

What does 'not-for-profit' mean?

Legal information for community organisations

This fact sheet covers:

- ▶ what is 'not-for-profit' and 'for-profit' and how are they different?
 - ▶ can a not-for-profit organisation make a profit?
 - ▶ why do we need to decide if we are not-for-profit?
 - ▶ what about social enterprises?
 - ▶ how do we start a not-for-profit organisation?
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Once a community group is clear about its aims, membership and activities, it's important for the group to decide whether to operate as a 'not-for-profit' organisation or a 'for-profit' organisation.

Whether your organisation is 'not-for-profit' or 'for-profit' is important because:

- there are different legal structures for, and different laws that apply to, 'not-for-profit' and 'for-profit' organisations
- certain benefits apply to a 'not-for-profit' organisation, and
- you need to be clear with those involved in your group and with donors, government and the public about what your organisation does and how it uses its money

What is 'not-for-profit' and 'for-profit' and how are they different?

Profit

Profit is an organisation's financial gain. This is the extra money an organisation has from its revenue that is left after accounting for all the costs of doing business, such as its bills and other expenses. Examples of revenue are membership fees, government grants and profits from selling products (like merchandise or shop goods). Examples of expenses are lease costs, room hire, catering, telephone bills, insurance premiums and employee wages.

What is a not-for-profit organisation?

A 'not-for-profit' organisation doesn't operate for the profit, personal gain or other benefit of its members either during its operation or if it winds up (closes down). Rather, any profit made is used to further the aims of the organisation. That means all profits are put back into the organisation to continue to pay for its activities and functions and to achieve its mission. For example, a 'not-for-profit' organisation may further the aims of the organisation by saving the profits to start a new project, employing additional staff or keeping a reserve amount from the profits to ensure the sustainability of the organisation.

A not-for-profit organisation will fall within two broad categories:



- charities (see further below), and
- other not-for-profit organisations that are not charities; for example, most sporting and recreational clubs and community service organisations

What is a for-profit organisation?

In contrast, a 'for-profit' organisation is set up to make a profit for the people who are members or owners of the organisation. In a 'for-profit' organisation, profit can be distributed among the members, investors or shareholders of the organisation, while the organisation is in operation or when it ends. If this is the case, then the organisation is a 'for-profit' organisation – or a business.

How are for-profit organisations different from not-for-profit organisations?

It can seem confusing that some for-profit organisations operate in the community sector (for example, in childcare and aged care). The clear differences between for-profit and not-for-profit organisations are that, in a for-profit organisation:

- the profit may be distributed to the organisation's owners, or to individual members or shareholders (this can't happen in a not-for-profit organisation), and
- people involved in the organisation are entitled to receive a personal benefit from the profits of the organisation (such as a dividend, or money when they sell their shares, or a payment directly from the profit)

Charities

While all charities are not-for-profit organisations, not all not-for-profit organisations are charities.

To be a charity, as defined by the *Charities Act 2013* (Cth) (the **Charities Act**), all of the following conditions must be met:

- the entity is not-for-profit
- all of the entity's purposes are:
 - charitable purposes that are for the public benefit (as defined in the Charities Act), or
 - purposes that are incidental or ancillary to, and in furtherance or in aid of the charitable purposes of the entity,
- none of the entity's purposes are disqualifying purposes (as defined in the Charities Act), and
- the entity is not a person, a political party or a government entity

Additional requirements apply for entities to be registered as a charity.



Not-for-profit Law resources

For information on registering as charity, see [Not-for-profit Law's resources](#) on this.

Can a not-for-profit organisation make a profit?

Yes! In fact, it is a good idea if you want to further your aims, support an event or start new programs.

Not-for-profit organisations can also:

- employ people and pay them reasonable salaries
- make money by charging members of the public for services
- make money by selling or leasing property, and
- invest money in shares and receive dividends

It's what the organisation **does** with the profit which makes an organisation not-for-profit. As stated above, profits need to be directed to furthering the mission of the organisation, rather than distributed.



If a not-for-profit organisation comes to an end, any remaining funds or assets need to be transferred to another not-for-profit organisation with similar purposes, in accordance with the dissolution or winding up clause in the organisation's rules or constitution (see below).

Why do we need to decide if we are not-for-profit?

Different laws apply to not-for-profit and for-profit organisations. Many of these laws treat not-for-profits favourably because the organisation hasn't been set up by people for their own personal gain.

