

## Factsheet: Medical Research Institutes

This factsheet is intended to give guidance to Medical Research Institutes on their obligations to the ACNC, and answer some commonly asked questions.

### Registering with ASIC and the ACNC

Many institutes are structured as a company limited by guarantee. Organisations which choose this structure register with the Australian Securities and Investments Commission (ASIC).

After your organisation is registered as a company limited by guarantee with ASIC, many apply to the ACNC to register as a charity.

Once registered with the ACNC, most of the company's ongoing obligations are to the ACNC rather than ASIC.

The ACNC's [template constitution for a charitable company limited by guarantee](#) may assist certain companies limited by guarantee to develop a suitable [governing document](#).

Other legal structures that may be registered with ASIC and registered as charities with the ACNC include [registrable Australian bodies](#), proprietary companies and foreign companies.

### Meeting ACNC and ASIC requirements for charitable companies

If your company limited by guarantee is registered as a charity with the ACNC, you have ongoing obligations to the ACNC.

You do not have to report annually to ASIC, or notify ASIC of certain changes.

Generally, you should contact ASIC for anything relating to the company's corporate status and the ACNC for anything relating to your charitable status.

And if your company stops being registered with the ACNC, you must comply with all ASIC requirements again.

### Meeting ACNC requirements

If your company limited by guarantee is a registered charity, your charity has ongoing obligations to the ACNC to:

- [keep your charity status](#), for example, by remaining not-for-profit and working towards your charitable purpose
- comply with governance requirements, including the [ACNC Governance Standards](#). Some of these are different to, and more flexible than, the requirements for companies under the *Corporations Act 2001* (Cth) (the Corporations Act) – for example: requirements for meetings



- submit an [Annual Information Statement](#) each year, and
- [notify the ACNC of changes](#) to your charity's:
  - company name (including removing 'Limited')
  - Address For Service
  - directors (who we call [Responsible Persons](#)), or
  - constitution (also called a '[governing document](#)').

Your company must have a company secretary, who may also be a director (Responsible Person). Even if your company secretary is not a Responsible Person, you may wish to include them as your charity's 'contact person'.

You can submit your Annual Information Statement and notify the ACNC of changes through the [Charity Portal](#).

You also need to notify the ACNC if you want to:

- change your charity's legal structure
- merge your charity with another charity
- wind up (close) your charity, or
- revoke your company's registration as a charity, even if you want to continue to operate your company.

For more information, see the ACNC's guidance on [merging](#) or [winding up](#) your charity and [revoking your registration as a charity](#).

## ACNC requirements that replace ASIC requirements

There are several major requirements under the Corporations Act that companies which are registered charities **do not** have to comply with. Instead, companies must comply with similar ACNC requirements.

### Holding members' meetings

You do not have to comply with the requirement to hold general meetings of members or annual general meetings under the Corporations Act.

Instead, you must comply with the requirements of [ACNC Governance Standard 2](#), which requires your charity to be accountable to members.

You may still have meetings to help your charity comply with Governance Standard 2.

### Meeting civil statutory directors' duties

You no longer need to comply with the civil directors' duties under the Corporations Act.

Instead, you must comply with [ACNC Governance Standard 5](#), which requires charities to make sure that their responsible persons meet similar duties to those under the Corporations Act.

However, the following requirements of the Corporations Act still apply to directors of companies that are registered charities:

- criminal offences relating to breaches of duties of good faith and acting for a proper purpose and misuse of position or information (under section 184 of the Corporations Act), and



- the duty to prevent insolvent trading (under section 588G of the Corporations Act) – this duty is also included under Governance Standard 5.

### Reporting annually

From the 2014 reporting period (that is, from the financial year starting on or after 1 July 2013), a company that is a registered charity only needs to submit an Annual Information Statement to the ACNC (with a [financial report](#), if your charity is medium or large).

You do not have to report to ASIC. This means that you do not have to do the following things for ASIC:

- file an annual review
- provide financial reports
- pass a solvency resolution, or
- pay an annual review fee.

The parts of the Corporations Act that relate to financial reporting still apply to charities that issue debentures.

### Keeping records

The ACNC requires all charities to [keep financial records](#).

ASIC does not require companies that are registered with the ACNC to keep written financial records in accordance with the 'Financial Reports and Audit' requirements of the Corporations Act.

### Meeting ASIC requirements

If your company is a registered charity, you need to contact ASIC when:

- you want to [change the name of your company](#) (including removing 'Limited' from the company name)
- your [auditor](#) resigns or is removed (in certain circumstances)
- an external administrator is appointed for your company, or
- you [wind up or deregister your company](#).

