

# **The Law Handbook**

**YOUR PRACTICAL GUIDE TO THE LAW IN NEW SOUTH WALES**

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# Community Organisations

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**[8.05]** While all community organisations will be not-for-profits, not all will be charities. As will become evident, not-for-profit organisations and charities are treated differently in a number of ways. Therefore, as a preface, it is necessary to first understand what a not-for-profit organisation is and what makes a not-for-profit a charity.

### Not-for-profit organisation

A not-for-profit organisation (sometimes referred to as a non-profit organisation or even a “for purpose” organisation) is an organisation that has the following two key characteristics:

- it is established and continues to exist for a purpose beyond making a profit (often of a charitable, environmental, cultural, sporting, industry or community benefit nature) that underpins the reason for its existence and shapes the nature of its activities; and
- if it does make any profit (or surplus), it is retained by the organisation to help further its purposes and, except in certain limited circumstances, is not distributed to the organisation’s members.

By way of contrast, a for-profit venture is generally established with profit as its primary focus and it may distribute profit to its shareholders, usually through the payment of dividends.

Other characteristics of a not-for-profit organisation include that it:

- consists of members who have no proprietary rights in the organisation; and
- commonly, but not always, prohibits the members of its governing body, usually a management committee or board of directors, from receiving money, property or other benefit in their capacity as a member of that governing body.

Not-for-profit organisations play a very important part in society and are abundant within our social fabric. They can be incorporated or unincorporated, big or small, may or may not have employees and may be, but need not be, charitable in the legal sense.

Not-for-profit organisations are found almost everywhere and cover a full and diverse spectrum of purposes, interests and activities, including:

- groups whose activities are “charitable” in the legal sense – being directed towards things like social welfare, advancement of education,

advancement of religion, reconciliation, human rights and protection of animals;

- sporting, social and cultural groups such as football clubs, staff social clubs and arts festival committees;
- public universities, schools, hospitals and religious institutions;
- environmental foundations, cancer research institutions and community resource centres; and
- industry associations and associations of employees, business people or professional people formed for the purpose of protecting their mutual interests.

### Charitable purpose

The concept of “charity” or “charitable” has an everyday meaning and a legal meaning. Even within the legal meaning, there are variances depending on whether one is talking about:

- registering as a charity with the Australian Charities and Not-for-profits Commission (ACNC);
- accessing Commonwealth tax concessions from the Australian Taxation Office – such as income tax exemption, fringe benefits tax concessions and deductible gift recipient (DGR) endorsement;
- accessing state-based tax concessions – such as exemptions from stamp duty, payroll tax and land tax; or
- obtaining authorities to undertake charitable fundraising activities – such as asking the public to donate.

While the legal meaning of charity has a long and interesting history, much of this is now codified in the *Charities Act 2013* (Cth) (*Charities Act*). The *Charities Act* lists 12 different categories (sometimes called “heads”) of charity. These 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;
- any other purposes beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in the subtypes above; and
- advancing public debate (promoting or opposing a change to any matter established by

law, policy or practice in the Commonwealth, a state, a territory or another country).

Regardless of whether an organisation is a not-for-profit only or is also a charity, all community organisations will benefit from properly understanding the rights and responsibilities explored in this chapter.

## INCORPORATION

**[8.10]** Unless a community organisation takes the step of *incorporating*, it is simply a group of people doing something together, with no legal identity apart from that of its individual members. This will be so even if it has a written constitution or set of rules. In legal jargon, it is an unincorporated association.

There are very good reasons why community organisations should incorporate. This chapter discusses the requirements for becoming an incorporated association, then goes on to discuss the legal obligations of community and charitable organisations in fundraising and handling money.

## Ways of incorporating

**[8.20]** An organisation can incorporate in various ways. The two most suitable for community groups are:

- as an association under the *Associations Incorporation Act 2009* (*Associations Incorporation Act*) (NSW); and
- as a company limited by guarantee under the *Corporations Act 2001* (*Corporations Act*) (Cth).

It is also possible to incorporate as a not-for-profit co-operative (referred to as a non-distributing co-operative) under the *Co-operatives National Law* although this form of incorporation is more commonly used by agricultural and trading groups.

Organisations, where a majority of the members and directors are Indigenous, have the option of incorporating under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth). This form of incorporation is administered by the Office of the Registrar of Indigenous Corporations (see [8.450]).

the eight members of the committee. Mr Smith was awarded \$26,500, to be paid by the committee members (*Smith v Yarnold* (1969) 2 NSW 410).

### **[8.30] Why incorporate?**

A group without a separate legal identity relies on its members to act in their own name on the group's behalf. Members who make and implement decisions – often the committee – are (usually) ultimately responsible for the group's debts and other legal obligations.

Incorporation gives the organisation a separate legal identity, and limits the personal liability of its committee and members. This protection is called *limited liability*.

Incorporation is also usually required before the group can receive a government or philanthropic grant.

### ***Personal liability in an unincorporated association***

Mr Smith was a spectator at a greyhound meeting run by the Taree Greyhound Racing Club. The grandstand he was in collapsed and he was injured. The club was not incorporated, so Mr Smith personally sued

Community legal centres can sometimes help local groups prepare for incorporation by reviewing forms and documents before they are lodged, or by recommending an appropriate solicitor. The Law Society of NSW also gives referrals to solicitors who work in this area.

# Incorporating as an association

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## [8.40] Eligibility

To be eligible to incorporate as an association under the *Associations Incorporation Act*, a group must:

- have at least five members;
- adopt a written constitution;
- be not-for-profit; and
- have the purpose of engaging in small scale and non-commercial activity.

To be “not-for-profit”, an association’s constitution must prohibit the direct or indirect distribution of its profits and assets to its members. This prohibition applies during the life of the association, and also when the association is closed down.

To be accepted as “small scale” under NSW Fair Trading policy, an association should have less than \$2 million in assets and/or annual income. Associations that exceed these thresholds will probably be refused registration and advised to seek incorporation as a company or co-operative.

A number of factors are taken into account by NSW Fair Trading when deciding whether an association is (or will be) engaged in commercial activities. Those factors are listed in the Fact Sheet “Commercial activities and monetary gain” and include:

- the nature and extent of the proposed activities, including dealings with the public;
- if the commercial money-making activities will be a major part of its operations;
- if the proposed activities will be undertaken in a normal commercial manner;
- if goods or services are restricted to members or available to the general public;
- if it is operating on a profit basis rather than a cost recovery basis; and
- if it is operating in competition with businesses undertaking the same commercial activities.

The above factors are taken into account collectively, which means that an application could be approved even though one or more of the factors is not satisfied.

For example, a community transport association could be accepted as non-commercial even though it offers services to members of the public in a manner that competes with services offered by commercial operators.

The level and extent of trading or commercial activities conducted for charitable purposes will be determined by NSW Fair Trading on a case by case basis. Where an association has doubts, it should contact the Registry or seek its own legal advice.

While there is no requirement to have all operations be in New South Wales, if all or a majority of the association’s operations are outside the state, incorporation as a New South Wales association may not be appropriate.

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### Where to get advice

A group planning to incorporate as an association can contact NSW Fair Trading, which administers the *Associations Incorporation Act*, for advice and information. The office has application forms and information on:

- eligibility to incorporate;
- the process of incorporating; and
- requirements after incorporation.

These are also available online at their website. For contact details, see [8.450].

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## [8.50] Cost of incorporation

The initial cost is \$173 if the name hasn’t been reserved, or \$134 if the name is already reserved (it costs \$51 to reserve a name). The process is relatively simple, and most groups can do the necessary paperwork without employing a solicitor.

The only compulsory ongoing fee is the cost of lodging an *Annual summary of financial affairs* with NSW Fair Trading each year – \$196 for Tier 1 associations and \$47 for Tier 2 associations.

## [8.60] How to incorporate

### Holding a meeting

#### *Existing unincorporated associations*

An unincorporated association wanting to apply for incorporation must first hold a general meeting of members. The members must be given at least 21 days written notice informing them that the meeting will consider special resolutions for:

- adopting a constitution suitable for incorporation (that includes the association's name and objects);
- appointing the association's first public officer; and
- specifying the association's first official address.

At the meeting:

- a quorum must be present; and
- at least three-quarters of those who vote must approve the special resolutions.

It may also be useful for the meeting to clarify whether there will be any changes in the membership of the management committee once incorporation has been granted. The management committee (sometimes called "committee" or "board") is responsible for managing the affairs of the association and is akin to the directors of a company.

### **New associations**

If a group of five or more people wish to incorporate an association that has not previously existed as an unincorporated association, then each of the individuals must authorise the:

- adoption of a constitution suitable for incorporation (that includes the association's name and objects);
- appointment of the association's first public officer; and
- selection of the association's first official address.

It may also be useful for the founding members to determine who will hold positions on the committee once incorporation has been granted.

### **Lodging the application**

The following documents must be lodged with NSW Fair Trading:

- the completed *Application for registration of an incorporated association* (form A2) and \$173 (or \$134 if a name has already been reserved); and
- the association's constitution (unless the model constitution is used – see Constitution at [8.80]).

The forms are available from the NSW Fair Trading website and can be lodged by mail, email and in person.

### **Reserving a name**

Reserving a name before applying to incorporate is optional but ensures that the name you nominate on the application to incorporate will be accepted.

### **The certificate of incorporation**

Once the application has been lodged, checked and approved, NSW Fair Trading issues a certificate of incorporation.

### **If the application is unsuccessful**

If the application is unsuccessful, the group is told why. If there is a problem with the constitution, the group must call another meeting to consider a further special resolution to amend the constitution.

