Running a CLG

A guide for directors and office holders

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Glossary

Key words and abbreviations

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ACNC	**ACNC** refers to the Australian Charities and Not-for-profit Commission
ACNC Act	**ACNC Act** refers to the *Australian Charities and Not-for-profits Commission Act 2012* (Cth)
ACNC Regulation	**ACNC Regulation** refers to the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth)
AFR	**AFR** refers to the Annual Financial Report that medium and large registered charity CLGs must submit to the ACNC along with their AIS
AGM	**AGM** refers to the annual general meeting of a CLG or other company or association
AICD	**AICD** refers to the Australian Institute of Company Directors
AIS	**AIS** refers to the Annual Information Statement registered charities are required to submit to the ACNC each year
ASIC	**ASIC** refers to the Australian Securities and Investments Commission
ATO	**ATO** refers to the Australian Taxation Office
Auditor	**Auditor** refers to an accountant (who is independent from the company) whose job is to check and confirm the accuracy of the company's financial records (commonly, once a year)
Board	**Board** refers to the company's governing body, sometimes referred to as a management committee, or similar
Board meeting	**Board meeting** refers to a meeting of the company's governing body; also referred to as a directors' meeting
Charities Act	**Charities Act** refers to the *Charities Act 2013* (Cth)
CLG	**CLG** refers to a company limited by guarantee
Common law	**Common law** refers to the law developed by the courts, or judge-made law (as opposed to legislation or statute, which is law made by Parliament)
Constitution (or **rules**)	**Constitution** (or **rules**) refers to the governing document of a company –the constitution sets out the company's purposes and the procedures for running the company A company can choose to follow the Replaceable Rules (found in the Corporations Act) or write its own constitution. If the constitution does not modify or replace a Replaceable Rule, the Replaceable Rule will apply to the company. The ACNC has a template constitution for registered charity CLGs
Corporations Act	**Corporations Act** refers to the *Corporations Act 2001* (Cth)

DET	**DET** refers to the Department of Education
Director	**Director** refers to a person specifically appointed to a position of management of the affairs of the company
Directors' meeting	**Directors' meeting** refers to a meeting of the company's governing body; also referred to as a board meeting
General meeting	**General meeting** refers to a meeting of the members of the company. General meetings include both 'annual' and 'special' general meetings
Incorporated association	**Incorporated association** refers to an organisation incorporated under state or territory based incorporated associations laws
Member	**Member** refers to the persons or entities that hold an interest in the company; for a company limited by guarantee, these are the persons or entities who gave a guarantee to be liable for a defined amount when they became a member, to cover the company's debts and liabilities if the CLG is wound up and unable to meet them
Minute book	**Minute book** refers to how minutes are stored. Traditionally a minute book was a securely bound book with sequentially numbered pages. The minutes were handwritten into the book. This guarded against fraud or tampering. While some small companies still use handwritten minute books, many companies now create and store minutes electronically and distribute them by email
Motion	**Motion** refers to a proposal that a member puts forward at a meeting, so that some action is taken or decision made about an issue. Technically, when a member 'moves' a motion, another member must 'second' it
Non-charitable CLG	**Non-charitable CLG** refers to a company limited by guarantee that is not registered with the ACNC
ORIC	**ORIC** refers to the Office of the Registrar of Indigenous Corporations
Officer	**Officer** is the umbrella term for a person who holds a position in a CLG where they are able to influence the governance and decisions of the CLG. Directors are generally officers, as are senior executives such as the chief executive officer, chief financial officer, secretary or treasurer
Policy	**Policy** refers to a particular way of dealing with an issue or area of activity which the company has agreed on. Policies are usually (but not always) written down. A company may have policies about, for example, recruitment of new committee members, procedures for meetings or dispute resolution. Policies can't override legal obligations in the Corporations Act or the company's constitution (or rules), but they can supplement them
Poll	**Poll** refers to a method for voting on a motion at a meeting. Technically this is different to a ballot, which is for voting in elections, but sometimes people use these words to mean the same thing. A poll must be in writing In a poll, members vote by filling out a voting paper and putting it in a box or container. These papers are then counted by those organising the poll, but not shown to other voters. When a poll is validly demanded, the result on the poll will override a vote on a show of hands
Proxy	**Proxy** refers to someone who is authorised to vote on behalf of another person at a meeting (if that person can't attend the meeting personally). For non-charitable CLGs, there are mandatory rules around proxy voting. Charitable CLGs should refer to their Constitution or Rules for provisions on proxy voting
Quorum	**Quorum** refers to the minimum number of people that need to be present at a meeting for that meeting to proceed
Registered charity CLG	**Registered charity CLG** refers to a company limited by guarantee that is registered with the ACNC

Resolution (or **ordinary resolution**)	**Resolution** (or **ordinary resolution**) refers to a decision that is made at a meeting. A resolution is the result of a motion put before the meeting, and is passed where more than 50% of the votes cast by members of the company, who are entitled to vote, are in favour of passing the motion (also known as a simple majority)
Rules	**Rules** is another word for the constitution of a company
Simple majority	**Simple majority** is when more than half (50%) of the people present and voting on a motion at a meeting, vote for (or 'in favour of') passing a resolution
Small CLG	**Small CLG** refers to a CLG that has less than $250,000 in annual revenue
Special general meeting	**Special general meeting** refers to a type of general meeting (that is, a meeting of the members), which is usually convened for a particular reason or purpose
Special purpose company	**Special purpose company** refers to a company that is set up for a specific reason, rather than just general business. A registered charity CLG may meet the requirements of a 'charitable purposes only' category of special purpose company
Special resolution	**Special resolution** refers to resolutions of the company that require at least 75% of votes to be in favour of the resolution. Special resolutions are required for particular matters under the Corporations Act – for example, changing a company's name or constitution, winding up the company, or changing the company type
Wind up or **winding up**	**Wind up** or **winding up** refers to the legal process for ending an incorporated company – this can be done voluntarily by the company, or, in certain circumstances, by a court or by ASIC. When an incorporated company is finally wound up, it stops existing

Part 1

Overview

Overview

Note

This guide provides information on running a company limited by guarantee. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to the full disclaimer that applies to this guide.

This part of the guide covers introductory information to help you understand your company limited by guarantee, the roles of the directors and members, and how to use this guide.

Summary of key points in this part of the guide

Who is this guide for?	This guide is primarily for directors and officeholders of companies limited by guarantee (**CLG**s). The guide provides an overview of their legal obligations in running a CLG. Directors and officeholders of CLGs registered with the Australian Charities and Not-for-profits Commission (**ACNC**) should refer to our guide to running a registered charity CLG.
What is a CLG?	A CLG is: • an incorporated legal structure set up under the *Corporations Act 2001* (Cth) (**Corporations Act**) that may be suitable for some not-for-profit organisations, and • generally regulated by the Australian Securities and Investments Commission (**ASIC**) in accordance with the Corporations Act (unless it is a registered charity CLG in which case certain parts of the Corporations Act no longer apply)
What is a registered charity CLG?	When a CLG registers as a charity, the responsible regulatory body (for the most part) shifts from ASIC to the ACNC. The ACNC regulates charitable CLGs under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**), the *Charities Act 2013* (Cth) (**Charities Act**) and the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth) (**ACNC Regulation**) which includes the Governance Standards. In this guide, we call: • CLGs registered with the ACNC – 'registered charity CLGs', and • CLGs not registered with the ACNC – 'non-charitable CLGs' This is how we differentiate between the two. But note – this doesn't necessarily mean a 'non-charitable CLG' doesn't meet the statutory (Charities Act) or common law definition of a charity.

What are a CLG's reporting obligations?	Companies (including CLGs) are required by law to keep financial records and prepare financial reports. The reporting obligations for CLGs will differ depending on its revenue and whether the CLG is registered with the ACNC as a charity.
What are the requirements regarding directors?	Every CLG must have at least three directors, two of which must ordinarily reside in Australia, and at least one secretary, at least one of which must ordinarily reside in Australia. A secretary may also be a director (more about this in **part 2** of this guide).
What are the obligations of directors and officers?	If you are (or are considering becoming) a director of a CLG, you need to understand the legal duties of directors and officers. The law requires directors and officers of a CLG to meet certain standards of conduct while managing the affairs of the company.
What are the members' rights?	Members of non-charitable CLGs will have rights primarily under the Corporations Act (although your CLG's constitution may also have rules about members' rights), including a right to attend and vote at general meetings. The rights of members of non-charitable CLGs under the Corporations Act include: • access to the company's register of members • access to a copy of the company's constitution • elect how they want to receive meeting related documents • general meetings of members or annual general meetings • access to minutes of meetings of members • for small CLGs, a financial report and directors' report if requested by 5% of members, and • for large CLGs, a financial report and a directors' report Registered charity CLGs are exempt from some of the obligations to members under the Corporations Act. However, registered charity CLGs are accountable to members under Governance Standard 2 of the ACNC Regulation. Under this standard, members have a right to adequate opportunity to raise concerns about the governance of the registered charity CLGs. The CLG's constitution may also specify additional rights and obligations.
What are the members' liabilities?	If your CLG is wound up, members may be liable for the amount, which they agreed to guarantee when they became a member. This amount is usually specified in your CLG's constitution.
Do the Corporations Act rules regarding company meetings and voting apply to registered charity CLGs?	Most of the Corporations Act rules regarding company meetings and voting do not apply to registered charity CLGs. **Instead** – your CLG must take reasonable steps to ensure it is accountable to members and that its members have an adequate opportunity to raise concerns about its governance. This allows registered charity CLGs to consider how best to be accountable to their members in their own circumstances. Registered charity CLGs should refer to our guide to running a registered charity CLG to learn more about the provisions regarding company meetings and voting that apply.

About this guide

This guide is designed for use by directors of CLGs. It provides an overview of directors' legal obligations in running a CLG in Australia. Directors and officeholders of CLGs registered with the ACNC should refer to our guide to running a registered charity CLG.

This guide is also useful for other members of management such as the company secretary or chief executive officer, as well as those who work with CLGs (such as peak bodies, advocacy groups, and lawyers advising CLGs).

This guide primarily focuses on the administrative aspects of running a CLG, but there are other laws which may apply to CLGs – for example, laws dealing with tax or workplace health and safety.

This guide is made up of the following parts:

glossary	• List of key words and abbreviations used in this guide
part 1	• Overview of companies limited by guarantee
part 2	• Appointing and removing a director or secretary
part 3	• Directors' legal roles, powers and duties
part 4	• Reporting, registers and records
part 5	• General meetings
part 6	• Board meetings
part 7	• Ending a CLG

More information

There are practical tools and tips throughout this guide, and links to other sources of information.

What is a company limited by guarantee?

A company limited by guarantee (**CLG**) is a type of incorporated legal structure that may be suitable for some not-for-profit organisations.

Note

Legal forms other than a CLG may be used by not-for-profit groups – such as incorporated associations and cooperatives. Different laws and rules apply to these other legal forms. This guide doesn't cover the laws and rules that apply to other legal forms.

Tip

If you are not sure whether your organisation is a CLG, search the company register on the ASIC website.

It's important to check this because not all not-for-profit organisations are established as CLGs. It's possible that your not-for-profit organisation has another legal form. For example, it may be incorporated as an association under a state-based law.

A CLG is a type of **public company** that must comply with the Corporations Act. If the CLG is registered as a charity with the ACNC, certain parts of the Corporations Act will not apply to the charitable CLG and the ACNC laws and regulations will apply instead.

More information

Directors and officeholders of CLGs registered with the ACNC should refer to our guide to running a registered charity CLG.

A CLG:

- is formed on the principle that the liability of its members is limited to the amount that the members undertake to contribute to the assets of the company in the event the company is wound up
- must use the word 'Limited' or 'Ltd' after its name (unless it's eligible for an exemption from this requirement), and
- must have a constitution (a document which sets out the rules governing the internal affairs of the company)

The Corporations Act includes some provisions (known as 'replaceable rules') which can be used to govern a company incorporated under the Corporations Act instead of its own constitution.

The members of a CLG have **limited liability** – they agree in writing (known as a 'guarantee') to pay a nominal amount (usually between $10 and $100) to the company.

This means that if the company ends (is wound up) and it can't pay all of its debts, each member may be required to contribute an amount up to, but no more than, the stated guarantee amount. The guarantee amount is different from any membership joining fee or annual membership fee that the CLG may impose on members.

Remember

Other laws also apply to CLGs – for example, laws dealing with work health and safety, workplace relations and tax. See our website for free resources on a range of laws relevant to not-for-profit organisations.

Replaceable rules

Replaceable rules are set out in the Corporations Act (section 141).

The replaceable rules apply to certain public and private companies on registration, unless they are displaced or modified by a company's constitution.

The replaceable rules cover matters including:

- appointment and powers of directors
- procedures for directors and members meetings
- inspection of books
- rights of shareholders, and
- the transfer of shares

More information

For a list of the replaceable rules, and more information about the rules, see ASIC's website.

A CLG will often have its own constitution and include the amount of the member's guarantee in the constitution. There is no replaceable rule setting out the default amount for a member's guarantee. A constitution which requires a member to apply in writing to be a member and comply with the constitution (which also sets out the amount of the guarantee) is a practical way of achieving the requirement

The constitution may also displace or modify the replaceable rules. If the constitution doesn't displace the replaceable rules, the replaceable rules will apply.

When would the legal structure of a CLG be suitable?

The legal structure of a CLG would be suitable for:

- organisations that want to operate nationally or in more than one state or territory
- larger not-for-profits, including those that only operate in one state (for example, the NSW Office of Fair Trading suggests that the CLG structure may be more appropriate for incorporated associations with income or assets exceeding $2 million)
- housing and aged care providers (who must be CLGs), and
- wholly owned subsidiary organisations, as only one member is required (but note, three directors are required)

Remember

CLGs registered as charities will generally report to the ACNC and not ASIC. While the ACNC has a range of regulatory powers, the ACNC will generally take a more educative approach than ASIC.

What are the general obligations for CLGs?

The CLG structure

The CLG legal structure is an incorporated company structure, which means that a CLG will be a separate legal entity from the people involved in its running, and its members will have limited liability. Being a separate legal entity means that the company has legal capacity in its own right.

As with most legal structures, legal obligations attach to CLGs. These obligations include requirements to prepare certain reports and notify the regulator of certain changes, and requirements to hold members' meetings. Directors and officers of CLGs also have separate duties and obligations.

Registering as a charity

It is possible (but not necessary) for a CLG to register as a charity.

Being a charity is a 'legal status' that may be held by an organisation. This is different from adopting a particular organisation type (such as a CLG), which is a form of 'legal structure'.

More information

For more information about what the charity status means, see our webpage on charity and the ACNC website.

Directors and officeholders of CLGs registered with the ACNC should refer to our guide to running a registered charity CLG.

To register as a charity, a CLG must meet certain requirements.

The 'charity' legal status carries legal obligations for the charity with it, including duties to:

- be accountable to members
- comply with Australian laws, and
- take steps to satisfy itself that persons in positions of authority in the organisation are suitable

Remember

It's not necessary for a not-for-profit organisation to adopt a CLG legal structure in order to register with ACNC as a charity.

What regulation will apply to your CLG?

Compliance with legal obligations is ordinarily overseen and enforced by a regulatory body. The regulator for companies (including CLGs) is ASIC.

Remember

Depending on its activities, your CLG may have additional reporting obligations to other regulators including the Australian Tax Office (**ATO**) and any applicable state Fair Trading body. You can find information about when you will need to report to these regulatory bodies on our webpage on reporting to government.

ASIC is an independent Commonwealth Government body and Australia's corporate markets and financial services regulator.

Enforcing the Corporations Act is a key role of ASIC. This includes registering companies and making sure they meet their obligations. ASIC has enforcement powers and can penalise companies (and their directors and officers) that do not comply with their legal obligations.

Note

In this guide we call CLGs registered with the ACNC 'registered charity CLGs'. We call CLGs not registered with the ACNC 'non-charitable CLGs'.

This doesn't mean CLGs not registered with the ACNC do not meet the statutory (Charities Act) or common law definition of a charity. This is just our way of differentiating the two kinds of CLGs.

What are a CLG's reporting requirements?

Companies (including CLGs) are required by law to keep financial records and prepare financial reports. The reporting obligations for CLGs will differ depending on whether the CLG is a registered charity CLG.

Financial records

A non-charitable CLG must keep written financial records that:

- correctly record and explain its transactions and financial position and performance, and
- enable true and fair financial statements to be prepared and audited

These financial records must be kept for seven years after the transactions covered by the records are completed.

Certain people may have a legal right to inspect a non-charitable CLG's financial records, including directors of the CLG, members of the CLG, ASIC, auditors, and liquidators.

See **part 4** of this guide for more information about financial records and how to keep them.

Operational records

Operational records are records about the business of the company, such as meeting minutes, reports to the board and strategic plans.

There is a legal obligation for a non-charitable CLG to keep board and member meeting minutes.

The minutes must:

- record all proceedings and resolutions of member and board meetings and all resolutions passed by the board and members without a meeting
- be signed by the chair of the meeting or the chair of the next meeting
- be signed by a director if a resolution is passed without a meeting, and
- be kept at the non-charitable CLG's registered office or principal place of business

There is no legal obligation for a non-charitable CLG to keep other operational records. However, to meet financial reporting obligations (outlined above), it may be necessary to keep operational records and it's also good business practice to do so.

See **part 4** of this guide for more information about operational records and how to keep them.

Reporting obligations

Broadly speaking, a non-charitable CLG will be required by law to prepare:

- a financial report, and
- a director's report

The reporting obligations vary depending on whether the company is a 'small CLG' or a 'CLG.'

Whether a company is a small CLG will depend on their revenue in a particular financial year.

The *Corporations Amendment (Corporate Reporting Reform) Act 2010* (Cth) introduced a range of reduced or streamlined financial reporting requirements for CLGs. These changes aimed to improve the corporate reporting framework by reducing unnecessary red tape and regulatory burden on companies, including CLGs given that these companies are predominately not-for-profit entities and the vast majority are relatively small.

See **part 4** of this guide for more information about reporting obligations for both registered charity CLGs and non-charitable CLGs.

More information

For more information on the reporting obligations of non-charitable CLGs, see ASIC's Information Sheet 131 Obligations of companies limited by guarantee (INFO 131).

Who is a director?

Corporations Act requirements

Under the Corporations Act, a CLG must have at least:

- three directors, two of which must ordinarily reside in Australia, and
- one secretary, at least one of which must ordinarily reside in Australia

In addition, a CLG's constitution may specify minimum and maximum numbers of directors.

In general, a 'director' is defined to mean anyone:

- appointed as a director or an alternate director, or
- not validly appointed as a director but acting in that position anyway or with whose wishes or instruction the directors are accustomed to act

Your company may use different names for its directors. These may include a managing director, alternate director, nominee director, executive director and non-executive director. Directors may also hold special positions on the board of directors, including the positions of secretary (who does not necessarily need to be a director), chair and treasurer.

The people who take on these positions are also sometimes called 'officers' or 'office bearers' of the company. No matter what name is used, all directors and officers of a company must comply with their legal duties, which are explained further below.

Note

Even if your company has appointed a treasurer, it's increasingly common for not-for-profit organisations to also create a 'finance committee' to help the board of directors understand and manage finances and financial risks in the company.

Remember – all directors are responsible for understanding and ensuring the organisation's financial health, irrespective of whether a treasurer or 'finance committee' is appointed. It's not compulsory to have a formal treasurer position unless your CLG's constitution requires it.

Note – registered charity CLGs

If your company is a registered charity CLG, note the ACNC Act refers to directors of the company as 'responsible entities'. However the ACNC has adopted '**responsible persons**' as their preferred terminology and this is the term you will see used in ACNC resources.

This means that the obligations that apply to responsible persons under the ACNC Act and Regulations are obligations that apply to directors of your registered charity CLG.

Directors and officeholders of CLGs registered with the ACNC should refer to our guide to running a registered charity CLG.

The board and the company constitution

The group of directors in an organisation is commonly referred to as the 'board of directors' or the 'board'.

The board of directors is responsible for governing and overseeing the affairs of the organisation.

Generally, it's the board's responsibility to identify an organisation's strategic direction and goals. This is different to the role of the management of a company (that is, employees of the company such as any Executive Director or CEO and other management staff) who have responsibility for the day-to-day

decision-making and running of a company. This can sometimes cause conflict, confusion and difficulties in a small organisation where the directors also operate the organisation (often on a voluntary basis).

It's important that directors understand their obligations and responsibilities within each of the roles they fill. While the Corporations Act includes provisions about the directors of a company, a company's constitution will usually set out further details about its board, including:

- its composition
- the ability to delegate (including to committees and individuals)
- the powers and duties of directors
- how directors are to be elected, removed and remunerated, and
- how board meetings are to be conducted

For information about the appointment and removal of company directors and secretaries, see **part 2** of this guide – Appointing directors and secretaries.

What are the legal duties of the directors and officers of a CLG?

The law requires directors and 'officers' of a CLG to meet certain standards of conduct while managing the affairs of the organisation. If you are (or are considering becoming) a director of a CLG, you need to understand what your legal duties are.

It's important to understand legal duties apply not only to directors of CLGs, but also to 'officers'.

An officer includes directors, secretaries, people who manage the CLG or its property (such as receivers and liquidators), and other people who have influence over the decisions of the CLG or who have the capacity to significantly affect the CLG's financial standing.

Senior executives, particularly the chief executive officer, and the chief financial officer or similar position, would ordinarily be regarded as 'officers'. Some obligations under the Corporations Act also extend to employees generally.

The Corporations Act includes requirements relating to the holding of an Annual General Meeting, providing ASIC with financial information, and providing ASIC with updated details of the names and addresses of directors and the registered address of the company, among other things.

Your company secretary may have responsibility for organising many of these matters in practice but a director should also be aware of these requirements. Most of these provisions do not apply to CLGs that are registered charities with the ACNC. Instead, different requirements (set out in the ACNC legislation) will apply.

More information

Directors and officeholders of CLGs registered with the ACNC should refer to our guide to running a registered charity CLG.

Duties of directors and officers

Corporations Act

The Corporations Act imposes duties on directors and officers of companies, including:

- the duty to exercise your powers and duties with the care and diligence that a reasonable person would, which includes taking steps to ensure you are properly informed about the financial position of the company
- the duty to exercise your powers and duties in good faith in the best interests of the company and for a proper purpose
- the duty not to improperly use your position to gain an advantage for yourself or someone else, or to cause detriment to the company

- the duty to disclose conflicts of interest, and
- the duty not to improperly use information obtained through your position to gain an advantage for yourself or someone else, or to cause detriment to the company

For more information about the legal role, power and duties of directors and officers of CLGs see **part 3** of this guide – Director's legal role, power and duties.

Overarching obligations – criminal offences

Two additional directors' duties under the Corporations Act are the requirements to:

- not allow a corporation to operate while it is insolvent, and
- not be reckless or intentionally dishonest in failing to exercise your powers and discharge your duties as a director in good faith in the best interests of the corporation

A breach of either duty is a **criminal offence**.

Note – duties under other legislation

Directors may have duties under other legislation.

For more information about duties under other legislation, see our duties guide.

What are the rights and obligations of members of a CLG?

As CLGs are public companies incorporated under the Corporations Act, many members' rights and obligations come from the Corporations Act. For example, under the Corporations Act, a non-charitable CLG must provide members with a copy of the constitution within seven days of a request.

It's important to remember that your CLG's constitution may specify additional rights and obligations. For example, a CLGs constitution may specify it must provide a copy of the constitution in a shorter period after a request from a member (and not longer).

Liability of members

If a CLG is wound up, members may be liable (legally responsible) for the amount which they agreed to guarantee when they first became a member, as set out in the CLG's constitution.

When a member first becomes a member of a CLG, they give a guarantee to the CLG promising to contribute a specified amount to cover the CLG's debts and liabilities if the CLG is wound up and has insufficient funds (see **part 7** of this guide about ending a company). If your CLG is wound up, members may be liable to pay that specified amount, but will not be liable to contribute anything more.

Generally, the specified amount for CLGs is quite small (usually $10 - $100). If a member stops being a member at least one year before the CLG began winding up, they will not need to contribute anything.

If a member stops being a member less than one year before the CLG began winding up, that person will be liable to contribute money (up to the specified amount under the guarantee) to help pay the CLG's debts or liabilities if those debts or liabilities arose while that person was still a member.

Because these member obligations are set out in the Corporations Act, anything in your CLG's constitution that conflicts with those obligations will be invalid.

Meetings and voting rights

A member of a non-charitable CLG has a right to attend and vote at general meetings.

The rules regarding general meetings of members and voting rights derive primarily from the Corporations Act (although your CLG's constitution may also have rules about these matters).

The rights that members have under the Corporations Act include:

- each member has a right to elect how they receive notice of meetings and other meeting related documents (for example, in physical form, electronic form or through a link to an electronic form)
- each member has a right to one vote, both on a show of hands and a poll (your constitution may also have other provisions in relation to voting)
- each member may appoint a proxy to vote on their behalf at company meetings, and
- each member has a right to receive notice of upcoming members' meetings 21 days or more before the meeting (subject to certain provisions of the Corporations Act that permit a members' meeting to be called on short notice in certain circumstances). The notice must set out:
  - the time and location of the meeting
  - the business of the meeting, and
  - whether a special resolution will be proposed at the meeting

Note

The meeting must be held at a reasonable time and place. It can be held in two or more locations using technology, as long as the members as a whole still have a reasonable opportunity to participate. For example, you may be able to attend a meeting through technology like Skype or Zoom.

In addition to these rights, 100 members or members who together have 5% of the voting power may collectively:

- compel the directors of your CLG to call a meeting, which the company must pay for
- give notice to your CLG's directors of a resolution they propose to move at a general meeting, or
- compel your CLG's directors to send out a statement to all members setting out a proposed resolution or any matter that may be properly considered at a general meeting, and
- take it upon themselves to call, arrange and pay for a general meeting to be held

More information

If your CLG is a registered charity CLG, the rules regarding company meetings and voting (listed above) do not apply.

Directors and officeholders of CLGs registered with the ACNC should refer to our guide to running a registered charity CLG.

Part 2

Appointing and removing a director or secretary

Appointing and removing a director or secretary

This part of the guide covers the legal requirements for appointing and removing directors and company secretaries of a CLG.

Despite having different obligations in some respects, the laws regulating the appointment and removal of directors and secretaries are essentially the same for registered charity CLGs and non-charitable CLGs. Where there is a difference – we explain it.

Note

If your company is a registered charity CLG, the ACNC Act refers to directors of the company as '**responsible entities**'. However, the ACNC has adopted 'responsible persons' as their preferred terminology and this is the term you will see used in ACNC resources.

Therefore, the obligations that apply to responsible persons under the ACNC Act and Regulations are obligations that apply to directors of your registered charity CLG.

Summary of key points in this part of the guide

Who can be a director?	The Corporations Act regulates who can be a director of a CLG. In addition, a CLG's constitution may have particular eligibility requirements.
How is a director appointed?	A CLG must have at least three directors. When a CLG is incorporated, those people who consent to become a director and are specified as proposed directors in the application to ASIC, become the initial directors at the time the CLG is registered as a company with ASIC. After this, directors can generally be appointed by other directors, with the consent of the director to be appointed, subject to any requirements in the CLG's constitution. Directors may also be appointed by a vote of members at a general meeting. A CLG's constitution may also have particular requirements for the appointment of directors, for example the appointment of a director by the other directors may need to be confirmed at the CLG's next AGM.
What happens after a director is appointed?	Non-charitable CLGs must notify ASIC within 28 days if a person is appointed as a director. A registered charity CLG must notify the ACNC about changes to 'responsible persons' within 28 days (medium and large charities) or 60 days (small charities) and does not need to notify ASIC of change in director. A registered charity CLG may have a CEO, company secretary or other office holders, but they will generally only be considered 'responsible persons' by the ACNC if they are on the board and can vote in board decisions. This guide uses the term 'director' to refer to responsible persons as this is usually the title used in a registered charity CLG for those on the board.

Who can be a secretary?	The Corporations Act regulates who can be a secretary of a CLG. A CLG's constitution may also have particular eligibility requirements.
How is a secretary appointed?	The directors of a CLG appoint the secretary. Initial secretaries are those people who consent to becoming a secretary and are specified as proposed secretaries in the application to ASIC. The secretary often sits in on board meetings and is often responsible in practice for the record keeping and compliance requirements of the CLG.
What happens after a secretary is appointed?	Non-charitable CLGs must notify ASIC within 28 days if a person is appointed as a secretary. Registered charity CLGs must notify the ACNC about changes in responsible persons. Whether the secretary is a responsible person will depend on their role in the charity. If they are on the board or governing body and take part in board decisions they will be a responsible person. If they attend board meetings to take notes and assist but can't vote on decisions, they will not be a responsible person so there would be no need to notify the ACNC about a change.
When will a director or secretary's position become vacant?	A person stops being a director of a CLG in circumstances including when they: • resign by giving written notice to the company • are removed or disqualified from managing a corporation or charity • are removed by a resolution of the CLG • were appointed for a specific term and that term has ended, or • they die Some of these circumstances differ slightly depending on whether the CLG is a registered charity or non-charitable CLG. The CLG's constitution will generally outline the circumstances in which a person will stop being a secretary.

