



Buddhist Council of NSW
Working for the Buddhist Community

Guide to setting up a not-for-profit organisation for your Buddhist group/temple.

This guide will help Buddhist groups set up a not-for-profit organisation. It goes through starting an organisation, running it and dissolving it when it is no longer needed.

First you need to decide what you want your organisation to do.

- Is it for education, religious activities, community support?
- Who do you hope will be your members?
- Does it have any links with any other organisation?
- Will it handle money?
- Have volunteers?
- Employ people?
- Support monastics?

These are things for you and your community/group to decide. You can then start thinking about the kind of organisation that will work best for you.

The guide then takes you through setting up an organisation, pointing to websites that will provide the information that you need – especially the list of *Useful websites for Not-for-Profit (NFP)/community organisations* at the top of the first page.

You may also need support from others who have done this before, including people with legal and other skills. You can also contact us at the Buddhist Council (office@buddhistcouncil.org) for assistance in finding the right people to help with your needs.

If you require clarification or assistance in using this guide, please contact our Committee Member, Sourina Simmalavong at sourinas@gmail.com with your enquiry.

We wish you well with developing your organisation. If you use this guide, please let us know how you get on with it. We need your feedback to improve it!

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LIFE CYCLE OF NFP/COMMUNITY ORGANISATION



Disclaimer: The information below is provided as a guide/resource and does not constitute formal advice. We recommend you conduct your own research and seek formal legal advice as appropriate. The information provided is current as at 24 February 2021.

	Resources
Useful websites for Not-for-Profit (NFP)/community organisations	<ul style="list-style-type: none">• Not-for-profit Law - Legal help for community organisations• Australian Charities and Not-for-Profits Commission• Australian Taxation Office – starting a NFP• Australian Securities and Investments Commission (ASIC)• Institute of Community Directors – Not for Profit 101• NSW Department of Fair Trading - Associations

SETTING UP A NFP/COMMUNITY ORGANISATION

<p>1. Getting started</p> <p>a. Incorporation – whether to incorporate or not. Which legal structure is best for my group’s needs?</p>	<ul style="list-style-type: none"> - https://nfplaw.org.au/gettingstarted - https://www.nfplaw.org.au/sites/default/files/media/Getting_started_decision_tree.pdf - https://www.nfplaw.org.au/sites/default/files/media/Getting_started_decision_tree.pdf - https://www.nfplaw.org.au/incorporationdecision - https://www.nfplaw.org.au/legalstructure - https://www.nfplaw.org.au/sites/default/files/media/Which_incorporated_legal_structure_should_we_choose_NSW.pdf - https://www.ato.gov.au/Non-profit/Getting-started/Starting-an-NFP/ - https://communitydirectors.com.au/tools-resources/not-for-profit-101
<ul style="list-style-type: none"> - Registration – incorporated association (State legislation <i>Associations Incorporations Act 2009 NSW</i> – see NSW Dept of Fair Trading) or company limited by guarantee (federal legislation – <i>Corporations Act 2001 Cth</i> – see ASIC) 	<ul style="list-style-type: none"> - https://www.nfplaw.org.au/sites/default/files/media/Incorporated_association_or_CLG_NSW.pdf - https://www.nfplaw.org.au/sites/default/files/media/Setting_up_your_organisation_fact_sheet_CH.pdf - https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations - https://asic.gov.au/for-business/registering-a-company/
<ul style="list-style-type: none"> - Apply for Business (Trading) Name: through Fair Trading 	<ul style="list-style-type: none"> - https://asic.gov.au/online-services/business-names/business-names-help/
<ul style="list-style-type: none"> - Apply for charity status: through ACNC <p>To be registered as a charity, your organisation must have a charitable purpose or purposes. Your organisation’s ‘purpose’ is</p>	<ul style="list-style-type: none"> - https://www.nfplaw.org.au/charity - https://www.acnc.gov.au/for-charities/start-charity