### **After incorporation**

After the certificate of incorporation has been issued, the association should:

- consider registering with the Australian Tax Office to obtain an ABN;
- open a bank account in the association's name (the bank will usually require a copy of the rules and wish to see the original certificate of incorporation);
- ensure that at least two people are authorised to sign official documents for the association – the public officer is authorised to do this under the *Associations Incorporations Act* and the committee can appoint committee members as additional signatories;
- set up books to record the association's financial transactions, a register of members, a register of committee members, and a folder or book to keep minutes, a record/register of disclosure of interests and a register of authorised signatories;
- arrange for property registered in trustees' names to be transferred to the name of the association;
- hold the first AGM no later than six months after the end of the association's financial year;
- lodge the *Annual summary of financial affairs* with NSW Fair Trading within one month of the AGM, or no later than seven months after the end of the financial year;
- if the association will be raising funds for a charitable purpose it will need to apply for a charitable fundraising authority from the NSW government (see [8.300]); and
- obtain a common seal if the constitution requires this (a rubber stamp showing the association's

full name, which must include the word “Incorporated” or “Inc”).

#### *Registered numbers*

Although incorporated associations are given a registered number on incorporation, it is not necessary to display this number next to the association’s name. This is not an Australian company number, which all companies must display (see [8.120]). Incorporated associations are only required to display a number if they have been issued with an Australian registered body number (ARBN) by the Australian Securities

and Investments Commission. An incorporated association would most commonly obtain an ARBN if it is, or is intending to, operate outside of NSW. A separate application is required for an ARBN.

Please note that an Australian Business Number (ABN) is issued by the Australian Taxation Office and is an identifier for tax related matters. An association’s ABN is therefore different from its association number and from its ARBN (if it has one). There are requirements for the use and display of an association’s ABN, which are outside the scope of this chapter. Please see [www.abr.gov.au](http://www.abr.gov.au) for more information.

## [8.70] Effect on property, contracts and debts

Once an unincorporated association has incorporated, the ownership of all its property, liabilities and contracts passes automatically from the members and trustees of the unincorporated organisation to the new incorporated association.

This means that:

- all debts owed to (or by) the organisation’s members (on behalf of the group) immediately before incorporation are transferred to the incorporated association;
- all contracts and arrangements that were lawfully made for the organisation before incorporation become the contracts and arrangements of the incorporated association; and
- members who could have personally sued or been sued immediately before incorporation are legally replaced by the association.

### Transfers into the association’s name

It is still necessary to fill out the relevant forms so that title deeds and other official documents can be changed into the association’s name.

## [8.80] Running an association

### Constitution

There are minimum requirements for an association’s constitution, covering 17 areas – membership, the committee, general meetings, dispute resolution and so on.

#### *The model constitution*

The model constitution is part of the *Associations Incorporation Regulation 2016* (NSW) and a

formatted version is also available for download from the NSW Fair Trading website. If this is used without amendment, there is no need to supply a copy of the constitution when applying for incorporation.

#### *Drafting your own constitution*

A group can also draft its own constitution. If it does, the constitution should cover all the matters required by the *Associations Incorporation Act*, otherwise the relevant provisions in the model constitution will automatically form part of the association’s constitution, and it will be bound by them.

### The public officer

Every incorporated association must have a public officer who is a NSW resident aged 18 or more. This person is the association’s official contact person and is responsible for informing NSW Fair Trading of certain changes in the association. The public officer should bring all documents received to the attention of the committee as soon as practicable.

The public officer of an association is akin to a company secretary of a company. They can be a member of the committee, a member of the association, an employee or a person outside the association. The person who applies for incorporation will become the association’s first public officer.

Please note that the Australian Taxation Office may also require the appointment of a “public officer”. This person is the contact for the ATO. So, while the public officer under the *Associations Incorporation Act* may be the same person as the public officer for the ATO, it doesn’t need to be.



**Official address**

The association must nominate one official address. This must be an address within NSW where the public officer can generally be found (such as a home or work address) and at which documents can be served on the association by post. This address cannot be a PO box.

The public officer must also notify NSW Fair Trading of any change in the association's official address within 28 days (form A9).

**If a vacancy in the office of the public officer occurs**

The committee must appoint a new public officer within 28 days of a vacancy occurring, and that public officer must provide NSW Fair Trading with their name and date of birth within 28 days of the appointment (form A9).

**For associations registered as a charity with the ACNC**

An association that is registered as a charity with the ACNC will also need to notify the ACNC of the following changes:

- a change to its constitution;
- a change of its address details; and
- a change in its "responsible persons" (ie, members of the management committee but not the public officer).

These changes must be notified to the ACNC within 60 days for small charities, and within 28 days for medium and large charities.

**The committee**

An association must have a committee of three or more members to manage its affairs. All committee members must be at least 18 years of age and at least three must be residents of Australia. The association must keep a register of committee members with details of committee members' names, residential addresses, dates of birth and dates of appointment. This register must be available for inspection by the public, free of charge.

The committee must meet and make decisions in accordance with the provisions of the association's constitution and good governance practices. Committee members must also ensure the association complies with the provisions of the *Associations Incorporation Act*, which includes requirements to:

- keep proper financial records and minutes of meetings;
- hold an annual general meeting (AGM) each year;
- lodge a Summary of Financial Affairs each year with NSW Fair Trading;
- act honestly and disclose any conflicts of interest; and
- act with due care and diligence for the benefit of the association.

A failure to comply with these requirements can result in a fine, and in cases of dishonesty and fraud to a fine and/or imprisonment.

Associations that are registered as a charity with the ACNC must also comply with the ACNC Governance Standards and if they send or spend money overseas, the ACNC External Conduct Standards.

**Disclosure of interest**

If a committee member has:

- a direct or indirect interest in a matter to be considered by the committee; and
- the interest appears to raise a conflict with the proper performance of the committee member's duties in relation to the matter,

the person must, as soon as possible after they become aware of the relevant facts, disclose the nature of the interest at a committee meeting. After making such a disclosure, the committee member cannot:

- be present during any deliberation of the committee with respect to the matter; or
- take part in any decision of the committee with respect to the matter,

unless the committee (without the person's involvement and in their absence) otherwise determines.

A committee member who fails to disclose an interest could be liable for a penalty of up to \$6,600 (60 penalty units).

The committee is obliged to keep a book recording any interests that have been disclosed and make that book available for inspection by members of the association.

**AGMs****The first AGM**

A newly incorporated association must hold its first AGM:

- within 18 months of incorporation; and
- within six months from the end of its first financial year.

**Subsequent AGMs**

After the first AGM, the association must hold an AGM at least once every calendar year and within six months from the end of its financial year. Each association may determine the period of its financial year (usually 12 months, but it can be less or up to 18 months, if the association determines this).

**Applying for variation**

If necessary, an association can apply to NSW Fair Trading for permission to vary these requirements. This should be done before the time periods have expired (form A11, plus a fee of \$33).

**Financial statements**

At each AGM, the committee must present to the meeting *financial statements* for the association's previous financial year. The statements must not be misleading and must give a true and fair view of the association's income and expenditure, assets and liabilities, and mortgages, charges and securities for the year. In the case of Large (Tier 1) associations (see below), the financial statements must be prepared in accordance with Australian Accounting Standards and accompanied by an auditor's report.

**Large (Tier 1) and Small (Tier 2) associations and audit requirements**

Associations are classified as either Large (Tier 1) or Small (Tier 2) on the basis of their income and assets. A large association is one with gross annual receipts exceeding \$250,000 (excluding GST) or current assets exceeding \$500,000.

"Gross receipts" are defined as "the total revenue recorded in the association's income and expenditure statement for that financial year".

"Current assets" are defined as "the assets (other than real property or assets capable of depreciation) held by the association as at the end of the association's last financial year, including amounts held in financial institutions, stocks and debentures".

Tier 1 incorporated associations are required to have their annual financial statements audited. Tier 2 incorporated associations are not obliged to have their accounts audited unless they are required to do so by a funding body or the *Charitable Fundraising Act 1991* (NSW) (see [8.290]).

**Lodging the Annual summary of financial affairs**

Within one month after the AGM, the association must lodge an *Annual summary of financial affairs*

(form A12) with NSW Fair Trading. Large (Tier 1) associations are also required to attach a copy of the financial statement, auditor's report and any resolution passed at the AGM concerning the financial statement or auditor's report. Small (Tier 2) associations are only required to include a summary of their financial affairs on the *Annual summary of financial affairs* itself.

**Fees**

The annual statement must be accompanied by the required lodgement fee (\$196 for Tier 1 associations and \$47 for Tier 2 associations if lodged within one month of the AGM). Additional fees apply for late lodgement.

**The committee's declaration**

Form A12 includes a declaration stating that the committee believes the financial statements to be true and fair and not misleading, and that there are reasonable grounds to believe the association can pay its debts as and when they fall due. This declaration must be signed by a person authorised by the committee.

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**For associations registered as a charity with the ACNC**

An association that is registered as a charity with the ACNC will also need to prepare an Annual Information Statement (AIS) and lodge it with the ACNC. In addition, medium charities (annual revenue between \$250,000–\$1 million) and large charities (annual revenue over \$1 million) registered with the ACNC will be required to provide annual financial reports to the ACNC. Large registered charities must have their financial reports audited. Medium registered charities can choose to have their financial reports reviewed or audited.

While there may be circumstances where an association is required to have its financial statements audited by NSW Fair Trading regardless of whether the ACNC requires it to do so, many incorporated associations now have the option to report only to the ACNC which reduces this duplication.

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**Special resolutions**

Decisions are made by passing resolutions at a meeting of members. A *special resolution* must be passed for decisions of particular importance – for example, to:

- change the association's name;
- amend its constitution or objects;

- amalgamate with another association;
- wind up or cancel the association; or
- apply for registration as a company or cooperative.

A notice giving details of the proposed special resolution must be sent to all members at least 21 days before the meeting.

