

## Landcare Victoria Inc.

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Queensland Water and Land Carers gratefully acknowledges the use of this document by Landcare Victoria. QWaLC has added QLD based information where relevant to assist our member groups. All changes are highlighted in Blue text.

# Your questions answered: Income tax reporting changes and charity registration for landcare groups

## Introduction

This document has been prepared for landcare groups reviewing their income tax status and considering charity registration in the wake of changes to the Australian Tax Office's (ATO) reporting requirements. It is intended as general advice for groups wanting to understand how income tax may apply to environmental volunteering groups, the requirements to be endorsed as income tax-exempt, and the process for registering as a charity.

This information is intended as a guide only and is not legal or financial advice. If you or your organisation has a specific legal issue, you should seek legal advice. If you require financial advice, please contact an authorised financial services provider.

Please refer to Landcare Victoria's guidance notes entitled '*Review your organisation's income tax status*' and '*Preparing for charity registration*' for more detailed information on these topics.

## INCOME TAX REPORTING REQUIREMENTS AND EXEMPTIONS

### What kinds of organisation do these income tax reporting changes apply to?

The changes apply to not-for-profit (NFP) organisations with an active ABN that are not registered as a charity with the Australian Charities and Not-for-profits Commission (ACNC). If this describes your organisation, you will need to review your income tax status and take appropriate action.

The reporting requirements apply to all NFP organisations, regardless of legal structure. Unincorporated groups, incorporated associations and companies limited by guarantee may all be affected.

If your organisation **does not have an ABN** and does not need to apply for one, these changes will not affect you. If your organisation is **already a registered charity**, these changes will not affect you as long as your charity status is maintained.

### Do landcare groups require an ABN to carry out their business? Can we cancel our ABN to avoid this issue?

An ABN may be required for several reasons, including confirming your organisation's identity to others when ordering and invoicing, to deal with GST, and when applying for government grants. If you're not sure whether your organisation requires an ABN, please check with a registered accountant or the ATO for more information.

If your organisation has had an active ABN during the 2023/24 financial year, it will already be on the ATO's radar. Cancelling an unneeded ABN may help your organisation avoid future reporting requirements, but it is our understanding it is too late to avoid your obligations for the 2023/24 year.

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## Who do we need to report to? How do we report?

Organisations may need to report directly to the ATO each year, or may be able to report to the ACNC instead, depending on the type of organisation and whether it is endorsed as income tax exempt. The important thing to note is that if your organisation has an ABN, it will need to report to somebody going forward.

The first step is to work through our guidance note entitled '*Review your organisation's income tax status*'. This will help you to determine what kind of organisation you have and what your options are.

For example, a charitable NFP has two options:

1. Register as a charity with the ACNC to be endorsed as income tax exempt (and report annually to the ACNC), **or**
2. Remain unregistered and be considered a taxable NFP (and report annually to the ATO by lodging a tax return, or a 'return not necessary' if assessable income is below the taxable threshold).

## Is my organisation eligible to self-assess as 'income tax-exempt'?

**This option is not available to most landcare organisations.** Please refer to our guidance note entitled '*Review your organisation's income tax status*' to determine whether your organisation is considered a charity by definition. If your organisation is charitable, it is **not eligible to self-assess** as income tax exemption, regardless of the category it fits into. The only way to access an exemption for a charitable NFP is by registering as a charity with the ACNC.

Your organisation can only self-assess that it is exempt from income tax if it is not a charity (by definition) **and** meets the requirements of one of the [eight exempt categories](#). Only these eligible 'non-charitable' NFPs are permitted to self-assess by lodging an annual self-review return with the ATO.

## Why wouldn't Landcare groups qualify as a 'community service organisation', making them eligible to self-assess as income tax exempt?

Firstly, most landcare groups are considered **charitable** in regard to their purposes – usually aligning with the '*advancing the natural environment*' charitable purpose. This disqualifies the organisation from self-assessing as income tax exempt, regardless of its category. Only once a landcare organisation determines it is **not charitable**, should it consider whether it fits into one of the eight exempt categories such as 'community service organisation'.

[According to the ATO](#), "Community service organisations promote, provide or carry out activities, facilities or projects for the benefit or welfare of the community or any members who have a particular need by reason of youth, age, infirmity or disablement, poverty or social or economic circumstances".

An organisation with environmental purposes would be outside the scope of 'community services' by this definition, which focuses on helping people directly with their needs.

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## What kind of NFP organisations are not considered as charitable? Aren't all NFPs run for public benefit?

Not all NFP organisations are charities. The definition of an NFP only relates to what the organisation can do with its profits and assets, whereas a 'charity' must meet additional criteria.

Some purposes may benefit the community, but not fit the legal meaning of a charitable purpose. For example, a social club (unless its main purpose is charitable, such as to help people who are socially isolated or disadvantaged) or a sporting/recreational club (unless its main purpose is charitable, such as providing sporting activities for people with disabilities).

