

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 you set up a company limited by guarantee?



Disclaimer

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 deciding what to do.

Please refer to [the full disclaimer](#) that applies to this fact sheet.

A company limited by guarantee (CLG) is a type of incorporated legal structure that may be suitable for some not-for-profit organisations.



More information – incorporated association or a company limited by guarantee?

If your organisation is choosing between incorporating as an incorporated association or CLG, see our fact sheet '[Incorporated association or company limited by guarantee?](#)'.

The process of setting up a CLG is set out in the *Corporations Act 2001 (Cth)* (Corporations Act).

All CLGs are governed by the *Corporations Act*, the *Corporations Regulations 2001 (Cth)* (Corporations Regulations) and the CLG's constitution.

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)* (**Charities Act**) 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 and Corporations Regulations to reduce the regulatory burden on registered charities.

What is a CLG?

A CLG is a type of incorporated legal structure that may be suitable for some not-for-profit organisations, including charities.



More information

For more information on choosing a legal structure, see our [webpage 'Which incorporated legal structure should you choose?'](#)

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. If the company is wound up and is unable to pay its debts and other liabilities, each member's liability is then limited to the nominal amount that the member has guaranteed.

Similar to other companies, registration of a CLG creates a legal personality (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?

As CLGs are a type of public company, specific rules relating to public companies in the Corporations Act and Corporations Regulations apply.

A CLG that is registered as a charity with the ACNC must comply with the requirements of both the ACNC and ASIC (although some ASIC requirements no longer apply when the CLG becomes a registered charity). 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.



More information

For more information, see:

- our [webpage on financial reporting to government](#)
- the [ASIC webpage 'Corporations Act provisions that no longer apply to charities registered with the ACNC'](#)
- the [ASIC webpage Obligations of companies limited by guarantee](#).

A CLG's constitution sets out the rules governing the internal affairs of the company including 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, its constitution must include certain provisions – for example, a suitable ‘not-for-profit’ clause – so it can’t use the replaceable rules alone.



Example – ‘not-for-profit’ clauses

- The assets and income of the company is to be applied solely to further its objects and no portion is to be distributed directly or indirectly to the members of the company except as genuine compensation for services rendered or expenses incurred on behalf of the company
- The Company is a not-for-profit, charitable and benevolent institution established and operated in Australia to provide support to young people with neuro developmental disabilities in Australia.



More information

For more information, see our [webpage ‘Should your group register 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 automatically be registered as a charity. Therefore, the word ‘Limited’ or ‘Ltd’ must be included in the legal name of the company. However, once the CLG is registered as a charity, it can omit the word ‘Limited’ or ‘Ltd’ when it uses its name (for example, in publications and on its website).

Some CLGs registered as charities might also go to the trouble of formally changing the legal name by passing a special resolution and notifying ASIC, but this is not a requirement (and does incur a fee payable to ASIC).

How do you set up a CLG?

Depending on your circumstances and organisational needs, it may be important to seek professional advice from a lawyer, accountant, qualified company secretary or some other professional experienced in setting up not-for-profit companies.

This is particularly important for organisations with existing membership structures or that already carry out significant activities which add an extra layer of complexity. For example, converting an existing co-operative to a company limited by guarantee – a process known as ‘demutualisation’ – is not straight forward.

The law in this area is quite detailed and the penalties that ASIC imposes for non-compliance with the law can be significant.

Professional advice should deal with issues such as:

- the drafting of a constitution including:
 - an objects clause, not-for-profit and winding up clause and relevant funding clauses that comply with the requirements for taxation and other concessions available to not-for-profit companies
 - provisions about the eligibility, election and removal of directors, 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



- whether your company should apply for an exemption from including the word 'Limited' or 'Ltd' in its name
- understanding the ongoing obligations of operating a CLG such as:
 - maintaining a record of books and records
 - keeping proper financial records
 - holding annual general meetings within five months of the end of the financial year, and
- understanding the rights and obligations of each member and director

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.



Tip

If your organisation wants to set up a CLG that will also apply to be a registered charity with the ACNC, 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

To complete the online application, it will be helpful to have the following documents:

- | | |
|--|--------------------------|
| • company constitution | <input type="checkbox"/> |
| • consents to act for each officeholder including directors, company secretary and public officer | <input type="checkbox"/> |
| • consents to act for each member | <input type="checkbox"/> |
| • consent to registered office (if the proposed registered office is not owned or occupied by the CLG – for example, the accountant's office), and | <input type="checkbox"/> |
| • register of members | <input type="checkbox"/> |

Each new director of the CLG must also personally apply for a Director Identification Number (**DIN**) with Australian Business Registry Services (**ABRS**) before being appointed to the proposed CLG.



Note – Director Identification Numbers

Directors are now required to have a Director Identification Number (**DIN**).

A director must apply for their DIN themselves because they must verify their identity. This application is made through the [Australian Business Registry Service](#).

For more information, see the [Australian Business Registry Services webpage on 'who needs to apply for a DIN and when'](#).

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



Tip

Be aware that, 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.



Note – applying for an ABN and tax registrations

When you apply to register a company, you may register for an Australian Business Number (**ABN**) as well as other tax registrations at the same time.

- 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 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 standard company registration application, so you may decide to apply for additional registrations later.

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.

Working through the application form

Part 1 – getting started

This part asks for basic information about the company

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 members or pay fees to its directors
- require its directors to approve any payments the company makes to directors or members, 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.

A non-exhaustive list of 'charitable purposes' include:

- advancing health, education, social or public welfare, religion, culture or the natural environment
- promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia
- promoting or protecting human rights
- preventing or relieving the suffering of animals, 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 '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

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, check whether the name is available by searching [ASIC Connect](#).

Note – also conduct a [trade mark search on IP Australia's website](#) to avoid any potential infringement of existing trade marks (you will need to consider any trade marks on the register similar to your proposed name as well as any logos you want to use).

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**). For more information, see [ASIC's webpage 'Company name availability'](#).

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 (\$55 as at April 2023).

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 part of 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, if the company is later 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

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',

- the charity's members must pass a special resolution in favour of the name change, and
- you must apply to ASIC to change the name using [Form 432 – application to change a company name to omit the word 'Limited'](#) and paying a fee (\$443 as at April 2023)

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 relevant ABN details of the company (ie. whether the company is income tax exempt)

Registered office

A CLG must have a registered office, and this requirement continues if you subsequently decide to register with the ACNC. However, after that, any change to the registered office will only need to be notified to the ACNC and not ASIC.

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 must 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 the CLG's principal place of business is different to its registered office, it must 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

If the CLG will have its own opening hours, this should be specified on the application for registration. In any event, the registered office must be open to the public each business day from at least 10am to 12pm 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 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. 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 [ASIC's banned and disqualified list](#) and the [ACNC's disqualified persons register](#).

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.

Note – Directors are now required to have a DIN (referred to above).

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, the company will also need to confirm that the proposed company secretary is suitable to be a 'responsible person' by checking [ASIC's banned and disqualified list](#) and the [ACNC's disqualified persons register](#). 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 must 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, and
- 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

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 penalty for not doing this within the three month period noted above is \$275 a day as at April 2023.

Auditor

If the CLG generates revenue (or consolidated revenue if applicable) over \$1 million, the CLG will need to appoint a registered company auditor within one month of registration.

To the extent that the CLG generates revenue (or consolidated revenue if applicable) below \$1 million and the directors believe the financial reports will be reviewed as opposed to audited, the CLG is not required to appoint a registered company auditor.

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