Some of the benefits of being a not-for-profit organisation are that:

- some legal structures are only available to not-for-profit organisations (like an incorporated association)
- there are exemptions, concessions and benefits for eligible not-for-profit organisations, including tax concessions (although being not-for-profit is only one of a number of requirements)
- some government grant programs and many private philanthropic bodies are set up only to fund not-for-profit organisations, and
- some laws only allow certain not-for-profit organisations to apply for registration to conduct certain fundraising activities (like minor gaming activities)

Not-for-profit Law has published information about incorporation, legal structures, tax laws, funding and fundraising.

If members of your organisation want to make money or a personal gain from the activities of the organisation (other than as reasonable payment for wages if they are employed by the organisation), unfortunately we can't help.

Not-for-profit Law only provides legal information on not-for-profit organisations. There is information available on establishing a for-profit business on the [Business Victoria website](#).

What about social enterprises?

A social enterprise is not a legally recognised classification but usually refers to an entity designed to achieve a particular social outcome, and which uses market-based strategies (like trading in goods or services) to achieve this outcome. For example, a social enterprise may direct its profits to a particular cause, trade only in certain kinds of products (such as ethically made products) or employ underemployed populations.

The choice between not-for-profit and for-profit is not always straightforward for social enterprises. There are many not-for-profit social enterprises, and many for-profit social enterprises, the difference being that not-for-profit social enterprises invest all profits towards their mission, rather than distributing to shareholders or investors.

The key consideration that will drive a choice between for-profit and not-for-profit for a social enterprise is where funding will come from, and what funders will expect in return from the organisation.

For example:

- some social enterprises operate for the benefit of their members and are set up as for-profits with shareholders, or as trading co-operatives
- some social enterprises seek investors, and offer returns to those investors (normally on a different basis to a normal enterprise, with some profits added back to the enterprise, and some distributed to investors), and
- some social enterprises get seed funding from philanthropic sources or the government, and then generate their own profits to sustain the enterprise – these enterprises are normally set up as not-for-profits



Related resource

For further information see our [website page on social enterprises](#), which features our Social Enterprise Guide.



How do we start a not-for-profit organisation?

There are a few key legal issues to think about when considering starting a not-for-profit organisation.

Make it clear to everyone involved that you are not-for-profit

Then everyone knows:

- they can't personally receive profits from the organisation, and
- all the organisation's money and assets must only be used to further the purposes of the organisation

Make it clear in any public interactions that you are a not-for-profit organisation

Many of the benefits available to not-for-profits (for example, low cost incorporation, tax concessions and the ability to conduct fundraising activities) may only be accessed by your organisation when it can prove its not-for-profit status.

Think about rules or constitution and statement of purposes for your organisation which describe its aims, structure and processes

You will need to include certain wording to say that you are prevented from distributing profits or assets for the benefit of members – both while the organisation is operating and when it winds up.

Include the Australian Taxation Office's non-profit and dissolution clauses in your organisation's constitution or rules

See the wording provided by the Australian Taxation Office (**ATO**) (below). This wording (or similar wording carefully drafted by a lawyer or accountant) will be recognised and accepted by government departments, regulators and grant-makers when your organisation applies for government concessions or for funding.



ATO's suggested wording for the two key clauses for an organisation's constitution to indicate that the organisation is not-for-profit

Non-profit clause

'The assets and income of the organisation shall be applied solely in furtherance of its above-mentioned objects and no portion shall be distributed directly or indirectly to the members of the organisation except as bona fide compensation for services rendered or expenses incurred on behalf of the organisation.'

Dissolution clause

'In the event of the organisation being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes which is not carried on for the profit or gain of its individual members.'



Related resource

The Australian Charities and Not-for-profits Commission (**ACNC**) has a sample constitution for companies limited by guarantee that are or will become registered with the ACNC as charities, which includes example not-for-profit (see clause 8) and winding up (see clause 69) clauses. View the template [here](#).



Resources

Not-for-profit Law resources

- ▶ [Getting started](#)

This page sets out the things you need to consider when deciding whether to start a not-for-profit organisation, including links to helpful resources.

- ▶ [Before you start](#)

This page includes specific matters to address before setting up a not-for-profit organisation.

- ▶ [The incorporation decision](#)

This page gives guidance to those not-for-profits deciding whether to formally incorporate or remain as an unincorporated group.

- ▶ [Choosing a legal structure](#)

This page lists the various types of not-for-profit legal structures, allowing you to determine the best structure for your group.

Australian Tax Office (ATO)

- ▶ [Getting Started](#)

This ATO page summarises what is a not-for-profit and how to start one up, including suggested wording for clauses to insert in an organisation's rules or constitution.