An NFP with a disqualifying purpose, such as to promoting a political party, would also not be considered charitable.

The ATO calls non-charitable NFPs 'not-for-profit companies'. NFP companies have different tax rates to other types of companies but are otherwise treated the same in regard to tax.

## How much tax do we need to pay if the organisation is considered a taxable NFP?

If you have determined your organisation is not eligible for income tax exemption, or your organisation chooses not to access the exemption, it will be subject to the NFP company tax threshold and rates.

The tax-free threshold for not-for-profit companies is currently \$416. This means if your organisation's assessable income is greater than \$416 annually, income tax will apply. The tax rates applying to not-for-profit companies in 2022/23 were:

Income category	Rate
Taxable income: \$0 – \$416	Nil
Taxable income: \$417 – \$915	Nil for first \$416, then 55% on all income between \$417 and 915
Taxable income: \$916 and above	30% on <b>all</b> taxable income

Please refer to our guidance note entitled '*Review your organisation's income tax status*' to determine whether this applies to your organisation.

## What types of income are assessable?

To calculate taxable income, an organisation needs to classify revenue as [non-assessable](#), [assessable](#) or [apportionable](#). The ATO provides some [guidance](#) on how various different types of income are classified, along with [some examples](#). This advice suggests donations and membership fee income may be considered non-assessable, while grants and sponsorships may be assessable.

For specific advice on the types of income your organisation receives, and which would be considered assessable, please seek advice from a registered accountant (preferably with expertise in tax and not-for-profit accounting), registered tax agent, or the Australian Tax Office. The **ATO's NFP Advice Service** may be reached via **1300 130 248** (available 8.00am - 6.00pm, Monday to Friday).

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## We have realised our organisation has been self-assessing as income tax exempt for years without being eligible to do so – will the ATO be taking action against groups for past mistakes? What happens if we need more time to register as a charity?

The ATO's Assistant Commissioner, Jennifer Moltisanti, has [provided the following reassurance](#):

“I understand the new reporting requirements represent a fundamental change for the sector and it may take time for smaller organisations to review and reset. Indeed, some may need to consider if they need to register as a charity or meet obligations as a taxable NFP.”

“Many NFPs may have gotten it wrong over the years and are now worried about potential consequences. I'd like to assure you that the ATO is taking a practical approach to compliance, which means we're focused on helping NFPs get it right going forward.”

“If you've made a mistake, and it wasn't intentional in that it wasn't driven by evasion or fraud, you can expect us to support you in meeting your obligations in future.”

Additionally, company tax returns and self-review returns for 2023/24 are not due until 31 October 2024, so there is still some time before the ATO will be expecting organisations to have reported to them or registered as a charity with the ACNC.

Regardless of the path your organisation is taking, this isn't something that needs to be completed by 1 July, so please don't panic!

## Does our organisation need a myGovID? What is RAM? Can ATO reporting only be done online?

MyGovID is the Australian Government's Digital Identity app. You can download it to your smart device to prove who you are when logging in to a range of government online services. **Note:** It is different to an individual myGov account.

Relationship Authorisation Manager (RAM) is an authorisation service that allows you to act on behalf of a business online when linked with your myGovID. You use your myGovID to log in to RAM.

Together, myGovID and RAM allow you to [access ATO Online Services on behalf of a business or entity](#).

Your organisation will **not** need to use MyGovID or RAM if it registers as a charity, as your reporting will be done via the ACNC rather than the ATO. Instead, you will need to create an account on the [ACNC Charity Portal](#).

If you need to report to the ATO but cannot do so online, the ATO has advised the NFP self-review return will be able to be lodged [over the phone](#), and the company tax return form is available in PDF and hard copy formats each year, or may be lodged on your behalf by a registered tax agent or BAS agent. Please check with the ATO after 1 July 2024 for further information.

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# CHARITY REGISTRATION AND ASSOCIATED REPORTING

## Does an organisation need to incorporate to register as a charity?

No. If your organisation is unincorporated, it can still register as a charity with the ACNC. However, it must adopt a governing document (also known as rules or a constitution).

The [ACNC has a governing document template](#) specifically for small, unincorporated charities. This template is appropriate for organisations that **want to register as a charity, but not incorporate**, and makes clear which clauses are necessary and which are optional.

Please refer to our guidance note entitled '*Preparing for charity registration*' for more information.

## **Our organisation has adopted the *Model Rules for an Incorporated Association, provided by Consumer Affairs Victoria* – are these suitable for charity registration?**

~~Yes.~~ The ACNC will accept a governing document which complies with state/territory (CAV or equivalent) incorporation requirements. If your organisation has adopted the Model Rules, then this document ~~will~~ contain the necessary clauses for charity registration. [QLD - please check your rules comply with ACNC](#) <sup>May</sup>

You should still review your governing document to ensure all details are correct and current prior to submitting it to the ACNC. If any changes are necessary, your organisation's members will need to approve of the updates by voting on a special resolution at a general meeting, and your state/territory regulator will need to approve the changes too.

