

## Establishing a Not for Profit Organisation or Fund

This fact sheet will help you identify some issues in setting up a Not for Profit organisation or Charitable Fund.

### What is a Not for Profit organisation?

A Not for Profit organisation is an organisation which is operating other than for the profit or gain of its members.

### What is a Charity?

There is a technical legal definition of “Charity” which is different from the ordinary meaning. Organisations which might be regarded as worthy causes do not necessarily qualify legally as “charitable”.

“Charities” operate for the advancement of religion, the advancement of education, the relief of poverty, or for some other purposes beneficial to the community.

If your organisation does not qualify as charitable, it may still be eligible for tax concessions as a Not for Profit organisation.

A Charitable Fund (sometimes called a “foundation”) is a fund which is established for a charitable purpose. The income and assets of a Charitable Fund are managed by a trustee.

A Charitable Institution is an organisation that conducts charitable activities.

### Issues to think about

If you are contemplating setting up a Not for Profit organisation, some preliminary questions to consider are:

#### 1. Do we meet the criteria for a Not for Profit organisation?

The governing rules of a Not for Profit must prohibit distribution of income and assets to members, and must prohibit distribution of assets to members on winding-up.

While Not for Profits can make a “profit” (usually called a surplus), they cannot distribute that profit to members. Rather, the profit or surplus is applied to further the purpose of the organisation.

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### 2. What is your principal purpose?

What is your main mission or goal? Not all worthwhile purposes are regarded as charitable.

### 3. How will we derive income?

Potential income sources include: donations, government funding, commercial operations, fees for service and membership fees.

Only certain categories of Not for Profit organisations qualify to receive tax deductible donations. These are known as “Deductible Gift Recipients”. Care needs to be taken when a Not for Profit is established, particularly in deciding on the precise “principal purpose” of the organisation, if endorsement as a Deductible Gift Recipient status is desired.

### 4. What is the best structure?

There are numerous options for structuring Not for Profit organisations. The best structure will depend on your particular circumstances, including the nature and scope of your operations, whether you wish to run a private charity or a more public one, and what level of accountability to members and/or funding bodies is required.

Options include:

- Unincorporated association (“CharityName”)
- Incorporated association (“CharityName Inc.”)
- Public company limited by guarantee (“CharityName Limited”)
- A trust (“CharityName Fund” or “CharityName Foundation”)

### What does it cost to set up a Not for Profit organisation?

Establishment and running costs vary with each type of structure as outlined above.

Moores Legal can give an indication once you have a picture of the type of organisation you require.

### Further information

Please contact a member of the Not for Profit team at Moores Legal if you require further information.

**DISCLAIMER:** *This fact sheet is for general information and should not be regarded as being comprehensive or be relied on as (or in substitution for) legal advice.*

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