other disasters, to ensure that they can have a modest standard of living while they are recovering from losing their home, and
- temporary accommodation to people who have suffered the loss of their homes due to bushfires or other disasters, to assist in relieving their immediate distress and needs due to their loss.

Attention - Important information! Purposes that the law recognised as charitable before the Charities Act came into effect will continue to be charitable. The charity subtypes of public benevolent institution and health promotion charity also continue to be recognised.

What happens after ACNC decide your purposes are charitable

Once the ACNC decide your organisation's purposes are charitable, and that it is otherwise eligible, we register your charity. When we register it, we register it as a 'subtype' of charity, which reflects its purpose or purposes (for example, as a charity advancing social or public welfare).

The subtype or subtypes of charity we register your charity as can affect the tax concessions that may be available to it. You may be required to provide further information to support an application for particular subtypes of charity, such as a public benevolent institution or health promotion charity.

Advancing social or public welfare

This is a new purpose introduced by the Charities Act, and includes purposes previously recognised in charity law (such as the relief of poverty and the relief of the needs of the aged). The Charities Act confirms that the following purposes (among many others) are included:

Relieving the poverty, distress or disadvantage of individuals or families

Some examples of charities relieving poverty, distress or disadvantage:

- Accommodation services for people experiencing homelessness
- International aid programs
- Services for refugees
- Soup kitchens
- Employment and training services for people who are unemployed

Caring for and supporting the aged

Some examples of charities that support and care for the aged:

- Residential and non-residential care and assistance.
- Alzheimer's associations, arthritis services, respite services
- Community services that provide food, home visits, home maintenance and assistance with shopping for the elderly
- Organisations that provide social, sporting or recreational activities may be charitable if those activities are for the purposes of addressing the needs of the elderly.
- Residential aged care facilities

Caring for and supporting individuals with disabilities

Some examples of charities caring for and supporting individuals with disabilities:

- Residential and non-residential care
- Braille libraries
- Disability employment services
- Guide dog associations
- Support groups for people living with particular disabilities

Charities can have more than one charitable purpose

Your organisation may have more than one charitable purpose. For example, your organisation may educate the public about the environment, and so advance education as well as the environment.

The law requires **all** of your organisation's purposes to be charitable, except for purposes that are 'incidental or ancillary to' (further or aid) the charitable purposes.

Your organisation may have more than one purpose, and many activities, and still be a charity, as long as these all further the charitable purpose.

Attention - Important information! If your organisation has non-charitable purposes and these do not further its charitable purposes, your organisation is unlikely to be registered as a charity.

Some purposes are not recognised as charitable

Some purposes may benefit the community, but not fit the legal meaning of charitable purpose. For example, your organisation may not fit the legal meaning of charity if it is a:

- **social club** – unless its main purpose is charitable such as to help people who are socially isolated or disadvantaged, and the club's social activities are the way it achieves this purpose
- **sporting and recreational organisation** – unless its main purpose is charitable such as providing sporting activities for the people with disabilities or the elderly
- **professional or trade group** – unless its main purpose is charitable, such as advancing education.

These organisations may still:

- be not-for-profits and [exempt from income tax](#), or
- qualify as charities under state or territory laws.

However, they are unlikely to fall within the general legal meaning of charity as we apply it.

3) Think about the resources required

Consider how much money or other resources your charity is likely to need, in starting up and ongoing costs. It may be worth getting financial and business advice.

- Do you have any money or other resources?
- What assets might you need, such as a physical location, equipment, vehicles?
- What ongoing costs might you have, such as utilities, rent, licences, insurance, salaries?
- How will you raise money?
- Will you require ongoing income?
- Do you need investors?
- Do you need staff or volunteers? How many?

4) Consider any fundraising requirements

Charities raise money in many different ways, including:

- charging membership fees
- door knocks or other public appeals, including social media and letter campaigns
- highway collections
- events like conferences, movie nights or fun runs
- public auctions
- selling goods.

The ACNC does not regulate fundraising or gaming activities (such as raffles). These activities are regulated by:

- state and territory laws that may require you to get a licence, to report or that set out how you fundraise
- corporations and consumer laws.

5) Understand the importance of legal structure

The legal structure you choose should meet your charity's needs, now and, hopefully, into the future. Charities have a range of structures, incorporated or unincorporated, and there may be more than one that works for your charity. For example, charities can be incorporated under Commonwealth or state laws. Your charity's legal structure will affect many things, such as its legal identity (whether it can be sued), its governance structure (who makes what types of decisions), who is liable for its debts and its specific responsibilities, such as what its reporting or other compliance obligations are.