## **Our network is a registered charity, but its subgroups are not registered charities – does each group need to register to access income tax exemption?**

Yes. If the network's subgroups have their own ABN, then these changes apply to them directly. Their membership of a network does not make them exempt.

## **Our organisation has realised its ABN details are incorrect, how can we update them?**

It's an Australian Business Register (ABR) requirement that all organisations, including NFPs, maintain and update their ABN details within 28 days of becoming aware of changes. Despite this, many organisations will find their ABN registration details are incorrect and must be updated before the organisation can register as a charity.

If you are an authorised contact for your organisation, or you know the details of the contact listed on the ABN record, changes can be made via [ABR Online Services](#) (using MyGovID) or via phone (ATO Business enquiry line: 13 28 66, or ABR Business services: 13 92 26).

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Updates can also be made by completing the 'Change of registration details' form ~~(available in PDF format or hard copy). Member Groups of Landcare Victoria Inc may request a hard copy of this form from us, as we keep copies on hand for members.~~

If you're not an authorised contact and prior contacts are unknown, the [ATO has confirmed](#) they will accept the 'Change of registration details' form from a new contact if you provide evidence of your approved nomination (for example, meeting minutes or a letter from your committee which confirms your position as an office bearer).

In some cases, the ABR may ask you to apply for a new ABN. If your organisation registers a new ABN, please be sure to cancel the original one.

## Is it okay for one of our documented purposes to mention supporting or educating our members? Is this still charitable?

Your organisation may not be a charity if it is too restrictive with its benefits, but that doesn't mean it can't include educating its members in its purposes.

In some cases, a charity can provide private benefits without jeopardising its charitable status, in accordance with the *Charities Act 2013*. This is the case if the private benefit is:

- ancillary or incidental to the charity's purpose (i.e. is a necessary by-product of or necessary means to fulfilling its purpose);
- genuine (i.e. genuinely made for an ancillary or incidental reason); and
- reasonable (i.e. the benefit is reasonable in the circumstances).

For example, if a landcare group exists to protect the natural environment from invasive weeds and provides training to its members so they are better informed about how to identify and eradicate particular weed species and are able to share this knowledge with the broader public, the private benefit provided to the members would likely be deemed incidental or ancillary to the charitable purpose, and therefore be permissible.

## Does registering as a charity mean our organisation can accept tax-deductible donations?

Only if the organisation is [eligible to be endorsed as a deductible gift recipient \(DGR\)](#) and selects the option to be endorsed as a DGR when applying for charity registration. Not all charities are eligible for DGR endorsement.

## Our organisation is registering as a charity and needs to list its Responsible People – is that the whole committee?

A charity's Responsible People are those individuals responsible for managing the charity. For an incorporated association, that would usually be each member of the organisation's committee of management.

The ACNC provides [detailed information about Responsible People](#) on its website.

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**If we register as a charity and start reporting annually to the ACNC, do we also have to do annual ATO tax paperwork?**

No. By registering as a charity, your organisation will avoid having to report directly to the ATO.

**If we register as a charity and are assessed by the ATO to be tax exempt, is that ongoing or do we have to reapply for tax exemption annually?**

If you maintain your charity status, comply with the ACNC's reporting requirements and any relevant regulations applying to charities, your organisation will maintain its endorsement as an income tax-exempt entity.

**If an incorporated association registers as a charity and starts reporting annually to the ACNC, does it still need to report annually to Consumer Affairs Victoria/NSW Fair Trading (or equivalent state/territory regulator)? What if we change our governing document or other details? [QLD Office of Fair Trading](#)**

The ACNC has [agreements with the state/territory agencies](#) which mean you will only need to report to the ACNC annually, once your organisation is a registered charity. The ACNC will share the information with your state regulatory authority.

However - if, for example, your incorporated organisation updates its governing document, it must have the changes approved by the relevant state body first, and then notify the ACNC of the change. More detail on [reporting obligations](#) may be found on the ACNC website.

**Do we have to register as a charity? Do we have any other options?**

If your organisation is an NFP that is eligible to register as a charity, then your only options are to do so (and be endorsed as income tax-exempt), or to be considered a taxable NFP.

If your organisation's assessable income is very low or you don't mind paying income tax, then you may choose not to register as a charity, but you will be obligated to lodge a tax return or 'return not necessary' with the ATO each year instead.

So, it is a choice between charity registration (free), being endorsed as income tax-exempt and reporting annually to the ACNC, **or** reporting annually to the ATO and potentially losing a significant percentage of the organisation's income to the Tax Office. If your organisation is within the scope of these reporting requirements, there's no way to avoid an annual reporting obligation.