NOT-FOR-PROFIT

Commonwealth definition of charity

The *Charities Act 2013* (Cth) provides a statutory definition of charity. Read more about the legal meaning of charity.

What is a not-for-profit?

A not-for-profit is generally an organisation that does not operate for the profit, personal gain or other benefit of particular people (for example, its members, the people who run the organisation, or their friends or relatives).

The definition of not-for-profit applies both while the organisation is operating and if it closes down.

Benefits to members

An organisation can still be a not-for-profit if it provides a benefit to a member while genuinely carrying out its purpose.

For example, a self-help group for young disadvantaged parents can retain its not-for-profit status even while providing counselling services to a young parent who is also a member of the organisation.

This is because the member receiving the benefit is a genuine person in need, and the benefit being provided by the self-help group is in line with its purpose.

Types of benefits

A not-for-profit can provide direct benefits (such as distributing money or gifts) or indirect benefits (such as a member receiving help that is consistent with the organisation's purpose).

A staff member and, sometimes, a Responsible Person (a board or committee member, or trustee) can be paid for their work, but they cannot be paid an unreasonable amount.

A charity's governing document may include clauses about reasonable payments and benefits.

Making a profit

A not-for-profit can in fact make a profit, but any profit it does make **must** be allocated towards its purposes.

Not-for-profits can also retain any profits they make, as long as there is a genuine reason to do so, and that reason is clearly linked to its purpose.

For example, an organisation may wish to retain profits it has made in order to save up for a new project, new infrastructure or building, or to help it accumulate a reserve so it remains sustainable.

If an organisation holds onto significant profits indefinitely – and without using them towards its charitable purpose – it may suggest the organisation is not working solely towards its stated charitable purpose. This, in turn, may mean it is not operating as a not-for-profit.

Demonstrating not-for-profit character

To be registered with the ACNC, an organisation must meet the requirement of being a not-for-profit.

An organisation can achieve this by having particular statements (clauses) in its governing document, and following them.

Sample clauses may be worded in line with these examples:

Not-for-profit clause

This clause sets out how the organisation's assets and income are to be used and distributed.

'The assets and income of the organisation shall be applied solely to further its objects and no portion shall be distributed directly or indirectly to the members of the organisation except as genuine compensation for services rendered or expenses incurred on behalf of the organisation.'

Dissolution clause

This clause sets out what happens to the organisation’s assets if it dissolves or winds up. To satisfy the ACNC's requirements for being a charity, the clause must state the assets go to another charity.

'In the event of the organisation being dissolved, all assets that remain after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes, which is charitable at law and which has rules prohibiting the distribution of its assets and income to its members.'

Deductible gift recipient (DGR) revocation clause

This clause is used if the organisation has applied for deductible gift recipient (DGR) endorsement from the Australian Taxation Office (ATO).

‘If the organisation is wound up or its endorsement as a deductible gift recipient is revoked (whichever occurs first), any surplus of the following assets shall be transferred to another organisation with similar objects, which is charitable at law, to which income tax deductible gifts can be made:

a. gifts of money or property for the principal purpose of the organisation
b. contributions made in relation to an eligible fundraising event held for the principal purpose of the organisation
c. money received by the organisation because of such gifts and contributions.’

Legal structure

The ACNC also accepts that some organisations can show their not-for-profit character through the operation of certain laws, such as state or territory incorporated associations legislation, and trust law.