<p>what your organisation has been set up to achieve. Some people also refer to this as their organisation's mission.</p> <p>Once registered as a charity, it will be eligible for charity tax concessions</p>	<ul style="list-style-type: none"> - https://www.acnc.gov.au/tools/factsheets/charity-tax-concessions - https://www.ato.gov.au/non-profit/getting-started/getting-endorsed/is-my-organisation-eligible-for-charity-tax-concessions-/
<ul style="list-style-type: none"> - Register for ABN through ATO – apply to be income exempt on ABN FORM 	<ul style="list-style-type: none"> - https://www.abr.gov.au/business-super-funds-charities/applying-abn - https://business.gov.au/registrations/register-for-an-australian-business-number-abn
<ul style="list-style-type: none"> - GST – consider if required 	<ul style="list-style-type: none"> - https://www.ato.gov.au/Business/GST/Registering-for-GST/
<ul style="list-style-type: none"> - Open bank account: provide bank with certificate of incorporation and constitution and resolution by directors of company to open account; two signatories one of whom should be public officer 	<ul style="list-style-type: none"> - https://www.westpac.com.au/business-banking/savings-accounts/not-for-profit/ - https://www.commbank.com.au/business/industries/not-for-profit.html - https://www.commbank.com.au/business/small-business/documents/association-checklist.html - https://www.nab.com.au/business/accounts/specialised-accounts/nab-community-fee-saver - https://www.bendigobank.com.au/business/not-for-profit/everyday/ - https://www.stgeorge.com.au/business/bank-accounts/society-cheque-account
<ul style="list-style-type: none"> - Fundraising: religious groups are exempt from having to apply for charitable fundraising authority <p>NB. Some individuals and organisations are exempt from the requirement to obtain an authority to fundraise. These exemptions may include:</p> <ul style="list-style-type: none"> o certain religious organisations 	<ul style="list-style-type: none"> - https://www.nfplaw.org.au/fundraising - https://www.nfplaw.org.au/fundraisingandevents - https://www.fairtrading.nsw.gov.au/charitable-fundraising - https://www.acnc.gov.au/tools/topic-guides/fundraising - https://www.fairtrading.nsw.gov.au/charitable-fundraising/starting-a-charity/exemptions-from-the-charitable-fundraising-act - https://www.nfplaw.org.au/seekingfunding

<ul style="list-style-type: none"> ○ an organisation or person that receives less than \$15,000 in a financial year from fundraising (small fundraisers) ○ local councils ○ trusts with a local council as a trustee ○ universities. <ul style="list-style-type: none"> - Grant funding - Events - Donations 	<ul style="list-style-type: none"> - https://www.ato.gov.au/Non-profit/Gifts-and-fundraising/ - https://www.keela.co/blog/nonprofit-fundraising/donation-receipts#gref - https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0006/371283/Charitable-Fundraising-Guidelines.pdf - https://www.ato.gov.au/Non-profit/Gifts-and-fundraising/Receiving-tax-deductible-gifts/Receipts/ - https://www.acnc.gov.au/tools/topic-guides/revenue - https://www.artslaw.com.au/article/accounting-for-donations-and-in-kind-support/
<ul style="list-style-type: none"> - Insurance: know the relevant insurance that is required, and consider applying to be a member of Buddhist Council NSW as the membership may allow a cheaper insurance option for Buddhist charities in NSW 	<ul style="list-style-type: none"> - https://www.nfplaw.org.au/riskinsurance - https://www.nfplaw.org.au/insurance - https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations/starting-an-association/insurance - https://publicliabilityinsurance.com.au/association-and-not-for-profit/ - https://www.ourcommunity.com.au/insurance/view_help_sheet.do?articleid=263 - https://www.icare.nsw.gov.au/employers/take-out-a-policy/workers-insurance-policies#gref - https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-compensation-policies/workers-compensation-guide-for-employers
<ul style="list-style-type: none"> - Tax deductibility: apply for Deductible Gift Recipient (DGR status) or Overseas Aid Gift Deductibility Status (OAGDS) if required 	<ul style="list-style-type: none"> - https://www.nfplaw.org.au/DGR - https://www.ato.gov.au/non-profit/getting-started/getting-endorsed/is-my-organisation-eligible-for-dgr-endorsement/