Appointing and removing directors

Who can be a director?

The directors of a CLG are responsible for managing the CLG's business. Generally, the directors may exercise all the powers of the organisation except a power that the Corporations Act, or a provision of the CLG's constitution (if any), requires the organisation to exercise in a general meeting.

In managing the CLG's business, directors will meet regularly. The Corporations Act sets out rules dealing with the calling and conduct of directors' meetings. Directors must keep a written record (minutes) of their resolutions and meetings.

More information

For more information on director's meetings for registered charity and non-charitable CLGs, see **part 6** of this guide.

Directors are important. Your organisation should appoint people who have the experience and skills to carry out the role.

Effective directors need to have a range of skills, including:

- enthusiasm for, and knowledge of, the company and its mission
- adequate time for the task
- interest in committee work
- good working relationships with other people involved, and
- reliability and good organisational skills

In choosing a director, also consider:

- any restrictions or qualifications required by law, particularly the Corporations Act (outlined below)
- your organisation's constitution, and
- any policies your organisation has

More information

See our fact sheets on an 'Introduction to the role of a board member' and 'Board inductions – bringing on a new board member'.

Corporations Act requirements

The following applies to both registered charity and non-charitable CLGs.

A director of a company incorporated in Australia must:

- consent to being appointed to the position, and
- be at least 18 years old (note there is no upper limit unless the constitution of the organisation says otherwise)

A person will be automatically disqualified from being a director under the Corporations Act if that person:

- has been convicted of certain offences (such as fraud) and the date of conviction or, if they were imprisoned, the date of release, was within the last five years(explained below)
- is 'an undischarged bankrupt' in Australia or overseas (explained below) or has executed a personal insolvency agreement, or
- is the subject of a court disqualification order

A CLG must have at least three directors. At least two of the directors must ordinarily reside in Australia (explained below).

Unless your CLG's constitution say otherwise:

- a director may hold another position in the company, and
- there is no upper limit to a director's age

More information

For the specific Corporations Act provisions in relation to directors, see sections 201-206 of the Act.

Note – Director Identification Numbers

Directors of certain entities, including all CLGs, are now required to have a Director Identification Number (**DIN**).

A director must apply for their DIN personally because they will need to verify their identity. This application is made through the Australian Business Registry Service.

A director of a CLG must apply for a DIN:

- by 30 November 2022 if they became a director on or before 31 October 2021
- within 28 days of appointment if they became a director between 1 November 2021 and 4 April 2022, or
- before appointment as a director if they become a director from 5 April 2022

For more information, see the Australian Business Registry Services webpage on 'who needs to apply for a DIN and when'.

Registered charity CLGs will also need to take note of the requirements under the ACNC Regulations – particularly Governance Standard 4 which outlines the suitability of responsible persons (including directors).

Governance Standard 4 requires that a director of a registered charity CLG:

- not be disqualified from managing a corporation under the Corporations Act, and
- not be disqualified by the ACNC within the preceding 12 months,

unless the ACNC believes it would be reasonable in the circumstances to allow the person to be a director of a particular charity.

Tip

Sometimes organisations accidentally appoint directors who are not allowed to hold the position.

To avoid this, before someone is appointed as director, get them to sign a letter in which they:

- agree to act as a director of the organisation
- confirm that they satisfy the Corporations Act requirements for being a director, and
- agree to notify the organisation if any of these matters, or their contact details, change

Who is a 'resident' of Australia?

At least two of a CLG's directors must ordinarily reside in Australia. The Corporations Act doesn't define 'ordinarily reside' but to avoid doubt a director's primary residence (the place where they usually live) should be in Australia.

Even if a director is not an Australian citizen or they frequently travel outside Australia, they can still be a director ordinarily resident in Australia if they are based here (live here most of the time).

Conviction for a criminal offence

A person is automatically disqualified from managing corporations under the Corporations Act (so can't be a director of a CLG) if the person:

- is convicted on indictment of an offence (including an offence in a foreign country) that:
  - concerns the making, or participation in making, of decisions that affect the whole or a substantial part of the business of the corporation, or
  - concerns an act that has the capacity to significantly affect the corporation's financial standing
- is convicted of an offence that:
  - is a contravention of the Corporations Act and is punishable by imprisonment for a period greater than 12 months, or
  - involves dishonesty and is punishable by imprisonment for at least three months (including in a foreign country), or
- is convicted of an offence against the law of a foreign country that is punishable by imprisonment for a period greater than 12 months

The period of disqualification starts on the day the person is convicted and lasts for:

- if the person doesn't serve a term of imprisonment — five years after the day on which they are convicted, or
- if the person serves a term of imprisonment — five years after the day on which they are released from prison

Caution

If you have a criminal conviction or if your CLG is considering appointing a director who has a criminal conviction, seek legal advice before the appointment. This protects both the organisation and the potential director.

Who is an 'undischarged bankrupt'?

'Undischarged bankrupt' is a general term used for when a person is bankrupt. Bankruptcy is a legal status that offers a person protection from further action against them by creditors (people the person owes money to).

A person is a 'declared bankrupt' when an actual declaration of bankruptcy has officially been made about them. The usual period of bankruptcy is three years.

Bankruptcy records are publicly accessible on the National Personal Insolvency Index (**NPII**), so it's possible to check if a person has been declared bankrupt by conducting a Bankruptcy Register Search. Fees apply for searching the NPII, but if you're in any doubt do the search.

More information

You can get more information about bankruptcy on the Australian Financial Authority website.

What is insolvent under administration?

A person is considered insolvent under administration if they have entered a personal insolvency agreement (which is an agreement to repay creditors that a person who is in debt can sometimes make to avoid being declared bankrupt). This rule applies whether the person has executed a personal insolvency agreement in Australia or something similar in a foreign country.

It's not possible to check if someone has entered a personal insolvency agreement, so it's a good idea to require the director to sign a declaration that they are not 'insolvent under administration'. For registered charity CLGs this can be done by requiring a director to sign the ACNC's suggested declaration that they are not disqualified from managing a corporation.

Note

A director who becomes insolvent under administration is no longer able to be a director.

Under the Corporations Act, the position of director becomes automatically vacant when this occurs. In this situation your company may need to appoint a new director.

What is a court disqualification order?

ASIC may apply to a court to disqualify a person from managing corporations for a period the court considers appropriate.

ASIC may only do this where the person has contravened a civil penalty provision under the Corporations Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth). Such a disqualification is at the court's discretion.

Caution

If a director of your company has contravened a civil penalty provision of one of those Acts you may wish to consider their suitability for the role of director in any event.

The CLG's constitution and policies

Check the CLG's constitution and policies for additional requirements about who can be appointed as a director and the length of their appointment.

For example, your constitution may require certain qualifications or experience for the role.

Note

The CLG's constitution or any policies can't override the legal requirements set out above. For example, your constitution can't allow a director to be under the age of 18.

Tip

Make sure you have the most up-to-date version of your registered charity CLG's constitution and policies and are familiar with their contents.

Your constitution may state that a director can be paid. The constitution may also allow for certain work of the directors to be carried out by a specialist firm or by employees. However, even if directors delegate their functions they remain legally responsible for those functions being properly carried out. For further information on the director's duties, see **part 3** of this guide.

More information

See our fact sheet on the payment of board members.

Where to find a new director

In many cases, new directors are found in the organisation – for example, there may be an existing member or volunteer who has suitable skills and interests.

If your organisation needs someone with particular expertise to fill the position (for example, because of the size and complexity of your company), ask around.

New directors are often found by the existing directors (or others in the organisation) who can use their networks to find people who may be suitable for the role.

You can also advertise online or in your local paper. Or you could contact the various organisations that link volunteer positions with volunteers, including:

- Go Volunteer
- Volunteering Australia
- State-based volunteering peak bodies, such as Volunteering Victoria and Leadership Victoria
- goodcompany
- Institute of Community Directors Australia
- OurCommunity, and
- Pro Bono Australia

How is a director appointed?

The following applies to both registered charity and non-charitable CLGs.

A director of a company may be appointed in one of three ways:

- at the time the company is registered with ASIC
- by the directors of the company, or
- by resolution at a general meeting of the company

Caution

A CLG must always have at least three directors, two of which must ordinarily reside in Australia.

Appointing directors at the time of registration

The following applies to both registered charity and non-charitable CLGs.

Directors may be appointed at the time the company is registered in the company's application for registration with the consent of the directors.

Before registering a company with ASIC, make sure you have people who are eligible to be directors and who have given their consent in writing.

You will need to provide the following personal information about the directors in the application:

- given and family names and any former names
- date of birth
- place of birth (town or city, and state or country), and
- residential address

Appointment by directors

The following applies to both registered charity and non-charitable CLGs

A CLG's constitution will usually set out some rules about the appointment of directors by the board.

If a vacancy arises between AGMs (sometimes called a 'casual vacancy'), the constitution will typically allow the board to appoint a director to fill the vacancy. As always, the written consent of the director to be appointed is required before they are appointed. The constitution may require the appointment be confirmed at the next AGM.

The constitution may also allow directors to appoint a director to make up a quorum of directors' meeting, even if the total number of directors of the company at the start of the meeting is not enough to make up that quorum.

Note

If the director is not confirmed at the next AGM, this does not make any of the actions of the company 'invalid' during the period they were appointed. That director has still been capable of binding the company in their dealings with other people (for example, if they have entered a contract).

Appointment by members' resolution

A person may be appointed by a resolution passed at a general meeting appointing them or confirming a previous appointment by directors.

If the company is appointing more than one director, it's generally simplest, to pass separate resolutions for each director. This is because a resolution appointing or confirming the appointment of two or more directors will be void unless there is an earlier resolution that the appointments or confirmations can be voted on together **and** no votes were cast against that resolution. There are exceptions to this rule, but in general, the easiest approach is to simply have separate resolutions for separate directors.

Example

A sample resolution of directors to appoint a new director is set out below:

> *The directors appoint Ms Katherine Smith to be a director of XYZ Ltd, effective from 1 January 2017 until the end of the next annual general meeting of XYZ Ltd (or earlier resignation or termination in accordance with the rules).*

To help make sure the director is eligible to hold the position, the company may also wish to state something like this in the minutes:

> *The company has received (and will keep for its records) a written statement by Ms Katherine Smith confirming that she:*
>
> – *agrees to act as a director of XYZ Ltd*
>
> – *satisfies the Corporations Act requirements for being a director; and*
>
> – *agrees to notify the other directors of XYZ Ltd if any of these matters or her contact details change.*

What happens after a director is appointed?

Non-charitable CLGs must notify ASIC within 28 days if a person is appointed as a director.

You must also provide ASIC with the same details of the new director as are required for the initial directors when registering the company (see 'Appointing directors at the time of registration' above).

Caution

If your organisation doesn't notify ASIC within the required timeframes, a penalty might apply.

Other notifications

You may need to consider whether there are other people, organisations or agencies that should be notified of a change of director or a new director. Check your organisation's policies and important documents such as funding agreements and leases.

Note

If your organisation is registered for tax purposes (for example, if it has an ABN), updating the ASIC database will also update the ATO's database. The ATO and ASIC communicate the changes between themselves. Similarly, if the organisation is a registered charity CLG, changes notified to the ACNC will be passed on to ASIC and to the Australian Business Register.

When will the position of director become vacant?

The following applies to both registered charity and non-charitable CLGs.

A person stops being a director of a CLG in any of the following circumstances:

- they resign by giving written notice to the company

- they are disqualified from managing corporations
- they are removed by a resolution of the members
- if they were appointed for a specified term, when that term ends, or
- they die

The other directors of a CLG can't remove a director.

An organisation's constitution may also outline circumstances in which a director will stop being a director. For example, a director may be required to retire if they stop being a member.

Processes for retirement of a director may be contained in the CLG's constitution. For example, the constitution may provide for notice requirements (for example, 28 days' notice), rather than simply allowing the director to resign.

The ACNC also has the power in certain circumstances to remove or suspend a director of a registered charity CLG (see above).

More information

To review the specific provisions, see sections 203A-D of the Corporations Act.

Note

A CLG is always required to have at least three directors. If a resignation or a disqualification means the organisation has less than this, the remaining directors should take immediate steps to rectify the issue.

What does it mean when a director reaches the end of their 'term'?

The following applies to both registered charity and non-charitable CLGs.

A director may be appointed for a particular length of time. This may be done by resolution when the director is appointed or the CLG's constitution may designate a time period for directors. This length of time is called their 'term' of office.

Check your CLG's constitution to find out if any term applies to directors. The constitution may state whether a director may serve for more than one term and if so whether there is a maximum number of terms, sometimes referred to as 'tenure'.

Returning the CLG's documents

A director will have access to documents about the organisation because of their role. After they leave their position, a director should return these documents as the organisation generally owns them. If the documents aren't returned, the CLG may take court action seeking an order directing the person to return them.

It's good practice for the outgoing director to sign a statement confirming they have returned all relevant documents after they have finished in the position.

Removing a director

The following applies to both registered charity and non-charitable CLGs.

Sometimes an organisation may have to remove a director from office – for example, because the person is not carrying out their duties properly or because the board is in constant dispute.

Despite anything in the CLG's constitution, or any agreement between the company or the members of a company and the director, the director of a CLG may be removed by resolution of members.

There may be legal consequences from removing a director. If member's resolve to remove a director, your organisation should seek legal advice.

A notice of intention to move a resolution for the removal of director must be given to the organisation at least two months before the meeting is to be held (note there are some exceptions to this).

The organisation must give the director a copy of the notice as soon as practicable after it is received. The director is entitled to put their case to members by giving the organisation a written statement for circulation to members that is not defamatory and no longer than 1,000 words. The director must be allowed to speak to the motion at the meeting. The organisation must circulate a copy of the written statement, if one is provided, by sending it to everyone to whom the notice of the meeting is sent.

If there is no time to distribute the statement before the meeting, it must be distributed at the meeting and read aloud before the resolution is voted on.

Caution

Removing a director can be incredibly hard on the people involved and the organisation. Before taking this step, really consider whether there are other ways to resolve the dispute. Given the complexity involved, the organisation may wish to get legal advice before taking this step.

What if the director is an employee of your company?

If your organisation wants to remove a director who is being paid (and removal would mean that the person no longer has a paid position with the organisation), seek legal advice before taking any action to remove the director. The organisation needs to ensure that it complies with relevant contractual and statutory requirements about ending a person's employment.

Under the *Fair Work Act 2009* (Cth), it's illegal to dismiss an employee on a range of grounds.

More information

For more information on fair and lawful termination, see the Fair Work Ombudsman's website.

Appointing and removing secretaries

Who can be a secretary?

A CLG must have a company secretary. The directors appoint the company secretary. A company secretary must be at least 18 years old. If a company has only one company secretary, they must ordinarily reside in Australia. If a company has more than one company secretary, at least one of them must ordinarily reside in Australia.

A person who is disqualified from managing corporations may not be a company secretary (the circumstances in which someone is disqualified are listed above). A person disqualified from managing corporations may only be a company secretary if ASIC has granted permission or leave is granted by a Court.

A company secretary must consent in writing to holding the position of company secretary. The company must keep the consent.

For appointments after the initial registration of the CLG, changes to the secretary must be notified to ASIC for non-charitable CLGs.

The same person may be both a director of a company and the company secretary.

For more information about the specific responsibilities of a secretary, see **part 3** of this guide.

Does the secretary have to be on the board of directors?

While the same person may be both a director of a company and a company secretary, there is no need for them to be.

The secretary doesn't need to be on the board but they will commonly sit in on board meetings and be responsible for board minutes. If your CLG's constitution doesn't require the secretary to be a member of the board, it will be implied (unless the rules expressly state otherwise) that the secretary can't vote at board meetings.

For more discussion on board meetings, see **part 6** of this guide.

How is a secretary appointed?

A secretary is appointed by the directors of an organisation. As detailed above, the secretary must consent to act as secretary **before** being appointed. The organisation **must** keep the consent given by the secretary.

The first secretary of your CLG is the person who is listed as secretary at the time of incorporation with ASIC.

Example

A sample resolution of a board to appoint a new secretary is set out below:

- *The board appoints Ms Katherine Smith to be the secretary of XYZ Ltd, effective from 1 January 2013.*

To help make sure the secretary is eligible to hold the position, the company may also wish to state in the minutes something like this:

- *The board has received (and will keep for its records) a written statement by Ms Katherine Smith confirming that she:*
  - *agrees to act as the secretary of XYZ Ltd*
  - *satisfies the AIR Act requirements for being a secretary, and*
  - *agrees to notify the board of XYZ Ltd if any of these matters or her contact details change.*

What happens after a secretary is appointed?

ASIC must be notified within 28 days if a person is appointed as a secretary. ASIC must also be provided with the details of the new secretary including:

- given and family names
- date of birth
- place of birth, and
- residential address

What is the role of a secretary?

Under the Corporations Act, the company secretary of a public company has a number of obligations.

These obligations under the Corporations Act include to:

- maintain a registered office and to notify ASIC of any change to this address within 28 days
- keep the registered office open to the public during certain hours
- notify ASIC of a change to the principal place of business
- lodge notices with ASIC regarding personal details of directors and secretaries
- lodge financial reports with ASIC (where required), and

- respond to requests from ASIC in relation to an extract of particulars and to return them

If a CLG fails to comply with a corporate responsibility provision, the secretary is deemed to have contravened the Corporations Act. Also note that a secretary's obligations under the Corporations Act may continue even after the organisation has been deregistered.

More information

The Australian Institute of Company Directors has published a guide on 'The role of the Company Secretary'.

Caution

A court may impose a penalty of up to $200,000 for the contravention of a corporate responsibility provision where the contravention is serious, or prejudices the interest of the company or its members or the ability of the company to pay its debts.

When will a secretary's position become vacant?

A person will stop being a secretary of a CLG in any of the following circumstances:

- they resign (in writing)
- they are removed from the position by the directors
- they are disqualified from managing corporations, or
- they die

The CLG's constitution may outline other circumstances in which a person will stop being a secretary.

A company secretary of a CLG who resigns may notify ASIC of the resignation. If the company secretary doesn't do so, the CLG must notify ASIC of the company secretary's resignation.

Tip

To assist the transfer of information from one secretary to the next, it's good practice to:

- arrange a handover from the outgoing to the incoming secretary
- arrange for the new secretary to seek information from the outgoing secretary (for example – logins and passwords, financial records, copies of documents lodged with ASIC, or, where appropriate, the ACNC) as soon as they are appointed or elected
- ensure that secretaries store all information securely in a central place (such as the company's office or computer), including back-ups of electronic data, and
- provide a copy of the constitution and explain the company's policies and procedures to the new secretary

Part 3

Directors’ legal roles, powers and duties

Directors' legal roles, powers and duties

This part covers:

- main legal tasks of company directors
- powers that can be exercised by company directors
- directors' duties, and
- consequence of breaching director's duties

Summary of key points in this part of the guide

What is the main legal tasks of a director?	The main legal task of a director is to manage the affairs of the CLG and provide direction and oversight of its work. A director must be completely up-to-date with what the CLG is doing. Although a director can delegate functions or tasks to others in the organisation, the directors remain ultimately responsible for all the CLG's activities.
What powers may directors exercise?	Directors may exercise all the powers of the CLG. These powers exclude those which, under the Corporations Act or the CLG's constitution, the company is required to exercise in a general meeting (see **part 5** of this guide).
Where are the legal duties of directors and officers set out?	For non-charitable CLGs, directors' legal duties ese are set out in the Corporations Act. For registered charity CLGs, these are mostly set out in ACNC Governance Standard 5 and some provisions of the Corporations Act. Directors also have duties under the common law (known as 'fiduciary duties'). The directors might also be subject to duties under other legislation, such as tax and health and safety legislation.
What are the consequences of a breach of directors' duties?	A breach of a directors' duties can have serious consequences, including criminal penalties in some cases. Consequences for breaching your duty as a director of a non-charitable CLG are outlined under the Corporations Act. For registered charity CLGs, these are listed under ACNC Governance Standard 5 and some provisions of the Corporations Act. There can also be common law consequences for breach.
Are directors or officers personally liable for the CLG's debts and liabilities?	Generally, directors and officers are not personally liable for the CLG's debts and liabilities. There are some exceptions – for example, personal liability might arise if a director allows the CLG to operate while it is insolvent, or a CLG doesn't pay its employees their superannuation entitlements.

What requirements apply to company secretaries?	Requirements also apply to company secretaries – mostly for non-charitable CLGs, which are designed to ensure the company complies with obligations under the Corporations Act.

The role of directors

What are the main legal tasks of a director?

The main tasks and legal obligations of a director or officer of a CLG are in:

- the Corporations Act
- the company's rules or constitution
- the company's policies and procedures (if any), and
- other legislation (for example, work health and safety legislation)

Registered charity CLGs have obligations under the ACNC Governance Standard 5. These apply instead of some obligations contained in the Corporations Act.

Directors also have duties under the common law (known as 'fiduciary duties').

More information

Directors and officeholders of CLGs registered with the ACNC should refer to our guide to running a registered charity CLG.

The directors are responsible for managing the affairs of the organisation. For this purpose, they can exercise all the powers of the organisation, except any powers that, under the Corporations Act or the constitution can only be exercised by the members. For example, under the Corporations Act, the constitution can only be amended by the members. The constitutions of some registered charity CLGs provide that only members can remove a director or auditor. However, powers reserved for members are generally quite limited, so the directors usually have wide discretion to manage the CLG's affairs.

Managing the CLG's affairs

The directors control the CLG's operations and finances. The directors must be completely up-to-date on what the CLG is doing to properly manage its affairs.

This will involve, for example:

- finding out and assessing for yourself how any proposed action will affect your CLG's business performance, especially if it involves a substantial amount of money
- getting outside professional advice if you need specialist input to make an informed decision
- as a board, questioning operational managers and staff about how the business is going (if you aren't running operations yourselves), and
- taking an active part in directors' meetings (see **part 6** of this guide for further detail on directors' meetings)

Record keeping

The directors are responsible for ensuring that the CLG complies with its obligation to keep proper records.

All companies must have financial records so that:

- true and fair financial statements of the company can be prepared if needed
- financial statements can be conveniently and properly audited if necessary, and
- the company can obey the tax laws (see **part 4** of this guide for more information on record keeping)

Directors must ensure the company keeps up-to-date financial records that:

- correctly record and explain its transactions, and
- explain the company's financial position and performance

Keeping accurate records also helps directors show they are complying with their legal duties outlined below.

Keeping regulators informed

Each year within a few days after your CLG's review date (usually the anniversary of your company's registration), ASIC will send your company an annual statement. The annual statement sets out the company's details recorded in ASIC's register, such as the names and addresses of its directors and secretary, registered office, and principal place of business.

If these details are correct and no other changes have occurred that require you to notify ASIC – then within two months after the review date:

- you must pay the annual review fee shown in the invoice that accompanies the annual statement, and
- the directors must pass a solvency resolution (that is, the directors must pass a resolution stating that they have or don't have reasonable grounds to believe that the company can continue to pay its debts as and when they fall due).

Directors are responsible for ensuring that ASIC is notified of these changes to the company.

See **part 2** of this guide for information about how to change company details.

More information

Directors and officeholders of CLGs registered with the ACNC should refer to our guide to running a registered charity CLG for information on reporting to the ACNC.

See **part 4** of this guide for more information on reporting.

Directors' duties and powers

Does a director have power to act on behalf of the company?

The Corporations Act provides that the company's business is to be managed by or under the direction of the directors.

Indeed, directors may exercise all the powers of the company except any powers that the Corporations Act or the CLG's constitution (if any) requires the company to exercise in a general meeting. In this way, directors have the power to act on behalf of the company.

What are the legal duties of a director?

The law requires directors and officers of a CLG to meet certain standards of conduct. And, under the common law (judge made law), directors are subject to various duties.

The legal duties set out in the Corporations Act differ depending on whether the CLG is a registered charity CLG.

More information

Directors and officeholders of CLGs registered with the ACNC should refer to our guide to running a registered charity CLG for information on their legal duties.

Note

The legal duties that apply under the Corporations Act, apply not only to official directors of CLGs, but also to ‘officers’.

What is an officer?

An officer is a person with a relationship to a CLG similar to that of a director, who has influence over the governance of the CLG.

The Corporations Act defines an 'officer' of a CLG as:

- a director or secretary of the company
- a person who makes or helps to make decisions that affect the whole or a substantial part of the company or who may significantly affect the company's financial standing (for example a CEO), and
- any receiver, administrator, liquidator or trustee of the company

Directors and officers of a CLG owe their duties to the company and may face legal proceedings conducted by the company or by ASIC if they breach these duties.

Note

The directors of CLGs also have obligations set out in other laws (for example, work health and safety legislation, tax legislation and employee protection legislation).

Summary of the main duties of directors and officers of non-charitable CLGs

	Duties of directors and officers	Source of duty	Liability
1.	To exercise your powers and duties with the care and diligence of a reasonable person in a similar position	Corporations Act	Civil liability
2.	To exercise your powers and duties in good faith in the best interests of the company and for a proper purpose	Corporations Act	Civil liability (criminal if the breach is reckless or intentionally dishonest)
3.	Not to improperly use your position to gain an advantage for yourself or someone else, or to cause detriment to the company	Corporations Act	Civil liability
4.	Not to improperly use information obtained through your position to gain an advantage for yourself or someone else, or to cause detriment to the company	Corporations Act	Civil liability

5.	To disclose material personal interests	Corporations Act	Civil liability
6.	Not to allow a corporation (for example, a CLG) to operate while it's insolvent	Corporations Act	Criminal liability; personal liability for CLG's debts
7	Workplace obligations under other legislation, such as the *Occupational Health and Safety Act 2004* (Vic)	Varies	Varies

Duties of directors and officers of non-charitable CLGs under the Corporations Act

The Corporations Act imposes general duties on directors and officers of non-charitable CLGs.

Duty 1 – to act with care and diligence

This standard requires a director to carry out their role with reasonable care and diligence.

'Reasonable care and diligence' is measured by what a reasonable person would do in the same situation.

You don't have to have particular skills or qualifications to be a director (unless the constitution says otherwise), but you do need to use whatever skills and experience you have for the benefit of the CLG and put reasonable effort into tasks you take on. This will involve keeping yourself informed about the activities of the CLG, understanding its finances and being actively involved in decisions. Advice or information can be taken from professionals or experts (for example accountants) but it is important that the directors inform themselves properly and make an independent assessment of any advice or information received.

However, the duty of reasonable care and diligence doesn't mean that all board decisions must be perfect. Sometimes, even though something has been thoroughly researched and discussed by the board, the outcome is not as hoped.

Defences to duty 1

Relying on advice from others

In meeting this duty, it's reasonable for you to rely on the special knowledge or expertise of another director, officer, adviser or expert (such as an accountant). However, you must adequately inform yourself and make an independent assessment of that information or advice.

When determining what will be reasonable, the Corporations Act presumes that sources of information or advice can be reasonably relied on – as long as the director relies on them in good faith and independently assesses their merit. The presumption applies to information or advice received from:

- employees of the organisation who the director reasonably believes are reliable and competent
- professional advisors where the subject matter of the information or advice falls within their expertise
- another office holder acting within their authority, and
- a sub-committee of the organisation, provided the director is not a member of the sub-committee

Business judgements

The law recognises that running a company involves making informed decisions on behalf of the company. These decisions will not always turn out to have been for the benefit the company, but this doesn't mean the person making the decision has breached a duty owed to the company.

As a result, the Corporations Act has a 'business judgment' defence to claims that a director has failed to meet the standard of care and diligence required under the Act.

This defence can be relied on where:

- you make a business decision in good faith for a proper purpose (that is, for the benefit of the company and not some other entity)
- the decision doesn't give rise to any actual or perceived conflict of interests
- you have informed yourself about the subject matter of the decision to the extent you reasonably believe is appropriate, and

- you rationally believe the decision is in the best interests of the company

Note

The 'business judgment' rule only applies as a defence to the duty of care and diligence. It can't be relied on for any of the other statutory duties below.

Example – the expensive fun run

Sara and Roshan are directors of a non-charitable CLG whose principal purpose is the development of a particular sport. After seeing the great success other not-for-profit organisations have with fun runs, they decide to spend 80% of the company's annual budget doing the same. In the end, only 10 runners sign up and the event makes a loss.