**NOTE:** The provisions in the Corporations Act relating to auditors still apply for charitable companies.

This means that you may still be required to appoint an auditor, even if the ACNC does not require your charity to have its reports audited or reviewed.

You may also have to notify ASIC about certain events relating to auditors (for example, if an auditor resigns or is removed).

### ACNC and ASIC requirements when changing your charity's details

You must do the following things to meet ACNC and ASIC requirements when you change your charity's name, address, directors or constitution.



[Contact](#) the ACNC to notify it of changes, or log into the ACNC [Charity Portal](#).

- ❖ Read ASIC's guidance on [appointing an auditor](#).
- ❖ Read ASIC's guidance on [charities registered with the ACNC](#).

### Changing your company name

To [change the name of your company](#), your members must [pass a special resolution](#) to change its name and lodge a [Form 205 – Notification of resolution](#) with ASIC (lodgement fees apply).

Before starting this process, you may want to:

- check the [ACNC Register](#) to see whether any other charity uses the proposed name
- check that the proposed company name is available by [searching ASIC Connect](#), and
- reserve the proposed company name before you are ready to register the new name by lodging [Form 410 – Application for reservation of a name](#) (lodgement fees apply).

After ASIC changes the company name, you should also [contact the ACNC](#) to let us know about the change.

Once we confirm that your charity's name has been changed on the ASIC register, we will make the corresponding change to the ACNC Register.

### Removing 'Limited' from your company name

You do not need to use the word 'Limited' when you use your company name (such as on company letterhead, or on the company's common seal) if:

- your company is a charity registered with the ACNC, and
- its constitution does not allow directors to be paid fees, and requires the directors to approve all other payments the company makes to directors.

The company's legal name (as registered with ASIC) will still include 'Limited' at the end of the name.

If you still want to change your legal name officially to have the word 'Limited' removed, you will need to apply to ASIC and pay a fee.

### Changing your company address

You must notify the ACNC of a change to your charity's 'Address For Service', which will be published on the ACNC Register.

You should provide your company's registered office address as your Address For Service so that the ACNC can pass this information on to ASIC to update the ASIC register. The registered office address must be a physical address (not a PO Box or email address).

The ACNC will send all correspondence (including legal documents) to your Address For Service. If you also provide an email address, the ACNC will use this as the main way to contact you.

You do not need to notify ASIC of a change of address (such as a registered office address, a principal place of business or officeholder's residential address).

### Changing your directors

You must notify the ACNC of the details of and changes to your company's directors (known as 'Responsible Persons').



You do not need to notify us about officeholders of your company who are not Responsible Persons –such as your company secretary or chief executive officer.

However, you may wish to make your company secretary the ‘contact person’ for the ACNC, so that they can contact, and be contacted by, the ACNC.

You do not need to notify ASIC of any changes to your company’s officeholders.

### Changing your constitution

To change your company’s constitution or adopt a new constitution, your members must [pass a special resolution](#).

You must notify the ACNC of changes to your constitution (also known as a ‘governing document’). You do not need to lodge a copy of the special resolution with ASIC.

### ACNC and ASIC registers

The information you report to the ACNC will be available to the public on the [ACNC Register](#), including information you submit in your Annual Information Statement and any changes you notify the ACNC of.

**Note:** Because registered charities are not required to notify ASIC of most changes that have been notified to the ACNC, the ASIC Register may not be current for registered charities.

### Summary Table: When to contact ASIC or the ACNC

Type of change	Who to Contact	
	ACNC	ASIC
<b>Register</b>		
Apply to register a company	No	Yes
Apply to register a charity	Yes	No
<b>Change Details</b>		
Notify of change to name of a company (see <a href="#">ASIC: Changing a company name</a> )	Yes, and let ACNC know once ASIC changes the name	Yes
Remove word ‘Limited’ from name (without changing legal name) as long as meet s150(1) <i>Corporations Act</i> (see <a href="#">ASIC: Charities registered with the ACNC</a> )	No	No



