

What is a charity

The word charity has a technical legal meaning. When the ACNC is deciding whether or not an organisation is eligible to become a registered charity, we apply the definition set out in the Charities Act.

We will also take into account the common law on the meaning of 'charity' and charitable purposes, and any other legislation, such as the Charities Consequential Amendments and Transitional Provisions Act and the Australian Charities and Not-for-profits Commission Act, which is also known as the ACNC Act.

Who can apply to be registered?

To be eligible for registration as a charity with the ACNC, your organisation must meet the following criteria: Be not-for-profit - generally, a not-for-profit is an organisation that does not operate for the profit, personal gain or other benefit of particular people. For example, its members, the people who run it or their friends or relatives.

The definition of not-for-profit applies both while the organisation is operating and if it winds up. To be registered, your organisation must show the ACNC that it operates on a not-for-profit basis. For most organisations, this is done through having a governing document with a suitable not-for-profit clause and then by consistently following that clause.

Your organisation can still be a not-for-profit if it simply provides a benefit to a member while genuinely carrying out its charitable purpose, pays a member a reasonable amount for services they have provided, or covers reasonable reimbursements for a member's expenses.

A not-for-profit can make a profit, but any profit must be put back into the organisation and used for its charitable purposes. A purpose is what your not-for-profit has been set up to achieve or what your activities work towards. Some people also call this the organisation's mission or objects. Your charity may have more than one charitable purpose.

To be registered with the ACNC, the law requires all of your organisation's purposes to be charitable, except for purposes that further the charitable purposes.

The Charities Act lists twelve charitable purposes. They 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; 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. This is a general category.

Your not-for-profit's charitable purpose must be for the public benefit. There are many ways your not-for-profit can benefit the public. It can provide goods, services, education, counselling or spiritual guidance or improve the environment.

Some purposes, for example, advancing education, relieving poverty and advancing religion,

are presumed to be for the public benefit, unless there is evidence otherwise. Charities may aim to benefit the public generally or a particular group of people. For example, a local community, refugees or young people.

Charities do not have to benefit everyone in the community, but any restrictions must be consistent with their charitable purpose. For example, a food bank could restrict its beneficiaries to people who cannot afford their own food. But it could not restrict it to people based on their appearance.

Your organisation may not be a charity if it is too restrictive with its benefits. For example, an organisation set up to provide scholarships to its own employees is unlikely to be a charity.

As well as needing to fit the legal definition of charity, to be eligible to register your not-for-profit you must have an Australian Business Number or an ABN, comply with the ACNC Governance Standards unless your organisation is a Basic Religious Charity, comply with the ACNC External Conduct Standards if it operates overseas, and not be a type of organisation that cannot be registered as a charity.

I will mention that a Basic Religious Charity known as a BRC is an ACNC category for a particular type of religious charity that meets six criteria.

Your organisation cannot be registered as a charity if it is a political party, a government entity - so this is an organisation that is part of, or controlled by an Australian or foreign government or one of its agencies or certain organisations established by a state or territory under a law or included in a written decision made by an Australian government agency or a judge that lists the organisation as engaging in or supporting terrorist or other criminal activities. Also, the ACNC cannot register an individual or a partnership, which is a particular type of legal structure, as a charity.

Issues preventing charity registration

The ACNC gets applications from organisations that we can't register. This section covers some of the common issues that we see the issues can be grouped together under two main headings: 'Problems with the charity's purpose' and 'problems with being not-for-profit'.

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 a 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.

A sporting or recreational organisation, unless its main purpose is charitable, such as providing sporting activities for people with disabilities or the elderly.

These organisations may still be not for profits and exempt from income tax or qualify as charities under state and territory laws. However, they are unlikely to fall within the legal meaning of charity for the purposes of the ACNC Act and Charities Act.

Some purposes cannot be charitable, some purposes are deliberately disqualified from being charitable, such as the purposes of engaging in or promoting activities that are unlawful or against public policy or promoting or opposing a political party or candidate for political office.

Having both charitable and non-charitable purposes

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.

For example, if your organisation has a purpose to provide food to homeless people, charitable, and to provide social events for the businesses who donate the ingredients for the meals, non-charitable, then your organisation is unlikely to be registered as a charity.

Private benefit to members

Some organisations may have a charitable purpose, but they also provide a private benefit to their members.

For example, an organisation that is set up to promote the arts, which is charitable, but does this by promoting works for sale of particular artists who are members of the organisation, would not be eligible to be a registered charity.

Lack of a suitable governing document

The ACNC will decide what the organisation's purposes are by looking at your organisation's governing documents, for example, its constitution, rules or deed, as 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.

If these documents are absent or incomplete, it means we can't identify your organisation's purposes or whether it is not-for-profit.

Choosing a charity subtype

When the ACNC registers an organisation as a charity, we register it with one or more charity 'subtypes'. These subtypes are categories that reflect the charity's charitable purpose – for example 'advancing education' or 'advancing health'.

Each subtype has a specific meaning under the law. To be eligible for registration with a subtype. Your organisation's objects and activities must be directed towards specifically achieving the charitable purpose described by that subtype.

For example, if you choose advancing education, you must show that your organisation's objects and activities are clearly directed towards this. You should not choose subtypes that your organisation does not actively pursue or are not included as objects or purposes in the organisation's governing document. Choosing inappropriate subtypes will delay processing of your registration application or subtype change request.

Remember, a charity's subtypes can change. As a charity develops and moves on to new purposes and focuses, the subtypes with which it is registered may need to change with it. Registered charities can apply to change their subtypes, add new ones or remove ones that no longer apply, at any point. Keep this in mind when choosing subtypes for your organisation.

Only choose subtypes that represent your organisation's purposes now. Do not apply for subtypes that may reflect a future purpose of the organisation. You can apply for subtypes that reflect a future purpose later when they become a purpose.