ASIC, or the company, could theoretically allege that Sara and Roshan have breached their duty of care and diligence. It's arguable that in spending 80% of the annual budget (as opposed to 20-30%) on the run, they failed to meet this duty. However, they could argue following the business judgement rule that they made the decision in good faith and for the proper purpose of advancing the fundraising goals of the company.

There were no inherent conflicts of interests in spending company funds to stage the fun run. They informed themselves about the likely success of fun runs after conducting a detailed analysis on the successes of other not-for-profit fun runs and, at the time they decided to spend the money, they rationally believed it was in the best interests of the company to stage the fun run.

Duty 2 – to act in good faith and in the best interest of the company

This duty requires directors and officers to exercise their powers and discharge their duties in good faith in the best interests of the company and for a proper purpose.

To meet this duty, you must hold an honest belief that actions you take are in the best interests of the company. For example, the use of company funds for the benefit of a related but separate entity would generally constitute a breach of the duty to act in the best interests of your company.

Duty 3 – not to improperly use your position as a director or officer

As a director or officer, you are prohibited from using your position in the company to gain an advantage for yourself or for someone else, or to cause detriment to the company.

This duty would be breached if, for example, you used your position as director or officer to award a contract to another entity controlled by a friend or relative that was not merit-based.

Duty 4 – not to improperly use information

Directors and officers have a duty not to improperly use information obtained through their position to gain an advantage for themselves or someone else, or to cause detriment to the company.

This duty prohibits directors from distributing confidential information about the company to people outside of the company (unless, of course, this has been consented to by the board of directors).

Duty 5 – to disclose conflicts of interest

Directors and officers are required to disclose to other directors any material personal interests they have that relate to the company's affairs, for example where the company is considering taking on a supplier that is owned or managed by a friend or relative.

Tip

To comply with the legal duty to manage conflicts of interest, take a three step approach when a conflict arises:

1. **Disclose** – tell the board of directors about any actual or even potential conflict of interest (for example, where you are a member of a competing company, or involved in a business that is tendering for a contract)
2. **Manage** – do not be involved in any discussion and do not vote on a decision about the matter in which you have an interest
3. **Record** – ensure that meeting minutes reflect that where a conflict was disclosed, you left the meeting for the relevant discussion and vote, and returned afterwards

Related party transactions

Directors of CLGs should take specific care in relation to related party transactions.

What is a related party transaction?

A 'related party transaction' is any transaction through which the CLG provides a financial benefit to a related party (such as a director, their spouse or certain relatives).

Related party transactions involve conflicts of interest because related parties are often in a position to influence the decision whether the benefit is provided to them, and the terms of its provision. For example, if a CLG of which you are a director wants to buy office supplies from a company owned by your daughter, this would give rise to a related party transaction.

Decisions to give financial benefits to related parties require approval by a majority vote of disinterested (ie. unrelated) shareholders, unless an exception under the Corporations Act applies.

When confronted with a possible related party transaction, ask yourself:

- **Is it a related party?** In addition to directors, their spouse and other relatives, section 228 of the Corporations Act provides a list of persons that are deemed to be related parties.
- **If so, is it a financial benefit?** 'Financial benefit' is interpreted broadly, and includes any financial advantage whether it involves money or not. See section 229 of the Corporations Act for a list of examples.
- **If so, does an exception apply?** Shareholder approval for providing a financial benefit to a related party is not required in some circumstances.

More information

For a full list of exceptions to the related party transactions rule, see sections 210-216 of the Corporations Act.

Example – awarding a contract

Sara and Roshan want to engage an online media company to help build social media awareness about their sport. Roshan suggests that his son Rudi, who has just started his own online media company with some seed investment from Roshan, would do a great job and wouldn't charge high fees.

In this scenario, both Rudi and Roshan are likely related parties receiving financial benefits. Rudi is the son of a director and would be receiving a financial benefit by supplying services to the non-charitable CLG in exchange for payment. Similarly, Roshan is a director of the non-charitable CLG and would receive a financial benefit by way of a return on his investment in Rudi's company. Importantly, both Rudi and Roshan are in a position to influence the decision of whether the financial benefit (supplying the media services) is provided to them, and the terms of its provision.

If Sara and Roshan decide that awarding the contract to Rudi is in the best interests of the company, they will need to confirm whether a Corporations Act exception applies and, if not, only award the contract to Rudi after receiving the majority approval of all disinterested shareholders.

Duty 6 – to prevent insolvent trading

Directors and officers must ensure that the company doesn't continue to trade while it's insolvent (unable to pay its debts as and when they fall due). This requires the board to regularly review the company's financial position and ensure there is enough money to pay for its activities.

Relevantly, a director will not be liable for a breach of this duty if at the time the company took on the extra debt it can be shown the director:

- had reasonable grounds to expect that the company could meet its current and future debts, or
- took all reasonable steps to prevent the company from incurring the debt

More information

See our fact sheet 'Insolvency and your organisation'.

Duties and obligations under other legislation

Directors and officers of CLGs are also subject to further duties and obligations under other legislation.

For example, under the *Occupational Health and Safety Act 2004* (Vic), 'officers' of an incorporated body can be personally liable for breaches of that Act. These provisions apply to both directors and officers of a CLG, although volunteer directors and officers may be exempted from these provisions in certain circumstances.

More information

For more information about work health and safety (WHS) laws, see our WHS webpage.

If your organisation employs people, the organisation will also be subject to obligations under the *Fair Work Act 2009* (Cth) which provides employee protection, for example relating to minimum entitlements and flexible working arrangements. Directors, officers and other persons involved in a contravention may be liable under the *Fair Work Act 2009* (Cth).

More information

For more information, see the Fair Work Ombudsman's website.

There may also be specific legal obligations that apply to you and your company because of the type of work the CLG does. For example, legal obligations apply to many different types of work, including working with children, health centres, providing home care or health services, and particular activities (such as the holding of events).

Of course, criminal and other laws that apply to the public can apply to directors of CLGs.

What happens if a director doesn't comply with their duties?

There are legal consequences if you are found not to have complied with your legal duties (ie. to have 'breached' the duties).

The main penalties for breach are financial (for example, a fine or paying compensation to the organisation, or both).

Breach of duties under the Corporations Act

If you fail to perform your duties as a director or officer under the Corporations Act, you may:

- have contravened a civil penalty provision (and the court may order you to pay to the Commonwealth up to $200,000)
- be personally liable to compensate the company or others for any loss or damage they suffer, and
- be prohibited from managing a company

Where you have been found to have breached the insolvent trading provisions, you may be subject to:

- civil penalties (up to $200,000)
- compensation proceedings (for the amounts lost by creditors), and
- if you are reckless or dishonesty is a factor, criminal penalties (fines of up to $220,000 or imprisonment of up to five years)

Breaches of duties under other legislation

The consequences of a failure to comply with duties under other legislation will vary according to the duty.

Check to see whether any of the other duties you or your company is subject to fines, banning orders or criminal liability (for example under work, health and safety legislation as outlined above).

Breaches of duties under the common law

Some of the duties set out above are also sourced from the common law, so a breach could give rise to action under the common law.

The principle is that if loss is suffered due to the breach of duty, the party which suffered the loss should be compensated accordingly.

Can a director be personally liable for the debts and liabilities of the CLG?

Generally, directors or officers are not personally liable for the debts of the company, including any costs incurred in winding up the company, unless the CLG's constitution say otherwise. However, there are some exceptions.

Directors and officers of CLGs may become personally liable for debts incurred while the company is insolvent (that is, the company is unable to pay their debts as and when they fall due). This is because one of the fundamental duties of a director is to ensure that the company does not trade while it is insolvent.

Personal liability for directors and officers of non-charitable CLGs may arise for any losses suffered by the company as a result of any breach of directors' duties. For example, a director who fails to act in the best interest of the company when authorising company expenditure may be personally liable for any losses resulting from that expenditure.

Personal liability for company directors and officers can also arise for failure to comply with duties outside of the Corporations Act. For example, officers and directors of an incorporated body can be personally liable for costs associated with breaches of the *Occupational Health and Safety Act 2004* (Vic). Notably, volunteer directors and officers are exempted from these provisions.

More information

For more information about work health and safety (WHS) laws, see our WHS webpage.

Directors may also become personally liable under tax legislation for overdue Pay As You Go or Superannuation Guarantee Charge payments (for more information see the ATO's website), or under the *Fair Work Act 2009* (Cth) for certain contraventions, for example underpayment of an employee.

More information

For more information, see the Fair Work Ombudsman's website.

How do the duties of company secretaries fit with directors' duties?

A CLG must have at least one company secretary who ordinarily resides in Australia. The secretary is appointed by the directors – however, one person may be a secretary and a director. This is a Corporations Act requirement and applies to both registered charity CLGs and non-charitable CLGs.

A company secretary is an officer of the company and, in that capacity, may be subject to the duties imposed on officers under the Corporations Act (see the discussion in **part 2** of this guide) for both registered charity and non-charitable CLGs.

A director should be aware of these requirements of secretaries set out in the Corporations Act as the company's failure to comply with its obligations may result in a breach of the director's own duties (such as the duty of care and diligence).

Note

A company's constitution may set other requirements for the secretary of the company – for example, it might specify that the secretary is responsible for maintaining certain registers (see part 4 about registers and records), and making arrangements for meetings and taking minutes of those meetings (see part 5 about Annual General Meetings and part 6 about Board meetings).

The company secretary of a non-charitable CLGs has specific responsibilities to ensure the company complies with given 'corporate responsibility provisions' under the Corporations Act (set out in **part 2** of this guide).

More information

The Australian Institute of Company Directors (**AICD**) has published a guide 'Role of the Company Secretary' which provides an overview of the role of the company secretary.

Part 4

Reporting, records and registers

Reporting, records and registers

This part covers:

- reporting and record keeping requirements for CLGs
- registers that CLGs must keep
- who can access a CLG's reports and records, and
- ASIC and ACNC compliance powers

Summary of key points in this part of the guide

What are a CLG's reporting obligations?	The reporting obligations for **non-charitable CLGs** vary depending on the size of the CLG. Broadly, a CLG is required to prepare an annual financial report and director's report. **Registered charity CLGs** have an ongoing obligation to report by submitting an Annual Information Statement and an annual financial report (if medium or large size). See our guide to running a registered charity CLG for more information.
What are a CLG's record keeping requirements?	A CLG must keep written financial records that correctly record and explain its transactions and financial position and performance, as well as operational records such as meeting minutes.
What registers must a CLG keep?	A CLG must have a members' register and may choose to keep other types of registers too. The members' register, and other types of registers which a CLG chooses to keep may help the CLG to meet its legal obligations to ASIC and ACNC (if applicable). We have provided sample registers in this part of the guide.
Can ASIC and the ACNC compel a CLG to provide certain information?	Where there are concerns about a CLG's compliance with the law, ASIC may use its powers to inspect certain documents, like financial records, or request production of documents. For registered charity CLGs, the ACNC may also request production of documents.

Note

Non-charitable CLGs and registered charity CLGs have different reporting and record keeping obligations. See our guide to running a registered charity CLG for more information.

What are a non-charitable CLG's reporting obligations?

Non-charitable CLGs have reporting obligations under the Corporations Act to prepare:

- an annual financial report, and
- a director's report

Both reports are required to be prepared in accordance with Chapter 2 of the Corporations Act and they must be reviewed or audited.

The reporting obligations vary depending on the size of the CLG.

Summary of reporting obligations for the different types of non-charitable CLGs

Tier	Type of CLG	Obligations
Tier 1	Small CLG A CLG is a 'small CLG' in a particular financial year if: • it's a CLG for the whole of the financial year • it's not a deductible gift recipient at any time during the financial year, and • its revenue (or consolidated revenue if it is a consolidated entity) for the financial year is less than $250,000	A small non-charitable CLG has no obligation to prepare reports unless ASIC, or a member or members with at least 5% of the votes directs that reports be prepared. A direction can relate to either or both the financial report and the directors report. Unless directed by ASIC or a member, the CLG does not have to: • prepare a financial report or have it audited • prepare a directors' report, or • notify members of annual reports
Tier 2	CLG with annual (or consolidated) revenue of less than $1 million	The CLG: • must prepare a financial report • can elect to have its financial report reviewed, rather than audited unless the company is a Commonwealth company, or a subsidiary of a Commonwealth company or Commonwealth authority • must prepare a directors' report, and • must give annual reports to any member who elects to receive them
Tier 3	CLG with annual (or consolidated) revenue of $1 million or more	The CLG must: • prepare a financial report • have the financial report audited • prepare a directors' report, and • give annual reports to any member who elects to receive them

Financial reports

As outlined in the table above, Tier 2 and Tier 3 CLGs must prepare financial reports.

Small CLGs (Tier 1) are not required to do so (unless directed), however, they may decide to prepare financial reports as a matter of good governance or where they think they will be required to provide reports in the future (previous years' reports will help in preparing future financial reports).

Financial reports must include **financial statements** and **a directors' declaration** about the financial statement.

Financial statements include:

- statements of financial position as at the end of the year, comprehensive income for the year, cash flows for the year and changes in equity
- consolidated financial statements, if required by accounting standards, and

- any notes to the financial statement which must include any disclosures required by the Corporations Regulations, any notes required by the Australian Accounting Standards and any other information required to give a true and fair view of the CLG's financial position

Tip

Financial statements are required to include a lot of documents. Consider getting an accountant to help you.

A directors' declaration about the financial statement and notes is a statement from the directors about the financial report and the solvency of the CLG.

The directors' declaration must include specific information such as:

- whether, in the directors' opinion, there are reasonable grounds to believe that the CLG will be able to pay its debts when they become due and payable
- if the CLG has included an explicit and unreserved statement of compliance with international financial reporting standards in the notes to the financial statements, that this statement has been included in the notes to the financial statement, and
- whether, in the director's opinion, the financial statement and notes are in accordance with the Corporations Act, including whether the financial report complies with the Australian Accounting Standard and provides a true and fair view of the CLG's financial position

Caution

If you're completing your directors' declaration and you have reason to believe the CLG can't pay its debts as and when they become due and payable, you may be trading while insolvent. **STOP and consider your and the CLG's next steps**. You may need to seek urgent legal advice

Other requirements for financial reports are:

- the financial report must be prepared in accordance with the accounting standards set by the Australian Accounting Standards Board. For small CLGs, there is an exception to this requirement if a member direction to prepare a financial statement specifies that the financial report does not need to comply with the accounting standards, and
- the financial statements and notes to the financial statements must give a 'true and fair view' of the financial position and performance of the CLG. This means that the financial report must include all information necessary to ensure that a reader of the financial statement will be able to understand how the CLG is performing.

Tip

ASIC has published a financial reporting quiz to test a director's knowledge of financial reporting.

Financial report audit or review requirements

Depending on the size of the CLG, the financial report may need to be audited or reviewed.

Small CLG	If a financial report is required to be prepared due to a direction from members or from ASIC, there is no obligation to have the financial report reviewed or audited.
Tier 2 CLG	The financial report is not required to be audited, although a CLG can elect to do this. The financial report must be reviewed if it is not audited.
Tier 3 CLG	The financial report must be audited

Who may conduct a review?

A review of a financial report provides a lower level of assurance than an audit, but is less costly.

The review does not have to be undertaken by a registered auditor. However, the reviewer must be a member of and hold a practicing certificate issued by Chartered Accountants Australia and New Zealand, CPA Australia, or the Institute of Public Accountants.

Who may conduct an audit?

An individual who is a registered company auditor, a firm, or a company that is an authorised audit company may be appointed as auditor for a CLG.

An auditor is required to provide a report (to members) in relation to the CLG's financial report and the adequacy of its financial and other record keeping requirements under the Corporations Act.

The directors of a CLG must appoint an auditor within one month after the day on which the company is registered, unless the company has appointed an auditor at a general meeting. The auditor holds office until the company's first AGM, where the appointment is confirmed by the members or another auditor is appointed.

The auditor holds office until:

- they obtain ASIC consent to resign, are removed by the company, die, or stop being capable of acting as an auditor because of certain provisions in the Corporations Act, or
- the company is being wound up

More information

Except for small CLGs, CLGs must comply with the laws regarding removal or resignation of an auditor. For more information on the resignation, replacement and removal of auditors, see:

- ASIC Regulatory Guide 26 Resignation, removal and replacement of auditors
- ASIC Information Sheet 65 Resignation of an auditor of a public company, and
- ASIC Information Sheet 62 Removal of an auditor of a company

Director reports

As outlined above, Tier 2 and Tier 3 CLGs must prepare director reports.

Small CLGs (Tier 1) are not required to do so (unless directed), however, they may decide to prepare director reports as a matter of good governance.

A director's report must include:

- a description of the CLG's short and long term objectives
- the CLG's strategy for achieving those objectives
- a statement of the CLG's principal activities during the year and how those activities assisted in achieving the company's objectives
- a statement about how the CLG measures its performance, including any key performance indicators used
- the name of each person who has been a director of the CLG at any time during or since the end of the year and the period for which the person was a director
- each director's qualifications, experience and special responsibilities
- the number of meetings of the board of directors held during the year and each director's attendance at those meetings
- the classes of membership (if the CLG has different classes) in the CLG and the amount which a member of each class is liable to contribute if the CLG is wound up
- the total amount that members of the CLG are liable to contribute if the CLG is wound up, and
- if an audit of the financial records is required, a copy of the auditor's declaration in relation to the audit or review for the financial year

If the financial report for a financial year includes additional information to give a true and fair view of the financial position and performance, the director's report for the financial year must also:

- set out the director's reasons for forming the opinion that the inclusion of that additional information was necessary to give the true and fair view, and
- specify where that additional information can be found in the financial report

Tip

The directors' report must also be made in accordance with a:

- directors' resolution (see **part 6** of this guide on board meetings and don't forget to check your constitution for any requirements)
- be signed by a director, and
- specify the date the report was made

Providing reports to members

CLGs don't automatically have to provide reports to members. However, members may elect to receive copies of any or all of the following, by sending a written notice to the CLG:

- financial reports
- directors' reports, or
- auditor's reports

As noted above, a CLG may not necessarily need to prepare some or all the reports in a financial year. If you do prepare any or all the reports, they should be provided to all members who requested to receive a copy.

The time frame for providing a report to a member differs depending on the size of the CLG.

Summary of obligations for providing reports to members

Tier	Type of company	Obligations
Tier 1	Small CLG	Any reports that the small CLG has been directed to prepare to all members who have elected to receive financial reports by the later of: • two months after the direction to prepare the reports was given, or • four months after the end of the financial year
Tier 2	CLG with annual (or consolidated) revenue of less than $1 million	Members who have elected to receive reports must be provided the reports free of charge by the earlier of: • 21 days before the next AGM after the end of the financial year, or • four months after the end of a financial year
Tier 3	CLG with annual (or consolidated) revenue of $1 million or more	Members who have elected to receive reports must be provided the reports free of charge by the earlier of: • 21 days before the next AGM after the end of the financial year, or • four months after the end of a financial year

Lodging financial reports with ASIC

There is no requirement for a small CLG to lodge reports with ASIC.

For Tier 2 and Tier 3 CLGs that are required to prepare a financial report, the report must be lodged with ASIC within four months of the end of the financial year.

When lodging financial reports with ASIC, the reports must be accompanied with ASIC's 'Form 388.' This form contains basic information about the CLG and the financial reports to help ASIC comply with the legislation.

Tip

A 'Form 388' can be lodged through ASIC's online services.

What are a non-charitable CLG's record keeping requirements?

Financial records

A CLG must keep written financial records that:

- correctly record and explain its transactions and financial position and performance, and
- enable true and fair financial statements to be prepared and audited

Financial records include:

- financial statements
- general ledger
- general journal
- asset register
- computer back-up discs
- cash records
- bank account statements, bank reconciliations and bank loan documents
- sales and debtor records
- work in progress records
- invoices and statements received and paid

- creditors ledger
- unpaid invoices
- registers
- minutes of meetings of directors and members, and
- deeds (where applicable) relating to:
  - trusts
  - debentures
  - contracts and agreements (such as hire purchase contracts or leases), and
- inter-company transactions, including guarantees

Tip

These are documents in common use – just make sure you keep them!

For more information, see ASIC Information Sheet 76: What books and records should my company keep?

How long must financial records be kept?

Financial records must be kept for seven years after the transactions covered by the records are completed. They can be kept in electronic form if they are convertible to hard copy form. Hard copy financial records must be made available within a reasonable time to a person who is entitled to inspect the records.

Caution

It's important to comply with this obligation as it is an offence under the Corporations Act to not keep proper books and records.

Operational records

Operational records are records about the CLG's business.

In general, except for meeting minutes, there is no obligation for a CLG to keep operational records.

However, it's likely that a CLG will need to refer to operational records to meet other obligations under the Corporations Act. Operational records can be used to demonstrate why particular decisions were made and help people who subsequently join a CLG understand why things have occurred. For these reasons, it's good practice to keep operational records.

Operational records include:

- meeting minutes
- reports to the board or other internal reports or memos
- written details about the CLG's activities, programs and services
- strategic and operational plans
- project proposals and documentation, and
- member communications

Meeting minutes

A CLG is required to keep a minute book recording minutes of meetings and resolutions.

What are minutes?

Minutes are an official and permanent written record of what happened at a meeting (including a directors meeting, general meeting and AGM), and any resolutions passed without a meeting.

Meeting minutes can be an electronic record if the record can be produced in written form.

Meeting minutes should record:

- all key decisions
- the nature and type of meeting, the time of commencement, the time of conclusion and the time and place of the next meeting
- a list of who was present, a list of apologies accepted and all resolutions passed at the meeting
- a record of any delegation of power, all appointments made and the terms of reference of any committee that is set up
- the outcome of any voting on a resolution and whether there were any abstentions (i.e. a refusal to vote) on a resolution
- the declaration by a director of any material personal interest, and
- incidents occurring at the meeting which may be significant

Meeting minutes must be signed within a reasonable time after the meeting by either the chair of the meeting or the chair of the next meeting.

For more information on meetings and meeting minutes see **part 5** (AGMS and general meetings) and **part 6** (board meetings) of this guide.

More information

For information on a registered charity CLG's reporting and record keeping obligations, see our guide to running a registered charity CLG.

What registers must a non-charitable CLG keep?

Members' register (compulsory)

A CLG must keep and maintain a members register.

The Corporations Act sets out the following minimum information which must be recorded in the members register:

- each member's name and address
- the date that person became a member, and
- if the company has more than 50 members, an up-to-date index of members' names

Tip – index

The Corporations Act states:

- the member index must be convenient to use and allow a member's entry in the register to be readily found, and
- a separate index need not be included if the register itself is kept in a form that operates effectively as an index

A register of members must also show:

- the name and details of each person who stopped being a member of the company within the last seven years, and
- the date on which the person stopped being a member

The CLG may keep entries of past members separate from the rest of the register. A register must be kept at the CLG's registered office, the principal place of business, a place where the work involved in maintaining the register is done or another place approved by ASIC.

If the register is established at an office that is not the registered office or principal place of business, or it is moved from one place to another, the CLG must lodge with ASIC a notice of the address at which the register is kept within seven days. However, no notice is required if you move the register between the registered office and principal place of business.

Tip – member rights

CLG members have a right to elect to receive meeting related documents in a physical or electronic form, and CLGs have an obligation to follow member wishes (see 'Sending meeting related documents to members in the correct way' below).

It would be useful to indicate on the members register whether a member has expressed a preferred method of communication and the date this election was made.

Tip – the CLG constitution

Check your CLG’s constitution (and any policies) about the members register. You may have different or additional requirements to those set out in the Corporations Act.

For example, your CLG’s constitution may require the register to record the amount of the guarantee each member gives, or the date they gave it.

Inspecting the members’ register

A member of a CLG can inspect a register without charge.

Other people may inspect the register only on payment of any fee required by the CLG. The fee can be a maximum of $5 for each inspection (if the register is not kept on a computer), or a reasonable amount that does not exceed the marginal cost of providing an inspection if the register is kept on a computer.

The CLG must give a person a copy of the register within seven days if they have made an application to access the register and paid the fee required by the company.

An application must be in the prescribed form, state the purpose for which the person is accessing a copy and not include a ‘prescribed purpose’. Prescribed purposes are certain purposes that are not acceptable

for requesting copies. For example, a person can't request copies of a member's register for the purpose of soliciting a donation from a member of the public.

It's important to keep the members register in order as the Corporations Act states that a register is proof of the matters shown in the register in the absence of evidence to the contrary.

Further, if it is not kept correctly, a company or aggrieved person can apply to the Court to have the register corrected. If the Court orders that the CLG correct the register, it may also order that the party be compensated for loss or damage suffered.

Tool

For an example of a members register, see **Tool 1: Sample members register**.

Other registers (optional)

Although not compulsory, it's good practice to keep other registers (depending on the size and activities of your CLG) to keep track of important matters and documents.

Relevant documents register (optional)

It's good practice for a CLG to maintain a register of relevant documents, to keep track of relevant documents that are required to be kept.

For some CLGs, particularly small, recently incorporated ones, it may be sufficient to keep a simple register of all relevant documents. Larger CLGs, or those that have been running for a long time, may find it easier to maintain 'sub-registers' because of the volume of documents they are likely to have.

Example of extracts from a register of relevant documents

Document type	Document name	Description	Location	Comments (retention, renewal, review dates where applicable)
Incorporation and governance	Certificate of Registration of Corporation	Certificate issued by ASIC dated 1 July 2017	Folder 1 in the office	ACN
	Constitution	Current version	Folder 2 in the office	See minutes of meeting of members on 1 November 2016 for special resolution approving changes.
	Policies and procedures manual	Contains current policies and procedures	Folder 3 in the office	Date for review: 1 January 2024
Documents lodged with ASIC	Application for incorporation of company	Lodged with ASIC on 1 June 2016	Folder 1 in the office	
	Annual statement (2017)	Lodged with ASIC on 2 July 2017	Folder 1 in the office	
	Change of company details form	Lodged with ASIC on 2 September 2017	Folder 2 in the office	

Tips

If you lodge a document by email, keep both the sent email and any attachment and note these details in the register.

When using ASIC's online lodging service, or the ACNC's Charity Portal, keep a record of all information submitted, for example, by saving or printing out the updated details and documents lodged.

A single relevant documents register approach may not work for larger companies, or those that have been running for many years simply because of the sheer volume of relevant documents. In companies with many relevant documents, your CLG may maintain sub-registers that will make finding documents easier.

Specific additional registers (optional)

Some companies may find it helpful to keep additional registers, such as registers of insurance policies or registers of assets.

Examples of registers which may be useful are set out below, and samples of extra registers are provided in the tools at the end of this part of the guide.

None of these registers are legally required but they might make administration and record-keeping easier.

Common seal register (optional)	A 'common seal' is a rubber stamp with the name of the registered charity CLG on it. It's used for official purposes, such as signing a lease or title deed to property. It's not compulsory to have a common seal, but if your CLG has one, your rules (constitution) must cover its custody and use. If your registered charity CLG has a common seal, it's good practice for the secretary to keep a register of when the seal is used. Ideally, the register should cross-reference to the relevant meeting minutes authorising its use.

Tool

For an example, see **Tool 2: Sample common seal register**.

Assets register (optional)	A register of the CLG's assets (for example, those worth more than a specific amount) is very helpful when, for example: • your company needs to calculate surplus assets (especially if your company is large) • the company prepares financial reports, and • an auditor wishes to check your financial records and assets

Tool

For an example, see **Tool 3: Sample assets register**.

Insurance policies register (optional)	Check your CLG's constitution, policies and operations for any requirements to take out particular insurance policies – for example, public liability, volunteers insurance, worker's compensation or directors' and officers' liability insurance. Your CLG may hold insurance policies such as public liability, volunteers' insurance, worker's compensation or directors' and officers' liability insurance. It can be useful to have a register listing these policies with details such as the type and period of cover.

Tool

For an example, see **Tool 4: Sample insurance policies register**.

More information

For information on insurance see our insurance and risk management guide

Bank details register (optional)	If your CLG has bank accounts or credit cards, it's good practice to keep a register of them. A register of bank accounts (and details about online banking facilities) can help the treasurer manage the cash flow. And, for example, if the CLG is required to keep a special account for project or trust moneys or fundraising funds, this can be noted in the register. Many companies have a rule requiring cheques to be signed by two members of the committee to keep track of who is authorised to sign cheques; it is good practice for the company to keep a register of signatories. Sometimes limits are made on bank account signatories' authority (for example, they may be authorised to transfer money only up to a specified amount). The company can record these limits in the register. It may also be useful to cross-reference the appointment of a signatory to the minutes of the relevant meeting. **Caution:** Details of bank accounts should never be kept in the same place as passwords and 'sample' signatures. It's poor practice and opens a real risk of fraud.

Tool

For an example, see **Tool 5: Sample banking details register**.

