

Explainer: The Regulatory Framework for Charitable Trusts Administered by Licensed Trustee Companies

A licensed trustee company (LTC) is a corporate entity approved to act as an executor of a will, administer deceased estates, manage trusts, and provide other financial services for clients. In Australia, LTCs manage a large number of charitable trusts established by living and deceased donors.

LTCs, and the charitable trusts they manage, operate within a multi-layered regulatory environment.

There are various legal and regulatory provisions governing how LTCs discharge their duties as trustees, including safeguards regarding fees charged for administering charitable trusts. These fees may cover trustee and investment management services and are generally paid from trust income or assets.

Where LTCs manage charitable trusts established by deceased donors, they have an obligation to give effect to the wishes of the donor to benefit charitable causes in the community. In doing so, they are bound by the provisions of a will and other relevant requirements.

It is important to recognise that administering philanthropic entities involves legitimate costs associated with governance, grantmaking, due diligence, stewardship and investment management. Such costs can be incurred irrespective of whether a charitable trust is managed by an LTC or another (non-licensed) trustee.

Regulation of Licensed Trustee Companies

LTCs are regulated under Chapter 5D of the *Corporations Act 2001* (Cth), regardless of their ownership structure, with the Australian Securities and Investments Commission having oversight as a regulator.

The legislation contains specific provisions governing fees for trustee company services. These can vary depending on whether a charitable trust existed before the national regulatory framework for LTCs commenced in 2010 or was established afterwards.

For charitable trusts that existed when the national regulatory framework commenced, there are fee limits for 'traditional trustee company services' based on the state and territory laws at that time. These arrangements are particularly relevant for older testamentary charitable trusts.

The framework contains fee provisions relating to 'common fund' investment arrangements and also allows courts to review excessive fees where an appropriate application is made.

Charity Law and Regulatory Oversight

Trustees of charitable trusts, whether licensed or not, are subject to extensive fiduciary, statutory and common-law duties. These require a trustee to act to further charitable purposes of a trust, rather than for private benefit.

Charitable trusts administered by LTCs are generally registered charities regulated by the [Australian Charities and Not-for-profits Commission](#) (ACNC). The ACNC framework includes governance and external conduct standards, reporting requirements, and public disclosure. The 'Annual Information Statements' and other financial reports for charitable trusts can be viewed on the [ACNC Register](#).

A trustee can charge fees for services provided when managing a charitable trust. However, charging fees which go beyond the fair and reasonable costs involved with administering a trust may raise concerns of private benefit.

Related party transactions, including arrangements involving investment management services provided by associated entities, must be managed appropriately, and in a manner consistent with furthering the charitable purposes of a trust. There are requirements to disclose such transactions as part of annual reporting to the ACNC, and this information is published on the ACNC Register.

The ACNC also has information-gathering and enforcement powers, which can be used if necessary to ensure compliance with regulatory obligations.

State Attorneys-General and Supreme Courts also retain additional oversight powers in relation to charitable trusts.

Taxation Law Requirements

Charitable trusts, including those administered by LTCs, are generally exempt from income tax under Division 50 of the *Income Tax Assessment Act 1997* (Cth).

To maintain this exemption, so called 'special conditions' must be complied with. This includes applying income and assets solely towards furthering charitable purposes. Fees that go beyond reasonable administration and investment costs may raise concerns of private benefit.

Income tax exempt charities must generally pursue their objectives and incur expenditure principally in Australia. In addition, some trust deeds and wills contain specific geographic limitations requiring funds to benefit particular Australian jurisdictions or communities.

Reform of Regulatory Settings

There has been debate about whether existing regulatory settings for LTCs are sufficient, with some stakeholders wanting stronger controls on fees and easier mechanisms for replacing trustees more easily.

Following the establishment of the ACNC in 2012 and the roll out of its regulatory framework, transparency and accountability requirements for all registered charities, including charitable trusts, have increased significantly.

In 2012, the Australian Government asked the Corporations and Markets Advisory Committee (CAMAC) to review the regulatory arrangements for charitable trusts administered by LTCs, and its report was completed in 2013.

More recently, the Productivity Commission's 2024 *Future Foundations for Giving* [report](#) concluded that these matters are best considered through a broader review of charity law and regulation, given that many of the issues are not unique to charitable trusts administered by LTCs.

The Commission recommended that the Australian Law Reform Commission undertake a comprehensive examination of charity law, including oversight of charitable trusts and the interaction between state and federal regulatory frameworks.

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