The ACNC does not register charities according to their legal structure, but you will be asked what your organisation's structure is (also called its 'entity type') if you apply to register with us.

Your decision on legal structure will need to take into account:

- the likely size of your charity, and how complex its activities will be
- whether your charity will have employees or volunteers
- the accountability your charity will have to its members (if any) and the community
- the potential personal liability of members or office holders for things done by them on behalf of the charity
- whether your charity will be applying for government grants
- whether your charity will want to operate in more than one state or territory, or even overseas
- your charity's eligibility for tax concessions.

The advantage of having a formal (incorporated) legal structure is that you can do things such as rent an office, borrow money, apply for government grants or take out insurance in the name of the organisation (rather than, for example, in the name of an individual committee member).

Incorporated structures

The most commonly used incorporated legal structures for charities (and other not-for-profits) include:

- [incorporated associations](#) (the most common type) – the name will be something like ‘XYZ Incorporated’ or ‘XYZ Inc’
- [companies limited by guarantee](#) (the next most common structure) – for example, ‘XYZ Limited’ or ‘XYZ Ltd’
- non-trading co-operatives – the name must include the words ‘Cooperative’ and ‘Limited’ or ‘Ltd’,

If your company limited by guarantee is registered with ASIC and also registered with the ACNC:

- you no longer have to pay ASIC filing fees, including the annual review fee
- reporting to the ACNC instead of ASIC means more generous reporting size thresholds. The ACNC thresholds are based on revenue alone and disregard consideration of DGR status. For example, a charity with \$245 000 in annual revenue and DGR status would be considered medium under the *Corporations Act 2001 (Cth)* (and would need to have an audit or review), but would be considered small under the ACNC Act (and would not require an audit or review, as they are exempt from providing financial reports)

Unincorporated structures

If your charity is not incorporated, it could be a [trust](#) (for example, ‘XYZ Fund’, or ‘XYZ Foundation’) or an unincorporated association (a less formal structure, with no separate legal identity).

Consider getting professional advice

Each structure has advantages and disadvantages – it is important to balance these against your charity’s particular circumstances and plans. This is an important decision, so consider getting legal and other professional advice early, and make sure it is specific to your situation.

Governing documents

A charity’s governing documents are the formal documents that set out:

- the charity’s [charitable purpose or purposes](#)
- that the charity operates on a [not-for-profit](#) basis, and
- the way that the governing body of the charity (such as its committee of management, or board) makes decisions and consults any members.

These documents may have different names, depending on your charity’s structure or form.

Charity structure	What its governing documents are usually called
Incorporated association (usually incorporated under state or territory law)	Statements of purpose and rules or articles of association
Company limited by guarantee or other company under <i>Corporations Act 2001</i> (Cth)	Constitution (previously these were known as memoranda or articles of association)
Trust	Trust deed
Unincorporated associations – this can include small groups such as church groups or parishes or parents associations	<p>Usually rules, but can be any documents that show the elements described above, and can be enforced against the association.</p> <p>Identifying your governing documents can be harder if your charity is unincorporated. For example, churches may not have a standard, single set of documents as its governing documents.</p> <p>It may be that your governing documents are a reference to your constituting legislation, church or canon law. If your charity is a local parish, we suggest that you contact your diocese or other regional or central administrator as they may have made the decision for a group of branches or parishes.</p>

6) Explore other legal and regulatory issues

There are many legal implications in setting up a charity, and it may have to comply with a wide range of laws, including Commonwealth, state and territory laws. Consider getting professional (including financial and legal) advice so you can think through your options.

- Where will you operate? Will this be across state or territory borders?
- Will you want to receive [charity tax concessions](#)?
- What other legal obligations will apply (such as workplace health and safety laws, employment laws, fundraising laws)?

What tax concessions are available?