Investments register (optional)	If your CLG invests any of its funds (for example, in term deposits, managed funds or shares), or has been donated actual assets (for example, paintings), it's good practice for the CLG to maintain an investments register.

Tool

For an example, see **Tool 6: Sample investments register**.

Key register (optional)	If your CLG has keys – for example, to buildings, filing cabinets, petty cash boxes, vehicles – it is a good security measure to maintain an up-to-date key register.

Tool

For an example, see **Tool 7: Sample key register**.

What compliance powers does ASIC have?

If ASIC is concerned about a company's compliance with the Corporations Act or how funds are being used, ASIC may consider using its powers of compulsory information gathering or inspection. This applies whether your CLG is registered with the ACNC or not.

ASIC's compulsory information-gathering powers allow it to issue a notice to compel a company or person to:

- provide documents and information, and
- attend an examination to answer questions and provide reasonable assistance

ASIC's powers of inspection allow it to inspect certain documents that must be kept under the Corporations Act (for example, financial records). An inspection, unlike the powers to compel the production of documents, does not require ASIC to issue a written notice. The inspection usually takes place at the premises where the documents are located.

The power to inspect documents doesn't mean ASIC can take possession of the documents or make copies of the documents. If ASIC wishes to do either, it must request their voluntary production or use its powers to require the company to provide them with documents. An ASIC officer inspecting documents may, if appropriate, give a written notice to produce documents at the time of the inspection.

Can a CLG be penalised for failing to comply with ASIC?

Under the *Australian Securities & Investments Commission Act 2001* (Cth) it's an offence for a company (or anyone involved in its activities) to fail to comply with a notice from ASIC. If your CLG receives a notice, seek legal advice.

Caution

The penalty for such a breach is 100 penalty units ($27,500 for offences committed) or imprisonment for two years, or both.

If ASIC finds that a company doesn't have a good reason for not complying with a notice, ASIC can certify to a court that a notice has not been complied with. The court can then, in its discretion, inquire into the case and order compliance.

The court can impose a penalty if it finds that a person has:

- breached the law by intentionally or recklessly, and without reasonable excuse, failed to comply with a notice, or
- given information or made a statement that is false

More information – registered charity CLGs

For information about the ACNC's compliance powers in relation to registered charity CLGs, see our guide to running a registered charity CLG.

Who can access a CLG's reports and records

Who?	Can they access records?
Directors	• have a common law right to receive internal information about the company's affairs so that they can carry out their functions (the access is for a proper purpose) and a statutory right to access the documents in relation to legal proceedings • have a statutory right (under the Corporations Act) to access financial records at all 'reasonable times' • can apply to the Court for an order if they are not provided access
Members	• can access minutes of general meetings, but not minutes of directors meetings • require a court order to inspect CLG's books (or records including financial) • a court will only make an order allowing a member to inspect the CLGs books if the court is satisfied that the applicant member is acting in good faith and wishes to inspect the books for a proper purpose
ASIC	• can access financial records and has compulsory information gathering powers
Auditors	• can access the books of the CLG at all reasonable times • may require any officer to give the auditor information, explanations or other assistance for the purposes of the audit or review

Tool 1 – Sample members' register (required)

This is a sample members register for a CLG. This register should be adapted as necessary for the purposes and requirements of your CLG.

Member number	Name	Address	Date member approved	Membership class (if any) *	Date membership ceased	2017			2016		
	(i)	(ii)	(iii)	(iv)	(v)	(vi)					
						Receipt No	Amt	Date	Receipt No	Amt	Date
1	Anna Blue	21 Smith Street Sandringham Victoria	8/1/2006	Ordinary member		2410	$10	9/1/17	4567	$15	8/1/16
2	Ben Cherry	5 Garden Court Warrandyte Victoria	9/1/2017	Ordinary member		2413	$10	9/1/17			
3	Cate Dandelion				20/2/2016						

*Classes of membership. This may vary depending on your CLG's constitution; (i) This should be a member's full name; (ii) This should be the postal or email address of the member; (iii) This should be the date the person became a member; (iv) See above for class of membership; (v) The date the person ceased to be a member – the register must reflect the name and details of persons who ceased to be members in the past seven years, (vi) This indicates details of any membership fees paid

Note – you could add a column called 'member election' to indicate if a member has elected to be sent documents in physical or electronic form.

Tool 2 – Sample common seal register (optional)

This is a sample common seal register. This register should be adapted as necessary for the purposes and requirements of your CLG.

Date	Document	Authorising signatures	Minute reference	Location
2/1/2016	Contract of purchase of clubhouse at 1 Green Street, Hawthorn	Mr D Ebony, President Ms E Fuchia, Secretary	Minute 3 of meeting 2/1/2016	Original document kept in Folder 1.1 in club house office

Tool 3 – Sample assets register (optional)

This is a sample assets register. This register should be adapted as necessary for the purposes and requirements of your CLG.

Date purchased or acquired	Description of assets	Cost or valuation	Asset ID number	Disposed of…		
				… at (location)	… date/manner	… for (consideration received)
5/4/16	Overhead Projector (IBM model 246x)	$1,000.00	1	Club House	2/2/00 by NFP Auctions Pty Ltd at public auction	$800.00
5/5/16	Book shelf (wood veneer)	$400.00	2			

Tool 4 – Sample insurance register (optional)

This is a sample insurance register. This register should be adapted as necessary for the purposes and requirements of your CLG.

Policy number	Company/ Broker	Type of policy	Premium $	Date paid	Period of insurance	Policy number	Company/ Broker
0132561	CLG Insurance	Public Liability	$320	30/6/16	1/7/16 — 30/6/17	Excess of $200 on fusion and exterior for storm damage	'Insurance' file kept in the office

Tool 5 – Sample register of bank accounts (optional)

This is a sample register of bank accounts. This register should be adapted as necessary for the purposes and requirements of your CLG.

Financial institution	Branch	Account names and number	Signatories	E-banking details	Comments
Familia Building Society	Doncaster East (1 Brown Street, Doncaster East)	XYZ Ltd general account BSB 098-765 Acc. 1234321	Mr F Green, Treasurer Ms E Fuschia Bag, Secretary	User name: XYZCLG123 Password: [known by signatories only]	Overdraft limit of $5,000 with cheque facilities Delegation of authority to signatories: see minutes of meeting 3 July 2016

Caution: The signatories must act in the best interests of the company when signing blank cheques or forms, and should carefully guard passwords for e-banking.

Tool 6 – Sample investments register (optional)

This is a sample investments register. This register should be adapted as necessary for the purposes and requirements of your CLG.

Financial Institution: Familia Building Society						Branch: Doncaster East	
Date	Principal		Rate	Maturity date	Interest earned	Rec/Chq Number	Instructions/Comments
	Amount invested	Redeemed					
1/1/16	$100,000	1/2/17	10%	1/6/16	8%	23564	Redeemed by authority of committee minute No 3/2016

Tool 7 – Sample key register (optional)

This is a sample key register. This register should be adapted as necessary for the purposes and requirements of your own CLG.

Date	Key number	Description	Person	Signature	Date of return	Comments
1/1/16	E-1	Master key to club exterior doors	Anna Blue	*AB*	13/1/16	Borrowed for weekend event

Part 5

General meetings

General meetings

This part covers:

- calling general meetings
- procedures at general meetings, and
- minutes of general meetings

Summary of key points in this part of the guide

What are 'general meetings'?	'General meetings' are meetings of the members of the CLG. These include 'annual general meetings' (**AGM**s) held once a year, and any other general meetings that may take place throughout the year. The term 'general meeting' in this part of the guide is used to refer to any type of general meeting, including an AGM.
Does a CLG have a legal duty to hold an AGM?	Non-charitable CLGs are subject to the requirements of the Corporations Act. The laws applying to non-charitable CLGs are more detailed than the laws applying to registered charity CLGs. A registered charity CLG does not have a legal duty under the Corporations Act to hold an AGM but must comply with ACNC Governance Standard 2. This requires the registered charity CLG to be accountable to its members and give them opportunities to raise any concerns. Holding an AGM is recommended by the ACNC as one of the ways to meet this Governance Standard. A registered charity CLG's constitution might also contain a requirement to hold an AGM.
What is a notice of meeting?	A notice of meeting is a written notice that a meeting will take place at a specified time. A member's **notice of resolution** (sometimes called a **notice of motion**) is a notice, given by a member or members of the organisation, which proposes some decision or action be discussed and voted on at the meeting.
Do laws regulate giving notice of an AGM?	Laws regulate the content of the notice of an AGM, the time and method of giving it, the format of the notice (physical or electronic), who the notice is to be given to, and what to do if the AGM (or a motion) is adjourned to another time and place. This part of the guide sets out the special requirements for notices of AGMs of a CLG's members. A sample notice and checklist tools are provided.
Must certain procedures be followed during an AGM?	At an AGM, certain matters must be considered by members and elections of the directors may be held. A sample agenda, with guidance for the secretary, is provided in this part of the guide.

What is a 'resolution'?	A 'resolution' is a matter that has been voted on and passed, usually at a meeting. An 'ordinary resolution' requires over 50% of members present at the meeting to vote in favour, and a special resolution requires 75% to vote in favour. Certain decisions, such as amending the constitution, can only be made by special resolution.
How do people who are entitled to vote at a meeting vote?	Voting on resolutions at general meetings is usually done by show of hands or in writing. It's also common for a CLG to have a method by which members can make decisions without a general meeting, usually called a written or circular resolution.
Is it important for a CLG to keep meeting minutes?	It's important for a CLG to keep minutes of general meetings.
What must the secretary do at the AGM?	At each AGM, the secretary should ensure that members pass a resolution confirming the minutes of the previous meeting and the Chair signs a copy of the confirmed minutes. This part of the guide explains this procedure and includes a tool to help you.

What are 'general meetings' and 'AGMs'?

A general meeting is a meeting of the members of the CLG (in contrast to a board meeting, which is a meeting of the directors – see **part 6** of this guide).

A general meeting held once a year is called an annual general meeting (**AGM**). Unless they only have one member, non-charitable CLGS must hold an AGM at least once each calendar year in addition to other general meetings.

The purpose of an AGM is to give all members the opportunity to:

- discuss the position and business of the CLG
- review the operations of the past year, and
- make decisions about the CLG

It also provides members with an opportunity to meet with the directors.

Common items at the AGM include:

- consideration of the annual financial report, directors' report and auditors' report
- election of directors
- appointment of the auditor, and
- fixing the auditor's remuneration

A CLG may hold other general meetings throughout the year, usually for a particular purpose.

A CLG may hold other general meetings throughout the year. Usually these are called 'special' general meetings (**SGMs**) and are convened for a particular purpose. The term 'general meeting' in this part of the guide is used to refer to any type of general meeting, including an AGM.

Tip

See **part 4** of this guide for information on reporting and auditors.

Note – different procedures for holding non-charitable and registered charity CLG general meetings

For non-charitable CLGs, the AGM must be convened using the procedures set out in the Corporations Act.

Registered charity CLGs must follow the procedures set out in their constitution and adhere to the ACNC's Governance Standard 2.

More information

See our guide to running a registered charity CLG for information about the procedures registered charity CLGs follow to hold general meetings.

When must a CLG hold an AGM?

A non-charitable CLG must hold its first AGM within 18 months of being registered. After that, it must hold an AGM at least once in each calendar year and within five months after the end of each financial year.

Note

If your company operates on a calendar financial year (1 January to 31 December) your annual general meeting must be held by **31 May**. If your company operates on a business financial year (1 July to 30 June), your annual general meeting must be held by **30 November**.

What if the meeting can't be held within the required timeframe?

A non-charitable CLG may apply to ASIC to extend the date for holding its AGM (using Form 2501).

The CLG must provide a detailed explanation of the reasons for seeking an extension of time and the form must be signed by a director or a secretary.

Tip

An application to extend the date of the AGM must be made before the end of the period within which the meeting would otherwise be required to be held.

However, an application to extend the date of the AGM should be lodged well in advance of that date to allow ASIC enough time to consider the application and enable the CLG to hold the AGM by the ordinary date if the application is refused.

More information

For more information, see ASIC Regulatory Guide 44 Annual general meeting – extension of time.

Sending meeting related documents to members in the correct way

Under amendments to the *Corporations Act 2001* (Cth), passed in 2022:

- CLGs may send meeting related documents (such as a notice of a general meeting) to members in physical form, electronic form or by providing a link to where the documents can be accessed electronically (in addition to any other methods of providing notice in the constitution)
- Members of CLGs have a right to elect to receive meeting related documents in a physical or electronic form, and CLGs have an obligation to follow the wishes of members
- CLGs must tell members of their right to elect to receive meeting related documents in their preferred format at least once per financial year or by notifying them on the website
- CLGs can send notice in physical or electronic form in accordance with the member's election, regardless of the requirements in the organisation's constitution

There are penalties associated with failing to comply with these provisions

You must act to ensure your CLG complies with these requirements. Your actions may include:

- Informing your members of their right to receive meeting related documents in their preferred format in the way that you would usually communicate with them (for example, your usual practice may be to send notices by post)
- Posting an ongoing notice about the members' right of election on the CLG's website
- Providing notice of the members' right every financial year as part of your regular communication with them
- Adding information to the CLG's members register indicating whether a member has expressed a preferred method of communication and the date this election was made
- Reviewing the notice provisions in the CLG's constitution to make sure they reflect these legal changes (for example, if your constitution only allows notice to be provided by post, you will need to update it constitution to reflect that notice can be provided through technology)

Calling general meetings

Notice of a meeting

What is a notice of meeting?

A ‘notice of meeting’ is a written notice that a meeting is to take place at a specified date, time and place.

A notice of meeting should set out enough information about what is proposed to be done so that those invited to the meeting know what the meeting is about and can decide whether to attend.

The contents of a notice of meeting may vary from organisation to organisation but will usually include:

- the place, date and time of meeting
- the general nature of the meeting’s business, including that the meeting is an AGM, and
- if there is intention to propose a special resolution, and, if so, what the resolution is, and any arrangements in relation to the use of proxies

What is a notice of motion?

A notice of meeting may include ‘members’ resolutions’, which are often called ‘notices of motion’. In this guide we call them ‘notices of motion’ because this is a term which is often used by other community organisations. (The Corporations Act calls them ‘member’s resolutions’ – see s249N-P of the Corporations Act).

A notice of motion is a notice, given by a member or members of the company, which proposes that action or decision be discussed and voted on at the next meeting.

Requirements for CLGs giving notice of a motion

Unless the constitution provides otherwise, CLG members may give the company notice of a motion they propose to move at a general meeting where:

- the members who are proposing the motion have at least 5% of the votes that may be cast on the motion, or
- at least 100 members who are entitled to vote at a general meeting submit the motion

The member (or members) must give the notice of motion to the secretary in writing, setting out the wording of the proposed motion.

The notice must be given two months before the AGM and the CLG must consider it at the next AGM if all the requirements are met.

The motion must be signed by all the members proposing to move it.

Tip

Unless there is serious disagreement, a way to ensure all members can have their say is to ask members for submissions about what should be discussed at the next AGM. The members can propose agenda items and the board can add them to the agenda, even if they don’t intend to vote in favour of them. This allows for member engagement.

A notice of motion gives the other members an opportunity to consider the motion before the meeting takes place. Members will generally only use the ‘notice of motion’ process where the matter they are proposing be discussed is important.

Tip

The secretary of a non-charitable CLG is usually responsible for preparing and giving notice of meetings under the company’s constitution. This is an important task.

If a notice of meeting is not correctly prepared and provided, the meeting may be invalid and any decisions made at the meeting may be void (of no legal effect).

Legal requirements for giving notice of an AGM

Note

The guidance about the legal requirements for holding an AGM under the Corporations Act will not generally apply to registered charity CLGs, which must instead comply with the ACNC Governance Standards.

However, some of the requirements under the Corporations Act demonstrate good practice and can be adopted by registered charity CLGs to assist them in meeting the Governance Standards.

General guidance provided throughout this part of the guide will be relevant to registered charity CLGs intending to hold AGMs.

For non-charitable CLGs, there are legal requirements about:

- when the meeting must be held
- when the notice must be given
- the content of the notice
- how notice must be given
- following the wishes of members about how they would like to receive notice
- who the notice must be given to, and
- what to do if the meeting is adjourned

Note

When planning for an AGM, both non-charitable CLGs and registered charity CLGs need to consider any requirements imposed by:

- the Corporations Act, the law developed by the courts (that is, 'judge-made law') and ACNC Governance Standard 2
- the company's constitution ('rules'), and
- the company's policies

More information

Further information on these specific requirements is set out in Part 2G.1 of the Corporations Act.

Example

Steven is a company secretary for Charity XYZ Limited, a non-charitable CLG. Because Charity XYZ is a non-charitable CLG, Steven considers, in planning the AGM, the requirements imposed by the Corporations Act, the law developed by the courts, Charity XYZ's constitution and its policies.

Charity XYZ operates on a business financial year (1 July to 30 June). Under the Corporations Act, Charity XYZ will have to hold its AGM before 30 November each year.

Steven spends considerable time drafting the notice of meeting. He makes sure that it:

- sets out the date, time and place of the AGM
- states the general nature of the meeting's business
- identifies the notice as an 'annual general meeting' (as required under Charity XYZ's constitution), and
- provides the information required by the Corporations Act on proxy voting (see the 'voting methods' part of the guidance)

After preparing the notice of meeting, Steven reviews it to make sure it's worded and presented in a clear, concise and effective manner. He makes sure there is full disclosure of the matters to be discussed at the meeting.

Steven checks with the directors that there are no special resolutions to be put to members at the meeting.

Steven will need to give the notice of meeting to members at least 21 days before the date of the AGM (Charity XYZ's constitution does not specify a longer notice period).

Steven must consider the method (if any) that each member has elected to receive notice.

Steven posts each notice of meeting being sent by post three days before this date, because the Corporations Act says a notice of meeting sent by post is taken to be given to a member three days after it's posted. For members who have nominated an electronic address (ie. an email) to be used to be notified of the meeting and to access those notices, Steven must send the notice electronically.

Steven also gives a notice of meeting to each director of Charity XYZ and its auditor.

When to give notice of an AGM

A non-charitable CLG must give members at least 21 days' notice of an AGM, unless a longer period is specified in its constitution.

A non-charitable CLG may call an AGM on shorter notice if all members agree beforehand. However, the notice period can't be reduced if the AGM will:

- include a resolution to remove a director (under section 203D of the Corporations Act)
- appoint a director in place of a director (removed under section 203D), or
- remove an auditor (under section 329, see subsections 249H(3) and (4))

Note

If your company is a registered charity CLG, you should check to see if your constitution specifies how and when to give notice of an AGM. The ACNC template constitution for example, requires a notice of general meeting be provided at least 21 days' before the meeting.

Tip

The words ‘service’ and ‘serving’ are used to describe the legal requirements for giving notice of a meeting.

‘Service’ simply means the process of giving a notice to someone who is invited to a meeting. For example, your constitution may state that a notice must be ‘served on’ (given to) a person by post, email or in person.

Also when calculating the notice period, don’t count the day the notice is received or the day of the meeting – there must be 21 clear days.

How to measure time for giving notice

Calculating the number of days’ notice can be confusing.

Under the Corporations Act, a notice of meeting sent by post by a non-charitable CLG is taken to be given to a member three days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given to the member on the business day after it is sent (however, you should check whether your company has its own rules about measuring time).

Note

A registered charity CLG may have its own requirements in its constitution about measuring time.

What information should be in a notice of an AGM?

A notice of an AGM should:

- be sufficiently clear and detailed so that any ordinary person who receives the notice and reads it quickly knows what is proposed to be done at the meeting and can decide whether to attend
- be a full disclosure of matters to be discussed at the AGM, and
- not mislead any member of the organisation

These legal requirements have been developed by the courts to help establish good and fair procedures.

More specifically, the notice of AGM must:

- set out the date, time and place of the AGM (and if the meeting is to be held in two or more places, the technology that will facilitate this)
- state the general nature of the meeting’s business
- if there will be a special resolution, set out the intention to propose the special resolution and state the resolution
- if a member is entitled to appoint a proxy, contain a statement setting out the following information:

- that the member has a right to appoint a proxy
- that the proxy does not need to be a member of the CLG (section 249X(1) of the Corporations Act doesn't allow a CLG to require a proxy to be a member), and
- that a member who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise (section 249L)

Most organisations have a rule that the notice must identify the meeting as an 'annual general meeting'.

The constitutions of some organisations also specify the 'ordinary business' which must be dealt with at an AGM. If your CLG's constitution specifies items of ordinary business for an AGM, these should be included on the notice of meeting, as well as any other (or 'special') business to be dealt with at the meeting.

More information

For more information on the requirements for how to call a meeting go to Part 2G.2 of the Corporations Act, specifically sections 249H to M.

Caution

Under the Corporations Act, the only matters that can be discussed and voted on at an AGM are:

- the ones set out in the notice of meeting
- consideration of the annual reports, directors reports and auditors report
- the election of the directors
- appointment of the auditor, and
- fixing of the auditors remuneration

All items of business should be set out in the notice. Check your CLG's constitution, policies and practices, as they may have additional requirements.

Tip

Commonly, agendas for AGMs include a catch-all item such as 'any other business' or 'general business'. This allows members to discuss any additional matters which arise at the meeting (such as setting a time and place for the next meeting).

However, the AGM should not pass resolutions on important matters which have not been previously notified to members. If additional matters of important business are raised at the meeting, it's best for the CLG to convene a 'special general meeting' (with sufficient notice to members) to consider the issues properly, and vote on any resolutions. See 'Special general meetings' below for more information.

Your CLG may also have policies about the content of notices of AGMs. For example, it may be your CLG's policy to specify who authorises the notice.

The notice is usually sent to members together with documents which provide background information on the matters to be discussed at the meeting, such as:

- the minutes of the last meeting

- reports prepared by the board (for example, a directors report where a company is required to prepare one), staff or volunteers, and
- financial reports (and auditors reports, where required)

Tool

For helpful tools, see **Tool 8: Checklist for notice of AGM** and **Tool 9: Sample AGM notice of meeting**

Note

If your CLG is a registered charity CLG, review your constitution and policies to determine what is required to be included in a notice of AGM.

Who should be given notice of an AGM?

A non-charitable CLG must give notice of an AGM individually to each member entitled to vote at or attend the meeting and to each director. The secretary usually has responsibility for maintaining the members register. For further information on registers and record keeping, see part 4 of this guide.

A non-charitable CLG must also give its auditor (where it has one):

- notice of the AGM, and
- any other communications relating to the AGM that a member of the company is entitled to receive

Note

If your CLG is a registered charity CLG, review your constitution and policies to determine who should be given notice of an AGM.

How to give notice of an AGM

Subject to its constitution, a non-charitable CLG may give the notice of meeting to a member:

- in person
- by post to the member's address (contained in the register of members or alternative address nominated by the member)
- by fax, email or other electronic means nominated by the member, or
- any other means that the company's constitution permits

If a member agrees, the CLG may make the notice of meeting available on its website and notify the member when the notice is made available on the website.

Sending meeting related documents to members in the correct way

Under amendments to the *Corporations Act 2001* (Cth), passed in 2022:

- CLGs may send meeting related documents (such as a notice of a general meeting) to members in physical form, electronic form or by providing a link to where the documents can be accessed electronically (in addition to any other methods of providing notice in the constitution)
- Members of CLGs have a right to elect to receive meeting related documents in a physical or electronic form, and CLGs have an obligation to follow the wishes of members
- CLGs must tell members of their right to elect to receive meeting related documents in their preferred format at least once per financial year or by notifying them on the website
- CLGs can send notice in physical or electronic form in accordance with the member's election, regardless of the requirements in the organisation's constitution

There are penalties associated with failing to comply with these provisions

You must act to ensure your CLG complies with these requirements. Your actions may include:

- Informing your members of their right to receive meeting related documents in their preferred format in the way that you would usually communicate with them (for example, your usual practice may be to send notices by post)
- Posting an ongoing notice about the members' right of election on the CLG's website
- Providing notice of the members' right every financial year as part of your regular communication with them
- Adding information to the CLG's members register indicating whether a member has expressed a preferred method of communication and the date this election was made
- Reviewing the notice provisions in the CLG's constitution to make sure they reflect these legal changes (for example, if your constitution only allows notice to be provided by post, you will need to update it constitution to reflect that notice can be provided through technology)

Tip

Check your CLG's constitution. The way in which notice must be given differs from organisation to organisation. Some organisation's constitutions require a notice to be posted to each member, others require notice by an advertisement in a local newspaper, and others may place a notice in their regular newsletter or on a notice board. You will also need to consider the method (if any) that your member has elected to receive notice. See 'Sending meeting related documents to members in the correct way' above.

Tip

It's good practice to give each member of the CLG an individual notice (rather than, for example, only putting up a notice on the company's notice board). This prevents a claim by a member that they were unaware of an AGM. With large organisation this may be expensive. Therefore, some organisations' constitution may allow for electronic methods of providing notice to members (for example, by email).

Adjourned meetings

Sometimes, an AGM may be adjourned to a later date. In such cases, you will need to consider whether a new notice of AGM (or notice of motion) is required. Check your CLG's constitution for any specific provisions about this (for example, for a CLG that relies on the replaceable rule in the Corporations Act a fresh notice of meeting must be served for meetings adjourned for one month or more).

In addition, check your CLG's constitution for any rule about the chair adjourning a meeting of company if the members present with a majority of votes at the meeting, either agree or direct that the chair adjourn the meeting.

Note

If your CLG is a registered charity CLG, review your constitution and policies to determine what to do if a meeting is adjourned.

The ACNC template constitution, for example, requires a new notice of AGM where a general meeting is adjourned for one month or more.

Caution

If the adjournment would mean that the CLG's AGM will be held more than five months after the end of the last financial year, a non-charitable CLG should apply to ASIC for an extension of time to hold the AGM .The application must be made before the end of the period within which the meeting would otherwise be required to be held.

Adjourned motions

Sometimes, even though the meeting goes ahead and a notice of motion has been given, a motion may need to be adjourned. This might happen, for example, if you run out of time at the AGM to address all motions.

If unaddressed motions concern items that must be addressed at the AGM, then the AGM should be adjourned so that the remaining essential motions can be addressed at the adjourned AGM.

Alternatively, if the unaddressed motion relates to ordinary business, the AGM can be concluded, and a special general meeting can be scheduled to discuss the remaining motions.

Additional requirements for special resolutions

There are additional notice requirements if particular types of decisions are proposed to be made at an AGM. One of these situations is when a motion requiring a 'special resolution' is proposed.

It's important to give members adequate time and information about the matter so that they can consider it carefully before the meeting.

Special resolutions require that, for the resolution to be passed, at least 75% of votes cast by members entitled to vote on the resolution be cast in favour of it.

Special resolutions are required under the Corporations Act for a company to make certain decisions, such as changing the company's name, constitution, or winding up the company.

Note

Regardless of whether you are a registered charity CLG or non-charitable CLG, you need to check whether your CLG's constitution permits these types of 'special' business to be dealt with at an AGM. Depending on these rules, you may need to hold a special general meeting to deal with special resolutions.

When to give notice of a proposed special resolution

A notice of a meeting that includes a motion requiring special resolution to pass must be given to all members at least 21 days before the meeting (otherwise the resolution can't be passed as a special resolution at the meeting).

Check your CLG's constitution to see if it specifies a longer minimum period of notice.

What information should be included in the notice?

To pass a special resolution at an AGM, a non-charitable CLG's AGM notice must:

- specify the date, time and place of the AGM
- set out the actual wording of the proposed special resolution in full, and
- state that it is intended to propose the resolution as a 'special resolution'

Caution

If a special resolution is proposed for an AGM, non-charitable CLGs must comply with the notice requirements in the Corporations Act (as outlined above). Otherwise, the resolution will be invalid.

Who should the notice be given to?

The notice must be given to all members entitled to vote or attend meetings, to each director and the company auditor (where it has one).

Note

Check whether your CLG has particular classes of members who are, or are not, eligible to vote on the matter.

What if a notice of an AGM is defective?

If there is a defect with a notice of AGM (for example, it didn't contain the details required by the Corporations Act, or was sent without providing sufficient notice), the notice may be 'invalid'. If this happens, any actions taken and decisions made at the subsequent meeting may be void (that is, of no legal effect).

If a member of your CLG alleges that a notice of an AGM is invalid, it can be difficult to work out whether the alleged defect is something that would make the meeting void. The answer will depend on the seriousness of the alleged defect. The CLG may need to seek legal advice.

Is it possible to 'waive' any defects in a notice?

If you have realised that your notice of AGM was defective, you can take certain steps to fix the defect. If all the members entitled to attend the AGM (not just those who actually attend) agree to 'waive' a defect in the notice (that is, essentially to ignore it), the invalidity may be overcome.