<p>b. Business/operational set up</p> <ul style="list-style-type: none"> - Temporary/permanent monk's residence - Setting up a Temple/Centre - Renting/buying premises 	<ul style="list-style-type: none"> - https://councilapproval.com.au/place-of-public-worship/ - https://www.ienvi.com.au/helping-a-place-of-worship-development-application-western-sydney-nsw/ - https://www.homeloanexperts.com.au/home-loan-articles/rezoning-property/
<p>RUNNING A NFP/COMMUNITY ORGANISATION</p>	
<p>2. Running a NFP</p>	<ul style="list-style-type: none"> - https://www.nfplaw.org.au/runningtheorg - https://www.nfplaw.org.au/whoruns - https://www.acnc.gov.au/tools
<p>a. Strategic (Management Committee)</p> <ul style="list-style-type: none"> - Role of Management Committee <ul style="list-style-type: none"> • the duty of reasonable care, skill and diligence • the duty to disclose interests • the duty not to misuse information or position, and • the duty to act in good faith. 	<ul style="list-style-type: none"> - https://www.nfplaw.org.au/sites/default/files/media/New_to_a_board_or_committee_Cth.pdf - https://www.nfplaw.org.au/sites/default/files/media/Board_inductions_-_bringing_on_a_new_board_member_CTH.pdf - https://www.nfplaw.org.au/sites/default/files/media/Duties_Guide_Cth.pdf - https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations/running-an-association/management-committee - https://www.acnc.gov.au/tools/guides/my-charity-and-acnc-guide-your-charitys-responsibilities-acnc - https://www.acnc.gov.au/for-charities/manage-your-charity/managing-charity-money
<ul style="list-style-type: none"> - Governance The 'governance' of an association is the responsibility of the committee, and generally refers to the direction and control of an association. This includes overseeing the affairs of the 	<ul style="list-style-type: none"> - https://www.nfplaw.org.au/governance - https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/governance-standards

<p>incorporated association and making sure its legal obligations are met.</p>	<ul style="list-style-type: none"> - https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/governance-toolkit - https://www.acnc.gov.au/tools/guides/governance-good-acncs-guide-charity-board-members - https://www.cpaaustralia.com.au/-/media/corporate/allfiles/document/professional-resources/notforprofit/internal-controls-for-nfp-organisations-brochure.pdf?la=en&rev=7490240a3c19421c83353cca40a0e9ba - https://www.cpaaustralia.com.au/-/media/corporate/allfiles/document/professional-resources/notforprofit/financial-management-nfp-organisations.pdf?la=en&rev=1eed68f994ba43ba9ee26be2a059e639 - https://www.governanceinstitute.com.au/resources/resource-centre/ - https://wiki.qut.edu.au/display/CPNS/Approving+financial+statements
<ul style="list-style-type: none"> - Constitution and Model Rules 	<ul style="list-style-type: none"> - https://www.nfplaw.org.au/constitution - https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations/starting-an-association/about-the-constitution
<ul style="list-style-type: none"> - Public Officer 	<ul style="list-style-type: none"> - https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations/starting-an-association/public-officer - https://www.nfplaw.org.au/sites/default/files/media/Part 2 Appointing and Removing a Public Officer Running an IA in NSW.pdf - https://www.nfplaw.org.au/sites/default/files/media/Part 3 Public Officers legal role powers and duties Running an IA in NSW.pdf

<ul style="list-style-type: none"> - Management Committee Meetings 	<ul style="list-style-type: none"> - https://www.nfplaw.org.au/meetings - https://www.acnc.gov.au/tools/factsheets/holding-meetings - https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations/running-an-association/management-committee/management-committee-meetings
<p>b. Operational/day to day activities</p> <ul style="list-style-type: none"> - Clients – v – members 	<ul style="list-style-type: none"> - https://www.nfplaw.org.au/clients - https://nfplaw.org.au/members
<ul style="list-style-type: none"> - Employees 	<ul style="list-style-type: none"> - https://www.nfplaw.org.au/employees - https://www.nfplaw.org.au/recruitment - https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/vicarious-liability - https://nfplaw.org.au/backgroundchecks - https://www.legislation.nsw.gov.au/#/view/act/2012/51 - https://www.kidsguardian.nsw.gov.au/child-safe-organisations/working-with-children-check - https://nfplaw.org.au/fairworksystem - https://nfplaw.org.au/employeeissues - http://www.fairwork.gov.au/resources/best-practice-guides/pages/effective-dispute-resolution.aspx
<ul style="list-style-type: none"> - Volunteers Gifts and honorariums 	<ul style="list-style-type: none"> - https://nfplaw.org.au/volunteers - https://youtu.be/Xtko_mhHYxA - https://nfplaw.org.au/managing-volunteers-video - https://www.acnc.gov.au/tools/guides/gifts-and-honorariums

