

Before You Start

The legal issues that your non-profit organisation may face don't just start once you get to work. Some important legal decisions need to be made before the non-profit organisation even begins its work. The way your non-profit organisation decides to set up or organise itself may be one of the most important decisions it may ever have to make. This is because with the right structure your group will:

- be able to carry out its activities effectively, and in a way that complies with the law;
- minimise the chance the group will run into legal difficulties (and costs) as it grows or changes; and
- be in a better position to deal with legal issues if they do occur.

So let's start at the start!

It is important to have a clear idea about the aim and proposed structure of your group. This will help you to make decisions about the best way to set up your group, as well as highlighting any legal issues that your group may need to consider, both now and in the future. Although you may be just starting out it is important to think now about the longer term goals of your group.

Answering the following questions will give you a clearer idea of what the aim of your group is and what the best structure for your group will be.

Questions about your group

What are 'non-profit' organisations?

Once your group is clear about its aims, membership and activities your group will need to decide whether it is going to operate as a 'non-profit' group. This is important because there are different legal structures for 'for-profit' and 'non-profit' groups and different laws apply to each. This website only provides legal information about the activities of non-profit groups.

Do note that not all non-profit organisations are charities, although all charities are non-profit organisations. For your non-profit organisation to become a charity, it must fulfil certain additional criteria. This will be elaborated on [here](#).

What is 'profit'?

Most groups need money to carry out their activities. A group may raise money by charging its members fees, holding raffles, seeking donations from the public, applying for grants of money from the government or in other ways. A group will have a 'profit' (a surplus) if it has extra money left over, after it has paid all its bills and expenses (for example room hire, coffee and tea expenses, telephone bills, insurance premiums and employee wages).

So, is a 'non-profit' group one that makes no profit?

No. Whether your group is a 'non-profit' group is determined by what your group does with that profit, not by whether your group makes a profit. In a 'non-profit' group the profits are never distributed to the individual members of the group. Instead any profit that the group makes must be used to further the purposes of the group. The profits are thus put back into the group to continue to pay for its activities and functions.

A 'non-profit' group can make a profit?

Yes! Non-profit groups can make a profit. In fact, it might be a good idea for a non-profit group to aim to have a small profit each year to be able to pay for unexpected expenses or to start new programs. Non-profit groups 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 money back.

It is what the group does with the profit rather than whether it has made a profit which makes the group non-profit. For example, in a non-profit group any of the profits that the group makes (such as from the sale of services or property) must be used to carry out the group's purpose and must not be distributed to members or any other individuals.

So, how does that make the 'non-profit' group different from the 'for profit' (business) groups?

In a 'for-profit' group (such as a business), the profit may be distributed to the group's owners or to individuals, members or shareholders. In a 'for profit' group, people who are involved in the group are entitled to receive a personal benefit from the profits of the group (such as a dividend, or money when they sell their shares, or a payment directly from the profit).

It can be a little confusing as some of these 'for-profit' groups operate in the community sector (for example, in childcare and aged care).

Why is it important to determine whether we are a non-profit?

It is important because there are different laws that apply to 'for-profit' and 'non-profit' groups. Many of these laws treat non-profits favourably, as the resources of the group will be put back in to helping the community. For example:

- legal structure: if your group wants to adopt a legal structure there are particular legal structures that are only available to non-profit groups (such as a "charity");
- tax laws: the tax laws offer a number of tax exemptions, concessions or benefits to eligible non-profit groups (although being non-profit is only one of a number of requirements);
- funding: some government grant programmes and many private philanthropic bodies are set up only to fund non-profit groups; and
- fundraising: some laws only allow non-profit groups like charities and community groups to apply for registration to conduct certain fundraising activities (like minor gaming activities).

We want to start a non-profit organisation. What do we do?

It's a good idea to make it clear to all people involved that the group will operate on a non-profit basis. That way everyone knows they are not entitled to receive any profits from the group and that all its money and assets must only be used to further the purposes of the group. It is also important to make the non-profit status of your group clear to the public. This is because you must prove your group's non-profit status before it can avail itself of many of the legal benefits given to non-profits (such as low cost incorporation, tax concessions and the ability to conduct fundraising activities).

Many groups have a constitution or a statement of purposes and rules. This is the document that contains the rules of the group and describes its basic aims, structure and processes. To indicate that your group operates on a non-profit basis, your group will need to include particular wording to say that the group is prevented from distributing profits or assets for the benefit of members – both while the group is operating and when it winds up. This is especially important if you intend to set up a society, which makes having a constitution mandatory. When writing the constitution you may want to refer to the sample constitution found on the [Registry of Societies website](#).

Next you will have to consider if you are required to adopt a legal structure or whether you would want to adopt one in any case.