A range of tax concessions are available to NFP organisations. The table below provides a summary of tax concessions and the types of NFP organisations that can access them. Your organisation may need to meet certain requirements before it can access a concession

Tax concessions	Types of NFP organisations		
	Public benevolent institutions and Health promotion charities	Charities	Other NFP organisations
Income tax exemption	✓	✓	✓ Certain types only
FBT exemption (subject to capping threshold)	✓		✓ Certain types only – Public and NFP hospitals are eligible for this concession
FBT rebate		✓	✓ Certain non-government NFP organisations are eligible
GST concessions for charities and gift deductible entities	✓	✓	✓ Certain types - the organisation must be a deductible gift recipient
GST concessions for NFP organisations	✓	✓	✓
DGR endorsement – the org must be endorsed by ATO unless it is listed in tax law	✓	✓ Certain types only	✓ Certain types only
Refunds of franking credits – the organisation must be a Charity endorsed by ATO or a DGR or an organisation is listed in tax law	✓	✓	✓ Certain types onl

7) Decide how your charity will be managed

- Does your charity need a governing body, such as a board or committee, or trustees?
- What kind of governance (rules, practices) will your charity have?
- Will you have formal processes for things like meetings, making or changing your rules or other decisions?
- Where will you operate from, a dedicated shop front, home office, shared spaced with another organisation?

You can read more about governance in our [tools and resources](#). If your charity is registered with the ACNC, it will also need to comply with governance standards.

8) Plan how to promote your charity and its work

Consider the kind of involvement you would like from the public and potential investors/donors, and how you will communicate its goals and activities.

- How will you promote your charity and encourage people to get involved?
- How will you get information out to your target audience?
- What are your main ways to publicise information?
- Will you need a website or other communication tools?

9) Ongoing obligations – ACNC duties

All registered charities must meet the following obligations to the ACNC.

i) Keep charity status

To remain eligible to be registered, charities must continue to be not-for-profit and pursue their charitable purpose or purposes.

A charity must make sure it continues to be entitled to registration under the ACNC Act. This includes meeting all of the criteria for initial registration, and ongoing registration, including that it:

- continues to be a charity, which means it must:
 - remain [not-for-profit](#), and
 - have a [charitable purpose](#) which is for the [public benefit](#)
- is complying with the [governance standards](#) (and external conduct standards, if introduced) that may apply to it
- has an [Australian Business Number \(ABN\)](#), and
- is not involved in terrorist or other criminal activity.

A charity must also make sure it continues to meet the description of the ‘subtype’ of entity (such as a charity for the advancement of education) that it is registered as. This subtype is related to its charitable purpose.

A charity's registration may also be affected if:

- it has breached a section of the ACNC Act (or is more likely than not to), such as failing to notify or report
- it has not complied with a governance or external conduct standard that applies (or is more likely than not to not comply)
- the ACNC discovers that the charity provided information that was false or misleading when it applied for registration
- the registered charity has:
 - a trustee in bankruptcy
 - a liquidator, or
 - a person appointed, or authorised, under an Australian law to manage its affairs because it is unable to pay all its debts as and when they become due and payable.

ii) Notify ACNC of changes

Charities have a duty to notify the ACNC of changes to their details, including responsible people and governing documents. Once you are aware of the change, you must notify the ACNC of changes as soon as you reasonably can but no later than:

- 28 days (medium and large charities), or
- 60 days (small charities).

Administrative penalties may apply for failing to notify the ACNC.

Charities must notify the ACNC if any of the following details change:

- legal name
- address for service (where legal documents can be sent)
- 'responsible persons' (people who are members of your charity's governing body including directors or committee members, or its trustees) – you need to let us know if someone takes on or finishes the role of a responsible person, and
- governing documents (such as its constitution, rules or trust deed).
- Change to responsible person

You must also let us know if you think your charity is not meeting its ongoing obligations to the ACNC in a significant way, and as a result, your organisation is no longer entitled to be registered.

iii) Keep records

Charities must keep financial records that correctly record and explain their transactions and financial position (net wealth) and performance and enable true and fair financial statements to be prepared and to be audited, if required. They must also keep operational records which explain their activities.

Keeping records can also help your charity meet the ACNC governance standards, for example, records can show:

- its charitable purpose and not-for-profit nature (governance standard 1)
- it is being accountable to its members (governance standard 2), and
- it is taking reasonable steps to make sure its responsible persons manage financial affairs responsibly, including not operating the charity whilst it is insolvent (governance standard 5).

Summary of ACNC record-keeping obligations

Your charity:

- must keep certain written financial and operational records
- can keep the records in any format you choose, as long as they are easy to find (including in electronic form)
- can develop its own system or process
- must keep the records for seven years
- must keep records in English, or in a form that can be easily translated to English
- is not required to provide the records to the ACNC unless asked.

What are records?

A record is a piece of information that shows your charity has operated or acted in a particular way, or spent or received money or other assets (made a transaction).

What records to keep for the ACNC

Under the ACNC Act, your charity must keep two types of records:

- financial records, and
- operational records.

