

Registration as a charity and with the Australian Charities and Not-for-profits Commission

Not-for-Profit Update

The Australian Charities and Not-for-profits Commission (“ACNC”) commenced operations on 3 December 2012. The ACNC is the independent national regulator of charities and is responsible for, among other things, registering organisations as charities and helping them understand and meet their obligations.

The ACNC decides if an applicant is entitled to be registered as a charity based on the requirements set out in section 25-5 of the *Australian Charities and Not-for-Profits Commission Act 2012* (Cth) (“Act”).

Who can be registered as a Charity?

Registration as a charity is voluntary however, for many organisations, being endorsed by and registered with the ACNC as a charity is necessary in order to access tax concessions.

An organisation is eligible to be registered as a charity with the ACNC where it satisfies the requirements set out in section 25-5 of the Act. Those requirements specify that an entity:

- (a) an entity is a charity;
- (b) has an Australian Business Number;
- (c) must not be involved in terrorist or other criminal activity; and
- (d) complies with the governance standards and external conduct standards imposed by the ACNC.

Who does this affect?

Not-for-profit entities and charities.

Article Highlights

- The ACNC refers to various criteria in assessing whether an entity is entitled to be registered as a charity.
- The main conditions require that in order to be registered as a charity, an entity is a not-for-profit entity, is in compliance with the governance standards, has an ABN and is not supporting terrorist or criminal activities.
- The ACNC will consider by reference to the objects and activities of an entity whether it has a charitable purpose which is for the public benefit.



What is a Charity?

Please note, 'charity' is now defined by the *Charities Act 2013* (Cth) and broadly requires that an entity be not-for-profit and have charitable purposes which are for the public benefit.

(a) Not-for-Profit

An organisation is generally accepted as being not-for-profit when it does not operate for the profit, personal gain or other benefit of particular people including the controllers of the organisation, the organisation's members and associates of controllers or members. A not-for-profit organisation must not give money or property, or provide any other form of gain or benefit to controllers, members or associates both while the organisation operates and/or on its winding-up or dissolution.

An entity must include appropriate not-for-profit clauses and winding-up/dissolution clauses in their constitution. The ACNC will review these clauses.

(b) Charitable purposes

An entity's constitution should include a list of its objects in order to satisfy the ACNC that the entity has a charitable purpose. An entity may have purposes which are not charitable so long as they are only incidental or ancillary to its charitable purposes.

The ACNC may require further information about an entity's activities in order to satisfy itself that the activities are charitable.

(c) Public benefits

An entity must benefit the general public or a sufficient section of the general public.

For more information on the definition of 'charity' please [CLICK HERE](#)

Compliance with governance standards

All entities, excluding basic religious charities, who wish to be endorsed as a charity must comply with the governance standards and the external conduct standards set out in regulations (see Part 3-1 of the Act);

The governance standards are set out in the *Australian Charities and Not-for-profits Commission Amendment Regulation 2013* (no 1) (Cth) and have effect from 1 July 2013. The external conduct standards separately set out the standards to be met by charities providing funds overseas or operating overseas. They are to be set out in regulations too.

Contact



Adam Levin
PARTNER

t: +61 8 9426 6753

e: alevin@jacmac.com.au



David Murphy
SENIOR ASSOCIATE

t: +61 8 9426 6748

e: dmurphy@jacmac.com.au



How to apply to the ACNC

If your organisation is entitled to be registered as a charity, it may apply in writing to the ACNC to be endorsed as a charity and included on the register.

Applications can be made online through the ACNC website www.acnc.gov.au.

You can obtain further information about the ACNC's role and the registration process on the website.

Please note, the ACNC application asks for certain information including details of an organisations activities, financial statistics relating to income and donations and details of directors or responsible persons. You will also be required to upload a copy of your governing documents at the time the application is submitted.

Disclaimer: This publication is intended to provide general information only and should not be relied upon as legal advice. If you require legal advice on a matter please contact us.

Contact Us

t +61 8 9426 6611 **f** +61 8 9321 2002 **e** jacmac@jacmac.com.au

a Level 25, 140 St Georges Terrace, Perth, Western Australia 6000
GPO Box M971, Perth, Western Australia 6843

www.jacmac.com.au