Type of change	Who to Contact	
	ACNC	ASIC
Apply to change the name of a company to omit the word 'Limited' (see <a href="#">ASIC: Charities registered with the ACNC</a> )	Yes, and let ACNC know once ASIC changes the name	Yes
Notify of changes to: <ul style="list-style-type: none"> <li>• Address For Service</li> <li>• directors (Responsible Persons)</li> <li>• constitution (governing documents)</li> </ul>	Yes	No
<b>Report annually</b>		
Submit an <a href="#">Annual Information Statement</a> for each reporting period	Yes	No
Submit financial statement for 2013 reporting period (period starting on or after 1 July 2012 but before 1 July 2013) (see <a href="#">ASIC guidance on reporting obligations</a> )	No	Yes*
Submit financial reports for 2014 reporting periods onwards for medium and large charities	Yes	No
Criminal liability for director duties (see ASIC guidance on director responsibilities as part of its <a href="#">'Your company and the law'</a> information)	No	Yes
<b>Auditor</b>		
Notify of resignation or removal of an auditor	No	Yes
Notify of appointment of an auditor	No	No
<b>Close</b>		
Request to revoke registration of a charity, to notify when an organisation is no longer entitled to registration as a charity, or if charity has closed	Yes	No



Type of change	Who to Contact	
	ACNC	ASIC
Notify external administration of a company	Yes, let ACNC know that responsible persons changed to administrator	Yes
Apply to deregister a company	Yes, and let ACNC know when company is de-registered with ASIC	Yes

\*Note that 'small companies limited by guarantee' under the Corporations Act may not have to submit a financial report.

## Notification obligations for all charities registered with the ACNC

Charities registered with the ACNC have an obligation to notify us 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 the ACNC know if someone takes on or finishes the role of a responsible person, and
- governing documents (such as its constitution, rules or trust deed).

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

Once a charity is aware of any such change, it must notify the ACNC. Medium and large charities **should** notify the ACNC of changes as soon as possible, and are **required** to notify the ACNC no later than 28 days after becoming aware of the change.

## Reporting obligations for charities

Charities have an ongoing obligation to report each reporting period.

Charities report by submitting an Annual Information Statement and, for medium and large charities, an annual financial report. The ACNC bases charity size on an organisation's annual revenue:

- Small charities have an annual revenue of less than \$250,000
- Medium charities have an annual revenue of more than \$250,000, but less than \$1 million
- Large charities have an annual revenue of \$1 million or more.



## How does size affect ACNC financial reporting obligations?

Your charity's obligations depend on whether it is small, medium or large. The table below outlines the differences:

	Small charity	Medium charity	Large charity
<b>Annual Information Statement</b>	✓	✓	✓
<b>Financial report</b>	(optional)	✓ <sup>1</sup>	✓ <sup>1</sup>
<b>Basis of accounting</b>	Cash or accrual	Accrual <sup>1</sup>	Accrual <sup>1</sup>
<b>Financial statements</b> <sup>2</sup>	Small charities can choose to submit a financial statement. The type of financial statement can be the same as a Medium or Large charity	<ul style="list-style-type: none"> <li>• Special purpose financial statement (if not a "reporting entity") or</li> <li>• Reduced disclosure regime general purpose financial statement or</li> <li>• Full general purpose financial statement</li> </ul>	
<b>Review or audit</b>	No ACNC obligation for review or audit	Your financial reports can be either reviewed or audited <sup>2</sup>	Your financial reports must be audited

<sup>1</sup> Unless the charity is basic religious charity or other transitional arrangements apply.

<sup>2</sup> The charity constitution/governing document or grant funding agreements may state the type of financial statement the charity must prepare and whether the financial report needs to be reviewed or audited.

### Review or audit of charity financial reports

As the table outlines, medium and large charities must comply with more stringent requirements than small charities when it comes to their financial reports.

#### Medium charities

Medium charities must submit a financial report, but can generally choose whether to have it reviewed or audited. The only exceptions to this occur if a charity

- is compelled to have audited financial reports under other requirements, for example under their governing documents or a funding agreement, or
- has received a written notice from the ACNC Commissioner stating that it must provide audited reports. However, this is very rare.

#### Large charities

Large charities must submit an audited financial report to the ACNC.

**NOTE:** If your charity is part of a group reporting arrangement, the size of your charity for reporting purposes will be the size of the largest member of the reporting group. For more on group reporting, refer to the below section of this factsheet.



## Reviews

In a review, a reviewer will look at your charity's financial statements and accounts, but in less detail than in an audit. A reviewer will speak to your charity's staff, including those responsible for finance and accounting.

Reviews can be completed by:

- a registered company auditor
- an audit firm
- an authorised audit company
- a current member of a relevant professional body, CPA Australia – CPAA (CPA or FCPA designation), Chartered Accountants Australia and New Zealand – CAANZ (CA or FCA designation) or Institute of Public Accountants – IPA (FIPA or MIPA designation).

