

Applying for tax concession charity endorsement

Legal information for community organisations

This fact sheet:

- ▶ explains what tax concession charity endorsement is
- ▶ sets out how to apply for tax concession charity endorsement, and
- ▶ distinguishes between tax concession charity endorsement and deductible gift recipient endorsement

This fact sheet explains tax concession charity endorsement and the application process.



Disclaimer

This fact sheet provides general information about applying for tax concession charity (TCC) endorsement. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this fact sheet.

What is tax concession charity endorsement?

Charities may be eligible for one or more tax concessions. To obtain a tax concession, the charity must be endorsed for that concession by the Australian Taxation Office (ATO). This process is called endorsement as a tax concession charity (TCC).

Tax concessions that may be available to charities include:

- income tax exemption
- goods and services tax (GST) concessions
- fringe benefits tax (FBT) rebate
- FBT exemption, and
- a refund of franking credits

The tax concessions available for charities and the eligibility requirements are set out in more detail in this fact sheet.



Summary of tax concessions available for charities that have a TCC endorsement

Tax concession	ABN	Governing rules requirement	Income and assets requirement	Meets 'in Australia', DGR, or 'prescribed by law' requirement	Registered with the ACNC	ATO endorsement
Income tax exemption	✓	✓	✓	✓	✓	✓
<p>If an organisation meets the statutory definition of 'charity' but has not registered as a charity with the ACNC, it is not entitled to access income tax exemption. If your organisation is not a charity and is not entitled to register as a charity, you may be able to self-assess whether it falls into one of the categories set out in the tax law that is entitled to an income tax exemption. For more information, see our webpage on income tax exemption.</p>						
FBT exemption	✓	✓	✓	✓	✓	✓
<p>The FBT exemption is only available to charities that are registered Public Benevolent Institutions (PBI), Health Promotion Charities (HPC), public and not-for-profit hospitals and public ambulance services. The exemption is capped at \$30,000 per employee for PBIs and HPCs.</p> <p>Our summary of requirements only considers the requirements for HPCs and PBIs and does not outline the requirements for hospitals and public ambulance services: see below for further explanation.</p>						
FBT rebate	✓	✓	✓	✓	✓	✓ Must also be income tax exempt.
<p>The charity must be an institution. The FBT rebate is not available to HPCs, PBIs, charities that are funds or institutions that are established by a law of the Australian Government, a state or a territory. The rebate is capped at \$30,000 per employee. For more information, see our webpage on fringe benefits concessions.</p>						
GST concession	✓				✓	✓
<p>For more information, see our webpage on goods and services tax (GST).</p>						
Refund of franking credits	✓	✓	✓	✓	✓	✓ Must also be income tax exempt.
<p>A separate endorsement for the refund of franking credits is not required. But there are additional requirements that must be satisfied in relation to the distribution to access the refund: see further below.</p>						



Is your organisation eligible to be a TCC?

To be endorsed as a TCC, the **common requirements** for all the tax concessions (income tax exemption, FBT exemption, FBT rebate, GST concession and refund of franking credits) are that your organisation must:

- have an Australian Business Number (**ABN**), and
- be registered as a charity with the Australian Charities and Not-for-Profits Commission (**ACNC**)

These two requirements are sufficient to be endorsed for the GST concessions.

But note that an organisation that is not entitled to register as a charity, may still be able to self-assess as income tax exempt if it falls into one of the categories set out in the tax law that is entitled to an income tax exemption. For more information, see [our webpage on income tax exemption](#).

Additional requirements must be satisfied in order to access any of the other tax concessions. These requirements are discussed below.

Applying for an ABN

You can apply online on the [Australian Business Register website](#). Application is free, and the link sets out what information must be supplied as part of your application.

Registration with the ACNC

To be eligible for registration as a charity with the ACNC, your organisation must have an ABN and satisfy the following five requirements (or six requirements if operating overseas):

- 1. Not-for-profit**

A charity must be not-for-profit.

This means it does not operate for the profit, personal gain or other benefit of its members. Organisations can still make a profit, but profits must be used to further the purposes of the organisation. The profits can't be used for the personal gain or benefit of persons associated with the organisation (such as members, staff, friends and family).

For more information, see [our webpage on 'What does 'not-for-profit' mean?'](#)
- 2. Charitable purposes**

A purpose is what your not-for-profit has been set up to achieve or what your activities work toward. Your organisation must carry on only 'charitable purposes'. *The Charities Act 2013* (Cth) lists 12 charitable purposes.