### **Passing a special resolution**

For a special resolution to be passed, a quorum must be present at the meeting, and at least three-quarters of those voting must support it.

### **Offences**

The incorporated association, public officer, committee members, other members and employees may all be liable to certain penalties for offences under the *Associations Incorporation Act*.

### **Penalties and fines**

NSW Fair Trading has the power to issue penalty notices of between \$50 and \$200 for minor offences such as failure to lodge a form. A penalty notice can be disputed by having the matter determined in a Local Court. Court proceedings may be initiated to prosecute more serious offences, such as where a committee member dishonestly uses their position to obtain gain (maximum penalty \$26,400 and/or two years imprisonment).

### **Who is guilty?**

In most cases where an offence occurs, the public officer and each member of the committee can be found guilty unless they can show that:

- they had no knowledge of the breach; or
- they were not in a position to influence the conduct of the association; or
- they used all diligence to prevent the breach.

### **Tax concessions**

The association should consider what (if any) tax concessions it can apply for, such as income tax exemption and endorsement as a DGR by the ATO (see [8.320]).

## **[8.90] Transferring incorporation**

A group already incorporated as a company limited by guarantee or a cooperative can transfer its incorporation to that of an incorporated association by:

- passing a resolution to apply for incorporation (see [8.60]); and
- lodging application forms A1 (Reservation of name), and A4 (Registration of a company or co-operative) with NSW Fair Trading to apply for the transfer.

It is also possible for an incorporated association to change its incorporation and become a company limited by guarantee or a cooperative.

## **[8.100] Amalgamation**

Two or more incorporated associations can amalgamate to form one incorporated association. To do this, each association must pass special resolutions stating the terms of the amalgamation and adopting the objects and rules of the new association.

### **Forms required**

Form A3 (*Registration of an amalgamated association*) and form A3 supplement (*Special resolution approving amalgamation*) must be lodged with the NSW Fair Trading.

### **Fees**

The fee to amalgamate associations is \$173 if the name hasn't been reserved, or \$134 if the name is already reserved (it costs \$52 to reserve a name).

## **[8.110] Ending incorporation**

The simplest and cheapest way to end incorporation is to apply for *voluntary cancellation*. This option is only available to associations able to pay their debts and liabilities. An *Application for voluntary cancellation of registration* (form A8) must be lodged with NSW Fair Trading, which has an information sheet to help with making the application. There is no charge. The association must pass a special resolution that approves cancellation of registration and proposes the distribution of its assets consistent with the association's constitution.

### **If there are financial problems**

If the association is in financial difficulty and unable to pay its debts, the committee should seek assistance from an accountant or solicitor with experience in this area.

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### *Limits on the protection of limited liability*

Incorporation is not a licence for committees to spend up big and hide behind the shield of limited liability when the bills come in. If an association incurs a debt and there are reasonable grounds to expect that it will not be able to pay that debt (or other debts), committee members could be personally liable. They could also be liable for a \$5,500 fine and/or one year's imprisonment. If fraud is involved, the penalties rise to \$11,000 and/or two years' imprisonment.

#### *Committee members' responsibility*

A committee member who did not authorise or consent to a debt being incurred, or who has reasonable cause to believe that the association's debts would be met, is not liable for that debt. However, committee members should be aware that it is possible for them to "authorise or consent" to the incurring of a debt without actually knowing about it, if they do not check or take enough interest in areas for which they are responsible.

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## Incorporating as a company limited by guarantee

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**[8.120]** Incorporating as a company limited by guarantee gives no better protection than other forms of incorporation. Generally speaking, companies are more expensive to incorporate and have more administrative requirements than incorporated associations. Unlike incorporated associations, which must have at least five members, a company limited by guarantee may have just one member. A company limited by guarantee can also operate (ie, undertake activities) in multiple (including in all) states and territories without the need to obtain an Australian Registered Body Number. Companies limited by guarantee that are also registered as a charity with the ACNC only need to report to the ACNC, unlike NSW incorporated associations which are required to report to both the ACNC and NSW Fair Trading. Please note that the ACNC is working towards a "charities passport" that would limit the amount of duplicate reporting but at the time of writing no arrangements of this nature have been finalised with NSW Fair Trading.

### *What does limited by guarantee mean?*

The "guarantee" simply means that members guarantee to contribute an amount, up to a specified maximum, if the company needs to be liquidated and its assets are not sufficient to pay its debts (ie, a member's individual liability is limited to the amount of the guarantee). The guarantee may be for a nominal sum – often about \$10.

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### **[8.130] Why incorporate as a company?**

Incorporation as a company provides automatic Australia-wide registration and so it is often used by groups wishing to operate regularly outside NSW (including Australia-wide). The company structure is also used by larger organisations (ie, with more than \$2 million in annual income, assets or expenditure) because they will not normally be accepted for registration as an association by NSW Fair Trading.

#### *Public and private companies*

A company limited by guarantee is classified as a *public* company and as such is subject to greater controls than *proprietary* companies (eg, public companies must have a minimum of three directors, at least two of whom must live in Australia).

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### **[8.140] Before applying for incorporation**

Before the application for incorporation can be lodged:

- a name must be chosen (see below);
- a constitution must be adopted; and
- written consents must be given by members and directors.

## Choosing a name

### Conducting a name search

Before deciding on a company name, it is advisable to conduct a name search on the Australian Securities and Investments Commission's free internet names database ([asicconnect.asic.gov.au](http://asicconnect.asic.gov.au)) or at any Australian Securities and Investments Commission business centre.

### Reserving a name

Although it is not essential, a name can be reserved beforehand by lodging an *Application for reservation of a name* (form 410), with the relevant fee. ASIC will reserve a name for two months, and this can be extended by paying a further fee.

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See [8.220] for more about choosing a name.

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## Rules

Every company must have a set of rules to govern its internal affairs. This can be either:

- a single set of rules called a constitution; or
- the basic set of rules (replaceable rules) in the *Corporations Act*, which apply unless there is a constitution to replace part or all of them.

Community organisations will usually need to prepare their own constitution as the replaceable rules are more suited to a profit-making company with shares. The ACNC website has a template constitution that may be used to assist charitable organisations develop their own document.

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### *The memorandum and articles of association*

A company's rules used to be called the *memorandum and articles of association*. The terminology was changed on 1 July 1998. Companies formed before that date continue to have their internal management governed by their memorandum and articles unless they repeal them and adopt the replaceable rules, or replace them with a new constitution.

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## The consent of members and directors

Anyone who wants to be a member, director or secretary of the company must agree to do so in writing. Each member must agree in writing to the amount of "guarantee" they will pay. The written consents should be kept with the company's records and the details recorded in the company's register of members, directors and secretaries. The

consents are not lodged with the application for registration.

## [8.150] Lodging the application

Once the consents have been obtained, an *Application for registration as a company* (form 201) is completed and lodged with the Australian Securities and Investments Commission, with the relevant fee and a copy of the constitution if the replaceable rules are not used. Applications can be lodged online using the "Australian Government Business Registration Service", by mail or in person at any Australian Securities and Investments Commission service centre.

## What must be in the application?

The application must contain:

- names and addresses of the initial members;
- details of directors and secretary (names, any former names, address, and date and place of birth);
- the company's office address and opening hours;
- the amount of the agreed guarantee; and
- whether or not it is a "special purpose" company.

## Special purpose company/company name without the word "Limited"

A company which meets the criteria of a "special purpose company" is eligible for a reduced annual review fee. To qualify as "special purpose", the company must have a constitution that:

- requires it to pursue only charitable purposes and apply its income to those purposes;
- prohibits it from making distributions to its members and paying fees to its directors; and
- requires the directors to approve all other payments the company makes to them.

A company which meets these criteria and is registered under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) is also eligible to apply to be registered without the word "Limited" at the end of its name.

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### *Special rule for companies registered as a charity with the ACNC*

A company registered as a charity by the ACNC does not have to pay the ASIC annual review fees or the ASIC levy costs.

Please note that a company limited by guarantee that is not registered as a charity with the ACNC but is a not-for-profit, may meet the requirements of a “special purpose company” and thereby be subject to a lower annual review fee of \$54 for proprietary special purpose companies and \$50 for public special purpose companies. These companies must still pay the full ASIC levy.

Companies registered as a charity with the ACNC may omit the word “Limited” anywhere that the company’s name is used if the company’s constitution:

- prohibits the payment of fees to its directors; and
- requires the directors to approve all other payments the company makes to its directors.

However, this does not remove the word “Limited” from the company’s legal name. An application must be made to ASIC using Form 432 to make this change to the legal name.

## Fees

A fee of \$408 must be lodged with the application for registration of a company. If the word “Limited” is not included in the company’s name, a further \$408 is payable and Form 432 must also be lodged.

### *Members, directors and registered office*

A person becomes a member, director or secretary of a company on registration if they are named in the application with their consent. The registered office specified in the application becomes the registered office of the company.

## [8.160] After incorporation

### The registered office

After receiving a certificate of incorporation, the company must establish its registered office, which must be open to the public on business days from 10 am to 12 noon and 2 pm to 4 pm, or for at least three hours between 9 am and 5 pm. The company name must be displayed outside every office and place of business it uses (if the premises are the company’s registered office, those words must appear).

### The common seal

If its constitution requires it, the company must obtain a common seal showing the company name

and Australian company number. A common seal, however, is not mandatory.

## Records that must be kept

The company must keep at its registered office:

- proper financial records (for at least seven years after completion of the transactions);
- minute books for general meetings and directors’ meetings;
- a register of consent forms signed by the directors and secretary;
- a register of members;
- a register of debentures (if any); and
- a register of charges (if any).

It is also recommended to keep a register of disclosed interests as a matter of good governance practice.

