

What does 'not-for-profit' mean?

Legal information for community organisations

This fact sheet covers:

- what is 'not-for-profit' and 'for-profit'?
- can a not-for-profit organisation make a profit?
- how are for-profit organisations different from not-for-profit organisations?
- why do we need to know if we are not-for-profit?
- what about social enterprises?, and
- how do we start a not-for-profit organisation?

Once a new community group is clear about its aims, membership and activities, it is important for the group to decide whether to operate as a 'not-for-profit' organisation or a 'for-profit' organisation.

This is important because there are different legal structures for 'not-for-profit' and 'for-profit' organisations and different laws apply.

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

- there are benefits which apply if you are not-for-profit, 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'?

Profit

Profit is an organisation's surplus. This is the extra money an organisation has from its income that is left after all its bills and expenses are accounted for. Examples of expenses are lease costs, room hire, catering, telephone bills, insurance premiums and employee wages. Examples of income examples are membership fees, government grants, or profits from selling products (like merchandise or shop goods).

What is a not-for-profit organisation?

In a 'not-for-profit' organisation, any profit made is used to further the aims of the organisation. That means all the profits are put back into the organisation to continue to pay for its activities and functions and to achieve its mission.

What is a for-profit organisation?

In a 'for-profit' organisation, profit can be divided amongst (distributed to) 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.

In other words, a 'for-profit' organisation is set up to make a profit for the people who are members/owners of the organisation.

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 is what the organisation does with the profit which makes an organisation not-for-profit. Profits need to be directed to furthering the mission of the organisation, rather than distributed. For example, profits can be used to employ another staff member, broaden the scope of a project, or enhance your organisation's infrastructure.

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 (eg. 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 individuals members or shareholders (this cannot occur in a not-for-profit), 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).

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 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 which are incorporated (like an incorporated association)
- there are exemptions, concessions and benefits for eligible not-for-profit organisations (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 produced 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?

The choice between not-for-profit and for-profit is particularly interesting, and not always straight forward for social enterprises. Social enterprises are designed to achieve a particular social outcome, and use market-based strategies (eg. trading in goods/services) to achieve this outcome. 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, is the question of 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. These types of enterprises 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.

How do we start 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
- that 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 (eg. 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 winding up 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.

The ATO's suggested wording for the two major clauses ('non-profit' clause and 'dissolution' clause) 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 RESOURCES

The Australian Charities and Not-for-profit Commission (**ACNC**) has a sample constitution for CLGs that are or will be charities, which contains example winding up and not-for-profit clauses. View the template [here](#).



Resources

Related Not-for-profit Law Resources on the Information Hub

▀ [Getting started](#)

This page discussed the various things to consider when starting a not-for-profit organisation, including choice of legal structure and relevant legislative requirements.

Australian Tax Office (ATO)

▀ [Is your organisation non-profit?](#)

This ATO page summarises how it assesses whether a group is considered for-profit or not-for-profit, including suggested wording for clauses to insert in an organisation's rules or constitution.

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

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