

Module	CHARITIES
Jurisdictions	CTH, NSW, VIC, SA, TAS, WA, NT, QLD, ACT
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Module Scope

Have you/do you wish to register and operate as a not-for-profit entity under the ACNC?

Does your organisation provide charitable services and supports in Australia and/or overseas?

Module Application

The CHARITIES module covers the legal obligations of various sized not for profit entities or organisations that are registered with the Australian Charities and Not for Profits Commission (ACNC) and operate as charities in accordance with the requirements of;

- › The Australian Charities and Not-for-profits Commission Act 2012 (Cth)
- › Australian Charities and Not-for-profits Commission Regulation 2013 (Cth)
- › Charities Act 2013 (Cth)

In addition to these commonwealth government requirements the ongoing operations and actions of charities in Australia are also governed by a complex variety of laws and regulations that operate at Commonwealth, state and territory, and sometimes local government level. Some of the obligations this module covers include those found in the;

- › Associations Incorporations Acts in each of Australia's six states and two territories;
- › Cooperatives Acts in all states and territories;
- › State-based fundraising and taxation Acts;
- › Corporations Act 2001 (Cth);
- › Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth); and
- › ACNC Governance Standards.

The CHARITIES module does not cover legal obligations for entities that are not registered as charities with ACNC.

The CHARITIES module also covers the obligations of registered charities that are Companies Limited by Guarantee and provides details of compliance requirements where applicable for the ACNC and Australian Securities and Investments Commission (ASIC) as there are some obligations of the Corporations Act 2001 which are not applicable to them.

The ACNC is the independent national regulator of charities and administers the national regulatory framework governing charities and their obligations by regulating;

- › registering charities;
- › collecting information about charities and maintaining a register of charities which is available to the public;
- › monitoring compliance with the legal definition of 'charity' and with ACNC governance standards;
- › providing guidance and education regarding compliance.

Individuals, political parties and government entities cannot apply to be charities. The CHARITIES module covers the registration process for an entity or organisation to become recognised and registered as a charity by ACNC;

- › they must have a charitable purpose(s) for public benefit;
- › operate as a not-for-profit;
- › not have a disqualifying purpose;
- › have governing documents which detail the charitable purpose and designates 'responsible persons' to manage its affairs;
- › have in place the structural requirements consistent with the type, subtype and jurisdiction for which the organisation wishes to register.

The CHARITIES module extensively covers the obligations of a registered charity required to meet its ongoing obligations and it also covers any exemptions and how they may apply;

- › establishing processes and procedures to facilitate compliance with the ACNC governance standards, state and territory, and Commonwealth regulators and legislation;
- › ensuring its entry on the ACNC Register is accurate and up-to-date and effective record keeping systems are in place;
- › uploading annual Information statements and financial reports to the ACNC's charity portal by the due date;
- › ensuring members (where applicable) are informed and their rights upheld;
- › Ensuring appropriate appointment, support and training of 'responsible persons' and 'responsible organisations'.

Not all charities have members but for those that do, the members have certain rights and the registered charity is required to have processes and procedures in place to ensure these rights. The module covers specific obligations for registered charities with members which are primarily related to accountability.

State and Territory laws govern fundraising by registered charities and the laws vary significantly between states and territories. The CHARITIES module covers the obligations for fundraising, including minor gaming activities, in each state and territory. The ACNC and commonwealth laws do not directly address specific fundraising obligations but do recommend that all activities are accurately documented and need to comply with the governance standards.

The CHARITIES module also covers exemptions where the ACNC governance standards do not apply, for example in the limited class of charities identified as 'basic religious charities'. To qualify for the exemption these charities must meet particular criteria with regard to;

- › deductible gifts;
- › reporting to ACNC as part of a reporting group;
- › government grants, and
- › incorporation under Australian law.

To be eligible to receive tax concession a charity must also be endorsed by the Australian Taxation Office (ATO) as a Public Benevolent Institution (PBI) or a Tax Concession Charity (TCC). The CHARITIES module does briefly cover the requirements for these endorsements but also advises that professional financial assistance in this regard would also be beneficial.

Charities may undergo significant changes, including winding up, mergers and a change of legal structure. A charity must comply with all requirements of its governing documents, regulators, the courts and the relevant legislation when undergoing such changes. The winding up may be voluntary or involuntary and there are differing obligations in this regard. The CHARITIES module does cover the obligations for these changes and also advises that professional legal assistance may also be beneficial in some instances.

The CHARITIES module also covers remediation actions to be taken in the event of breaches or possible breaches of obligations and the consequences that can apply when breaches or instances of non-compliance exist.

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