## Opening a bank account

The company must open a bank account. The bank may require a copy of the constitution, and may wish to see:

- the certificate of incorporation; and
- a resolution by the directors to open the account.

## Appointing an auditor

A registered company auditor (who must give written consent beforehand) should be appointed within one month of incorporation. At the company’s first AGM, the auditor’s appointment must be ratified, or a new auditor appointed. However, a company limited by guarantee is not required to appoint an auditor if it:

- has an annual revenue of less than \$1 million and the directors believe the financial reports of the company will be reviewed instead of audited; or
- is a “small company limited by guarantee” – being a company with revenue for the year that is less than \$250,000 and it is *not* approved by the ATO as a DGR.

See Financial reporting requirements at [8.170] for more information about reporting obligations.

## Information required by the Australian Taxation Office

The Australian Taxation Office (ATO) must be informed of the name and address of the

company's public officer within three months of commencing operations, if the company will be carrying on business or deriving income from property.

### Tax concessions

The company should consider what (if any) tax concessions it can apply for, such as income tax exemption and endorsement as a DGR by the ATO (see [8.320]).

### Charitable fundraising

If the company will be raising funds for a charitable purpose, it will need to consider applying for a charitable fundraising authority from the NSW government (see [8.300]).

## [8.170] Running the company

### AGMs

#### First AGM

A company limited by guarantee must hold its first AGM within 18 months of its registration.

#### Subsequent AGMs

Subsequent AGMs must be held at least once per calendar year within six months from the end of the company's financial year.

#### Extensions

It is possible to obtain an extension of these time periods by applying to the Australian Securities and Investments Commission and lodging form 2501 and a \$3,487 fee.

#### Notice to members

For companies that are not registered as a charity, or that are registered as a charity but choose to follow the *Corporations Act*, members must be given at least 21 days written notice of:

- the time, date and place of the meeting; and
- the business to be transacted.

Depending upon the size of the company, copies of some or all of the following documents may need to be sent with the notice of meeting:

- the annual financial report;
- the annual directors' report; and
- the auditor's report.

The content of each of these reports is prescribed by the *Corporations Act*.

### What the AGM may do

Even if it is not specified in the notice of meeting, the AGM may:

- consider the annual financial report, directors' report and auditor's report;
- elect directors; and
- appoint an auditor and approve the auditor's payment, when necessary.

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### Special rule for companies registered as a charity with the ACNC

A company that is registered as a charity with the ACNC no longer needs to comply with the requirement to hold an AGM each year. However, such companies are required to comply with the Governance Standards set out by the ACNC. While the ACNC has said that Governance Standard 2 (Accountability to members) can be complied with by holding an AGM each year and reporting to members in the same way as is required by the *Corporations Act*, this is not the only way compliance can be achieved.

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### The annual statement

The Australian Securities and Investments Commission sends an annual company statement and invoice to the registered office of every company on its *review date* (usually the anniversary of the company's registration). The statement contains information about the company's:

- registered office;
- principal place of business; and
- officeholders and members.

#### Fees

The annual review fee is currently \$1,240 unless the company is a "special purpose company" (see Special purpose company / company name without the word "Limited" at [8.150]) in which case the fee is \$50. The fee must be paid within two months or a late payment fee will apply. Companies registered as a charity with the ACNC are not required to pay an annual review fee.

Companies are also required to pay an ASIC levy (also known as ASIC industry funding). The cost of these levies varies on a yearly basis.

#### Changes

Any changes to the information in the annual statement should be made online through Form 484, not the statement.

The Australian Securities and Investments Commission must be notified within 28 days or a late review fee will be charged. A late lodgement fee will also be charged if the changes are notified outside the lodgement period.

### **Solvency resolution**

The company's directors must pass a solvency resolution within two months after the company's review date, unless the company has lodged a financial report with the Australian Securities and Investments Commission within 12 months before the review date.

## **Financial reporting requirements**

The financial reporting obligations for a company limited by guarantee vary depending on the size of the company and other factors (including whether it is registered as a charity with the ACNC).

### **Small company limited by guarantee**

A company will qualify as a small company limited by guarantee if its revenue for the year is less than \$250,000 and it is *not* approved by the ATO as a DGR.

A small company limited by guarantee is not required to:

- prepare a financial report or have it audited;
  - prepare a directors' report; or
  - notify members of annual reports,
- unless either ASIC or at least 5% of the voting members request it.

### **Annual company revenue less than \$1 million**

A company with annual revenue of less than \$1 million that is not a small company limited by guarantee:

- must prepare a financial report;
- can elect to have its financial report reviewed, rather than audited;
- must prepare a directors' report, although with less detail than that required of other companies; and
- must give annual reports to any member who elects to receive them.

A company may be able to save some money by having a review rather than an audit as the process is not as rigorous and it can be done by an accountant who is not a registered company auditor.

### **Annual company revenue of \$1 million or more**

A company with annual revenue of \$1 million or more must:

- prepare a financial report;
- have the financial report audited;
- prepare a directors' report, although with less detail than that required of other companies; and
- give annual reports to any member who elects to receive them.

If an annual financial report, director's report or auditor's report is required, then it must be lodged online with ASIC within four months after the end of the company's financial year using Form 388 (there is no fee if the form is lodged on time).

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### **Special rules for companies registered as a charity with the ACNC**

A company that is registered as a charity with the ACNC no longer needs to comply with the requirements to:

- lodge an "annual statement" with ASIC each year; or
- prepare a directors' report.

However, all charities registered with the ACNC are required to prepare an annual information statement (AIS) and lodge it with the ACNC. In addition, medium (annual revenue between \$250,000 and \$1 million) and large charities (annual revenue over \$1 million) registered with the ACNC are required to provide annual financial reports to the ACNC. Large registered charities must have their financial reports audited, and medium registered charities can choose to have their financial reports reviewed or audited.

Please note that other laws, such as those relating to charitable fundraising, and contractual obligations (such as under government funding agreements) may require a company to prepare audited accounts even where the ACNC does not.

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## **Changes to be notified**

Although a company not registered as a charity with the ACNC is reminded of its registered details when it receives its annual statement, it must notify the Australian Securities and Investments Commission of changes when they occur during the year using the appropriate forms and, in some cases, paying a fee.

Some of the more common changes, with the relevant forms, fees and lodgement time limits are summarised below:



<i>Change</i>	<i>Form</i>	<i>Fee</i>	<i>Lodgement due</i>
Change to company name	205	\$408	14 days after passing resolution
Change to registered office or principal place of business	484	Nil	28 days after change
Change to office hours	No form – letter	Nil	Before the change
Appointments, resignations, changes of name or address of the directors or secretary	484	Nil	28 days after change

A director or secretary can also notify the commission if they resign, using form 370 in which case the company is not required to lodge a form 484.

### **Obtaining forms**

Some of the forms can be obtained in pdf format from the Australian Securities and Investments Commission website and lodged via post. However, other forms (eg, Form 484) are only available via ASIC's online services and hence require registration as an online user.

### **Late lodgement fees**

The amount of the late lodgement fee, late payment fee and late review fee is \$80 for lodgement within one month of the prescribed time, and \$333 for lodgement more than one month after the prescribed time.

### **Changing the constitution**

To change a company's constitution, the members must pass a special resolution, following the same procedure as an incorporated association (see Special resolutions at [8.80]). A *notification of resolution* (form 205) should be lodged with the Australian Securities and Investments

Commission within 14 days. There is no fee, as long as the form is lodged on time.

### **Special rules for companies registered as a charity with the ACNC**

A company that is registered as a charity with the ACNC no longer needs to comply with the requirement to notify ASIC of:

- a change to its constitution;
- a change of address details; or
- the appointment, resignation or retirement of directors, secretaries and alternate directors or submit personal details of directors and secretaries.

Instead, the ACNC must be notified of these changes within 60 days of the change taking effect for small charities (for medium and large charities this must be done within 28 days).

### **Changing the company name**

To change its name, a company must pass a special resolution adopting a new name and lodge a copy of the resolution with the Australian Securities and Investments Commission on form 205 within 14 days of the date of the resolution. There is a fee of \$408. Companies that are registered charities with the ACNC must also notify the ACNC of the name change within 28 days from the change for medium and large charities or within 60 days for small charities.

### **What must be on company documents**

The company must have on certain documents:

- its name; and
- the words "Australian Company Number" or "ACN", along with the relevant number; or
- the words "Australian Business Number" or "ABN", along with the relevant number.

The information must be on:

- every public document issued, signed or published by or on behalf of the company;
- the common seal, if there is one;
- all negotiable instruments; and
- all documents lodged with the Australian Securities and Investments Commission.

## [8.180] Duties and liabilities of directors

Company directors have three broad duties imposed on them by both the *Corporations Act* and the general or common law:

- the duty of care, diligence and skill;
- the duty to act in good faith for the benefit of the company as a whole; and
- the duty to use their powers for proper purposes and to disclose any relevant interests.

This puts a legal obligation on directors to acquaint themselves with, and take responsibility for, the operations and affairs of the company. A director is expected to understand the company's activities and have an informed knowledge of its financial position.

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### *Who may not be a director*

A person cannot be a company director if:

- they are bankrupt; or
  - they have been convicted of a serious offence in the past five years (*Corporations Act*, s 206B).
- 

## Specific obligations

The *Corporations Act* also imposes a number of specific obligations on company directors. Breaches can result in civil or criminal liability, or both. For example:

- if a company incurs a debt and there were reasonable grounds to expect that the debt (or other debts) could not be paid, the directors could be personally liable;
- a director who acts with the intent to defraud the creditors of the company, or anyone else, could be found guilty of a criminal offence.