The reviewer will state if there is or isn't anything that has come to their attention that causes them to believe the financial report does not meet the requirements of the ACNC Act (in all material aspects).

A review also states whether your charity:

- provided all information, explanation and assistance needed to conduct the review
- kept good financial records so a financial report could be prepared and reviewed
- kept other records as required under the ACNC Act.

A review is a lower level of assurance than an audit, and provides only limited assurance. The reviewer will state that they do not know of anything to suggest your charity's financial report is non-compliant.

## Reviewer's report

Under the ACNC Act, a reviewer's report must:

- state whether anything has come to their attention that causes them to believe your charity's financial report does not meet the requirements of the ACNC Act. If the reviewer believes the report does not meet the Act, they must:
  - explain why
  - where possible, quantify the effect of this on your charity's financial report or if it is not possible to quantify to explain why
- describe any material defect or irregularity in the financial report
- state any problems in the assistance they received from the charity when conducting the review, or any issues with the records kept by the charity as identified above, and
- include any statements or disclosures required by the auditing standards.

The reviewer's report generally also includes the following:

- a title stating that it is an independent review report, and who it is addressed to – for example, the members of the charity
- an introduction covering the basics of the engagement and what has been reviewed
- a section outlining the governing body's responsibility for the financial report
- a section outlining the reviewer's responsibilities



- a conclusion of the review
- if it applies, a section outlining reporting responsibilities to other government agencies
- the date of the report, and
- the reviewer's signature and address.

### **Reviewer's independence declaration**

Your charity must get a signed written declaration from the reviewer of your charity's financial report that states that to the best of the reviewer's knowledge and belief that:

- there have been no contraventions of any applicable code of professional conduct in respect of the review, or
- the only contraventions of any applicable code of professional conduct in respect of the review are those explained in the declaration.

### **Audits**

An audit of your charity's financial report sees an auditor provide an opinion as to whether the report:

- has been prepared correctly under the ACNC Act
- represents a true and fair view of the charity's financial position (its net wealth) and performance (how it has gone)
- meets all applicable Australian Accounting Standards.

An audit aims to identify material misstatements in the financial report, including those resulting from fraud. The auditor will also obtain sufficient and appropriate evidence to evaluate whether your charity:

- provided all information, explanation and assistance needed to conduct the audit
- kept good financial records so a financial report could be prepared and audited, and
- kept other records as required under the ACNC Act.

Audits can be done by:

- a registered company auditor
- an audit firm
- an authorised audit company.

An audit provides more assurance (comfort) than a review, and the auditor's process is more detailed than a reviewer's. It involves additional procedures to enable them to provide an opinion of reasonable assurance in relation to your charity's financial statements and accounts.

Unlike the review, an auditor must collect evidence to allow them to give a direct reasonable assurance opinion that is positively stated – namely, that your charity's financial report meets the requirements of the ACNC Act.

### **Auditor's report**

Under the ACNC Act, an auditor's report must:



- state whether in the auditor’s opinion your charity’s financial report has been prepared correctly under the ACNC Act. If the auditor believes that your charity’s financial report does not meet the requirements of the ACNC Act, they must:
  - explain why
  - where possible, quantify the effect of this on your charity’s financial report, or if it is not possible to quantify to explain why:
    - describe any material defect or irregularity in the financial report
    - state any problems in the assistance they received from the charity when conducting the audit, or any issues with the records kept by the charity as identified above, and
    - include any statements or disclosures required by the auditing standards.

The auditor’s report generally includes the following:

- a title stating that it is an independent audit report, and who it is addressed to – for example, the members of the charity
- an introduction covering the basics of the engagement and what has been audited
- a section outlining the governing body’s responsibility for the financial report
- a section outlining the auditor’s responsibilities
- the auditor’s opinion of the audit
- if applicable, a section outlining other reporting responsibilities to other government agencies
- the date of report, and
- the auditor’s signature and address.

### **Auditor’s independence declaration**

Your charity must get a signed written declaration from your auditor that states that, to the best of the auditor’s knowledge and belief:

- there has been no contraventions of any applicable code of professional conduct in respect of the audit, or
- the only contraventions of any applicable code of professional conduct in respect of the audit are those detailed in the declaration.

## **Group reporting**

### **What is group reporting?**

Group reporting is an option for organisations and is allowed for under the ACNC Act. It allows registered charities to report as a group.