Financial records

These must:

- correctly record & explain how your charity spends / receives money or other assets
- correctly record and explain your charity's financial position and performance, and
- allow for true and fair financial statements to be prepared and audited or reviewed, if required.

Even if your charity does not need to submit financial reports to the ACNC (because it is a small or a basic religious charity), your charity still needs to keep financial records that meet these requirements. The ACNC Act or the ACNC Commissioner could require your charity to prepare financial statements.

Operational records

These are any other documents about your charity's operations. You must keep operational records that show how your charity:

- is entitled to be registered as a charity and as its subtype
- meets its obligations under ACNC Act, and
- meets its obligations under tax law.

How to keep records

Charities can keep the records in any format that suits, as long as they are:

- in writing
- readily accessible (easy to find), and
- in English, or in a form that can be easily translated to English.

Charities can keep records on paper or on their computer (in electronic form).

Record-keeping for other regulators

Your charity may need to report to other government regulators, which may have their own record-keeping requirements. For example, you will need to maintain good business records to help manage your charity's obligations with the Australian Taxation Office (ATO). If you are following the ACNC record-keeping requirements it is likely that you are meeting most of your obligations to the ATO.

iv) Report information annually

Charities (except [corporations registered with the Office of the Registrar of Indigenous Corporations](#)) must submit an Annual Information Statement (and, for medium and large charities, a financial report) every year. This statement is due within six months of the end of your reporting period and can be submitted by using the ACNC Charity Portal.

iv(a) Reporting annually – small charity

A small charity has an annual revenue of less than \$250 000.

Annual Information Statement

Small charities only need to submit an Annual Information Statement.

Financial reporting

Small charities:

- can submit a financial report, but it is optional
- can choose whether to use cash or accrual accounting, and
- do not need to have their financial statements reviewed or audited for ACNC purposes.

iv(b) Reporting annually – medium charity

A medium charity has annual revenue of \$250 000 or more, but less than \$1 million.

Annual Information Statement

Medium charities need to submit an Annual Information Statement. Since 2014, the Annual Information Statement has included financial questions.

Financial reporting

Medium charities need to submit a financial report that is either reviewed or audited.

iv(c) Reporting annually – large charity

A large charity has annual revenue of \$1 million or more.

Annual Information Statement

Large charities must submit an Annual Information Statement. Since 2014, the Annual Information Statement has included financial questions.

Financial reporting

Large charities need to submit a financial report that is either reviewed or audited.

v) Meet the governance standards

Charities (except a limited group called '[basic religious charities](#)') must comply with the governance standards. These standards set out a minimum standard of governance, to help promote public trust and confidence in charities.

Charities must meet a set of governance standards to be registered and remain registered with the ACNC. The governance standards do not apply to a limited class of charities called '[basic religious charities](#)'.

Charities do not need to submit anything to the ACNC to show they meet the standards, but must have evidence of meeting the standards that they can provide if requested.

What are governance standards?

The governance standards are a set of core, minimum standards that deal with how charities are run (including their processes, activities and relationships) – their governance.

The standards require charities to remain charitable, operate lawfully, and be run in an accountable and responsible way. They help charities remain trusted by the public and continue to do their charitable work. Because the governance standards are a set of high-level principles, not precise rules, your charity must decide how it will comply with them.

What the standards require

Standard 1: Purposes and not-for-profit nature

Charities must be not-for-profit and work towards their charitable purpose. They must be able to demonstrate this and provide information about their purposes to the public.

Standard 2: Accountability to members

Charities that have members must take reasonable steps to be accountable to their members and provide them with adequate opportunity to raise concerns about how the charity is governed.

Standard 3: Compliance with Australian laws

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.

Standard 4: Suitability of responsible persons

Charities must take reasonable steps to:

- be satisfied that its responsible persons (such as board or committee members or trustees) are not disqualified from managing a corporation under the *Corporations Act 2001 (Cth)* or disqualified from being a responsible person of a registered charity by the ACNC Commissioner, and
- remove any responsible person who does not meet these requirements.

Standard 5: Duties of responsible persons

Charities must take reasonable steps to make sure that responsible persons are subject to, understand and carry out the [duties](#) set out in this standard.

How the ACNC will assess compliance

The ACNC expects most charities will already be meeting the governance standards and we focus on charities that have seriously or deliberately breached the governance standards by (for example):

- diverting money to non-charitable purposes
- not disclosing serious conflicts of interest, or
- being grossly negligent with their finances.

We will act, according to our [regulatory approach](#), if we have information that indicates that there may be serious risks involved.

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