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### *Special rules for companies registered as a charity with the ACNC*

A company that is registered as a charity with the ACNC no longer needs to comply with most of the director's duties imposed by the *Corporations Act*. Instead, registered charities are required to make sure that directors understand and comply with Governance Standard 5 (Duties of responsible persons). This Standard largely reproduces the duties imposed by the *Corporations Act* but does not carry the same penalties.

For more information about incorporating as a company limited by guarantee, contact the Australian Securities and Investments Commission, or consult its website.

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# Incorporating as a cooperative

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## [8.190] Who should form a cooperative?

The cooperative is a form of incorporation commonly used by trading and agricultural groups in industries such as dairy, rice and fishing.

### Community organisations

This form of incorporation is not often used in the non-profit community sector, since cooperatives are primarily structured in a way that entitles members to a return on their shares and therefore puts them outside the not-for-profit category. This means that most are not eligible for such concessions as the exemptions from income tax applying to some not-for-profit organisations.

### *Not-for-profit cooperatives*

It is possible to form a not-for-profit cooperative. Under the *Co-operatives National Law*, they are called *non-distributing cooperatives*. They can exist with or without shares. These cooperatives are allowed to trade, but they cannot distribute profits to members or shareholders.

## [8.200] Forming a cooperative

At least five people are required to form a cooperative. Interested organisations should obtain information from the NSW Fair Trading website. The website includes:

- a copy of the standard rules; and
- a guide to completing the disclosure statement.

An application to register a co-operative (Form C4), a set of rules and a disclosure statement must be completed and lodged with the Registry of Co-operatives, along with the application fee of \$110 where a disclosure statement is not required or \$383 where a disclosure statement is required.

## [8.210] Transfer of incorporation

A cooperative without share capital that wishes to transfer its incorporation to that of an incorporated

association may do so under the *Associations Incorporation Act* by passing a special resolution by a special postal ballot.

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For more information about incorporating as a cooperative, contact the Registry of Co-operatives and Associations section of NSW Fair Trading.

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## Registration of names

### [8.220] Incorporated bodies

Incorporated bodies (such as companies and incorporated associations) must register a name as part of the incorporation process.

#### Incorporated associations

##### *Names that will not be accepted*

A name will not be accepted for registration as the name of an incorporated association if it is likely to be confused with or mistaken for the name of another association, company, cooperative or business, or contains unavailable words or phrases (see [8.240]).

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#### *Incorporated associations operating in other states*

An incorporated association can carry on business under its incorporated name in NSW without other registration. However, if it plans to carry on business in other states, it must register with the Australian Securities and Investments Commission as an *Australian registered body*.

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#### Companies

##### *Identical names*

The Australian Securities and Investments Commission will not register a name that is identical to a registered business name or the name of another incorporated body. In making its decision, the commission:

- treats singular and plural words as equivalent; and
- ignores “the”, “a” or “an” at the beginning.

#### *Similar names*

Unlike NSW Fair Trading, the Australian Securities and Investments Commission does not have to reject a name similar to, or likely to be confused with, an already registered name. This is because the Australian company number assigned to a company differentiates it. It does not mean that an organisation with a similar name cannot take action to stop the new name being used (see [8.250]).

#### *Unavailable names*

The Australian Securities and Investments Commission will not register certain “unavailable” names (see [8.240]).

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#### *Companies operating in other states*

A company (or an Australian registered body) can carry on business under its name throughout Australia without other registration.

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#### *Business names and incorporated names*

A company, association or other incorporated body can register a business name that is different from its incorporated name.

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### [8.230] Unincorporated bodies

An unincorporated group need not register its name unless it intends to carry on a business.

## Business names

An unincorporated organisation that wishes to carry on a business must have a registered business name, unless the business is carried on under the name of an incorporated body.

### **Names that will not be accepted**

A name will not be accepted for registration if:

- it is likely to be confused with, or mistaken for, other registered names; or
- it contains words or phrases that are “unavailable” (see [8.240]).

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### **What registration does not do**

Registration or use of a business name does not create a legal entity or give the members of an organisation limited liability. This can be done only by incorporation.

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## Businesses run by individuals

Individuals running businesses must also register a business name unless they conduct their business only under the name of the person or persons involved (ie, first name and surname, or initials and surname).

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### **National registration of business names**

Historically, business names were registered separately in each state or territory where the business was carried on. However, on 28 May 2012, the responsibility for the registration of business names became national and is now controlled by the Australian Securities and Investments Commission. Existing registered business names were automatically transferred to the national system and attained a national registration status. New businesses will need to obtain an ABN before they can register a national business name.

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## [8.240] Unavailable names

Certain words and phrases cannot be used in company, association or business names without appropriate approval. These include:

- words such as trust, university, chamber of commerce, building society and chartered; and
- words suggesting a connection with:

- government;
- the British royal family;
- an ex-servicemen’s organisation.

This is to ensure that an organisation’s name is not misleading. Names that are offensive or suggest illegal activity will also not be registered. (For more detail, see *Associations Incorporation Act*, s 18; *Associations Incorporation Regulation 2016* (NSW), Sch 2; *Business Names Registration (Availability of Names) Determination 2015*.)

## [8.250] Similar and deceptive names

Using a name that is deceptively similar to a name being used by another business can lead to action under the *Competition and Consumer Act 2010* (Cth), or under the part of the common law called *passing off*.

If an organisation misrepresents (even unintentionally) that it is connected with another business, it could be forced to pay compensation and to stop using the name. The fact that a name has been registered is no protection.

### **When can action be taken?**

Legal action can be taken against names that are misleading because they:

- create the impression that goods and services originate from a particular source when they do not;
- imply that a product or business has sponsorship, affiliation or approval that it does not have; or
- wrongly suggest that a business or its goods or services have particular attributes or a particular status or function – for example, that the business is of a particular size, has been established for a particular length of time, or operates at a particular level in the distribution chain (wholesale or retail).

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### **Check before using**

Before using or registering a name, it is advisable to check that it is not already registered as a name or trade mark by using the free online searches at <https://asicconnect.asic.gov.au> and [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au).

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# DEALING WITH MONEY

[8.260] There are several ways in which a community organisation with limited funds can improve its financial position. These involve raising money from grants, appeals and trading

activities, and saving money through tax exemptions and concessions.

A group's ability to use any of these methods of raising and saving money depends on a number of factors, which are discussed in this section.

## Community organisations and funding

[8.270] A community organisation can obtain funds through:

- grants from a government department, a foundation or a corporation;
- earning income from trading activities; and
- appealing for funds from members or the general public.

### [8.280] Government grants

#### Funding agreements

If a group is allocated government grant money, it will usually have to sign an agreement with the funding body setting out:

- why the grant is made; and
- the group's responsibilities on receiving it.

Each funding agreement is different, but a number of matters are common to most.

#### Negotiation

Most funding bodies offer their own standard agreement. This does not mean there is no room for negotiation. Funding agreements change from year to year, partly as a result of suggestions made by the groups asked to sign them.

Any aspect of a funding agreement that is not clear (or not acceptable) should be raised in a letter to the funding body.

Any agreed changes should be confirmed in writing, and included in the final agreement.

#### The management committee's responsibilities

Although the staff of an organisation may play an important role in negotiating and implementing a funding agreement, it is usually the management committee (or Board), not the staff, who must ultimately decide whether or not to sign the agreement, and then ensure that its terms are carried out.

#### Grant conditions

Government grants are almost always made on condition that the recipient undertakes specified activities and meets specified requirements.

#### Audit and reporting requirements

Most funding agreements include conditions requiring audited financial statements and activity reports to be submitted to the funding body at regular intervals.

A group may find that the requirements of one funding body are different from those of a joint funder (or a regulatory body such as the Australian Securities and Investments Commission). To make the process more efficient, it is possible to negotiate with funding bodies on the frequency and type of information required.

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#### Choosing an auditor

Before choosing an auditor, it is important to find out what their qualifications are and to check that these meet the requirements of the relevant funding or regulatory body.

Most funding agreements indicate exactly what qualifications are required, and usually specify that the auditor must not be either a member of the organisation's governing body or an employee.

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#### Ownership of assets

Most government departments require the return of any grant funds not spent (or committed) during the funding period.

Some funders stipulate that anything purchased with grant money is the property of the department supplying the funds. (This can create problems if the group wishes to trade-in or sell outdated equipment, or if it is sued and a court order is issued to seize property.)

### **Assets of a non-profit organisation**

All the assets (and income) of a not-for-profit group must be used for the group's objects as set out in its constitution. Apart from some limited circumstances (eg, when a not-for-profit organisation establishes a subsidiary where it is the member), it is a fundamental principle that the members of a not-for-profit group have no personal right to the group's assets or income. This principle should be clearly stated in the group's constitution.

### **Surplus assets on winding up**

All associations incorporated under s 65 of the *Associations Incorporation Act* must, on winding up or voluntary cancellation of incorporation, return any surplus property that was "supplied by a government department or public authority", including unexpended grant funds. The property must be returned to the supplying department or authority, or a body nominated by the department or authority.

This applies even if there is nothing to that effect in the funding agreement. The requirement applies only to surplus property, that is, it only comes into force if property remains after the payment of outstanding debts, liabilities and winding-up costs. There is no similar provision in the *Corporations Act*.

## **[8.290] Appeals for funds**

There are various methods a group can use in its quest for funds. The most straightforward is a simple request for donations from the public or a business sponsor. This approach may be more successful if the group can offer tax deductibility for donations. If it can't, it may have to make requests for money more attractive by offering something in return, such as raffle tickets or entertainment.

### **What approvals are required?**

Before starting any fundraising activities, it is necessary to decide whether any of the following authorities, permits, licences or approvals are required:

- a fundraising authority under the *Charitable Fundraising Act* (see Fundraising authorities at [8.300]);
- a permit under the *Lotteries and Art Unions Act 1901* (NSW);

- a liquor licence; or
- approvals from bodies such as the police or the local council.