	<ul style="list-style-type: none"> - https://www.ato.gov.au/Non-profit/Your-workers/Your-volunteers/Paying-volunteers/Honorariums/
<p>c. Sub-Committees</p> <ul style="list-style-type: none"> - Relationship between Management Committee and Sub-Committees 	<ul style="list-style-type: none"> - https://www.diycommitteeguide.org/resource/what-role-of-sub-committees - https://communitydoor.org.au/resources/boards-and-management-committees#0-text-nav-item-4 - https://communitydirectors.com.au/help-sheets/board-committees - https://www.ourcommunity.com.au/management/view_help_sheet.do?articleid=599 - https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0009/1045989/Better-Practice-Toolkit-Terms-of-Reference.pdf
<p>d. Registers</p>	<ul style="list-style-type: none"> - https://www.nfplaw.org.au/sites/default/files/media/Keeping_and_accessing_documents_records_and_registers_NSW_0.pdf
<p>e. Record-keeping</p>	<ul style="list-style-type: none"> - https://www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc/keep-charity-records - https://www.nfplaw.org.au/recordkeeping - https://www.cpaaustralia.com.au/professional-resources/not-for-profit - https://www.acnc.gov.au/tools/templates - https://www.acnc.gov.au/for-charities/manage/keep-charity-records/examples-financial-and-other-records
<p>f. Ongoing compliance obligations</p> <ul style="list-style-type: none"> i. Yearly obligations: AGM, ACNC Annual Report, Dept of Fair Trading Annual Reporting, ii. Monthly obligations 	<ul style="list-style-type: none"> - https://www.nfplaw.org.au/reporting - https://www.nfplaw.org.au/annual-reporting-government - https://www.nfplaw.org.au/charityreporting - https://www.nfplaw.org.au/sites/default/files/media/Financial_reporting_for_charities_Cth.pdf

<ul style="list-style-type: none"> - Tax & super: PAYG, BAS, Super Guarantee - MC meetings, Committee reports, financial reports <p>iii. Other compliance obligations</p> <ul style="list-style-type: none"> - Insurance renewals, - Membership renewals - Grant acquittals - Other contractual obligations - Privacy obligations - Other regulators <ul style="list-style-type: none"> o local council obligations o Child Protection Obligations o Covid-19 regulations 	<ul style="list-style-type: none"> - https://www.acnc.gov.au/information-newly-registered-charities - https://www.nfplaw.org.au/taxreporting - https://www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc/reporting-annually-acnc - https://www.ato.gov.au/uploadedFiles/Content/SME/downloads/Nonprofit16966Tax_basics_for_non_profit_organisations.pdf - https://www.acnc.gov.au/tools/topic-guides/other-regulators - https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations/running-an-association/financial-reporting-requirements - https://www.nfplaw.org.au/privacy - https://www.nfplaw.org.au/sites/default/files/media/Privacy_Guide_Cth.pdf
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DISSOLVING A NFP/COMMUNITY ORGANISATION

<p>3. Dissolving a NFP</p> <ul style="list-style-type: none"> • ending an incorporated association, and • ending a company limited by guarantee • special requirements for ending a registered charity 	<ul style="list-style-type: none"> - https://nfplaw.org.au/windingup - https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations/closing-an-association
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FREQUENTLY ASKED QUESTIONS FOR NFP/COMMUNITY ORGANISATION

Disclaimer: *The information below is provided as a guide/resource and does not constitute formal advice. We recommend you conduct your own research and seek formal legal advice as appropriate. The information provided is current as at 24 February 2021.*

1. What type of non-profit should we use?

*The usual charity structures are an Incorporated Association which is state-based, or a Company Limited by Guarantee which is nationwide. Our recommendation is that an Incorporated Association is suitable to the size of your charity, however, if the charity is going to be operating interstate, then you should consider whether forming a Company Limited by Guarantee instead. See **Appendix 1** below on setting up a not-for-profit organisation.*

2. What do we need to register this non-profit organization? Any example?

If you want to open an Incorporated Association, then you need to apply to [NSW Dept of Fair Trading](#). If you want to open a Company limited by Guarantee, then you need to apply to [ASIC](#).

You should also apply for a [Business \(Trading\) Name](#) through ASIC, and also apply for charity status through [ACNC](#).

At the formation stage, you will need to prepare a constitution and ensure it matches the principles and objects of the charity.

You will also need to apply for charity insurance after the charity has been established.