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
 - promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a state, a territory or another country for the purpose of supporting any of the abovementioned charitable purposes, and
 - other similar purposes 'beneficial to the general public' (a general category)



The charity subtypes of Public Benevolent Institution (**PBI**) and Health Promotion Charity (**HPC**) are also recognised.

Your organisation's rules or constitution must state what charitable objects your organisation wants to achieve, and your organisation's activities must reflect this. It's important that your organisation's purposes and activities are all charitable purposes as defined.

Your organisation can also have purposes that are ancillary or incidental to, and in furtherance or in aid of, the charitable purposes. For example, some social clubs and neighbourhood houses undertake a mix of charitable and non-charitable activities (such as running social events and also running a soup kitchen) and although these organisations do some charitable work, the ACNC is unlikely to accept them as charitable.

Your organisation is not a charity if it:

- is for sporting, recreational or social purposes (unless its purpose is charitable, and its activities are the way it achieves this purpose)
- is a professional or trade group (unless its purpose is charitable)
- is for providing private benefits (more than minor or incidental to the charitable purposes)
- provides services to its members only (ie. a membership club), or
- is a government entity or a political party

Your organisation is also not a charity if it has any disqualifying purposes:

- engaging in, or promoting activities that are unlawful
- engaging in, or promoting activities that are contrary to public policy, or
- promoting or opposing a political party or candidate for political office

For more information about what is a charity, and examples of organisations that are and are not charities, see the ACNC's guidance as well the information listed in the resources section at the end of this fact sheet.

3. Public benefit

Your organisation's charitable purpose must be for the public benefit. There are many ways your purpose can benefit the public. Examples include the provision of goods, services, education, counselling or spiritual guidance to members of the public. Improving the environment is another example. Some types of charitable purpose (such as advancing education, relieving poverty, or advancing religion) are presumed to be for the public benefit.

Charities do not have to benefit everyone in a community, but they cannot be too restrictive in who can receive benefits.

4. Governance standards

Charities must meet a set of [governance standards](#) to maintain registration with the ACNC. The standards are a set of core, minimum standards that deal with how charities are run (their governance).

The governance standards require the charity to:

- be not-for-profit, work towards their charitable purpose, be able to demonstrate this and provide information about their purpose to the public
- be accountable to their members
- comply with Australian laws
- ensure its responsible persons are not disqualified from managing a corporation under the *Corporations Act 2001* (Cth) or from being a responsible person of a registered charity by the ACNC Commissioner
- ensure its responsible persons are subject to, understand and carry out specified duties, and
- maintain and enhance public trust and confidence in the Australian charity sector



5. Not disqualified from registration

Your organisation can't be registered as a charity if it is:

- an individual or a partnership (ie. a particular legal structure)
- a political party
- a 'government entity', or
- engaging in or supporting terrorist or other criminal activities

6. External conduct standards

If your organisation operates outside Australia, it must satisfy external conduct standards concerning activities and resource management outside Australia.

These standards broadly require the charity to:

- ensure its activities outside Australia are consistent with its purpose and not-for-profit character
- ensure its resources are used outside Australia consistently with its purpose and not-for-profit character
- ensure resources provided to other parties for use outside Australia are applied consistently with the charity's purpose and not-for-profit character
- obtain and keep sufficient records for its overseas operations
- implement processes and procedures to combat fraud and corruption in its overseas activities, and
- protect vulnerable individuals overseas providing services for the charity or receiving benefits from the charity

For additional detail on the external conduct standards, see the ACNC website.



For more information, see our webpage 'Should your group register as a charity?'.

GST concessions

As explained above, only two preconditions are required to access most GST concessions – having an ABN and being registered as a charity.

The range of GST concessions that may be relevant generally fall into two categories:

- administrative concessions relating to the GST regime, such as a higher GST registration turnover threshold for not-for-profit entities
- concessions which depend specifically on the transactions being undertaken, such as the GST-free treatment of raffles and bingo where certain eligibility criteria are met. When considering the GST concessions, it is important to consider the type of transaction and the anticipated GST treatment



For more information, see our webpage on GST.



What other requirements does your organisation need to satisfy to access the other (non-GST) tax concessions?

Income tax exemption

In addition to having an ABN and being registered as a charity, your organisation must satisfy two conditions and one of three tests in order to be endorsed for income tax exemption.