A defective notice of an AGM that includes a proposed special resolution is unlikely to be fixed by a waiver. If 21 clear days' notice has not been given, you should seek legal advice. You may need to hold the meeting again or confirm the resolution at a future general meeting.

Is it possible to overcome alleged defects in any other way?

One method of overcoming any alleged defects in a notice is to continue to hold the possibly invalid AGM, if those present agree, and to keep records of the decisions made at the meeting. At the next validly convened general meeting, a motion can be put to adopt the decisions made at that earlier invalid AGM.

Until the subsequent meeting validates the decisions of the previous possibly invalid AGM, the decisions of the previous meeting will have no legal standing or effect. For this reason, this approach is usually only appropriate if there is likely to be no dispute about the previous decisions.

A CLG can also consider obtaining relief from the court. A court can make orders about irregularities generally. Legal advice should be sought before pursuing this option.

Notices of intention to remove an auditor

If a CLG receives a notice of intention (from the members) to remove the CLG's auditor, the CLG must, as soon as possible, send a copy of the notice to its auditor, and lodge a copy of the notice with ASIC.

If the members of the CLG want to remove the auditor, they will usually include a request in the notice of intention for the CLG to convene a general meeting. A resolution to remove an auditor is an ordinary resolution. The notice period for the meeting will generally be 21 days.

The notice of intention must be served on the company secretary at least two months before a meeting is held.

The auditor may make representations

Within seven days of receiving a copy of the notice of intention, the auditor may make representations in writing to the CLG and request that a copy of the representations be sent by the CLG (at its expense) to every member who has been sent notice of the meeting. The auditor can also require that the representations be read out at the meeting. The CLG must comply with the auditor's request, unless it applies to ASIC for the requirement to be waived, and ASIC gives its approval.

Notification to ASIC of removal of the auditor

If the resolution is carried, the CLG must lodge notice of the removal (ASIC Form 315 Notification of resignation, removal or cessation of auditor) with ASIC within 14 days of removing the auditor.

Appointing a new auditor

When an auditor is removed, the CLG is required to appoint a new auditor. The CLG may pass a special resolution at a general meeting to immediately appoint an individual, firm or organisation as auditor of the CLG if a copy of the notice of nomination has been sent to the individual, firm or organisation.

If the special resolution to appoint a new auditor is not passed, or could not be passed because notice of the nomination of the auditor had not been sent, the meeting may be adjourned for between 20 and 30 days after the first meeting. Nominations for the appointment of an auditor at the adjourned meeting must be received by the CLG 14 days before the meeting and must be from a member. This resolution is an ordinary resolution.

If the CLG fails to appoint a replacement auditor (under subsection 327E) it must notify ASIC within seven days. Note that ASIC has discretion to appoint an auditor.

More information

You can read more about removing and appointing an auditor in Part 2M.4, of the Corporations Act, in particular, Division 6 of that Part.

For more information on the resignation, replacement and removal of auditors, see:

- ASIC Regulatory Guide 26 Resignation, removal and replacement of auditors (RG 26)
- Information Sheet 65 Resignation of an auditor of a public company (INFO 65), and
- Information Sheet 62 Removal of an auditor of a company (INFO 62)

Procedures at the AGM

Procedures for AGMs can vary considerably pending on the organisation, who is attending and what is being discussed.

Generally, the larger the organisation (and the number of members) the more formal the AGM procedures. This ensures the meeting can deal with its business efficiently.

The person who chairs the AGM (usually called the Chair) guides the meeting style. As long as legal requirements are met, the Chair may run the AGM in a style as relaxed or formal as the situation allows.

Note

When establishing your CLG's meeting procedures, consider any requirements imposed by the Corporations Act and your CLG's constitution.

Each organisation develops its own customs, practices and 'culture' over time. These may not be formally reflected in the CLG's constitution. So it's important to ask about your organisation's policies and procedures, as well as the constitution, to find out how your organisation usually conducts meetings and the AGM in particular.

Tip

Some customs and practices are intentionally designed to promote efficiency, to focus on certain key meeting issues, or for other strategic purposes.

For example, an organisation may table certain reports and take them as read (that is, the AGM does not deal in detail with the report, but calls for questions).

What is the role of the company secretary?

For AGMs, the company secretary is usually responsible for:

- preparing and distributing any reports or documents to people invited to the meeting
- dealing with any correspondence in relation to the meeting
- assisting in and recording the outcome of any votes taken, and
- taking minutes of the meeting (or arranging for a delegate to do so)

For further information about the role of the secretary, see **part 3** of this guide.

Check your CLG's constitution and the Corporations Act and follow the requirements about your AGM, including:

- the agenda for the meeting
- the 'quorum' for the meeting (that is, the minimum number of members who must be present)
- how resolutions are passed
- voting methods, and
- how meetings can be adjourned

These are discussed in detail below.

Can members attend by phone or Zoom?

The Corporations Act has been amended to make it clear that CLGs are permitted to hold both wholly physical and hybrid members' meeting, even if not specifically authorised under the CLG's constitution.

A hybrid meeting is a type of meeting that is held at one or more physical venues and using 'virtual meeting technology'.

Wholly virtual meetings are only allowed if they are expressly required or permitted under the CLG's constitution.

To make sure there's no ambiguity about whether a meeting was validly held, your constitution should set out provisions for remote meetings clearly.

Agenda for the AGM

An AGM agenda will be different to those for other general meetings because the business dealt with at the AGM will be different to other types of meetings.

Your CLG's constitution may specify the business to be conducted at the AGM.

The business of the AGM may include:

- the consideration of the annual financial report, directors' report and auditors' report
- the election of directors
- the appointment or removal of the auditor, and
- the fixing of the auditor's remuneration

For non-charitable CLGs:

- the Chair of the AGM must allow a reasonable opportunity for the members as a whole to ask questions about or make comments on the management of the company, and
- if the auditor is present or represented at the AGM, the Chair must allow a reasonable opportunity for members as a whole to ask the auditor or their representative questions about:
  - the conduct of the audit
  - the preparation and content of the auditor's report
  - the accounting policies of the company, and
  - the independence of the auditor (see sections 250S and 250T of the Corporations Act)

Tool

For a sample agenda for an AGM, see **Tool 10: Sample agenda for AGM**.

Note this document is a guide only. You should adapt it to suit your CLG's requirements.

Quorum at the AGM

Before you can deal with any business at an AGM, there must be a minimum number of members present. This number is called the 'quorum'.

Your CLG's constitution may specify the quorum for AGMs and other general meetings.

The quorum for a non-charitable CLG's AGM, that is relying on the relevant replaceable rule, is two members and the quorum must be present at all times during the meeting. Under this rule, you can count individuals attending as proxies or body corporate representatives to meet the quorum requirement.

However, note that:

- if a member has appointed more than one proxy or representative, only count one of them, and
- if an individual is attending both as a member and as a proxy or body corporate representative, only count them once

Check your CLG's constitution for the quorum number, and whether they may be present by proxy (see below for further information about proxies).

What happens if there is no quorum?

If there is no quorum, your CLG's constitution should set out what will happen.

The Corporations Act, as way of example, contains a replaceable rule that if a meeting of the CLG's members does not have a quorum present within 30 minutes after the start time for the meeting set out in the notice of meeting, it is adjourned to the date, time and place the directors specify. If the directors do not specify one or more of those things, the meeting is adjourned to:

- if the date is not specified – the same day in the next week, and
- if the time is not specified – the same time, and
- if the place is not specified – the same place

If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the replaceable rule provides that the meeting is dissolved.

In cases of a lack of quorum, there is no reason that an informal meeting can't be held, with the outcome of proceedings being presented for agreement at a later valid meeting.

Motions and resolutions

The words 'motion' and 'resolution' are often used as if they mean the same thing. As explained above, even though the terms are sometimes used to refer to the same thing, in this guide we use separate, but related, meanings.

Motion

A motion, in this guide, is a proposal put by a member at a meeting in order to propose an action or decision about an issue.

The technical procedure for a motion is:

- a member moves the motion, then
- another member seconds the motion

Sometimes, members may wish to change the wording of the motion. If so:

- a member moves an amendment to the motion, then
- another member seconds the amendment

Resolution

A resolution, in this guide, is a motion that the meeting has voted on, and has approved or 'passed'.

Once the motion is passed, it is a resolution, and the meeting has made a binding decision.

There are two main types of resolutions:

- ordinary resolutions, and
- special resolutions

The requirements for passing ordinary and special resolutions are different, and are discussed in more detail below.

For information about drafting motions and resolutions, see 'Preparing and keeping minutes' below.

What are the rules for putting motions?

Under the Corporations Act, the following members can give the CLG a notice of a motion that they propose to move at a meeting:

- members with at least 5% of the votes that may be cast, or
- at least 100 members who are entitled to vote at a general meeting

This notice must be in writing, set out the wording of the proposed motion, and be signed by the member or members proposing to move the resolution.

The percentage of votes that members have is to be worked out as at the midnight before the member or members give the notice.

If a CLG has been given notice of a motion, the motion is to be considered at the next general meeting that occurs more than two months after the notice is given. The CLG must give all its members notice of the motion at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.

Example

The XYZ Ltd meeting votes to approve a motion 'that this meeting approve the lodgement of a zoning application for the company's Club House with the Betoota City Council'.

The motion becomes a resolution that legally binds XYZ Ltd. But, if necessary, the company can change or cancel its decision by passing another resolution at another general meeting to override the previous one.

Distributing member statements

Members have the right to request a CLG to give all its members a statement provided by the members making the request about:

- a motion that is proposed to be moved at a general meeting, or
- any other matter that may be properly considered at a general meeting

The requirements for such a request are similar to the requirements for putting motions.

How is an ordinary resolution passed?

Unless your CLG's constitution says otherwise, an ordinary resolution is passed by a 'simple majority' of voting members. A simple majority is when more than half of the members present and voting at the meeting, vote in favour of the resolution.

For example, if there were 20 members voting on a motion, you would need 11 (or more) members voting in favour to pass an ordinary resolution.

Tip

Check your CLG's constitution for any particular requirements for passing resolutions (either ordinary or otherwise).

For example, it may require a majority of all members **entitled** to vote (rather than a majority of members who **actually** vote) to pass a resolution. So if the constitution requires a majority of members entitled to vote and your CLG has 50 members, and 30 of them turn up to the meeting, you will need 26 votes (that is, more than half the 25 members eligible to vote) to pass a resolution. This is sometimes known as a resolution by 'absolute majority'.

How is a special resolution passed?

To pass a special resolution at an AGM:

- notice of the proposed special resolution must have been given, and
- not less than three quarters (that is, 75% or more) of members who are both:
  - entitled to vote, and
  - who actually do vote at the meeting, either in person or by proxy if allowed,

  must vote in favour of the special resolution

Your CLG's constitution can impose additional requirements (for example, a requirement to include certain extra information about the special resolution in the notice of meeting), but can't reduce or increase the 75% provision

Caution – non-charitable CLGs

For non-charitable CLGs some decisions passed by special resolution (for example, changing the CLG's constitution) are not official under the Corporations Act until notice has been provided to ASIC. Depending on the type of decision, you may need to notify ASIC that the special resolution was passed at the meeting.

For example, you will need to notify them if a special resolution is passed which changes the company's name, or its structure, or that it is to be wound up.

See the ASIC website for more information.

Voting at AGMs

If members at an AGM want to decide on a matter, motion or amendment, it is usual for each member to cast a vote — generally 'in favour' (for) or 'against'.

For information about voting methods see 'voting methods' below.

Adjourning AGMs

A CLG's constitution will usually require the Chair to adjourn an AGM if there is no quorum present after a specified time. For example, the Corporations Act's replaceable rules provide:

- if members present with a majority of votes at the meeting agree, the chair may adjourn the meeting, and
- at the rescheduled meeting, the only business that may be dealt with is the unfinished business from the meeting that was adjourned

Note

If you don't have a quorum for a meeting, you may need to adjourn the meeting or have an informal meeting (with the outcome of the meeting being presented for agreement at a later valid meeting, if desired). See 'What happens if there is no quorum?' above.

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one month or more. Some organisations' constitutions allow for an AGM to be adjourned in other circumstances as well. You need to check the terms of your CLG's constitution.

If you are a registered charity CLG and using the ACNC template constitution, it provides that if no quorum is present within 30 minutes after the scheduled start time, the meeting is adjourned to the date, time and place specified by the chair of the meeting or, if the chair does not specify any of those things, to the same day, time and place the following week. If a quorum is not present at the resumed meeting within 30 minutes of the scheduled time, the meeting is cancelled.

Voting methods at an AGM

There are various ways in which votes can be taken at an AGM.

The most common methods are voting by show of hands or by poll (a vote in writing).

The usual procedure for voting at an AGM is that the chair will:

- clearly state the motion to be put to the meeting
- take a vote from those present (in person or by proxy) and entitled to vote
- determine the result, and
- announce the result of the vote

Tool

The particulars of certain voting methods are discussed more detail in **Tool 11: Table of voting methods**.

Tip

If your CLG plans on holding hybrid or wholly virtual meetings, make sure your constitution allows for the option of voting by poll first (rather than voting by a show of hands first).

The Corporations Act contains specific rules about voting, however, these are replaceable rules (and as already outlined in **part 1** of this guide, your CLG's constitution may draw upon these replaceable rules), so you should check your CLG's constitution.

Your CLG may also have different membership classes with differing voting rights.

How many votes does each member have?	Check your CLG's constitution. As an example, the Corporations Act contains a replaceable rule that each member has one vote, both on a show of hands and on a poll. It is also a replaceable rule that the Chair has a casting vote, in addition to any vote as a member.
Can a right to vote be challenged?	Check your CLG's constitution. Under the Corporations Act, any challenge to a right to vote at a meeting of a company's members: • may only be made at the meeting, and • must be determined by the chair, whose decision is final

How should voting be carried out?

Check your CLG's constitution.

As an example, the Corporations Act contains a replaceable rule that a motion put to the vote at a meeting of a company's members must be decided on a show of hands unless a poll is demanded. A poll may be demanded on any motion, however, a CLG's constitution may provide that a poll can't be determined on any motion concerning:

- the election of the chair of a meeting, or
- the adjournment of a meeting

The Corporations Act also contains a replaceable rule (so check your constitution) that before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.

Who decides the result?

Check your CLG's constitution.

As an example, the Corporations Act contains a replaceable rule that on a show of hands, the chair's declaration is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

Abstaining from voting and opposing

Some members may decide not to vote at all (they 'abstain') and may wish to have the secretary record their names in the minutes as having abstained. Other members may oppose a motion and request their opposition be noted.

What if a vote is tied?

If a vote is tied, most CLG constitutions provide that the chair has a second (or 'casting') vote to decide the matter, as is the case under the Corporations Act. Commonly, the chair will exercise this vote to maintain the existing situation (so that a resolution for change will not be passed).

Polls

What is a 'poll'

A 'poll' is a method of voting in writing on a motion (and any amendments) at a meeting.

Usually the chair will determine whether a poll is required, direct the conduct of the poll and supervise the counting of written votes. The way in which each member voted in the poll is not usually disclosed.

Tool

For more information on how to conduct a poll, see **Tool 11: Table of voting methods**.

Poll rules for non-charitable CLGs

Who can demand a poll?

A poll may be demanded on any motion by:

- at least five members entitled to vote on the motion
- members with at least 5% of the votes that may be cast on a poll, or
- the chair

A CLG's constitution may provide that fewer members or members with a lesser percentage of votes may demand a poll. The percentage of votes that members have is to be worked out as at midnight before the poll is demanded.

More information

For the specific provisions of the Corporations Act that apply to polls, see section 250K and 250L.

When can a poll be demanded?

The poll may be demanded before a vote is taken, before the voting results on a show of hands are declared, or immediately after the voting results on a show of hands are declared.

How should a poll be conducted?

The Corporations Act provides a replaceable rule (you should check your constitution) that:

- a poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs, and
- a poll on the election of a chair or on the question of an adjournment must be taken immediately

What if a member is unable to vote in person at an AGM?

The following applies to both non-charitable and registered charity CLGs.

If a member of a CLG is unable to attend an AGM to cast their vote in person, that member may, depending on the CLG's constitution, vote by 'proxy'.

As an alternative, a CLG may, if its constitution permits, allow direct voting so that members who will be absent from an AGM can cast their own vote. The vote can be cast by completing and lodging a voting form before the meeting (sometimes called 'postal voting').

What is proxy voting?

If a member of a CLG can't attend and vote at an AGM in person, they may be able appoint another person to vote on their behalf (that is, 'vote by proxy') at the meeting.

Caution

Proxy voting is quite complicated. Your CLG may want to take time to make sure it understands how it works and what is involved, and develop any supporting policies and procedures. It would also be good practice to make sure members are informed. This may help reduce any disagreements about the process.

If your CLG is uncertain about proxy voting, it may be a good idea to get legal advice.

'Donor' and 'proxy'

When talking about proxies, it's important to know the following definitions:

- the 'donor' is the member of the CLG who appoints another person to vote on their behalf
- the 'proxy' or 'proxy holder' is the person appointed to vote on behalf of the absent member; and
- the 'proxy form' is the document by which the donor appoints the proxy

Tool

For more information on proxies, see **Tool 12: Flowchart for reviewing proxies**.

Be sure to check the flowchart against your company's constitution and policies before relying on it. If your constitution is different, adapt the tool to suit your own circumstances.

What are the legal requirements for proxy voting?

For non-charitable CLGs there are **mandatory** rules under the Corporations Act for proxy voting. These are set out below.

Check your CLG's constitution carefully for any provisions about proxy voting.

The constitutions of some companies specify a deadline for receiving proxy forms before the AGM. Having a deadline in your constitution avoids the secretary having to receive many proxy forms at the meeting (if the secretary has to deal with them at the meeting, this can slow the progress of the meeting).

A CLG's constitution may also allow one or more of the following:

- non-members to act as proxies
- a general proxy (which gives a member the right to appoint another to vote as they see fit on all aspects of the company's business for a certain period of time)
- a specific proxy (which allows a person to cast a vote only at a particular meeting in a particular way), or
- the chair to hold the general proxies of many absent members

What if the donor attends the AGM themselves?	If the donor attends an AGM and they have appointed a proxy for that meeting, the proxy holder can't vote on the donor's behalf if the donor also votes.

Is the chair required to exercise the proxies they may hold?

If the chair has been appointed a proxy holder by a number of absent members, there is no general rule about whether the chair must vote on behalf of these donors. It will depend on the wording of the document that appoints them as proxy.

It's good practice for the proxy form to set out whether the chair must vote in a particular way or whether the chair may (or may not) vote in a particular way on the resolution. If the chair may vote, but doesn't have to, they have 'discretion' about exercising the proxy. If a donor appoints the chair as their proxy to vote on a resolution in a particular way, the chair must vote in that way.

Cancelling a proxy

Generally, a donor may cancel (or 'revoke') a proxy before it is exercised by:

- giving both the proxy holder and the company a written notice of revocation (which becomes effective as soon as it is received and which, strictly, must be received by the company before the AGM at which the proxy was to be used)
- granting a subsequent and superseding (overriding) proxy to the same or another person, or
- transferring the shares in the company, in respect to which the proxy was given

Check your CLG's constitution carefully for any provisions about revoking proxies. For example, some CLGs require a donor wishing to cancel a proxy to give notice to the CLG by a certain deadline before the meeting.

Rules for proxy voting for non-charitable CLGs

Appointment of proxies

For non-charitable CLGs the Corporations Act provides – unless the company's constitution rules out proxy voting – each member who is entitled to attend and cast a vote at a meeting may appoint a person as the member's proxy to attend and vote for the member at the meeting. This person may be an individual or a body corporate.

If the member is entitled to cast two or more votes at the meeting, they may appoint two proxies. If the member appoints two proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the votes.

What needs to be disclosed in the notice of meeting?

A statement in the notice of AGM must set out:

- whether the member has a right to appoint a proxy
- if the member has a right to appoint a proxy, whether the proxy needs to be a member of the company (**note**: a non-charitable CLG can't require that the proxy be a member of the company), and
- where proxy voting is allowed, that a member entitled to cast two or more votes may appoint two proxies and specify the proportion or number of votes each proxy is appointed to exercise

If a member requests a proxy appointment form or a list of persons willing to act as a proxy at the meeting, the CLG must send the form or list to all members making the request who are entitled to appoint a proxy. Otherwise, if the CLG chooses to send a proxy appointment form or a list of persons willing to act as proxy, it must do so for all members entitled to appoint a proxy.

When will an appointment of a proxy be valid?

An appointment of a proxy will only be valid if it's signed by the member making the appointment and contains the following information:

- the member's name and address
- the CLG's name
- the proxy's name or the name of the office held by the proxy, and
- the meetings at which the appointment may be used

The CLG's constitution may provide that an appointment is valid even if it contains only some of the information required. Also be aware that:

- if an appointment is not dated, it will be deemed to be dated on the day it is given to the CLG
- if an appointment is lodged electronically it must be authenticated by the procedure in the Corporations Regulations
- an appointment of a proxy can be ongoing (ie. it applies to more than one meeting, called a 'standing appointment')
- appointments don't have to be witnessed, and
- a later appointment will revoke an earlier inconsistent appointment

For an appointment of a proxy to be effective, the following documents must be received by the CLG at least 48 hours before the meeting, unless the CLG's constitution says otherwise:

- the proxy's appointment, and
- if the appointment is signed by the donor's attorney (see 'Powers of Attorney' below) – the authority under which the appointment was signed or authenticated or a certified copy of the authority

If a meeting is adjourned, appointments and authorities received at least 48 hours before the resumed meeting will be effective for that meeting.

A CLG receives an appointment or authorities when they are received at the CLG's registered office, or a fax number at the company's registered office, or a place, fax or electronic address specified in the notice of meeting.

More information

Corporations Regulation 2G.2.01, sets out the process for electronic authentication of an appointment of a proxy (for example, it must include a method of identifying the member and an indication of the member's approval of the information communicated).

Where appointment is e-mail or Internet-based voting, the member must be identified by personal details and the member's approval must be communicated by a form of security protection (for example, the entering of a confidential identification number).

More information

For more information on the Corporations Act requirements, refer to Division 6 of Part 2G.2 of the Corporations Act, specifically sections 249X to 250D. For example, section 250B(1) requires the proxy notice of appointment be given unless the constitution says otherwise (section 250B(5)).

What are the rights of proxies under the Corporations Act?

A proxy appointed to attend and vote for a member has the same rights as the member to:

- speak at the meeting
- vote (but only to the extent allowed by the appointment), and
- join in a demand for a poll

Be aware that:

- the constitution of a non-charitable CLG may provide that a proxy is not entitled to vote on a show of hands (however, the Corporations Act says they may still make or join in the demand for a poll)
- a proxy who is not entitled to vote on a resolution as a member, may vote as a proxy for another member who is able to vote, if their appointment specifies the way they are to vote on the resolution and they vote that way
- unless the constitution says otherwise, a proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting, and
- even if, before the proxy votes:
  - the appointing member dies
  - the member is mentally incapacitated
  - the member revokes the proxy's appointment
  - the member revokes the authority under which the proxy was appointed by a third party, or
  - the member transfers the share over which the proxy was held,

  a vote cast by the proxy will be valid, unless the CLG received written notice of the matter before the start or resumption of the meeting.

What rules must proxies follow?

Under the Corporations Act, if an appointment of a proxy specifies the way the proxy is to vote on particular resolution:

- the proxy does not need to vote on a show of hands, but if they do so, the proxy must vote according to the terms of the appointment
- if the proxy has two or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands
- if the proxy is the chair of the meeting at which the resolution is voted on, the proxy must vote on a poll, and must vote that way, and
- if the proxy is not the chair the proxy need not vote on the poll, but if they do so, the proxy must vote that way

The Corporations Act contains restrictions on proxy voting by key management personnel and related parties of the company.

When can a proxy be transferred to a chair?

Under the Corporations Act, if the proxy appointment specifies:

- the way the proxy is to vote on a particular resolution
- the appointed proxy is not the Chair, and
- the appointed proxy is either not present or does not vote,

then the Chair is deemed to have been appointed as the proxy for the purposes of voting in a poll on the motion.

Powers of attorney

A person can appoint another person to have 'power of attorney' for them — that is, to make decisions on their behalf, either indefinitely or for a specified period of time.

This must be done in writing, signed and dated.

This is another way to enable a person to vote on behalf of a member who is not attending an AGM. An attorney may exercise all powers of the donor and vote on their behalf at an AGM. A person who has appointed a power of attorney may cancel (revoke) the appointment at any time in writing.

More information

For more information on powers of attorney and sample forms, see the Office of the Public Advocate website.

'Donor' and 'attorney'

When talking about powers of attorney, it is important to know that:

- the 'donor' is the person who appoints another person to make decisions on their behalf
- the 'attorney' is the person who is appointed by the donor, and
- the 'power of attorney' is both the document by which the attorney is appointed, and the actual grant of power

How can you tell if someone has a power of attorney?

If a person says they have power of attorney to act on behalf of a member of your company, it's good practice to:

- ask that person for a written declaration that they have the powers they claim, and
- request to see, and then carefully read, the original copy of the power of attorney to:
  - confirm that the power exists
  - make a note of the extent of the power granted to the attorney, and
  - make a note of the period of time (if any is specified) that the power operates

Can the attorney appoint a proxy or be a proxy holder?

Depending on the terms of the power of attorney, the attorney may sometimes appoint a proxy or be a proxy holder.

A power of attorney that gives a person the power to act on the donor's behalf on all matters is a 'general' power of attorney. So, in this situation, the attorney would have the authority to appoint a proxy, or to be a proxy holder.

Direct voting

What is direct voting?

Direct voting is a method of voting which enables members to exercise their voting rights without having to either attend the AGM, or give their right to vote to someone else (ie. a proxy or attorney). Direct voting provides for members to vote by submitting a vote in writing to the company before the AGM, where the company allows this (see below).

Direct voting makes it easier for a member to vote (and have their vote counted) when they can't attend an AGM. In contrast to proxy voting, direct voting allows an absent member to simply lodge their vote in writing before the AGM. Direct voting can foster greater member participation in decision-making, and avoids a situation where, for example, a proxy holder falls ill on the day of an AGM and can't attend.

Direct voting does not necessarily replace the proxy system. It can sit alongside it. Direct voting simply provides an additional voting option to members who know they can't attend an AGM.

Implementing direct voting

Direct voting is not available to members unless the CLG's constitution provides for it. If your CLG's constitution does not currently allow for direct voting, and you would like to adopt a direct voting system, the constitution will need to be changed to allow direct voting.

You will need to consider how you want the procedure to work. For example, do you want the constitution to outline the form and process for direct voting, or do you want to leave this to the board to determine in the future as it sees fit?

Tool

For sample wording of a new rule to allow direct voting, see **Tool 13: Sample wording for allowing direct voting in your constitution**

Caution

Check the voting provisions in your CLG's constitution. If your CLG's constitution does not allow for direct voting, you will need to change it to implement direct voting procedures.

Non-charitable CLGs and registered charity CLGs need a special resolution to change their constitution.

A special resolution must be passed in accordance with the requirements of the Corporations Act which requires at least a 75% vote in favour of the change (see section 136).

Non-charitable CLGs must lodge a copy of that special resolution with ASIC within 14 days after it is passed.

A copy of the modification of the constitution must be lodged with ASIC.

Registered charity CLGs must notify the ACNC of changes to the constitution as soon as they reasonably can but no later than:

- 28 days (medium and large charities), or
- 60 days (small charities)

A copy of the new constitution must be given to the ACNC.

Minutes of the AGM

What are minutes?

Minutes are a formal written record of the matters discussed and decisions made at a meeting.

CLGs must make sure that:

- minutes are taken of each meeting (including the AGM) of the company
- minutes are confirmed by the company as an accurate record of the meeting, and
- the minutes of all meetings are kept safely by the company for future reference

Often minutes are taken and kept by the company secretary, but this is not a specific requirement.

Non-charitable CLGs must comply with legal requirements in the Corporations Act and the company's constitution (if any), for preparing and keeping minutes of AGMs. Your CLG may also have particular policies and practices for taking and keeping minutes.

Other laws which you should be aware of when preparing and distributing minutes, including defamation and privacy laws, are also discussed below.

Writing and keeping minutes of AGMs

Non-charitable CLGs must comply with the requirements of the Corporations Act about keeping accurate minutes of AGMs and allowing members access to minutes of the company.

Under the Corporations Act, non-charitable CLGs must:

- keep minute books in which they record, within one month, proceedings and resolutions of meetings of the company's members
- ensure minutes of a meeting are signed within a reasonable time after the meeting by either the Chair of the meeting or the chair of the next meeting, and
- ensure the minute books for the meetings of its members, and for resolutions of members passed without meetings, are open for inspection by members free of charge

It's therefore important that the CLG ensures accurate minutes are taken of the company's AGMs and that they are kept in a safe place.