You also need to consider succession so if the organisation closes then when it falls into disuse then what are you going to do with the charity and the money raised but not spent.

3. What bank should we use? (no fee)

You will need to contact the individual banks or research this online as there are different products for charities, but generally most big banks have a no fee account for basic accounts and then charge for certain transactions.

4. Do we need the accountant audit?

Depends on how much money you earn each year if an Incorporated Association, and yes you need it for a company - see attached information sheet

5. Do we need the lawyer?

It is not essential until you require legal advice. So you can certainly form the charity without a lawyer, however there are certainly charities who use legal services to assist them in the formation of the charity including the preparation of the constitution since it is an important document.

6. Do we need local Council approval to set up a Temple/Monk's residence?

Places of worship require Council approval where there will be large congregations and gatherings and need to be located in the appropriate town planning zone. A monk's residence where there will be visitors in small numbers, is permissible in a residential zone, depending on proposed usage and traditional and cultural practices. We recommend consulting with local town planners/builders and architects prior to the purchase or rental of any real estate.

Appendix 1

Disclaimer: The information below is provided as a guide/resource and does not constitute formal advice. We recommend you conduct your own research and seek formal legal advice as appropriate. The information provided is current as at 24 February 2021.

Steps in setting up a Not-for-Profit Organisation

1. What are the goals, activities and members?

2. Choose structure:

2.1. Unincorporated association: not regulated; personal liability of members.

2.2. Incorporated association: governed by Fair Trading under *Associations Incorporation Act 2009 NSW*; limited liability; lightly regulated with the following requirements:

2.2.1. Annual obligations

- a) Audit requirements for associations with annual gross receipts exceeding \$250,000 or current assets exceeding \$500,000
- b) Lodge “Annual summary of financial affairs” with Fair Trading \$49 within one month of AGM (first AGM to take place no later than 6 months after the end of the association’s financial year)

2.2.2. Eligibility:

- a) Official physical address in NSW is required
- b) All committee members must be 18 years of age and at least three are Aus residents
- c) At least 5 members, and appoint one as public officer
- d) Adopt a constitution
- e) Be non-profit (so can’t distribute profits and assets to members even after close down)
- f) Have the purpose of engaging in small scale and non-commercial activity, that is < \$2M in assets, annual income or expenditure. If > then incorporate as company

2.3. Company limited by guarantee: is a company under *Corporations Act 2001 (Cth)*; limited liability – highly regulated – usually larger organisations > \$2M and wanting to operate in more than one state¹ and with the following requirements:

¹ Other forms of companies are limited by shares/ Unlimited liability. NB: Proprietary companies can’t fundraise or offer shares to public

- 2.3.1. Three members of whom 2 live in Australia - member/ director/ secretary
- 2.3.2. Guarantee from its members (eg. \$20)
- 2.3.3. Adopt constitution
- 2.3.4. Written consents by members and directors as to position and amount of guarantee
- 2.3.5. Name to be chosen – search at ASIC
- 2.3.6. Submit form 201 with ASIC and request “Special Purpose Company” so no Ltd and reduced annual review fee (or + form 432)
- 2.3.7. One month after incorporation, appoint auditor

2.4. **Trusts:** trustee holds property, incurs liabilities, earns, distributes income on behalf of the beneficiaries. Trustees are personally liable, though deed can state trustee indemnifies by trust assets.

- 3. **Formation of organisation:** If you want to open an Incorporated Association, then you need to apply to Fair Trading. If you want to open a Company limited by Guarantee, then you need to apply to ASIC.
- 4. **Apply for Business (Trading) Name:** through Fair Trading
- 5. **Apply for charity status:** through ACNC
- 6. **Register for ABN** through ATO – apply to be income exempt on ABN FORM
- 7. **GST** – consider if required
- 8. **Open bank account:** provide bank with certificate of incorporation and constitution and resolution by directors of company to open account; two signatories one of whom should be public officer
- 9. **Fundraising:** religious groups are exempt from having to apply for charitable fundraising authority
- 10. **Tax deductibility:** apply for Deductible Gift Recipient (DGR status) or Overseas Aid Gift Deductibility Status (OAGDS) if required
- 11. **Insurance:** know the relevant insurance that is required, and consider applying to be a member of Buddhist Council NSW as the membership may allow a cheaper insurance option for Buddhist charities in NSW