The most common group reporting arrangement is known as ‘joint reporting’. Joint reporting sees a charity, as part of a group of registered charities, submit one Annual Information Statement (AIS) and one financial report (if applicable).



You must apply to the ACNC to be approved for a group reporting arrangement. When we receive your application, we will consider several factors (such as the public interest in transparency, or our ability to assess compliance) before we agree to the arrangement.

**NOTE:** If your charity is part of a group reporting arrangement, the size of your charity for reporting purposes will be the size of the largest member of your reporting group.

### Why would you apply for group reporting?

Group reporting is especially useful in the situation where similar types of charities need to report.

One example might be where several medical research charities who are centrally controlled by an overarching or umbrella body feel it appropriate to report as a group.

Another example is where a pair of registered charities, consisting of a fundraising body and the organisation which it funds to undertake research or provide grants, wish to submit a single AIS and a single financial report.

### How can you apply for group reporting?

To apply for group reporting, you must fill out the ACNC's [Form 4B: Request group reporting \[PDF 685KB\]](#).

It is important to note that those approved for group reporting arrangements do not use the online Annual Information Statement form to complete their reporting. They use a slightly different print version of the form.

For more information, read the [ACNC's group reporting policy](#) or the [Commissioner's policy statement on Annual Information Statements](#).

**NOTE:** Under a group reporting arrangement, each individual registered charity still remains responsible for meeting its non-ACNC reporting obligations (for example, reporting to other state or territory government agencies).

## Bulk lodgement

### What is bulk lodgement?

Bulk lodgement is another alternative some charities can use when reporting to the ACNC.

Bulk lodgement is a process that allows an individual or a central charity to submit more than one AIS on behalf of multiple registered charities on a single form.

Bulk lodgement is generally only suitable for, and available to, larger organisations.

In fact, an individual or a central charity submitting Annual Information Statements for multiple charities must be submitting on behalf of 10 or more charities before the ACNC allows them to do so via bulk lodgement.

Examples of situations where bulk lodgements may occur include organisations such as a corporate trustee administering multiple trusts, or a denomination administration office for multiple religious charities.



Bulk lodgements must be completed via the ACNC's bulk lodgement form. When using the form, each individual charity being included as part of the bulk lodgement must record their own responses to each question.

### **How can you apply for bulk lodgement?**

To apply to report via bulk lodgement, [download Form 4C](#) from the ACNC's forms page. You can also contact [reporting@acnc.gov.au](mailto:reporting@acnc.gov.au).

For more information, read the [Commissioner's policy statement on Annual Information Statements](#).

## **The ACNC's red tape reduction work in fundraising**

One of the ACNC's objects is to 'promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector. The ACNC works within the Commonwealth Government's [Regulator Performance Framework](#) to reduce the cost of unnecessary or inefficient regulation, or 'red tape'.

### **ACNC red tape reduction work**

The ACNC's red tape reduction work includes:

- sharing charity information with other government agencies to build a 'report once, use often' framework for charities using the ACNC [Charity Passport](#)
- streamlining reporting arrangements for charities with other Commonwealth regulators
- harmonising ACNC and state and territory regulatory requirements for charities registered under state and territory laws
- commissioning research on red tape reduction in the not-for-profit sector to inform red tape reduction initiatives, and
- providing guidance and advice to charities to assist them to meet their regulatory obligations.

A vital part of this work is to reduce red tape when it comes reporting to state and federal regulators. Two key areas the ACNC is targeting in its efforts to cut red tape are by reducing duplicate reporting obligations

- for incorporated associations, and
- in the areas of reporting on fundraising activities and fundraising licencing.

This table summarises the current state-of-play for the ACNC's red tape reduction work for fundraising:



## Red tape reduction - fundraising

	Report once	Common audit thresholds	Exempt from license
SA	✓	✓	✓*
WA	In progress	In progress	✗
ACT	✓	✓	✓
TAS	✓	✓	✗
VIC	✗	✗	✗
NSW	✗	✗	✗
NT	N/A	N/A	N/A
QLD	✗	✗	✗

\*Charities must notify their intention to fundraise in SA, but do not apply for a license

The ACNC will continue to work with state and territory regulators to streamline regulatory and reporting for charities, including those that are incorporated associations, charitable fundraisers or charities with state taxes and duties exemptions.

For the latest on our efforts to reduce red tape, visit [www.acnc.gov.au/redtapereduction](http://www.acnc.gov.au/redtapereduction).