### **Liquor licences**

A liquor licence is not required if an organisation wishes to provide (not sell) liquor at meetings and functions held at its own premises. It does need a licence if it wishes to sell liquor at its premises or elsewhere (eg, in a public hall).

A charge for food or entry to a function where liquor is provided is regarded as a sale of liquor. A "limited licence" can be obtained for a single function or for multiple functions.

### **Applications**

Application forms can be obtained from the Liquor and Gaming NSW website along with fact sheets and guidelines that explain the types of licences available, their costs and the conditions which apply. It is also possible to apply for a licence online via the ServiceNSW website at [www.oney.gov.nsw.gov.au/new](http://www.oney.gov.nsw.gov.au/new).

### **Permits for games of chance**

Groups conducting games of chance such as raffles, lotteries, art unions or sweeps for a charitable purpose need:

- a fundraising authority (see Fundraising authorities at [8.300]); and
- in some cases, a permit as discussed below.

### **Raffles – prize value under \$30,000**

A not-for-profit organisation does not need a permit to hold a raffle or lottery provided the total value of prizes does not exceed \$30,000.

There are, however, a number of other requirements. Contact NSW Fair Trading for more information.

### **Art unions – prize value over \$30,000**

Where the normal retail value of the prizes in a raffle exceeds \$30,000, it becomes an *art union*, and a permit must be obtained from NSW Fair Trading before tickets may be sold (see *Community Gaming Bill 2018* (NSW)).

### **Other games of chance**

A permit, as well as a fundraising authority, is required for games of chance such as chocolate wheels, bingo and lucky envelopes, which are otherwise unlawful.

To apply for a permit, a group must complete an *Application for a permit to conduct games of chance*, available from NSW Fair Trading.

### **Sweeps and calcuttas**

Sweeps and calcuttas may be conducted on prescribed events (such as the Melbourne Cup) without a permit, provided the total value of tickets sold does not exceed \$20,000.

A permit from the NSW Fair Trading is required for amounts over \$20,000.

### **Other approvals required**

An organisation considering holding a large outdoor function or a roadside collection should

consider notifying the local council and the NSW Police.

Permission from the relevant government department is required to conduct a collection or other event on public property such as a park, railway station or wharf.

## **[8.300] Charitable fundraising**

Under the *Charitable Fundraising Act*, an organisation that raises money for a charitable purpose must hold a fundraising authority.

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### **What does “charitable” mean?**

The meaning of “charitable” in Australia comes from early English common law and the *Charities Act 2013* (Cth). The meaning of charitable is not uniform across all state, territory and Commonwealth laws, so it is important to ensure that the correct definitions and tests are being applied correctly in the specific

circumstances. When conducting fundraising activities in NSW to support a charitable purpose, the most relevant law is the *Charitable Fundraising Act*, the *Charitable Fundraising Regulations 2015* (NSW) and the Fundraising Authority Terms and Conditions.

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For more information, see [8.350].

### **Fundraising authorities**

#### **When is a fundraising authority required?**

An authority may be required if the organisation:

- solicits or receives money, property or some other benefit (by, eg, seeking or obtaining donations, selling tickets in a lottery or art union, seeking sponsorship in a walkathon, selling food, entertainment or other goods or services, or operating a commercial undertaking); and
- represents that it is doing so for a charitable purpose.

#### **When a fundraising authority is not required**

A fundraising authority is not required for:

- requesting or receiving membership fees;
- an appeal to (or receipt from) members;
- appeals for bequests of money or property;
- an appeal among workers for a fellow employee (or their family);
- applications for (or receipt of) government funds;
- small fundraisers (being annual fundraising of up to \$15,000 by volunteers);

- money received by fee or charge for:
  - educational facilities or services;
  - child-minding services;
  - goods or services supplied through a supported employment service for people with disabilities;
  - nursing and medical services;
  - other care or welfare services; or
- a request for, or the receipt of, money, property or other benefit from a registered club if the registered club applies profits to community development and support in accordance with the ClubGRANTS guidelines.

#### **Exemption for religious organisations**

Religious organisations recognised under the *Marriage Act 1961* (Cth), and certain groups affiliated with them, are exempt from the requirements of the *Charitable Fundraising Act*.

Religious organisations not recognised under the *Marriage Act* must be specifically mentioned in the regulations of the *Charitable Fundraising Act* to obtain an exemption.

#### **Obtaining a fundraising authority**

Application forms are available from NSW Fair Trading. There is no fee to apply.

**What does the authority cover?**

Fundraising authorities in NSW are granted for a specific period of time (usually five years) or a specific event or events. A standard set of “Fundraising Authority Conditions” apply to all authorities issued and a copy of these conditions may be obtained from the NSW Fair Trading website.

**Notification of changes**

A group holding a fundraising authority must notify NSW Fair Trading within 28 days, in writing, of:

- changes to its name, address, phone number, constitution (unincorporated groups only), auditor, incorporated status, charitable objects and certain other details; and
- any decision to stop conducting fundraising appeals.

This can be done by email to [charity.inquiries@finance.nsw.gov.au](mailto:charity.inquiries@finance.nsw.gov.au).

**When funds have been raised**

Any money received in the course of a fundraising appeal must be paid immediately – before expenses are deducted – into a bank, building society or credit union account containing only money raised in fundraising appeals conducted by the authorised fundraiser. An exception to this general rule occurs if all receipts are paid into the general account of the authorised fundraiser and accounting procedures are in place to ensure that money received in the course of a particular fundraising appeal can be clearly distinguished.

**Expenses**

All funds raised must be used for the group’s stated charitable purposes in conducting the fundraising, except that “proper and lawful expenses” in accordance with the terms of the fundraising authority may be deducted.

**Investment of funds**

Funds not needed at once may only be invested in accordance with laws regulating trust funds (eg, with a bank or building society).

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**Expenditure outside NSW**

Money raised in a fundraising appeal may be used outside NSW if this does not contravene any other law or the organisation’s own constitution.

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**Financial recording requirements**

A group conducting a fundraising appeal must:

- make records (in English) of income and expenditure, and keep them for at least seven years;
- show how the appeal’s proceeds were used;
- keep a cash book, register of assets, minute book, register of receipt books, register of identification badges and register of collection boxes; and
- include certain specific information in the annual financial accounts.

**Audit requirements**

If a group holds a fundraising authority, its accounts must be audited annually by a registered company auditor, or another person approved by the minister. There is an exemption from the audit requirement when the fundraiser receives less than \$250,000 gross in any financial year from any fundraising appeals.

**Unincorporated organisations**

Unincorporated organisations or individuals holding a fundraising authority must send financial returns to the minister. The authority will specify how often the returns must be sent and they will need to include details showing:

- gross amounts received from each appeal; and
- the net amount received after the deduction of expenses.

**Incorporated organisations**

Incorporated organisations need not lodge returns with the minister unless it is a condition of the fundraising authority that they do so.

The group must, however, comply with the requirements for lodging annual returns contained in *Charitable Fundraising Act* under which it was incorporated.

**Liability of directors and managers**

A director or manager of an incorporated body who knowingly authorised or permitted a breach of the *Charitable Fundraising Act* or regulation can be held personally responsible for the breach.

**Public access to information**

If a group holds a fundraising authority (or has held one in the past 12 months), it must, within 30 days, supply to any member of the public who requests it:



- audited financial statements for fundraising appeals over the past seven years;
- the organisation's constitution; and
- the names, qualifications and occupations of members of the governing body.

### **Fees**

The maximum fee that may be charged for this information is:

- \$17.50 for the first page; and
- \$1.50 for each additional page.

## **[8.310] Trading**

If a group is considering selling goods or services to raise money (trading), it will need to consider:

- obtaining an Australian business number;
- registering for the goods and services tax;
- pay-as-you-go tax;
- restrictions imposed by its incorporation;
- restrictions imposed by its constitution; and
- business licences.

### **Obtaining an Australian business number**

A community organisation can apply for an Australian business number (ABN) on the basis that it is an "entity carrying on an enterprise in Australia".

### **Why obtain an ABN?**

Some advantages of having an ABN are that:

- an organisation must have an ABN to apply for registration as a charity with the ACNC and for endorsement to receive charity tax concessions (such as income tax exemption and DGR status with the ATO); and
- if you supply goods or services to another business and quote your ABN on the invoice, the business does not have to withhold tax (at the top marginal rate) from their payment.

You can apply for an ABN online at the Australian Business Register ([www.abr.gov.au](http://www.abr.gov.au)). Application forms for an ABN can also be obtained from the ATO.

### **Registering for the GST**

Registering for the GST (goods and services tax) is a separate process from obtaining an Australian business number, although it can be done at the same time and on the same form.

### **Which not-for-profit organisations must register?**

Not-for-profit organisations must register for the GST if their annual turnover is \$150,000 or more. Not-for-profit organisations with an annual turnover less than this can register if they wish.

### **GST free sales of goods and services**

Some concessional rules apply to sales made by charities, DGR and government schools. Sales made by these organisations of donated second hand goods, raffle tickets and "non-commercial" goods or services are GST free.

#### *What is a non-commercial sale?*

A sale is regarded as being "non-commercial" if the amount charged is less than 50% of the market value

or less than 75% of the amount paid to acquire the good or service (if the supply is of accommodation then it will be GST free if the amount charged is less than 75% of the market value or cost of acquisition).

### **What must a GST registered organisation do?**

An organisation registered for the GST:

- must include 10% GST on all its taxable supplies;
- can claim a credit for GST paid for acquisitions in certain circumstances; and
- must complete a business activity statement (BAS) and send it, and the GST payable, to the ATO at least once every three months.

### **Organisations that are not registered**

An organisation not registered for GST:

- does not charge the 10% GST on its supplies
- cannot claim a credit for GST paid on its purchases.