Conditions (you must meet both):

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|---------------------------------------|--|
| 1. Governing rules condition | <p>Your charity must operate in a way that complies with all the substantive requirements in its own governing rules – that is, the rules that authorise the policy, actions and affairs of your charity. Breaches of procedural requirements (eg. missing a required lodgement date) will not necessarily prevent your charity from meeting this requirement but acting in a manner inconsistent with the stated purpose of your charity, or in a manner inconsistent with a not-for-profit clause, is likely to cause this condition not to be met.</p> <p>New charities satisfy this condition initially if they intend to comply with its governing rules.</p> |
| 2. Income and assets condition | <p>Income and assets of the charity must only be used for the purpose for which the charity was established. If your charity is new, it will initially meet this requirement if it intends to apply its income and assets solely for the purpose for which it was established.</p> |

Tests (you must meet one of the three below):

- | | |
|-----------------------------|--|
| 1. In Australia test | <p>Your charity will meet this test if it:</p> <ul style="list-style-type: none"> • has a physical presence in Australia (for example, an office, a clinic, a centre), and • to the extent that it has a physical presence in Australia, incurs its expenditure and pursues its objectives principally in Australia <p>For example, if a charity runs a clinic in Australia and another clinic offshore, and the two clinics are run independently, where Australian expenditure and activity relates to the Australian clinic only, the test will be satisfied. In the same example, if the charity funds both clinics and the offshore clinic is funded from Australia, it may be unlikely to meet the test as, on balance, it is hard to say that the charity pursues its objectives principally in Australia. However, in determining this, if the charity funds the offshore clinic using amounts received as gifts or by way of government grants, these amounts can be disregarded and the test could still be met.</p> |
| 2. DGR test | <p>This test is met if either:</p> <ul style="list-style-type: none"> • your charity (and not just a fund or authority your charity operates) has been endorsed as a deductible gift recipient (DGR), or • your charity is listed by name in the income tax legislation as a DGR <p>A DGR that is not listed by name in the income tax law needs to be endorsed by the ATO.</p> |



- 3. Prescribed by law test** This test is met if your charity is prescribed by name in the income tax laws, and either:
- is located outside Australia and is income-tax exempt in its country of residence, or
 - it has a physical presence in Australia but incurs expenditure and pursues its objectives principally outside Australia



For more information, see [our webpage on income tax exemption](#).

Fringe Benefits Tax exemption

Fringe Benefits Tax (**FBT**) is a tax payable by employers for benefits paid or provided to an employee (or an employee's associate, for example, a family member) in place of or in addition to salary or wages. This is separate to income tax and is calculated on the taxable value of the fringe benefits provided.

Not all benefits paid or provided to employees are subject to FBT – there are certain exemptions and concessions that apply to all employers (not only not-for-profits). These exemptions and concessions should be considered first.

Where FBT would otherwise be payable, an exemption from employers having to pay FBT on certain fringe benefits provided to employees is available to:

- public or not-for-profit hospitals (unless controlled by a society or association that is a charity) and public ambulance services, without ATO endorsement being required. The exemption is currently capped at \$17,000 of fringe benefits per employee under a specific formula
- registered PBIs and HPCs, provided they are ATO endorsed to access the FBT exemption. A \$30,000 cap per employee currently applies under a specific formula

Any fringe benefits provided to an employee that exceed those caps and are otherwise taxable are subject to FBT and need to be reported and tax paid accordingly.

A specific exemption from FBT on eligible car parking benefits may also be available to registered charities.

FBT rebate

A FBT rebate is an entitlement to a rebate equal to a percentage of the gross FBT payable, subject to a capping threshold.

A rebate on FBT on fringe benefits provided to employees is only available to a registered charity that:

- is endorsed to access the income tax exemption (see above)
- is an institution (this means it must be more than a fund, and must not have a small membership with limited activities)

The FBT rebate is not available to a charity that is:

- not an institution
- an institution established by a law of the Australian Government, a state or a territory, or
- not a registered PBI or HPC (in which case the FBT exemption is relevant and the FBT rebate is not applicable)

Certain other entities are eligible for the FBT rebate but are not discussed here (for example, certain educational and scientific institutions).



Further information on [Fringe Benefits Tax](#) and the [FBT Exemption](#) is available on the ATO website. Also see [our webpage on fringe benefits concessions](#).