Check your CLG's policies about taking and keeping minutes. If you don't have any, your company may choose to create policies, using this guide for assistance.

Tip

Many CLGs require the company secretary to keep minutes of resolutions and proceedings of each AGM. As a guide, in taking minutes for an AGM, the minute taker should record the names of members attending the meeting, proxy forms given to the Chair, and any financial reports submitted to members.

See **part 3** of this guide for more information about obligations to store and provide access to minutes.

What should the minutes include?

Minutes should record the motions moved and resolutions made at the AGM. The minutes are an official historical record of the CLG, so it's good practice to record in the minutes the name and position of office bearers (chair, secretary, treasurer) as well as names of members and any other people present.

The format and style of minutes varies considerably among companies. Some minutes are very brief and precise, and record the bare minimum of information. Others are more detailed. In exceptional circumstances, the minutes may include a transcript of everything that was said at an AGM. Check your CLG's constitution and policies to confirm what is required in your circumstances.

Tool

For information on matters to include in the minutes, see **Tool 14: Checklist for content of meetings**. For samples of commonly accepted drafting conventions for minutes, see **Tool 15: Conventions for drafting minutes**.

Drafting motions and resolutions

The exact wording of a motion should appear in the minutes. If there is a problem with the wording of a resolution (that is, a motion which is passed at the AGM), this will have to be corrected at a later meeting. Once the minutes have been confirmed, the secretary has no power to alter them in order to correct the mistake.

For each motion, the minutes should record whether the motion was passed (in which case it becomes a resolution), rejected, or adjourned (that is, put off until another meeting).

Often the minutes will also include:

- the names of people who move and second the original motion and any amendments, and
- the method of voting (for information about voting methods, see 'Voting methods' in this guide)

Tip

If a motion is proposed verbally at a meeting, the secretary may find it helpful to:

- write the motion down on a board or flip chart and show it to the meeting during the debate, or
- require the motion to be given to them in writing by the member proposing it

This way, any corrections to the wording of the motion can be made before voting on the matter. It also gives the secretary a chance to draft the motion in a way which can be suitably recorded in the minutes.

When circulating the minutes for confirmation, it is useful for the secretary to also circulate an 'action list' to the people or sub-committees who have been given specific tasks at the AGM.

Drafting minutes of difficult meetings

Sometimes AGMs get heated and the participants resort to personal attacks, walk-outs, threats and inappropriate remarks. In many instances, the chair may require such remarks to be withdrawn (therefore the remarks are not recorded). In other cases, it is sufficient to record that 'a vigorous discussion ensued' rather than a blow-by-blow account in the minutes.

Tip

For meetings where vigorous discussion took place the company secretary (if drafting the minutes) could consider:

- asking the Chair for specific help to draft the minutes (it is good practice for the secretary to check the minutes they have drafted with the Chair before distributing them to others), and
- unless a motion was made and/or resolution passed, not including the controversial material at all. The minutes will have to be approved at the next meeting and, if at that time it is considered necessary to include more detail, it can be agreed on then

Defamation

Sometimes minutes will have to deal with potentially defamatory matters. A Chair should challenge any defamatory statements at the time they are made in an AGM and have them withdrawn. The statements will then not be recorded in the minutes.

Generally a 'defamatory statement' about a person is one that exposes the person to hatred, contempt or ridicule, tends to lower them in the opinion of other people, harms their reputation (for example in their profession) or causes them to be shunned or avoided by others.

Caution

The law of defamation is complex. If a minute-taker is concerned about any potential defamatory matters when drafting minutes, they should seek legal advice before finalising and distributing the minutes.

Storing minutes – the minute book

Finalised minutes are often entered into a 'minute book'. However it can be difficult to keep track of the 'official' version of the minutes when they are created and stored electronically. For these reasons you should take precautions to make sure the official minutes of meetings are secure, and easily identifiable.

A non-charitable CLG must keep its minute books at its registered office, its principal place of business in Australia or another place in Australia approved by ASIC.

Confirming and verifying minutes

It's good practice to make sure:

- the accuracy of the minutes is 'confirmed' at the next meeting, and
- the chair of the AGM (or the chair of the next meeting) has 'verified' the accuracy of the confirmed minutes, for example, by signing them

Tool

For more information, see **Tool 16: Flowchart for confirming and verifying minutes**.

Check your CLG's constitution for any special provisions about confirming and verifying minutes.

Special general meetings

What is a special general meeting?

A special general meeting (**SGM**) is a meeting of the members of a CLG.

A SGM is any general meeting that is not an AGM.

SGMs are used to address matters that are not dealt with at an AGM, and are normally convened to address one or more particular matters. All voting members of a CLG must be provided with notice of an SGM and can vote on any motions at the SGM.

Generally, the requirements that must be met for holding SGMs for non-charitable CLGs mirror the requirements that a non-charitable CLG must follow in holding an AGM, namely the procedures set out in the Corporations Act.

Also check your CLG's constitution for any additional requirements regarding SGMs

Tool 8: Checklist for notice of AGM

Order	Description	Done
1.	Check the Corporations Act and your company's constitution, resolutions and policies for specific requirements.	☐
2.	Content of notice: • as its heading, the word 'notice of annual general meeting' • name and registration number of the company • meeting date, time, location, any technology used • nature of business to be discussed at meeting, including for example: – confirming minutes of the previous annual general meeting and any other general meetings held since then – receiving the financial statement and other reports on activities of the company in the last financial year – electing the directors of the company – if applicable, receiving the reviewer's/auditor's report on the financial affairs of the company for the last financial year – if applicable, presenting the reviewed/audited financial report to the meeting for adoption – if applicable, appointing a reviewer/auditor • date of notice • directions to the meeting venue and disability access (optional) • company secretary's contact details (optional) • notice 'authorised by xx' (optional)	☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐
3.	If relevant, the notice of annual general meeting may also include: • the wording of motions or resolutions to be considered at the meeting (if a special resolution is proposed, set out the intention to propose the special resolution, and include the *exact* wording of the special resolution) • any directors' disclosure of interest to be dealt with (see **part 3 of** this guide) • if the constitution allows proxy voting, an explanation of how / when to appoint a proxy, and attach a proxy form • a non-charitable CLG will need to include a statement for members entitled to a proxy vote that the member has a right to appoint a proxy; if that proxy has to be a member of the company; and, if a member is entitled to cast 2 or more votes, that they may appoint 2 proxies and may specify the proportion of votes or number of votes each proxy is appointed to exercise • if the constitution allows direct voting, an explanation of how/when to vote directly before the meeting, and attach a direct voting form	☐ ☐ ☐ ☐ ☐
4.	**The notice should also attach background information & documents such as:** • minutes of the last AGM & any other general meetings held since then if needed • reports from staff, committees or volunteers • financial reports • where appropriate, relevant background correspondence	☐ ☐ ☐ ☐
5.	**Time for giving notice** • AGMs must be held within 5 months of the end of your company's financial year • See company constitution, resolutions or policies & the Corporations Act for specific requirements • Note rules on how days are calculated	☐ ☐ ☐

6.	**How to give notice** • Usually by post, but can be by email or fax. Check your company's constitution, and policies for specific requirements (i.e. notice in local paper)	☐
7.	**Who to give notice to** • Usually all members of the company (check the members register), each director and the auditor	☐

Tool 9: Sample AGM notice of meeting

Note

This notice is for companies that have their financial accounts audited by an independent auditor. Not all CLGs are required to have their accounts audited.

See **part 4** of this guide.

Notice of Annual General Meeting

[*Company name*] ACN **[*Australian Company Number*]**

Notice of Annual General Meeting

Notice is given that the Annual General Meeting of [*company name*] will be held on *[date]*, at *[time]* at *[address]*.

Business of the Meeting:

1. To confirm the minutes of the previous annual general meeting and of any general meeting held since that meeting
2. To receive and consider the annual financial report, directors' report and auditor's report for the year ended [30 June 20XX]
3. To re-elect [director name] who retires from the office of director by rotation, and being eligible, offers himself for re-election
4. Other business

Dated: [date]

By Order of the Board

……

Company Secretary

Appointment of Proxies

A member entitled to attend and vote at the annual general meeting may appoint a person to attend and vote at the meeting as the member's proxy. A proxy need not be a member.

A proxy may be appointed by completing a proxy form (attached) and returning it to the Company Secretary by:

a) post to the Company's registered office at *[address]*,

b) facsimile to the Company on facsimile number [*number*], or

c) email to [*email*]

so that it is received not less than 48 hours before the commencement of the meeting.

Inquiries

All inquiries should be directed to the Company Secretary, [Name], [Company Name], [Address], [telephone], [fax], [email]

Attached

- Minutes of Previous Annual General Meeting held on *[date]*
- Annual Financial Report
- Directors' Report
- Auditor's Report
- Proxy Form

Tool 10: Sample agenda for AGM

Note

The agenda and explanatory notes below relate to formal requirements and procedures for an annual general meeting. However, for some companies, the annual general meeting is also a time to celebrate the company's achievements, and may include, for example a guest speaker, awards for volunteers, and/or an audio visual presentation of the company's activities.

Annual General Meeting to be held in the XYZ Clubhouse Ltd, at 123 Frank Street, Motown, 1 November 2017 at 7.00pm

Agenda summary

- Chair's welcome
- Apologies & attendance
- Minutes of previous meeting
- Questions to directors and/or the auditor
- Election of board members
- Presentation of any financial reports required to be prepared under the Corporations Act
- Special business
- General business
- Close

1. Business

The company is responsible for ensuring that someone (often the company secretary) takes, accurate minutes of what is discussed and decided on at the meeting.

2. Chair's welcome

The chair, who normally acts as chair of the meeting, calls the meeting to order and welcomes any new members and guests.

3. Apologies and attendance

The chair asks the company secretary whether any apologies (that is, the name of any person who is unable to attend and has asked that this be noted) have been received, then asks if any member has an apology to record. These apologies are recorded in the minutes. The secretary also records the names of the people present, or circulates a book for them to record their own names.

4. Minutes of the previous meeting

The minutes of the previous meeting should already be prepared. If the minutes have been distributed with the notice of meeting, the chair may ask the meeting if there is any objection to taking the minutes as read. Otherwise the company secretary may read the minutes to the meeting.

The meeting should confirm that the minutes are an accurate record of the previous meeting. It is usual for a member who was at the previous meeting to propose this motion and for another to 'second' the motion. The motion is simply, 'I move that the minutes be confirmed as a true and accurate record of the last meeting'. All present may vote on the resolution, whether or not they were present at the last meeting. However, if the minutes are not correct in some aspect, a member may propose a motion to correct them. The members may vote on whether the minutes should be changed. This procedure is to agree on what

was said at the previous meeting; not to re-open the debate or reverse previous decisions. The chair may sign a copy of the minutes (with any changes marked) and these are kept in the company's records.

5. Questions to directors and/or the auditor

The Corporations Act requires that:

- the Chair of the AGM allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the company, and
- if the auditor is present or represented at the AGM, the Chair must allow a reasonable opportunity for members as a whole to ask the auditor or their representative questions about:
  - the conduct of the audit;
  - the preparation and content of the auditor's report;
  - the accounting policies of the company; and
  - the independence of the auditor.

6. Election of board members

A company's constitution will often set out a process for the retirement of directors on a rotational basis. This process will usually allow the re-election of the retiring director.

7. Presentation of financial reports

The company must lay the following reports, (where applicable) for each AGM in respect of the prior financial year:

- annual financial report;
- directors' report; and
- auditor's report

If it is a non-charitable company's first AGM (and the AGM falls prior to the financial year of the company), it will not need to lay any financial reports before the AGM.

If it is a non-charitable CLG that is also a 'Small CLG' (i.e. its revenue less than $250,000 in the financial year) will not have to lay a report before the company's AGM, unless the report has been prepared as a result of a member direction.

If the financial reports have been distributed with the notice of meeting, the chair may ask the meeting if there is any objection to taking the reports as read. Otherwise the company may distribute copies of the reports to the meeting, allow time for reading, and then a director or the company secretary will usually summarise the key points.

8. Special business

Special business consists of matters placed on the agenda by the board. Special business may also be a proposed special resolution or some other important matter to be discussed. Note: there may be particular procedures for giving members notice of special business under your company's constitution, and there are special notice requirements under the Corporations Act for some matters (such as proposed special resolutions and resolutions to remove an auditor).

9. General business

At this stage of the meeting, any member may raise a question or an issue which has not yet been dealt with. These are usually minor matters, such as setting the date of the next meeting (which may be a regular yearly date, such as the first Monday in May, or another agreed date) or votes of congratulations, appreciation and/or farewells.

However, if a new resolution is proposed by a member, it should not be considered at that meeting because proper notice has not been given to all members. If additional matters of important business are raised at the meeting, it is best for the company to convene a further meeting (with sufficient notice to members) to consider the issues properly and vote on any motions. This is to avoid a situation where a member who didn't attend the meeting complains that they would have attended (and voted on the motion) if they were aware it would be proposed.

Members who wish to raise complex issues should advise the chair of their intentions before the meeting, and provide a written copy of the motion they intend to move.

10. Close

It is usual for the chair to close the meeting and thank members for attending. The chair may invite everyone for refreshments after the close of the meeting.

Tool 11: Table of voting methods

Note

This table sets out methods for voting. The most common methods are:

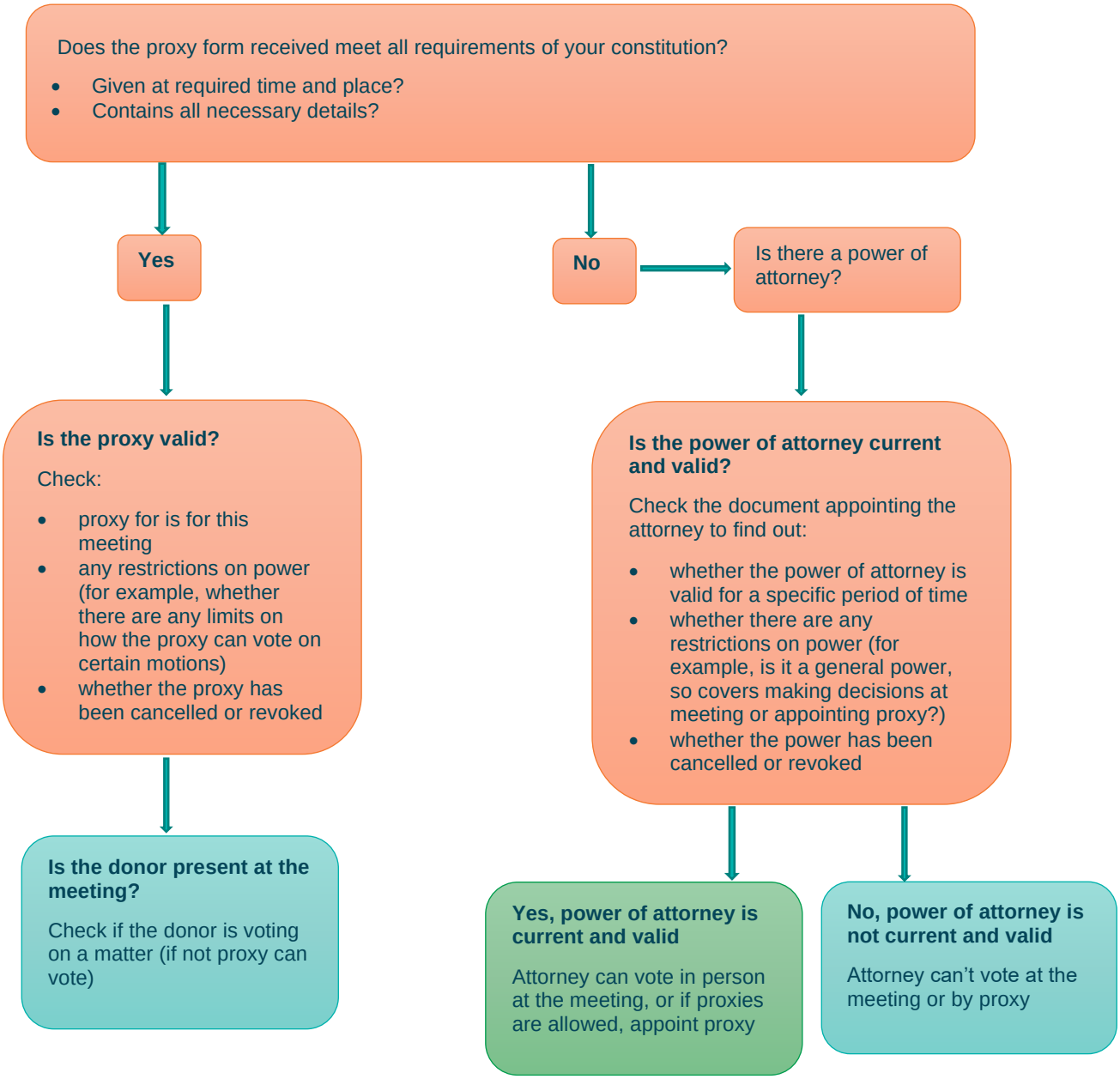
- voting by show of hands
- voting by voice, and
- voting by poll (especially for important matters and/or to keep votes secret ('secret ballot'))

Method	How to conduct vote	How to count votes	Comments
Voting by show of hands	Chair requests those voting in favour of the motion to raise a hand. The procedure is repeated for those voting against the motion.	Usually, chair (perhaps with help of a company secretary) counts the hands. Chair states whether or not the motion has been passed. Secretary records the result in the minutes. If the outcome of the vote is clear, it is unnecessary to count the hands. However, it is good practice to count the hands if the result of the vote will be close, and/or the result is likely to be challenged. It may also be necessary to count the hands if: • the company's constitution requires a specific percentage majority for a motion to be carried; or • an issue must be determined by a certain minimum proportion of the members (for example, a special resolution).	Voting by show of hands is difficult to administer if there are a large number of people voting at the meeting. In these circumstances, the chair may ask for help (usually from the secretary) to count the votes. The chair may also appoint 'tellers' (usually one from each voting 'side' or perspective) and use those people (independently of each other) to determine the count on each vote. The tellers will help the chair ensure that no person raises two hands or votes for both 'sides' of the motion. If necessary (that is, if a record is required), the chair can make a list of the names of people voting.
Voting by standing	A similar method to voting by show of hands. The members stand for the motion that they favour.	Usually, chair (perhaps with help of secretary) counts the people standing. Chair states whether or not the motion has been passed. The result is recorded in the minutes.	Voting by standing can make the counting process easier and reduces the possibility of a vote being counted twice. If necessary, the chair can make a list of the names of people voting.
Voting by voice (or by applause)	Chair says, 'All those in favour of the motion say 'Aye'' (or 'Yes'). After noting the volume of sound, chair continues, 'Those against say 'No'.' Voting by applause is similar, except that members clap instead of saying 'Aye' or 'No.' Voting by applause is usually for a vote of thanks.	Chair determines which of the 'Ayes' or the 'Nos' (or claps) made the more noise and states the conclusion by saying, 'The 'Ayes' (or the 'Nos') have it'. The result is recorded in the minutes.	A problem with voting by voice or applause is a lack of documentation of individual votes. A written record of votes is useful if the decision is later disputed or if (as in the case of a special resolution) a three-quarters majority is required. So, if the particular matter to be voted on is contentious or if a special resolution is required, it is better to conduct a vote by show of hands, by standing, or better still, by division or a poll (see below).

Voting by division	Chair places the motion before the meeting, saying 'All those in favour, the 'Ayes', will pass to the right of the chair; those against, the 'No's', will pass to the left of the chair.'	To record votes, members stand and walk past one side or other of chair, depending upon their vote. As each person passes, chair (or secretary) records their name.	Voting by division takes longer than the methods discussed above. However, it has the advantage of being accurate and straightforward to administer, as well as involving a more objective written record.
Voting by poll	The company (often through the secretary) prepares voting paper containing all relevant details of the matter being voted on. Company distributes the papers to all the people entitled to vote. (If direct voting is allowed, voting forms will be distributed to members before the meeting takes place, e.g. with notice of meeting.) The company must keep a written record of: • names of the people to whom they distributed the voting papers; and • how many voting papers were distributed to each person. Chair explains to those voting the manner of voting required by the voting paper (for example, the poll may call for a 'Yes' or 'No' vote). People who are entitled to vote record their votes in writing on the voting paper. They usually also record their name on the paper. Tellers (people who count the votes) collect the papers. Scrutineers (people who examine the papers) generally supervise the process. (Tellers and scrutineers can be the same people. They may be appointed by resolution at the meeting or by the board.) If any votes are doubtful the scrutineer consults with the chair, who makes a ruling.	Chair checks that all voting papers distributed have now been collected. Tellers and scrutineers count votes and inform chair of the result (usually in writing) as soon as it has been determined. Chair announces the result to the meeting. If a large number of people are voting (and therefore the counting could take some time), chair can usually adjourn the business to after voting papers have been collected and checked.	Voting by poll takes longer to administer than other methods, but the precautions that form part of the procedure are necessary to ensure a correct count. The advantages of poll voting are that: • the votes are made in writing; • all people entitled to vote have an opportunity to do so, (because, if the constitution allows for proxies and/or direct voting, proxies are issued additional ballot voting papers and 'direct votes' are counted); and • members with more than one vote each (that is, differential voting rights) have a say in proportion to their voting entitlement (which may help prevent an overbearing or noisy minority from influencing the vote).
Voting by ballot (for election of board)	Company prepares ballot paper containing all relevant details of the matter being voted on (for example, the names of all nominated candidates). As with a poll, company distributes the papers to all the people entitled to vote and keeps a written record of: • names of the people to whom they distributed the ballot papers; and	Chair checks that all ballot papers distributed have now been collected. Tellers and scrutineers collect and count votes and inform chair of the result (usually in writing) as soon as it has been determined. Chair announces the result to the meeting. If a large number of people are voting (and therefore the counting could take some time), chair can usually adjourn the business until after	The benefits of a ballot are similar to those of a poll (see above). Ballot papers usually do not record the name of the voter (in which case it is a 'secret ballot'). The secrecy of the process is designed to avoid voters being influenced by other people's votes or feeling pressured to vote in a particular way.

	• how many ballot papers were distributed to each person. Chair explains to those voting the manner of voting required by the ballot paper (for example, the ballot may require people to indicate their preference by placing the number 1 against their first preference and placing the number 2 against their second preference). As with a poll, tellers (people who count the votes) collect the papers, and scrutineers (people who examine the papers) generally supervise the process. If any votes are doubtful the scrutineer consults with the chair, who makes a ruling.	ballot papers have been collected and checked.

Tool 12: Flowchart for reviewing proxies



Tool 13: Sample wording for allowing direct voting in your constitution

Note

Below is a sample clause which could be included in a company's constitution to allow 'direct voting' by members of the company. Read the wording carefully. Consider whether this procedure is suitable for your company. Note that the wording gives the board a *discretion* to allow direct voting at a general meeting – in other words, members do not have an *automatic* right to direct voting at every meeting.

You may like this wording, or you may need to adapt the clause or use different wording altogether. This will depend on your company's needs. If necessary, seek legal advice about changes to your constitution.

'The board may determine that at any general meeting of the company, a member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution.

If the board determines that votes may be cast by direct vote, the board may specify the form, method and manner of casting a direct vote and the time by which a direct vote must be received by the company in order for the vote to be valid.'

Tool 14: Checklist for content of meetings

It's a good idea to include the following in minutes of a meeting.

Order	Description	Done
1.	Name of your company and heading, 'Annual General Meeting'	☐
2.	Date, place and opening time	☐
3.	Name of chair	☐
4.	Names of members present (and their status if office holders) and other people present, such as observers (or reference to separate attendance register)	☐
5.	Names of non-members who are attending (if any)	☐
6.	Names of those people who have sent apologies (for not attending)	☐
7.	Confirmation of previous meeting's minutes	☐
8.	Record of motions, resolutions and amendments	☐
9.	Names of the people who move and second motions	☐
10.	Short summaries of the debates on motions	☐
11.	The method of voting on motions (for example, show of hands, poll) and the numbers of votes for, against and abstaining	☐
12.	The details of any proxy voting or direct voting	☐
13.	Results of voting (for example, passed, rejected or adjourned)	☐
14.	Titles (and any relevant details) of documents or reports tabled	☐
15.	(If relevant) cross references to previous minutes or policies of the company	☐
16.	Minutes should approve or ratify all the company's expenditure	☐
17.	Details of next meeting	☐
18.	Closing time	☐
19.	List of tasks arising from the minutes and name of person responsible for each	☐
20.	After minutes have been confirmed at the next meeting, signature of chair	☐

Tool 15: Conventions for drafting minutes

Note

The table below is in two parts. The first deals with drafting minutes of **discussion** at meetings, the second deals with drafting **motions** discussed at meetings.

Drafting minutes of discussions in meetings

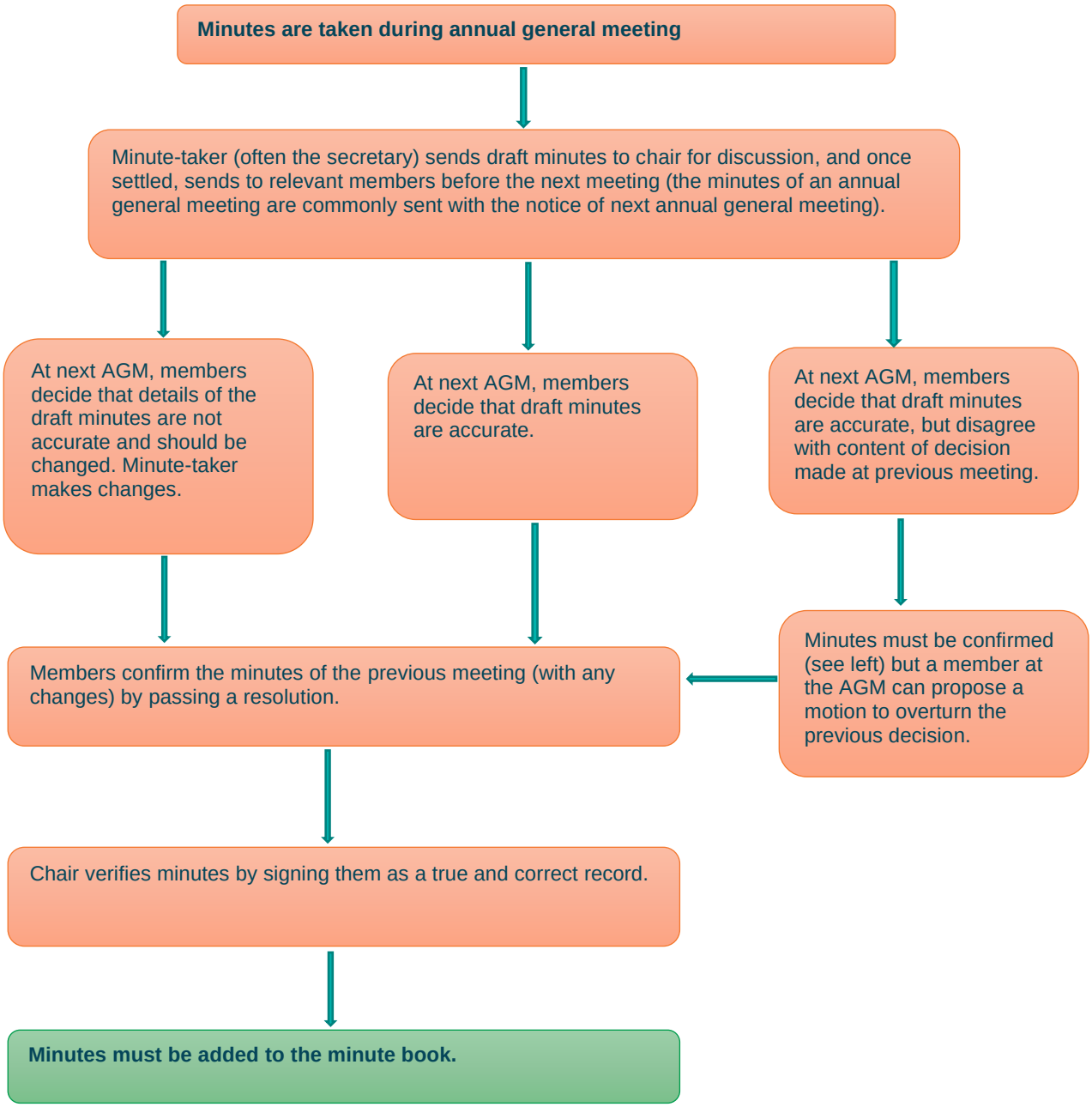
Convention	Explanation	Example
Use simple sentences and simple words	This helps people understand what was discussed (especially if they were not at the meeting).	**Do not** write: 'Mr UB Sporty extrapolated that this fine sporting institution's solar matt 500 water heating appliance with the white duco slimline control panel was performing consistently below its engineered benchmarks.' **Do** write: 'Mr UB Sporty reported the club's hot water system needed urgent repairs.'
Use active, rather than passive voice	In the 'active' voice, the subject of the sentence performs the action stated by the verb. In the 'passive' voice, the subject of the sentence is acted upon. Generally, the passive voice can be more difficult for a reader to understand. However, it is acceptable to use the passive voice if: • you want to soften an unpleasant message; • you don't know who did a particular thing recorded in the minutes, or • you want to shift the reader's attention away from the person to other information.	**Do not** write (passive voice): 'A computer was used by the secretary to write these minutes.' **Do** write (active voice): 'The secretary used a computer to write the minutes.' **Do** write (passive voice) in some circumstances: 'Complaints were put in the suggestion box.' (That is, you do not want to specify who actually made the complaints.)
Use only one tense	It is usually best to use the past tense in minutes.	**Do** write: • 'Ms L Little report*ed* that she had ....' • 'The board consider*ed* that …'
Avoid terms such as 'he said' or 'she stated' unless you quote their actual words	This is to avoid 'putting words into a person's mouth.'	**Do not** write: 'Mr S Fry said: 'I got a letter from the Council about this. I reckon the Council is being stupid.'' **Do** write: 'Mr S Fry reported that he had received a letter from the Council. He spoke critically of the Council's position on this issue.'
Avoid personal descriptions or attributes	This is to make sure that the minutes are as 'objective' or 'impartial' as possible – the minutes should not include the minute-writer's own personal opinions or reflections.	**Do not** write: • 'The chairman announced *happily*...' • 'The director *meanly* said...' • 'The club representative *slammed* the report.'
Be careful (1) not to defame anyone; and (2) when recording matters	The law of defamation is complex. A Chairperson should challenge any defamatory statements at the time they are made in a meeting and	**Do not** write: 'Ms L Little reported that the builder engaged to renovate the club house has a history of stealing from companies and said he was a disgrace to his profession.'

that include confidential information	have them withdrawn. The statements will then not be recorded in the minutes. Mark the minutes as 'confidential' if they contain sensitive, confidential or personal information. This makes it clear that access to minutes is intended to be limited.	**Do** write: 'Concern was expressed about the suitability of the builder for the task of renovating the club house.'