Forms to register for the GST can be obtained from the ATO.

**GST and fundraising events**

An organisation registered for GST and as a charity with the ACNC may choose to treat all sales it makes in connection with certain fundraising events as input taxed. This means that the charity does not need to charge GST on what it sells (supplies) for the event (eg, ticket sales, sponsorships rights, etc) but it also cannot recover any GST charged on inputs, for example, supplies for catering, venue hire, security and so on.

A charity can conduct a particular fundraising event up to 15 times in a financial year and choose to treat each event as input taxed. However, if the charity holds more than 15 of the same type of event in a financial year, none of the events can be treated as input taxed fundraising events.

**Pay-as-you-go tax**

Non-profit organisations that employ staff or purchase goods or services need to understand the PAYG (pay as you go) tax system.

PAYG is a single reporting system that replaces more than 10 previous instalment and reporting systems, including the obligation to make deductions from employees' wages and to withhold a percentage of payments to suppliers who do not quote an Australian business number.

Organisations required to withhold money (eg, income tax deductions from staff wages) must be registered with the ATO and account for the money through regular business activity statements and payments.

**Paying by instalments**

Not-for-profit organisations that are not exempt from income tax, and that earn more than the threshold of \$416, may be required to pay their tax by instalments. The ATO will give the organisation an income tax instalment rate, and require it to pay

instalments as part of its regular business activity statement.

If no instalment rate is provided, income tax is accounted for by lodging an annual company income tax return.

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See Chapter 38, Taxation for more about taxation requirements.

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**Restrictions on trading activities*****Incorporated associations***

Changes to the *Associations Incorporation Act* mean that an incorporated association can carry on trading activities provided they are small-scale and non-commercial (see [8.40] for an explanation of "small scale" and "non-commercial").

***Companies and cooperatives***

There are no special restrictions on trading activities of cooperatives and companies limited by guarantee, though organisations registered as a charity with the ACNC should take care to ensure that such activities are conducted in the furtherance of its charitable purpose.

***Restrictions imposed by a constitution***

A group can restrict its ability to engage in trading activities by its constitution. This applies to unincorporated and all types of incorporated groups.

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***Business licences***

A group planning to raise funds by starting a business operation may need a licence or permit. To find out what might be required, go to the Australian Business Licence Information Service (ABLIS) website at [ablis.business.gov.au](http://ablis.business.gov.au).

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## Tax exemptions and concessions

**[8.320]** A group's eligibility for exemptions depends on:

- the type of activities it undertakes;
- whether it is or is not furthering a charitable purpose;
- what is in its constitution; and
- whether it otherwise complies with the requirements of the specific tax laws under which it is seeking the exemption, many of which are in this section.

### [8.330] Applying for exemption

When applying for an exemption, a community organisation should be ready to provide its constitution and other information such as a website address, brochures or a statement of activities. A copy of recent financial reports may also be required.

The department processing the application will be looking for specific features allowing an exemption under the legislation creating the particular tax or charge. Each piece of legislation is different and specifies the types of organisations that are eligible.

## Federal taxation

[8.350] The federal government is concerned with:

- income tax
- tax deductible donations
- fringe benefits tax
- superannuation contributions.

### [8.360] Income tax

All community organisations (incorporated and unincorporated) are regarded as having a separate entity for income tax purposes and are liable to pay income tax at company rates unless they are an *exempt entity*.

deducted from any interest earned, it must quote its tax file number to the financial institution.

The interest still forms part of the group's income and must be shown in its tax return.

#### **Groups that do not need to lodge a return**

Groups need not lodge an income tax return if:

- they are exempt from paying income tax; or
- they earn less than the minimum taxable income of \$416 per year.

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#### **What is income?**

Income tax is levied only on *income*. This means that while net trading revenue, interest and rental income are taxable, annual subscriptions and gifts to an association are generally not.

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### Types of organisations that are exempt from income tax

Exempt non-profit organisations include:

- charities registered with the ACNC;
- community service organisations;
- cultural organisations; and
- sporting organisations.

#### **Obtaining an income tax exemption**

Charities must have an Australian business number (ABN) and be registered with the ACNC before their application for income tax exemption will be considered by the ATO (see Obtaining an Australian business number at [8.310]). The ACNC charity registration application includes sections that the applicant can use to notify the ATO that they wish to apply for exemption from income tax and be endorsed for other tax concessions.

Non-profit organisations that are not registered with the ACNC are required to make a self-assessment of their income tax status. The ATO has a worksheet and explanatory material to help with this called *Income tax status review worksheet for self-assessing non-profit organisations* which is available on the ATO website.

### Non-profit groups that are not exempt

Non-profit entities that are not exempt pay tax only if their taxable income is over \$416 per year.

If taxable income is between \$417 and \$832 per year, the amount over \$416 is taxed at 55%. If taxable income is \$833 or more, the whole taxable income (not just the amount over \$416) is taxed at a flat 27.5%.

### Lodging tax returns

If a group has to pay income tax, it must lodge an income tax return and needs a *tax file number*.

#### **Paying tax on interest**

If the group holds money in an interest-bearing account and does not want tax automatically

**Other qualifications for exemption**

To qualify for income tax exemption, most organisations must have a physical presence in Australia, and pursue their objectives and incur their expenditure in Australia.

**[8.370] Tax deductible donations**

While many organisations are eligible for an income tax exemption, most will find it difficult to obtain tax deductible status for donors.

**Deductible gift recipient**

The *Income Tax Assessment Act 1997* (Cth) provides that gifts of \$2 or more (as well as other types of gifts) to certain organisations or funds are tax deductible for the donor. Many organisations are mentioned by name. There are also some general categories listed in the DGR tables in *Income Tax Assessment Act*, including:

- public benevolent institutions (see Public benevolent institution at [8.370]);
- public funds for acquiring, constructing and maintaining school buildings;
- public funds for providing religious instruction in schools;
- approved research institutes;
- approved overseas aid funds;
- registered environmental organisations;
- public funds for setting up or maintaining marriage guidance organisations;
- charitable services institutions;
- certain animal welfare charities;
- fire and emergency services funds;
- harm prevention charities; and
- developed country or Australian disaster relief funds.

**Applying for DGR status**

To be endorsed as a DGR, an organisation must have an Australian business number and, apart from a handful of exceptions, be registered with the ACNC. The application form includes a section for notifying the ATO that it wants to apply for endorsement as a DGR. An application form for endorsement is then sent to them.

Public benevolent institutions and health promotion charities are each a charity subtype

and DGR category. This means that the Australian Charities and Not-for-profits Commission will, as part of the charity registration application process, collect the information required for the Australian Taxation Office to make its assessment as to the organisation's eligibility for DGR endorsement and will pass this information to the Australian Taxation Office on behalf of the applicant.

**Public benevolent institution**

A *public benevolent institution* is a type of charity whose main object and activity is "the relief of poverty, sickness, suffering, distress, misfortune, destitution or helplessness". To be recognised as a public benevolent institution, a group must be an organisation or association formed to benefit the public and must:

- provide relief for the benefit of a section of the public that is in need;
- make its services available without discrimination to those who the organisation aims to benefit; and
- do more than just distribute money to other organisations, that is, conduct its own activities and not act as a passive fund.

**Health promotion charity**

An organisation can qualify as a health promotion if:

- it is a charity as defined above;
- it is an institution which carries out activities (apart from just distributing funds);
- it promotes the prevention or the control of disease in human beings; and
- this is its principal activity.

**Other qualifications**

To qualify for endorsement as a DGR, an organisation must also:

- have a dissolution clause providing that any surplus assets must go to another organisation with DGR endorsement; and
- in some circumstances, have rules that establish a gift fund into which all donations can be deposited and accounted for separately from other funds (this is not essential where the organisation as a whole will be endorsed as a DGR).

## [8.380] Fringe benefits tax

Non-profit organisations that provide fringe benefits to their employees are subject to fringe benefit tax, with four exceptions:

- public benevolent institutions;
- health promotion charities;
- religious institutions, for certain employees; and
- non-profit organisations:
  - whose activities include caring for elderly or disadvantaged people; and
  - who provide benefits to live-in carers.

Some minor benefits valued at less than \$300, some taxi travel and some work-related items (such as mobile phones and laptop computers) are also exempt.

### The fringe benefits tax rebate

Even though all other organisations are liable to pay fringe benefits tax, most non-government, income tax exempt organisations qualify for a *fringe benefits tax rebate*, reducing their liability by a rebate equal to 47% of the fringe benefits tax payable.

The concessional fringe benefit tax treatment is capped at \$30,000 of grossed-up taxable value for each employee. Any fringe benefits above

this level is subject to normal fringe benefits tax treatment.

Please note that not-for-profit organisations that are not registered charities with the ACNC but have self-assessed as income tax exempt under Div 50 of the *Income Tax Assessment Act 1997* are also entitled to the FBT rebate (see *Fringe Benefits Tax Act 1986* (Cth), s 65J).

## [8.390] Superannuation contributions

All community organisations who are employers (including income tax exempt charities) are subject to the superannuation guarantee legislation, which requires all employers to pay a superannuation contribution for each employee – full-time, part-time or casual – unless they are paid less than \$450 in any calendar month.

An employer who fails to pay superannuation contributions is liable to pay a *superannuation guarantee charge*.

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See Chapter 37, Superannuation for more about superannuation.

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## State taxation

[8.400] NSW government taxation affects community organisations in the areas of:

- stamp duty on conveyances and mortgages;
- stamp duty on insurance policies;
- stamp duty on an application to register a motor vehicle;
- land tax; and
- payroll tax.

## [8.410] Stamp duty

### Conveyances and mortgages

It is difficult to obtain a blanket exemption from stamp duty on conveyances of property and mortgages. However, a blanket exemption may be granted if an organisation uses its resources predominately for:

- the relief of poverty in Australia; or
- the promotion of education in Australia.