Refund of franking credits

Franking credits arise when certain Australian resident companies pay income tax on their taxable income and distribute their after-tax profits by way of a franked dividend. The franked dividends have franking credits attached.

A not-for-profit organisation may be entitled to a refund of franking credits where the organisation has an ABN, is income tax exempt, satisfies the residency requirement and is one of the following:

- a charity registered with the ACNC
- endorsed by the ATO as a DGR
- specifically named as a DGR in the *Income Tax Assessment Act 1997* (Cth)
- a 100% subsidiary of the Future Fund Board that is incorporated under an Australian law, or
- a prescribed institution eligible under the income tax regulations



Note

The regime around franking credits can be complex, and we recommend organisations seek advice about their eligibility for a refund of franking credits where necessary.

Do you need to make any changes to your organisation's rules or constitution to be eligible for TCC?

The ACNC will require that your charitable purpose be expressed in your constitution or governing rules. You may, therefore, need to make changes to your rules or constitution to satisfy the ACNC registration requirements.

Both the ACNC and the ATO will also require that your rules or constitution demonstrate that your organisation is not for profit – both while in operation and when winding up. It's therefore expected that both the ACNC and ATO will require your rules or constitution to contain a 'not-for-profit clause' and a 'winding up clause'. These are explained below.

If your organisation would like to apply for Deductible Gift Recipient (**DGR**) status, it will need further clauses, and these should be added at the same time. These are not addressed in this fact sheet.



For more information, see [our webpage on DGR status](#).

Not-for-profit clause

You will need to include a clause (paragraph) stating that your organisation is not-for-profit. The law does not prescribe the words that a not-for profit clause should contain.

However, the ATO and ACNC both agree that the following example clause will be considered appropriate, so long as:



- the other clauses within the constitution do not contradict the not-for-profit clause, and
- the charity behaves consistently with the not-for-profit clause



Example – not-for-profit clause

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.

Winding up clause

You will need to include a clause stating that, on the winding up of the organisation (that is, when it ceases to operate), any remaining property will be distributed to another organisation or fund which is also charitable and also not-for-profit. The ATO has a sample clause.



Example – winding up 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 charitable organisation with similar purposes which is not carried on for the profit or gain of its individual members.



See our [webpage on managing an organisation's rules or constitution](#).

How to apply for TCC endorsement

You may need help from a lawyer or accountant to make your application to be a TCC, especially if you need to change your organisation's rules.

The application steps:

- | | |
|---|--|
| 1. Finalise rules or constitution with not-for-profit and winding up clauses | If you need to change your rules to insert the appropriate clauses, the members of your organisation will need to approve the changes (this may take some time). For most organisations this means holding a general meeting where over 75% of eligible votes cast are in favour of the changes. |
| 2. Apply for an Australian Business Number (ABN) | You can apply online . |
| 3. Fill out the ACNC application form, including the TCC section | The ACNC has a checklist to help your organisation gather all the information it will require before starting the ACNC application process. To apply for charity registration, you need to log in to the ACNC charity portal and complete the application form. Once you complete the ACNC application form, the ACNC will forward the application for TCC to the ATO. |



If your organisation is registered with the ACNC but it's not already a TCC (you can check this on the Australian Business Register), you must submit a TCC application directly to the ATO using [the ATO application form](#).

The ACNC doesn't charge a fee for organisations to register as a charity.

4. Provide any further information to the ATO or ACNC, as requested

The ACNC or ATO may write back to you, seeking further information about your objects, activities and committee members, before making a decision on your endorsement.



Tip

When making an application to the ACNC, to register as a charity you can also apply for multiple tax concessions at the same time.

When making an ACNC application you will need:

- your ABN
- details about your organisation
- the organisation's legal structure
- to know the charitable purposes that applies to your organisation
- the organisation's activities
- financial information about your organisation
- details of directors, board members, trustees or committee members (ie. the responsible persons)
- to know what charity tax concessions you are applying for
- whether the organisation will be a DGR
- other optional information to support the application (for example, a business plan, policies and procedures, brochures for the organisation), and
- an electronic copy or scanned copy of your governing documents (such as a constitution, trust deed or rules)

Does TCC endorsement make you a tax deductible gift recipient organisation?

No. To be able to receive tax deductible donations your organisation needs to be endorsed as a DGR.



For more information, see [our webpage on DGR status](#).