Drafting motions

Convention	Explanation	Example
Commence the motion with the word 'that'	This is so all resolutions of the meeting are in the same format. Before the word 'that', imagine inserting the words, 'The meeting passed a resolution…'	**Do** write: '*That* the treasurer's recommendation be adopted.'
Use the verb 'be' rather than the word 'is'	This is to be grammatically correct when the motion commences with the word 'that' (see above).	**Do not** write: 'That the newspaper release *is* adopted.' **Do** write: 'That the newspaper release *be* adopted.'
Express the motion in the positive	This means that a 'yes' vote from the members results in the proposal being approved or supported.	**Do not** write: 'That the doors *be not shut* during the meeting.' **Do** write: 'That the doors *be open* during the meeting.'
If you can't express the motion in one sentence, split it up into carefully written parts	Carefully construct a composite motion (one with a number of separate parts) so that the chair can split it up to enable the meeting to deal with each of its parts separately.	**Do not** write: 'That in addition to any other motions proposed this meeting resolve to thank the members of the Town Hall including Ms T Bag for providing the refreshments and Mr B Room for making the accommodation available and instruct the secretary to send letters of thanks to Ms T Bag and Mr B Room with a copy to Mr S Visor.' **Do** write: 'That the meeting register its appreciation for Town Hall members generally, and specifically ask the secretary to: (a) send a letter of thanks to: (i) Ms T Bag for providing the refreshments; and (ii) Mr B Room for making the accommodation available; and (b) send a copy of these letters to Mr S Visor.'

Tool 16: Flowchart for confirming and verifying minutes



Part 6

Board meetings

Board meetings

This part covers:

- what a board meeting is
- procedures for holding board meetings
- voting at board meetings
- making decisions without a board meeting, and
- minutes

Summary of key points in this part of the guide

What is a board meeting?	A board meeting is a meeting of the company's directors (or 'board'). Sometimes these are called directors meetings. This guide uses the term ‘board meeting’.
How is a board meeting called?	A director may call a meeting by giving reasonable notice individually to each other director. All directors must agree on a form in which this notice needs to be given.
What is a notice of meeting?	A notice of meeting is a written notice that a meeting is to take place at a specified time. The notice must propose some decision or action be discussed and voted on at the meeting.
What are the procedures for board meetings?	There are legal requirements and common procedures at board meetings, including procedures around voting.
Can decisions be made in writing without a board meeting?	Decisions can be made in writing without a board meeting, (known as ‘circular resolutions’). A circular resolution enables the board to make decisions if a meeting is not possible, which can be useful if urgent matters arise.
What are ‘minutes’?	Minutes are a written record of what was discussed and decided at a meeting. There is a legal requirement to make and keep minutes of proceedings and resolutions of board meetings. The minutes must be signed within a reasonable time by the chair of the meeting in question or of the next meeting.

Board meetings

What is a board meeting?

A board meeting is a meeting of the company's governing body (sometimes called a 'directors' meeting').

Board meetings are usually less formal than annual general meetings, so the notice requirements are often less formal too. In fact, many board meetings of small companies are held in a relaxed way around a kitchen table.

There are very few legal requirements in the Corporations Act for board meetings.

A CLG's constitution may contain more detail – for example, specifying that the directors must meet a certain number of times and can hold additional meetings.

Some CLG constitutions allow the board (and any subcommittees) to make their own notice specifications for their meetings. Usually, the board or a subcommittee will do this by passing a resolution.

Tip

Make sure you have the most up-to-date version of your CLG's constitution.

Corporations Act requirements for directors' meetings

The Corporations Act requirements for holding directors' meetings are not 'switched off' for registered charity CLGs. This means they apply to **both** registered charity CLGs and non-charitable CLGs.

- Directors can call meetings by giving notice to all the other directors. The notice must be reasonable. What is reasonable will often depend on the circumstances of your CLG.
- Meetings can be conducted using any technology agreed to by all the directors. Directors can withdraw consent in certain circumstances.
- The meetings must be chaired. Directors can decide who is to chair and for how long they will be the chair (for example, they may decide to rotate the position of chair).
- Meetings must have a quorum of a least two directors (or more as agreed) at all times for every meeting.
- A resolution of directors must be agreed to by a majority of directors who are eligible to vote on the resolution (note that provisions also exist for directors to make resolutions outside of meetings and also how the resolutions are to be recorded).
- Minutes of directors' meetings must be taken and recorded within one month of the meeting. The minutes must be signed within a reasonable time of the meeting by the chair of the meeting or the chair of the next meeting.

Caution

Check your CLG's constitution.

For example, it may state that the quorum for directors meetings is three directors and not two.

Subcommittee meetings

In larger organisations, subcommittees are sometimes established to consider and make recommendations to the directors on the direction of particular areas of operation of the organisation.

Subcommittees, such as finance or audit subcommittees, are usually created under an organisation's constitution but don't have to be. For example, the constitution may give the directors the power to establish subcommittees and set the 'terms of reference' and decide which members will form the subcommittee.

Although the directors delegate power to the subcommittee to look at certain matters, the overall responsibility for the matter still sits with the directors. It's not enough for a director to simply rely on a sub-committee.

Your CLG's constitution or policies may deal with how a notice of a subcommittee meeting is to be given and what is to be included in the notice. As a general rule, subcommittee meetings are notified more informally than board meetings and members of the subcommittee are free to raise any item of business, related to the terms of reference, at the meeting. However, each subcommittee should take care to clearly record their conclusions, actions and recommendations.

The CLG must ensure that records of subcommittee meetings are properly maintained. Someone should take minutes. These minutes must be signed by the chair of the subcommittee meeting or the chair of the next subcommittee meeting.

Notice of board meetings

What is a notice of meeting?

A 'notice of meeting' is a written notice that a meeting is to take place at a specified date, time and place.

It will also usually contain information about the purpose of the meeting so that the directors know what is to be discussed.

When and how to give notice of a board meeting

Your CLG's constitution may set out when directors should receive notice of a board meeting. Or your CLG may have specific policies (and procedures) in relation to meetings including how and when notice is to be given to directors and what should be contained in the notice.

If the constitution or policies don't this, and unless the constitution says that the replaceable rules do not apply, a replaceable rule in the Corporations Act will apply. This rule provides that any director may call a board meeting by giving 'reasonable notice' to every other director. What is 'reasonable' will depend on the circumstances, for example the size of the board, where the directors live, and whether the meeting is to deal with urgent matters.

Your CLG's constitution may have special requirements on giving notice for a board meeting which is being held for a particular purpose.

A board meeting may be called using any technology (for example email) consented to by all the directors, and a director may only withdraw their consent within a reasonable period before the meeting. This is a provision in the Corporations Act that can't be replaced by the CLG's constitution (although the constitution might include it for completeness).

The consent to technology may be a 'standing consent' which applies to every board meeting rather than a specific meeting. Notice by email is often the most practical way of calling board meetings.

Your CLG's constitution may also have special requirements for giving notice of a board meeting which is being held for a particular purpose (for example, if

something particularly important is being discussed, longer notice might be required).

Tool

Tool 17: Checklist for notice of board meeting will help you to prepare a notice for a board meeting.

Tip

It's good practice to give at least one week's notice of a board meeting so that directors have time to read the papers and prepare properly. In many companies, the dates of all board meetings for the year are set at the first meeting of the year. This helps people to plan their availability. If urgent matters arise, additional meetings with shorter notice can be arranged.

What information should be included in a notice of board meeting?

There are no legal requirements for the contents of a notice of board meeting and this is not usually covered in a CLG's constitution. But check your own constitution and policies for any particular requirements.

In the notice – include all the necessary practical details such as time, place and (if relevant) dial-in details. It can also be useful to include:

- a summary of the agenda, and
- documents that provide background information on matters to be discussed at the meeting (for example, the minutes of the last meeting, relevant reports and important correspondence)

It can be helpful to categorise the documents to help directors prepare for the meeting effectively, for example, by marking them 'for information only', 'for discussion', or 'for action'.

A notice of board meeting doesn't usually need to specify all the business to be dealt with – any business raised at the meeting may be considered, regardless of whether that business was included in the notice.

However, some CLGs have a rule that a notice of a 'special' board meeting, where particular issues are to be discussed, must specify the general nature of the business to be conducted, and no other business may be conducted at that meeting. Check the constitution and policies of your CLG to see whether this applies.

Who should be given notice of a board meeting?

All directors should be given notice of a board meeting (plus usually the company secretary and Chief Executive Officer (if you have one), if they are not directors themselves). Check your CLG's constitution or policies.

What if a board meeting is adjourned to a later date?

If a meeting is adjourned, consider whether a new notice is required to continue the meeting. Check your CLG's constitution or policies. If in doubt, it's best to send out a new notice.

Procedures at board meetings

The Corporations Act does not set out any particular procedure for board meetings. A CLG's constitution or policies will often specify that the board:

- must meet a certain number of times per year, and
- may hold additional meetings

Although the procedures for board meetings are usually less formal than for general meetings, the directors should run their meetings in an organised way so that the process of decision-making is clear and can be referred to if necessary.

Apart from this being good governance practice, it also helps to show that the directors have complied with their legal duties and took proper care when making decisions.

The board should be careful to:

- clearly record their decisions and actions (done through the minutes)
- note any actual or potential conflicts of interest (see **part 3** of this guide) and details of how the meeting dealt with voting on contracts or matters to which these relate
- carefully consider the CLG's financial position, and
- approve or confirm any expenditure for the company

Quorum

What is a quorum?

Before you can deal with any business at a board meeting, there must be a minimum number of directors present. This number is called the 'quorum'.

If a quorum is not present, the meeting (and any decisions taken) will not be valid. Note that only directors themselves count in the quorum, so any others attending the meeting (such as the secretary who is not also a board member or anyone who has been invited to the meeting such as a member of staff) will not form part of the quorum.

The quorum should aim to strike a balance between ease of decision making and participation in decisions. You don't want the number to be so high that it will be difficult to reach the required quorum, but preferably it should not be so low that only a small minority of the board makes decisions.

The Corporations Act provides that, unless the directors determine otherwise, or the CLG's constitution otherwise provides, the quorum for a board meeting is two directors. The quorum must be present at all times during the meeting.

Your CLG's constitution or policies may include specific provisions about how and when meetings can be adjourned (for example, see below for where there is no quorum). However, there may also be other circumstances where adjourning the meeting is appropriate.

Tip

The directors may wish to make a determination (and incorporate the determination into the policies of the CLG) which provides something similar to the following:

- the quorum for a board meeting is the presence of the majority of directors
- no business can be conducted unless a quorum is present, and
- if a quorum is not present within half an hour of the time for the start of the meeting, then:
  - the meeting does not happen at all, or
  - if the meeting is an ordinary board meeting — it is adjourned to a date no later than 14 days later, and notice must be provided of the time, date and place

Can directors attend a board meeting by phone or Zoom?

The Corporations Act provides that board meetings can be held using any technology consented to by all the directors. The consent can be a standing one (ie. ongoing consent which is valid for all board meetings).

A director can only withdraw their consent within a reasonable period before the meeting. What is 'reasonable' will depend on the circumstances.

This provision of the Corporations Act can't be replaced by the CLG's constitution, although the constitution might include it for completeness.

More information

Use of technology at board meetings is set out in section 248D of the Corporations Act.

The chair

Unless your constitution says otherwise, the Corporations Act will apply regarding the chairing of board meetings.

Corporations Act – section 248E

The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chair.

The directors must elect a director present to chair a meeting, or part of it, if:

- a director has not already been elected to chair the meeting; or
- a previously elected chair is not available or declines to act, for the meeting or the part of the meeting.

The effect of this is that every board meeting must be chaired, either by a chair who is in the post for a particular period, or by a director who chairs a particular meeting (or part of meeting).

As well as ensuring that the business of the meeting is dealt with, the chair guides the meeting in a style that suits the situation and type of organisation. It's important that the chair has the ability to keep the meeting on track and make sure all the agenda items are dealt with in the time available.

The meeting agenda

It's important (although not a legal requirement) to prepare an agenda for the meeting so that it is clear what needs to be covered. The agenda can improve the effectiveness of board meetings by keeping discussions focused. The agenda may be sent to the directors before the meeting to help them prepare.

It's advisable to make conflicts of interest a regular item on board meeting agendas and to cover this item before the actual business of the meeting and any voting takes place.

See **part 3** of this guide for more detail on the duty to disclose and manage conflicts of interest.

Voting at board meetings

Unless your constitution provides otherwise, the Corporations Act will apply to the passing of resolutions (ie. making formal decisions) at board meetings.

A resolution is a proposed decision or action which has been voted on and passed. A proposed resolution is sometimes referred to as a 'motion', which may be suggested (or 'moved') by a particular director or directors.

Corporations Act – section 248G

A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.

The chair has a casting vote if necessary (ie. if the votes are evenly split) in addition to any vote they have in their capacity as a director.

Note - The chair may be precluded from voting, for example, by a conflict of interest.

There are various ways in which votes on resolutions can be taken at a board meeting, and it will generally be up to the directors to decide how to organise voting (unless the constitution or policies of CLG set out a process for this). For example, voting may be by show of hands or in writing. Carefully check your constitution and policies about voting methods.

What if a vote is tied?

If a vote is tied, the most common solution is that the chair of the meeting has the 'casting' vote (see section 248G of the Corporations Act). Commonly, the chair will exercise this vote to maintain the existing situation (so that a controversial resolution will not be passed). Check your constitution.

Caution

The replaceable rules in the Corporations Act regarding voting will apply if your constitution is silent on this and does not state that the replaceable rules don't apply. This means that the chair will have a casting vote. If you don't want the chair to have a casting vote, this should be explicitly stated in the constitution.

Abstaining from voting

Some directors may decide not to vote at all (that is, 'abstain' from voting) and they may wish to ensure the minutes record them as having abstained. In circumstances where a director has a conflict of interest in a matter, that director should not participate in discussions about or vote on the matter. In this instance, they

must ensure this is recorded in the minutes of the meeting. For more information on conflict of interests, see **part 3** of this guide.

What if a director is unable to attend a board meeting and vote in person?

The CLG's constitution may allow a director to cast their vote even if they don't attend the meeting in person. For example, they may be able to transfer their voting rights to another director (commonly called a proxy) or to cast their vote by completing a voting form before the meeting.

Where a proxy vote is used, it's good practice to ensure the minutes note it so everyone is clear about what happened. Check your CLG's constitution or policies to see what it says about proxy voting.

A CLG may permit direct voting to allow directors who will be absent from a board meeting to cast their vote by completing and lodging a voting form prior to that meeting. For more information about direct voting, see **part 5** of this guide.

Passing resolutions without a board meeting

The Corporations Act sets out a process for the passing of resolutions in writing without a board meeting (sometimes called a 'circular resolution' because the resolution is 'circulated' among the directors).

Circular resolutions can be useful if a board resolution is needed, and a meeting is not possible.

Note

The Australian Institute of Company Directors recommends that circular resolutions be used sparingly and be limited to:

- procedural or recurring, non-controversial matters (for example, administrative matters where a board decision is required on a monthly basis, but the board doesn't meet monthly), or
- matters that have had previous board discussions in meetings, don't require further discussion and can't be deferred to the next meeting

Under the Corporations Act a circular resolution is passed if all the directors entitled to vote on it (ie. not a just a majority) sign a document stating they are in favour of the resolution set out in the document. They can sign separate copies of the document as long as the wording is identical in each copy.

If your constitution is silent on circular resolutions, the replaceable rules in the Corporations Act will apply (unless your constitution says that the replaceable rules do not apply).

You can choose to adopt different arrangements by setting these out in the constitution. Many CLGs find it practical to allow circular resolutions by email. If your constitution doesn't already provide for this you might want to consider adding it.

More information

The relevant provision regarding resolutions without a meeting passing of directors' resolutions is section 248A of the Corporations Act.

Board meeting minutes

What are ‘minutes’?

Minutes are a formal written record of the matters discussed and the decisions made at a meeting.

Under the Corporations Act, a CLG must make and keep minutes (ie. a formal written record) of board meetings, committee meetings, and circular resolutions of the directors.

The CLG must make sure that minutes taken of each board and committee meeting are:

- accurate
- signed by the chair, or the chair of the next meeting, within a reasonable time after the meeting, and
- kept safely (because they can be called as evidence in legal proceedings)

What is a reasonable time depends on the circumstances, but many companies ensure minutes are signed before the next meeting.

More information

The duties relating to board and committee minutes are set out in section 251A of the Corporations Act.

In addition, a CLG’s constitution will usually set out requirements for taking and recording of minutes. Check your CLG’s policies and practices about taking and keeping minutes. If you don’t have any, it’s a good idea to develop some.

There are other laws which you should be aware of when preparing and distributing minutes, including defamation and privacy laws.

Tip

Many CLGs comply with their requirements through their company secretary. Secretaries are often responsible for taking minutes and performing compliance tasks for the organisation.

Note

Signed minutes may be used as evidence in a court proceeding and a signed minute is evidence of the resolution to which it relates, unless the contrary is proved. Because of this, it’s important that accurate minutes are taken of the board meetings and they are kept in a safe place.

Writing the minutes

It’s often the responsibility of the secretary to take the minutes.

The minutes are an official record of the meeting, so should include:

- the date, time and location of the meeting and the type of meeting (ie. board or committee meeting)
- the names and position of the people present (including office holders such as the chair and secretary)
- any conflicts of interest declared and how these were managed – this is particularly important
- resolutions passed at the meeting – the exact wording should be recorded, and
- a summary of discussions at the meeting

Drafting generally

The format and style of minutes vary considerably among CLGs. Some minutes are brief and precise, recording the bare minimum of information. Other minutes include 'blow by blow' summaries of the discussions that took place at the meeting.

Most importantly, the minutes should record the motions moved and resolutions made at the board meeting.

It's generally advisable to record a summary of factors relevant to any decision taken. This will help to show, if it becomes necessary, that the directors complied with their duty to exercise reasonable care and diligence by properly considering the issue before passing a resolution. Recording the length of time spent on a discussion can also help to demonstrate this. In exceptional circumstances, the minutes may include a transcript of everything that was said at the meeting.

Check if your CLG has any policies on minute taking. Looking at minutes of previous meetings can also be helpful.

Tip

Experience shows that it is best to write up the first draft of minutes as soon as possible after a meeting. Memory is fresh and the task can be done more quickly and efficiently than leaving it until just before the next meeting. To this end, notes should be taken during the meeting.

It's a good idea to send the minutes as quickly as possible to the chair of the meeting. They can review the minutes and make amendments if necessary. The chair can send the minutes to the other directors and ask if they have any disagreements – it's best to resolve these as soon as possible while everyone has a fresh memory. Once the directors' agree, the chair should sign the minutes and record them in the minute book.

Note

The minutes are an official historical record so it's good practice to record the name and position of those who are present in the minutes.

More information

The Australian Institute of Company Directors has published guidance on board minutes.

Tool

For detailed information about the usual matters to include in the minutes of meetings, see **Tool 18: Checklist for contents of minutes**.

Despite variety in the form of minutes, there are some commonly accepted drafting conventions – see **Tool 19: Conventions for drafting minutes**.

Recording resolutions

The exact wording of resolutions and proposed resolutions should appear in the minutes. If there is a problem with the wording of a resolution (that is, a motion which is passed at the board meeting), this will have to be corrected at a later meeting. Once the minutes have been confirmed, the directors have no power to alter the motion in order to correct the mistake.

The wording of the motion must comply with your constitution, including its purposes — it can't recommend any action outside the scope of your CLG's powers and activities. The motion must also be allowed to be made, especially if the meeting has been called for a specific purpose.

For each motion, the minutes should record:

- the names of people who move and second the motion and any amendments
- the method of voting, and
- whether the motion was passed (in which case it becomes a resolution), rejected, or adjourned (that is, put off until another meeting)

Votes of individual directors should not be recorded, but if a director chooses not to vote (ie. abstains from voting) and asks for this to be included in the minutes, this should be recorded.

If a resolution is proposed verbally at a meeting, the person taking the minutes may find it helpful to ask for this to be given in writing by the director proposing it so it can be recorded accurately in the minutes. It might also be useful to pass it round the room to the other directors before a vote is taken so that they can suggest any changes.

Tip

It's useful for the minute taker to circulate draft minutes with an 'action list' to the people or subcommittees who have been given specific tasks at the board meeting.

Tip

If a motion is proposed verbally at a meeting, the person taking the minutes may find it helpful to require the motion to be given to them in writing by the member proposing it; and circulate it around the room to the other directors.

This way, corrections to the wording of the motion can be made before voting on the matter. It also gives the minute-taker a chance to draft the motion in a way which can be suitably recorded in the minutes.

Drafting minutes of difficult meetings

Sometimes board meetings get heated, and the participants might make inappropriate or personal remarks. In many instances, the chair may require such remarks to be withdrawn (and the remarks will not be

recorded in the minutes). In other cases, it's sufficient to record that 'a vigorous discussion ensued' rather than writing a blow-by-blow account. Clearly, if this is more than a rare occurrence it might indicate a problem with the make-up of the board that needs to be resolved.

Tip

For difficult meetings, the minute-taker could consider:

- asking the chair for specific help to draft the minutes (in any case, it is good practice for the minute-taker to always check the minutes they have drafted with the chair before distributing them to others)
- unless a motion was made and or resolution passed, omitting the controversial material altogether. The minutes will have to be approved at the next meeting and, if it is considered necessary to include more detail, it can be agreed on then, and
- marking minutes 'confidential' to make clear that access to them is intended to be limited

Caution

The law of defamation is complex. If a minute-taker is concerned about any potential defamatory matters when drafting minutes, they should seek legal advice before finalising and distributing the minutes.

Confirming and verifying minutes

Under the Corporations Act:

- non-charitable CLGs must confirm the accuracy of the minutes at the next board meeting, and
- the chair of the meeting (or next meeting) must verify the accuracy of the confirmed minutes (for example, by signing them or by a written statement)

Tool

See **Tool 20: Flowchart for confirming and verifying minutes**.

Check the rules of your own company for any special provisions about confirming and verifying minutes.

Note

The Corporations Act allows a CLG to store minutes of meetings electronically, provided they can be reproduced in written form (ie. can be printed). CLGs are also required to take reasonable precautions to protect their records against damage and tampering.

More information

- Governance Institute of Australia: Good Governance Guide: Issues to consider when recording and circulating minutes of directors' meetings
- AICD: Board minutes and meeting effectiveness
- Governance Institute of Australia: Good Governance Guide: Issues to consider in the use of circular resolutions

Keeping the minutes

It's a requirement under the Corporations Act to keep 'minute books' in which minutes of board meetings, circular resolutions and committee meetings are recorded within one month.

Storing minutes electronically fulfils the requirement for a 'minute book' if the minutes can be 'reproduced in written form' (for example, printed from the computer). Most CLGs now use electronic minute books.

Tip

Your CLG can take the following steps to keep the minutes more secure:

- lock the minutes document from editing, add a password to the document, or both
- print the minutes out and paste them into an official minute book (numbering each page)
- get the chair to sign each page of the minutes to confirm official minutes
- number each meeting sequentially (ie. 'Minutes of Board Meeting No. 3 of 2018 of XYZ Club Ltd')
- distribute the minutes electronically in PDF form rather than in an editable form (such as a Word document), and
- mark the minutes 'confidential' if they contain confidential or personal information

Tool 17: Checklist for notice of board meeting

Note

Board meetings are usually less formal than general meetings and the board may be able to make its own notice procedures under the company's rules (for example, notices may be allowed to be provided by email).

Order	Description	Done
1.	**Check your company's rules, resolutions and policies for specific requirements, such as how much notice to give, what information should be included, and who it should be given to**	☐
2.	**Content of notice:** • the name and Australian company number (ACN) of the company • type of meeting (that is, board meeting) • date, time and place of meeting • if necessary, nature of business to be discussed at meeting (for example, if it is a 'special' meeting, why meeting is being held) • date of notice • directions to the meeting venue and disability access (optional) • secretary or director's contact details (optional) • notice 'authorised by xx' (optional)	☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐
3.	**If relevant, the notice may also include:** • the wording of motions or resolutions to be considered at meeting • disclosure of the interest of any director in the business to be dealt with at meeting (for example, a conflict of interest – see part 3 of this guide)	☐ ☐
4.	**The notice should attach relevant background information and documents, such as:** • minutes of the last board meeting • reports from staff, subcommittees or volunteers • financial reports	☐ ☐ ☐
5.	**Time for giving notice** • check your company's rules, resolutions and policies for specific requirements (for example, if the meeting is being held to discipline a member of the company) • if none, the time of service must be 'reasonable' in the circumstances – good practice is at least one week • Note rules on how days are calculated	☐ ☐ ☐
6.	**How to give notice** • check your company's rules, resolutions and policies for specific requirements, including use of technology. Note the Corporations Act permits the use of technology at board meetings	☐
7.	**Who to give notice to** • all directors • usually also the Chief Executive Officer and secretary (if they are not also directors themselves and where they exist) • in special circumstances, others (for example, any invited guests, a member who is to be disciplined)	☐ ☐ ☐

Tool 18: Checklist for contents of minutes

It's good practice to include the following in minutes of a meeting.