It is also possible to obtain an exemption from stamp duty on a transaction-by-transaction basis. These exemptions are available to a broader range of organisations, that is, organisations that, in the opinion of the Chief Commissioner of Revenue NSW, are of a charitable or benevolent nature or have a primary object of promoting the interests of Aborigines. The following have been noted by the Chief Commission as purposes which may be eligible for the transaction exemption:

- the relief of poverty;
- the relief and prevention of sickness and disability;
- the relief of suffering and distress caused by old age;
- the promotion of education;
- the establishment of organisations to assist sections of the community with special needs; and

- the relief of distress caused by natural disasters or sudden catastrophes.

### Applying for exemption

To apply for an exemption, an organisation must lodge an “Application for Exemption – Charitable & Benevolent Bodies” (ODA 048), available from Revenue NSW.

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For more information, see s 275 of the *Duties Act 1997* (NSW) and Revenue Ruling DUT034. Copies can be obtained from Revenue NSW or its website at [www.revenue.nsw.gov.au](http://www.revenue.nsw.gov.au).

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## Insurance policies and motor registrations

Non-profit organisations with a charitable, benevolent, philanthropic or patriotic purpose are eligible for an exemption from stamp duty on:

- insurance policies other than life insurance (*Duties Act*, s 259); and
- motor vehicle registrations (*Duties Act*, s 267).

### Applying for exemption

To apply for an exemption, an organisation must lodge an “Application for Exemption from Duty” (ODA 006), available from Revenue NSW or its website.

## [8.420] Land tax

### Taxable land

Landowners in NSW do not have to pay land tax on land used as their principal place of residence. Land tax is payable on other land owned if the total value exceeds a specified threshold – \$692,000 in 2019.

### Exemptions

An exemption from land tax is available for land owned by (or held in trust for):

- a religious society;
- a charitable institution;
- an educational institution;
- a sporting group; and
- another association that does not operate for the financial profit of members.

Land used for farming or other primary production activities is generally exempt from land tax.

### Partial exemptions

A partial exemption may apply in some situations where only part of the land or building is used and occupied for non-profit purposes.

### Applying for exemption

Applications for exemption should be made to Revenue NSW. For more information, see s 10 of the *Land Tax Management Act 1956* (NSW). Application forms for exemption are available from [www.revenue.nsw.gov.au](http://www.revenue.nsw.gov.au).

## [8.430] Payroll tax

### Exemptions

Under the *Payroll Tax Act 2007* (NSW), wages paid or payable by the following organisations are exempt from payroll tax:

- a religious institution, public benevolent institution or a non-profit organisation having as its sole or dominant purpose a charitable, benevolent, philanthropic or patriotic purpose (but not including a school or educational institution), for work of a kind ordinarily performed in connection with the religious, charitable, benevolent, philanthropic or patriotic purposes of the institution or body and to a person engaged exclusively in that kind of work (s 48);
- a school or college (other than a technical school or a technical college) that provides education at or below, but not above, the secondary level of education, and is carried on by a non-profit association (s 49);
- a Community Development Employment Project funded by the Department of Employment and Workplace Relations of the Commonwealth or the Torres Strait Regional Authority for wages paid to an Aboriginal person who is employed under an employment project (s 50); and
- a health care service provider for work of a kind ordinarily performed in connection with the conduct of a health care service provider and to a person engaged exclusively in that kind of work (s 51).

### Wages that are not exempt

If non-exempt wages paid by an organisation exceed Revenue NSW prescribed monthly threshold, the organisation must register with the Payroll Tax Office. If the total payroll for

non-charitable activities exceeds \$900,000 for the year ended 30 June 2019, a liability for payroll tax will arise.

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Note: Religious institutions, public benevolent institutions, non-profit and charitable organisations that are, or would be exempt, under the *Pay-roll Tax Act 1971* (NSW) as at 30 June 2007 will continue to be subject to the provisions of that Act unless they alter their constitution in respect of their charitable or equivalent objects after 30 June 2007.

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### Applying for exemption

Application forms for exemption from payroll tax (Form OPT 007) are available from Revenue NSW or its website at [www.revenue.nsw.gov.au](http://www.revenue.nsw.gov.au).

## [8.440] Rates and charges

### Local government rates

Under the *Local Government Act 1993* (NSW), land is exempt from local council rates (including any water and sewerage special rates levied by the local council) if it is:

- owned by a religious body and used for religious purposes; or
- owned by a school and used as a school (s 555).

Land owned and occupied by a public charity or public benevolent institution is also exempt from ordinary council rates, excluding water and sewage special rates, if it is used for the organisation's purposes (s 556(1)(h)). In some cases, land owned by a public charity may be exempt from water supply and sewerage special rates levied by the local council.

### Applying for exemption

Applications should be made to the local council.

### Water rates

An exemption from water service charges may be obtained for land:

- owned by a public benevolent institution or public charity that uses or occupies it for its benevolent or charitable purpose;
- owned by a religious body that occupies and uses it for religious purposes, or as a hospital;
- used or occupied as a baby health centre, day nursery, kindergarten or amenities for the aged that is not conducted for private profit; or

- used as a free public library and vested in the Crown, a public body or trustees.

The relevant legislation for the Sydney area is s 67 and Sch 2 of the *Sydney Water Act 1994* (NSW).

### Applying for exemption

Applications for exemption can be made to the local Sydney Water office. Outside the Sydney area, applications for exemption should be made to the local water supply authority (see the *Water Management Act 2000* (NSW), s 312 and Sch 4; *Local Government Act 1993* (NSW), s 558).

### Electricity

There are no concessions available to community organisations for electricity accounts. The best an organisation can do is qualify for billing under the lowest tariff. The rate (commercial, institutional, industrial or domestic) will be determined by the purpose for which an organisation uses its premises.

### Motor vehicle registration

When lodging an "Application for registration", a non-profit organisation with a charitable, benevolent, philanthropic or patriotic purpose is entitled to a concessional rate for vehicle registration, which is lower than the company rate. It may be necessary to give Roads and Maritime Services a statutory declaration about the use of the vehicle.

Non-profit organisations that qualify for this concession are also eligible for an exemption from paying stamp duty on the transfer of motor vehicle registration.

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### Leasing premises

Although community organisations are given preferential treatment in some areas of the law (such as tax exemptions and simplified forms of incorporation), they are otherwise subject to the same laws as the business community. One of the common commercial transactions a community group may engage in is leasing a property.

For a group unsure about how to deal with a commercial situation, it is useful to talk to a local solicitor to give members an idea of the legal position and help them decide the next move.

### Understanding the lease

Community organisations need to be cautious about signing a lease, not just relying on statements made by the landlord or real estate agent but reading the agreement carefully and making sure that each clause

is understood. It is usually a good idea to obtain independent legal advice before signing.

*Negotiation*

You don't have to agree to everything in the lease. Landlords often expect that it will be negotiated, so some of the terms they propose at first may be unreasonably burdensome. It may also be possible to negotiate some of the initial costs, including rent-free periods and sharing legal fees, depending on the rental market.

You may not get all the concessions you want, but you won't get any concessions if you don't negotiate.

*Lease terms*

Most leases for commercial premises are offered for initial terms of two or three years. The organisation will need to ensure that lease obligations do not conflict with its funding guarantees.

If possible, the organisation should have a clause inserted into the lease allowing early termination if its funding is not renewed. Otherwise, it should negotiate a lease for a shorter term.

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## Contact points

**[8.450]** If you have a hearing or speech impairment and/or you use a TTY, you can ring any number through the National Relay Service by phoning **133 677** (TTY users, chargeable calls) or **1800 555 677** (TTY users, to call an 1800 number) or **1300 555 727** (Speak and Listen, chargeable calls) or **1800 555 727** (Speak and Listen, to call an 1800 number). For more information, see [www.communications.gov.au](http://www.communications.gov.au).

Non-English speakers can contact the Translating and Interpreting Service (TIS National) on **131 450** to use an interpreter over the telephone to ring any number. For more information or to book an interpreter online, see [www.tisnational.gov.au](http://www.tisnational.gov.au).

Changes are expected to the websites for many NSW government departments that were not available at the time of printing. See [www.service.nsw.gov.au](http://www.service.nsw.gov.au) for further details.

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### **Australian Charities and Not-for-profits Commission**

[www.acnc.gov.au](http://www.acnc.gov.au)

ph: 13 22 62

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### **Australian Government gateway to government information and services**

[www.business.gov.au](http://www.business.gov.au)

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### **Australian Securities and Investments Commission**

[www.asic.gov.au](http://www.asic.gov.au)

ph: 1300 300 630

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### **Australian Taxation Office**

[www.ato.gov.au](http://www.ato.gov.au)

ph: 1300 130 248

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### **Department of Justice, Liquor and Gaming**

[www.liquorandgaming.nsw.gov.au](http://www.liquorandgaming.nsw.gov.au)

ph: 1300 024 720

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### **Law Society of NSW**

[www.lawsociety.com.au](http://www.lawsociety.com.au)

ph: 9926 0333

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### **NSW Fair Trading**

[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

ph: 13 32 20

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### **NSW Legislation**

[www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

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### **Office of State Revenue**

[www.revenue.nsw.gov.au](http://www.revenue.nsw.gov.au)

ph: 7808 6900

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### *Land tax*

ph: 1300 139 816

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### *Payroll tax*

ph: 1300 139 815

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### *Stamp duties*

ph: 1300 139 814

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### **Office of the Registrar of Indigenous Corporations**

[www.oric.gov.au](http://www.oric.gov.au)

ph: 1800 622 431

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### **Registry of Co-operatives and Associations**

[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

ph: 1800 502 042