Order	Description	Done
1.	Name of your company and heading, ie. 'Board Meeting'	☐
2.	Date, place and opening time	☐
3.	Name of chair	☐
4.	Names of directors and office holders present and other people present, if relevant, such as observers (or reference to separate attendance register)	☐
5.	Names of those people who have sent apologies (for not attending)	☐
6.	Confirmation of previous minutes	☐
7.	Record of motions, resolutions and amendments	☐
8.	Names of the people who move and second motions	☐
9.	Short summaries of the debates on motions	☐
10.	The method of voting on motions (for example, show of hands, poll) and the numbers of votes for, against and abstaining	☐
11.	Results of voting (for example, passed, rejected or adjourned)	☐
12.	Titles (and any relevant details) of documents or reports tabled	☐
13.	If relevant, cross references to previous minutes or policies of the company	☐
14.	Board minutes should approve or ratify all the company's expenditure	☐
15.	Details of next meeting	☐
16.	Closing time	☐
17.	List of tasks arising from the minutes and name of person responsible for each	☐
18.	After minutes have been confirmed at the next meeting, signature of chair	☐

Tool 19: Conventions for drafting minutes

Note

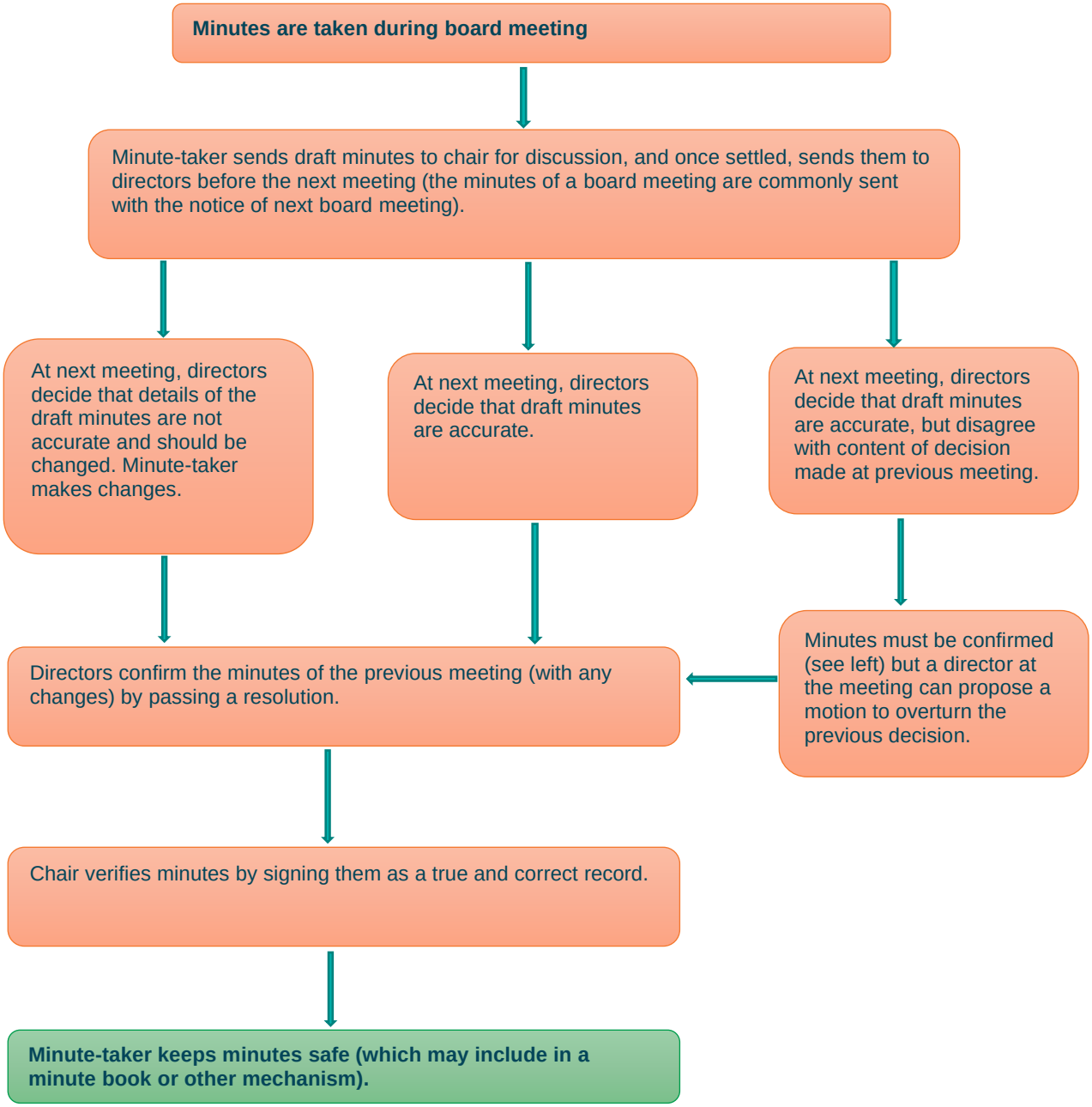
The table below is in two parts. The first deals with drafting minutes of discussion at a meetings, while the second part deals with the drafting of motions to be discussed at meetings.

Draft minutes of discussions in meetings

Convention	Explanation	Example
Use simple sentences and simple words	This helps people understand what was discussed (especially if they were not at the meeting).	**Do not** write: 'Mr UB Sporty extrapolated that this fine sporting institution's solar matt 500 water heating appliance with the white duco slimline control panel was performing consistently below its engineered benchmarks.' **Do** write: 'Mr UB Sporty reported the club's hot water system needed urgent repairs.'
Use active, rather than passive voice	In the 'active' voice, the subject of the sentence performs the action stated by the verb. In the 'passive' voice, the subject of the sentence is acted upon. Generally, the passive voice can be more difficult for a reader to understand. However, it is acceptable to use the passive voice if: • you want to soften an unpleasant message; • you don't know who did a particular thing recorded in the minutes, or • you want to shift the reader's attention away from the person to other information.	**Do not** write (passive voice): 'A computer was used by the secretary to write these minutes.' **Do** write (active voice): 'The secretary used a computer to write the minutes.' **Do** write (passive voice) in some circumstances: 'Complaints were put in the suggestion box.' (That is, you do not want to specify who actually made the complaints.)
Use only one tense	It is usually best to use the past tense in minutes.	**Do** write: • 'Ms L Little report*ed* that she had ....' • 'The board consider*ed* that the hot water system was…'
Commence the motion with the word 'that'	This is so all resolutions of the meeting are in the same format. Before the word 'that' imagine inserting the words, 'The meeting passed a resolution…'	**Do** write: '*That* the treasurer's recommendation be adopted.'
Use the verb 'be' rather than the word 'is'	This is to be grammatically correct when the motion commences with the word 'that' (see above).	**Do not** write: 'That the newspaper release *is* adopted.' **Do** write: 'That the newspaper release *be* adopted.'
Express the motion in the positive	This means that a 'yes' vote from the members results in the proposal being approved or supported.	**Do not** write: 'That the doors *be not shut* during the meeting.' **Do** write: 'That the doors *be open* during the meeting.'
If you can't express the motion in one sentence,	Carefully construct a composite motion (one with a number of	**Do not** write:

split it up into carefully written parts	separate parts) so that the chair can split it up to enable the meeting to deal with each of its parts separately.	'That in addition to any other motions proposed this meeting resolve to thank the members of the Town Hall including Ms T Bag for providing the refreshments and Mr B Room for making the accommodation available and instruct the secretary to send letters of thanks to Ms T Bag and Mr B Room with a copy to Mr S Visor.' **Do** write: 'That the meeting register its appreciation for Town Hall members generally, and specifically ask the secretary to: (a) send a letter of thanks to: (i) Ms T Bag for providing the refreshments, and (ii) Mr B Room for making the accommodation available, and (b) send a copy of these letters to Mr S Visor.'

Tool 20: Flowchart for confirming and verifying minutes



*** Note**: If minutes were not sent out before the next meeting, allow time for directors to read them, or the minute-taker should read them aloud at the meeting.

Part 7

Ending a CLG

Ending a CLG

This part covers:

- voluntary deregistration or winding up of a CLG, and
- compulsory winding up of a CLG, and
- deregistration by ASIC

Summary of key points in this part of the guide

How does a CLG end?	A CLG may be ended either voluntarily (through deregistration or winding up) or compulsorily (by winding up only).
What is the criteria for voluntary deregistration?	A CLG will satisfy the criteria for voluntary deregistration where all the members agree to the deregistration, the company is no longer carrying out its activities, the company's assets are worth less than $1,000, the company has paid all fees and penalties payable to ASIC under the Corporations Act, and the CLG has no outstanding liabilities and is not party to any legal proceedings.
What if a CLG doesn't satisfy the criteria for voluntary deregistration?	Where a CLG doesn't satisfy the criteria for voluntary deregistration, it must use the voluntary winding up procedures. Winding up is a highly technical process that requires a good understanding of the provisions of the Corporations Act. A liquidator will need to be appointed and it may be necessary to obtain legal advice.
When does compulsory winding up occur?	Compulsory winding up occurs when a person or company brings legal proceedings against an organisation and asks the court to order that an organisation be wound up. This usually happens where a creditor has served a demand for payment of a debt that has not been answered, or where there is a breakdown or failure in management of the organisation, or where the organisation has become defunct or never started operating.

Caution

This information is intended to provide only a general summary of the options open to a CLG and what is involved in each of those options. It should not be relied on as a complete guide to undertaking a winding up or any of the other options discussed.

It will be important to seek appropriate professional advice if your organisation might need to close.

Voluntarily ending a CLG

There are various reasons why you may choose to end your CLG voluntarily.

For example, it may have achieved its purpose, be unable to get funding, or be unable to find people to govern the charity or to volunteer.

A CLG may voluntarily end in two ways – through **deregistration** or **winding up**. Both processes are governed by the Corporations Act:

- **Deregistration**

  Deregistration is the quicker and cheaper option but will only be available to the organisation if it's not operating, has virtually no assets, has no liabilities and is not party to any legal proceedings (ie. if it is effectively dormant).

- **Winding up**

  If the CLG doesn't meet the criteria for voluntary deregistration, it will have to follow the formal steps of a voluntary winding up.

  'Winding up' is sometimes used as a general term for ending an organisation, but here it is used to refer to a specific process in contrast to deregistration.

Tip

Check your CLG's constitution to see whether there are requirements to winding up, in addition to those required by the Corporations Act, as these are likely to affect how you must undertake the process.

Note

If a CLG is de-registered but then reinstated, the company is viewed as having continued in existence as if it had not been deregistered.

Note

Even if a CLG is deregistered the directors at the time of deregistration must keep copies of the company's books for a further three years. Failure to do so in an offence.

Voluntary deregistration

A director, member, or the CLG itself (through an authorised nominee) can apply for voluntary deregistration by lodging a Form 6010 Application for voluntary deregistration of a company with ASIC.

This form can only be used if:

- all the members agree to the deregistration
- the CLG is no longer carrying out its activities and not conducting business
- the CLG's assets are worth less than $1,000
- the CLG has paid all fees and penalties payable to ASIC under the Corporations Act, and
- the CLG has no outstanding liabilities and is not party to any legal proceedings

Once the Form 6010 is lodged and the fee paid (currently $44, but check ASIC's website for any changes to this), ASIC can request information about the current and former officers (directors and secretary) of the CLG.

If ASIC is satisfied with the information provided, it will give notice of the proposed deregistration on its database and its 'published notices' website. This is the website where ASIC publishes the notices it is required to publish under the Corporations Act, including those relating to voluntary deregistration applications.

When two months have passed after these notices are given, ASIC will deregister the company and send a confirmation notice, notifying the director, member or nominated person who originally made the application.

Note

ASIC's publication notices website is an ASIC-hosted website for the publication of notices, including insolvency and external administration-related notices, required to be published under the Corporations Act and Corporations Regulations.

This publication website operates independently of ASIC's main website.

Voluntary winding up

If the CLG does not meet the criteria listed above for voluntary deregistration, the only way to end the organisation is to initiate a voluntary winding up. Once the winding up is completed, the CLG will be deregistered by ASIC.

When voluntarily winding up is proposed, the board members (directors) of the organisation must examine the company's financial position.

If the board decides the company:

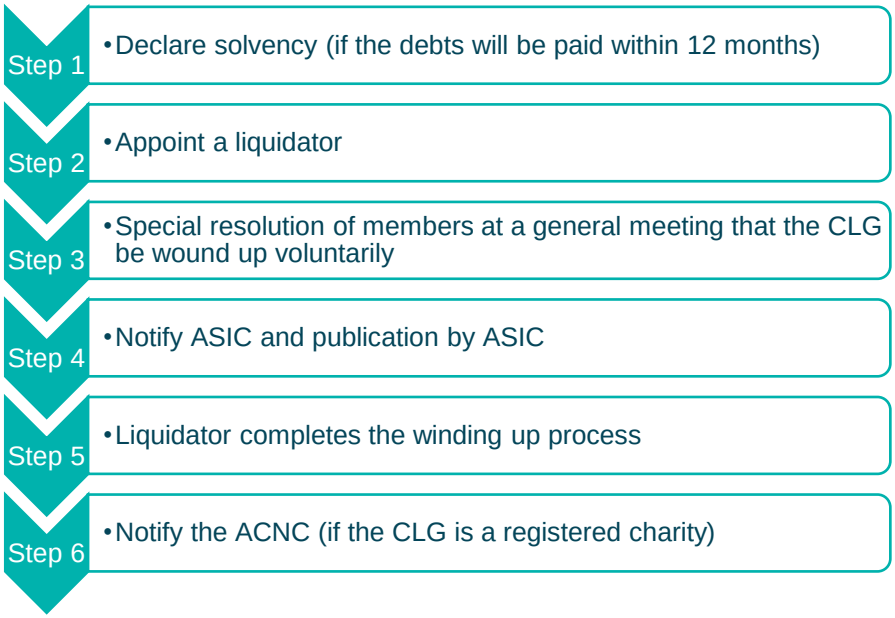
- **is expected to be able to pay its debts** in the next 12 months, the board makes a 'declaration of solvency'. In this case, the members get to choose who to appoint as liquidator, and are responsible for approving the liquidator's remuneration and receiving reports from the liquidator. This is known as a **'members' voluntary winding up'** (or liquidation – the terms 'winding up' and 'liquidation' are often used interchangeably and describe the same process).
- **is not expected to be able to pay its debts** in the next 12 months, there is no declaration of solvency. In this case, the creditors can overrule the members' choice of liquidator and become the main point of contact for the liquidator for reporting and decision making during the liquidation. This is known as a **'creditors' voluntary winding up'** (or liquidation).

A creditors' voluntary winding up usually begins when:

- creditors vote for liquidation after a voluntary administration or a terminated deed of company arrangement, or
- the members of the insolvent company resolve to wind up the company and appoint a liquidator

Apart from the differences in choosing the liquidator and reporting (and limited decision-making powers), there is very little practical difference between the conduct of a members' voluntary winding up and a creditors' voluntary winding up.

Winding up steps



Each of these steps is explained in more detail below.

Note that – except for special permission from a court – a company can't be wound up voluntarily if:

- an application to wind up the company in insolvency has been filed, or
- a court has ordered that the company be wound up in insolvency

Note

Winding up is a highly technical process that requires a good understanding of the provisions of the Corporations Act. It will be difficult for an organisation to be sure that it has completed all the necessary steps without first obtaining legal advice or assistance from an accountant with experience in voluntary winding up.

Step 1

CLG directors – declaration of solvency

To begin winding up a CLG, a majority of the directors must meet and consider if the CLG will be able to pay all its existing debts within 12 months after the meeting of members which will resolve to wind up the company. If they form that opinion they can make a 'Declaration of solvency' using ASIC Form 520.

In that case, the directors get to choose who to appoint as liquidator and are responsible for approving the liquidator's remuneration and receiving reports from the liquidator. As noted above, this is known as a '**members' voluntary winding up**' (or liquidation – the terms 'winding up' and 'liquidation' are often used interchangeably).

If the directors think the CLG is not expected to be able to pay its debts in the next 12 months, they can't make a declaration of solvency. In these circumstances, the creditors can overrule the members' choice of liquidator and become the main point of contact for the liquidator for reporting and decision making during the liquidation. This is known as a '**creditors voluntary winding up**' (or liquidation), as also outlined above.

More information

For more information on the steps involved in making a declaration of solvency, see our fact sheet on voluntary deregistration or winding up of a CLG.

Caution

It's an offence under the Corporations Act to make a false declaration of solvency. Penalties can apply. If you believe that your CLG is insolvent, see 'Compulsory winding up', discussed below.

Step 2

Finding a liquidator

Regardless of whether your CLG has made a declaration of solvency or not, you need to identify a person to be appointed as liquidator.

A liquidator is required to oversee the distribution of company assets and settlement of all claims against the CLG. The person to be appointed must be a 'registered' liquidator. In most cases, this will be an accountant who specialises in liquidation work.

A liquidator can't accept an appointment unless they have first provided the CLG with a written consent to act as liquidator. A person is not permitted to consent to act as liquidator (without permission from a Court) if the CLG owes them, or they or owe the CLG, more than $5,000, or if they are:

- an officer, employee or auditor of the CLG (or a partner, employee or employer of a person who is an officer, employee or auditor of the CLG), or
- an officer or an employee of a body corporate that holds security over the CLG's property

Tip

For a list of firms that offer liquidation services, see the Australian Restructuring Insolvency & Turnaround Association's website.

Step 3

CLG members must pass a special resolution

Once you have identified a liquidator or liquidators and obtained their consent (and, in the case of a members voluntary winding up, arranged the declaration of solvency), the next step is to pass the necessary resolutions. For either a members or creditors voluntary winding up, the CLG must convene a meeting of members for the passing of a special resolution that the company be wound up voluntarily.

A special resolution can only be passed at a general meeting of members (for further information about special resolutions, see parts 5 and 6 of this guide). The following requirements apply:

- the special resolution can either be at the annual general meeting, or a special general meeting
- members must have at least 21 days' notice in writing of the meeting to vote on the special resolution, and the notice should set out the text of the proposed special resolution, and
- at the meeting, at least 75% of company members must be in favour of the resolution for it to pass (this includes members who are not actually present

themselves but who appoint a 'proxy' to cast votes on their behalf, and excludes those members who abstain from voting)

The company must lodge a Notification of resolution (Form 205) with a printed copy of the resolution that was passed.

Note

The liquidator will usually request that the members also be asked to pass a resolution at the same meeting fixing the liquidators' remuneration (or fees and expenses).

However, the members are not permitted to fix the liquidators' remuneration until the liquidator has prepared and tabled at the meeting a report setting out the matters the members need to know before they can decide if the proposed remuneration is reasonable, including details of the major tasks to be completed in the liquidation and the costs associated with those tasks.

Step 4

Notification to ASIC and publication on the ASIC published notices website

The CLG must advise ASIC of the passing of the special resolution. This can be done by lodging a 'Notification of resolution' using ASIC Form 205. The same form is used if it is a creditors or members voluntarily winding up and there is no fee. This must be done within seven days of the passing of the special resolution.

A 'Notification of appointment or cessation of an external administrator' using ASIC Form 505 must also be lodged with ASIC, so they are formally advised of a liquidator's appointment. There is no fee.

The CLG must also publish a notice of the resolution on ASIC's 'Published notices' website within 21 days. You will need to sign up to the website and pay the appropriate fee before you can publish a notice.

For registered charity CLGs, when a liquidator is appointed, the ACNC must be notified of a new responsible person. Registered charity CLGs have 28 days after the appointment (for medium and large charities) and 60 days after the appointment (for small charities) to notify the ACNC of this change.

Step 5

Liquidator winds up CLG's affairs

From the moment a CLG passes resolutions that the CLG be wound up and a liquidator is appointed:

- the powers of the directors stop, unless the liquidator agrees that some or all of those powers continue
- the liquidator takes absolute control of the CLG and begins the process of shutting down its activities, including terminating staff, terminating leases of property and equipment, collecting and selling or disposing of its assets, and paying off creditors
- the CLG must stop carrying on its usual activities, unless the liquidator thinks that it is necessary for the activities to continue in the short term to maximise the benefits from the disposal of the organisations assets, and
- each officer of the CLG (directors and secretary) must deliver all the records of the CLG in their possession to the liquidator, meet with the liquidator and provide information about the organisation the liquidator reasonably requires and cooperate with the liquidator

If the administration process began on or after 1 September 2017, the liquidator must lodge an Annual Administration Return (Form 5602) annually after their appointment, for the duration of the winding up process. The form requires a detailed list of receipts and payments for the administration.

If the liquidation began before 1 September 2017 the liquidator must lodge Presentation of accounts and statement (Form 524) every six months after they have been appointed for the duration of the winding up process.

Once the liquidator has control of the CLG's cash and sold all its assets, the liquidator pays all outstanding debts and then pays any surplus funds in the manner provided for in the CLG's constitution.

If, at any point (even if a declaration of solvency has been made), the liquidator thinks the CLG will be unable to pay their debts in full, they must either:

- convene a meeting of creditors, or
- apply to the court for the CLG to be wound up in insolvency

Where the CLG is wound up without adequate funds to discharge its liabilities, each person who is a member at the start of the winding up is liable to pay an amount that the member has undertaken to contribute if the company is wound up (see **part 1**, 'the rights and liabilities of members of a CLG').

Once the liquidator has finished winding up the CLG, they must lodge an End of administration return (Form 5603), within one month after the end of the winding up.

Once these forms have been lodged the company will be deregistered within three months.

Step 6 – for registered charity CLGS

Notify the ACNC

If the CLG is a registered charity CLG, you will need to notify the ACNC that the charity is no longer in operation and apply to the ACNC to have the organisation's charity registration revoked. To do this, complete and submit a Form 5A: Application to revoke charity registration.

Note

At any stage of the winding up, a company member or creditor can ask the court to review any part of the winding up. This includes the appointment of a liquidator, their payment, or other issues that arise.

What else does the liquidator do?

In addition to collecting and selling the assets of the CLG, the liquidator is required to investigate the way in which the activities of the organisation have been conducted in the period leading up to the winding up.

If the liquidator becomes aware of any misconduct by officers or other wrongdoing, a liquidator has wide ranging powers to enquire into those matters and can bring legal proceedings on behalf of the organisation. The liquidator is also obligated to report to ASIC any offences against the Corporations Act they discover during the winding up process.

Compulsory winding up

The following applies to both registered charity and non-charitable CLGs.

Compulsory winding up occurs when a person or company brings legal proceedings against an organisation and asks the court to make a winding up order. This usually happens in one of two circumstances:

- **insolvency**: where a creditor (a person or company owed money) has served a demand for payment of a debt that has not been answered, or where the organisation is unable to pay its debts when they become due and payable. This is known as '**winding up in insolvency'**, and
- **other grounds**: where there is a breakdown or failure in management of the organisation, or where the organisation has become defunct, or never started operating. This is known as **'winding up on other grounds'**

Winding up in insolvency

The CLG itself can apply to be wound up in insolvency.

In addition, a creditor, member (ie. a shareholder), director, liquidator, or ASIC may make an application (but generally require the court's permission to do so).

Whoever applies is required to prove to the court that the CLG is insolvent.

In most cases, an application to wind up a CLG in insolvency will be made by a creditor. This usually involves:

- a creditor that is owed money by the CLG sends, by post or delivery to the registered office of the organisation, a signed document called a 'statutory demand' (ie. a formal demand for the monies owed)
- the CLG doesn't pay the demand, or bring a court proceeding to have the demand set aside within 21 days after the demand is received (in both situations the court will assume that the CLG is insolvent), and
- the creditor then brings legal proceedings for an order that the CLG be wound up (insolvency is proved by the failing of the CLG to respond to the statutory demand by making payment or applying to the court within 21 days to have the demand set aside)

An application for an organisation to be wound up in insolvency is generally determined by the court within six months of the application being made.

Note

There are many other ways a company can be wound up in insolvency, but all of them begin with a statutory demand or legal proceedings (or both). There are very specific rules that relate to the form of the demand and the time limits which apply to this process. If you are served with a demand, you should seek legal advice immediately.

What can you do to have a statutory demand set aside?

If the CLG doesn't agree with a statutory demand it receives, it can apply to have it 'set aside'. It must apply to the court **within 21 days** of receiving the demand.

The application must also include a supporting affidavit (a sworn statement for use in legal proceedings, made before authorised people like senior police officers or lawyers) The application to set aside the demand and the affidavit in support must be served on the person who made the demand **within the 21 day period**. The supporting affidavit must state the reasons for making the application to have the demand set aside; it can't simply state that it does not agree that the debt is owed.

What should you do if you receive a statutory demand or the CLG is struggling to pay its debts?

If your CLG receives a statutory demand, or you are concerned that your CLG may not be able to pay its debts when they become due, the consequences of doing nothing can be extremely serious. Your CLG should urgently seek legal advice or advice from an accountant who specialises in insolvency. One of the things your CLG might be advised to do is to appoint a 'voluntary administrator'. This is explained further below.

What is 'voluntary administration'?

One option for a CLG facing insolvency is for its board (directors) to hold a meeting and resolve that:

- in the opinion of the directors voting for the resolution, the CLG is insolvent or is likely to become insolvent at some future time, and
- an administrator of the CLG should be appointed

A voluntary administrator must be a specialist accountant or lawyer who is registered by ASIC as a liquidator.

A voluntary administrator of an organisation takes control of the CLG a bit like a liquidator, but has much more flexibility in deciding what to do about the future of the CLG. In particular, a voluntary administrator can promote and endorse a restructuring of the CLG that will see it continue to exist, perhaps in a reduced form. It is also possible as part of this restructuring to ask creditors to agree to accept less than 100 cents in the dollar for their debts.

However, the entire process is ultimately dependent on the support of creditors (the administrator will prepare a report on the CLG's options, and then a meeting of creditors to decide on the future of the CLG).Unless creditors can be persuaded that a form of restructuring is better for them than liquidation, they can resolve that the CLG should be wound up. If that happens, the CLG is then treated as if it has resolved to go into a creditors' voluntary liquidation (see above).

Tip

For a list of firms that offer liquidation services go to the Australian Restructuring Insolvency & Turnaround Association's website.

The main advantages of a voluntary administration for your CLG are that:

- if taken quickly enough, a decision to appoint a voluntary administrator will protect the directors from the consequences of allowing the CLG to incur new expenses when it's insolvent, and
- it provides a chance for a CLG that is struggling financially to restructure, communicate clearly with creditors, and reduce its debts, and potentially continue operating

Caution

Appointing a voluntary administrator has very serious consequences and a decision to do so should not be made before your organisation has obtained legal or other professional advice.

Winding up on other 'non-insolvency' grounds

A CLG may possibly be wound up by a court when:

- it has resolved by special resolution to be wound up by the court
- it has not started any activities within a year after incorporation or has suspended its activities for a whole year
- it has no members
- in conducting the affairs of the CLG, the directors have acted in their own interest rather than in the interests of the members as a whole, or in any other manner which appears unfair or unjust to members
- the affairs of the CLG are being conducted in a manner that is oppressive, unfairly prejudicial, or unfairly discriminatory, against a member or members, or in a manner that is contrary to the interests of the members as a whole
- a group of members does something (or fails to do something) which is or would be oppressive, unfairly prejudicial, or unfairly discriminatory against a member or members, or is or would be contrary to the interests of the members as a whole

- ASIC believes that the CLG can't pay its debts and should be wound up
- ASIC believes that it is in the interests of the public, the members or the creditors that the CLG be wound up, or
- the court believes it is just and equitable that the CLG be wound up

Who can apply to the court to bring action on any of these grounds?

An application to a court on any of these grounds can be brought by:

- the CLG itself
- a creditor of the CLG
- a member (and in some cases, a former member)
- a liquidator, or
- various government bodies (for example, ASIC)

In most cases, applications to court for winding up will be made:

- where the CLG has become defunct (although often it will be easier and cheaper to end a defunct CLG by deregistration or voluntary winding up), or
- where there is a deadlock, serious dysfunction or significant dispute in or about the management of the CLG, and the CLG or a member (often a disgruntled member or group of members) decides that the only way to end the problem is to end the CLG

What are the steps for applying to a court for winding up on non-insolvency grounds?

The process for bringing an application to a court relying on grounds other than insolvency requires the preparation of a form of court application or other court process setting out the grounds to be relied on, supported by a sworn affidavit (or affidavits) verifying the grounds.

In a simple uncontested case (for example, where the CLG has resolved by special resolution to be wound up by the court) the application will be reasonably straightforward and the affidavit in support will simply confirm that the resolution was validly passed.

However, in cases where the application is made in the context of some alleged management dysfunction or a dispute, the application will be much more complex and the proceedings can take on the scale and cost of any contested litigation.

In either case, the application and affidavits must be:

- filed with the court (either the Supreme Court of a State or the Federal Court), and
- served on interested parties (in particular, the CLG if it's not the one making the application)

In more difficult applications, the court registry will usually then allocate the application to a judge and set a date a few weeks later for the judge to hear from the interested parties and make directions for any further affidavits or other steps that need to be taken before a final hearing. It would be unusual for more complex applications to be finally heard and determined in less than a few months, and they can take years. Simpler uncontested applications should be determined within a few weeks.

Note

Given the cost involved with winding up proceedings, and the ill-will they may generate, it's always preferable to try and resolve disputes in some other way. In cases of dysfunction, a member should consider other ways to resolve the dispute before moving to wind up the company.

What happens if a court makes a winding up order?

With both winding up in insolvency or winding up on other grounds, if the court agrees with the application, the court will order that the CLG be wound up and a liquidator or liquidators be appointed to the CLG. Usually the party making the application will have arranged to obtain a form of consent from a suitable liquidator before the court finally decides the application.

The winding up process proceeds in much the same way as a creditors' voluntary winding up (outlined above), with control of the CLG passing immediately to the liquidator and the liquidator proceeding to collect and sell the CLG's assets, pay off creditors, investigate the CLG, and report to ASIC.

Finally, as for any other closure process, for registered-charity CLGs an application must be made to the ACNC for deregistration. As explained above, this is with a Form 5A: Application to revoke charity registration.

More information

For more information, see our fact sheet on compulsory winding up.

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