

# Running a registered charity CLG

A guide for directors and office holders

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# **Glossary**

**Key words and abbreviations**

# Glossary

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## Key words and abbreviations

<b>ACNC</b>	<b>ACNC</b> refers to the Australian Charities and Not-for-profit Commission
<b>ACNC Act</b>	<b>ACNC Act</b> refers to the <u><a href="#">Australian Charities and Not-for-profits Commission Act 2012 (Cth)</a></u>
<b>ACNC Regulation</b>	<b>ACNC Regulation</b> refers to the <u><a href="#">Australian Charities and Not-for-profits Commission Regulation 2013 (Cth)</a></u>
<b>AFR</b>	<b>AFR</b> refers to the Annual Financial Report that medium and large registered charity CLGs must submit to the ACNC along with their AIS
<b>AGM</b>	<b>AGM</b> refers to the annual general meeting of a CLG or other company or association
<b>AICD</b>	<b>AICD</b> refers to the Australian Institute of Company Directors
<b>AIS</b>	<b>AIS</b> refers to the Annual Information Statement registered charities are required to submit to the ACNC each year
<b>ASIC</b>	<b>ASIC</b> refers to the Australian Securities and Investments Commission
<b>ATO</b>	<b>ATO</b> refers to the Australian Taxation Office
<b>Auditor</b>	<b>Auditor</b> 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)
<b>Board</b>	<b>Board</b> refers to the company's governing body, sometimes referred to as a management committee, or similar
<b>Board meeting</b>	<b>Board meeting</b> refers to a meeting of the company's governing body; also referred to as a directors' meeting
<b>Charities Act</b>	<b>Charities Act</b> refers to the <u><a href="#">Charities Act 2013 (Cth)</a></u>
<b>CLG</b>	<b>CLG</b> refers to a company limited by guarantee
<b>Common law</b>	<b>Common law</b> refers to the law developed by the courts, or judge-made law (as opposed to legislation or statute, which is law made by Parliament)
<b>Constitution (or rules)</b>	<b>Constitution (or rules)</b> 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](#).

<b>Corporations Act</b>	<b>Corporations Act</b> refers to the <a href="#">Corporations Act 2001 (Cth)</a>
<b>DET</b>	<b>DET</b> refers to the Department of Education
<b>Director</b>	<b>Director</b> refers to a person specifically appointed to a position of management of the affairs of the company
<b>Directors' meeting</b>	<b>Directors' meeting</b> refers to a meeting of the company's governing body; also referred to as a board meeting
<b>General meeting</b>	<b>General meeting</b> refers to a meeting of the members of the company. General meetings include both 'annual' and 'special' general meetings
<b>Incorporated association</b>	<b>Incorporated association</b> refers to an organisation incorporated under state or territory based incorporated associations laws
<b>Member</b>	<b>Member</b> 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
<b>Minute book</b>	<b>Minute book</b> 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
<b>Motion</b>	<b>Motion</b> 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
<b>Non-charitable CLG</b>	<b>Non-charitable CLG</b> refers to a company limited by guarantee that is not registered with the ACNC
<b>ORIC</b>	<b>ORIC</b> refers to the <a href="#">Office of the Registrar of Indigenous Corporations</a>
<b>Officer</b>	<b>Officer</b> 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
<b>Policy</b>	<b>Policy</b> 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
<b>Poll</b>	<b>Poll</b> 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

<b>Proxy</b>	<b>Proxy</b> 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-registered charity CLGs, there are mandatory rules around proxy voting. Registered charity CLGs should refer to their Constitution or Rules for provisions on proxy voting
<b>Quorum</b>	<b>Quorum</b> refers to the minimum number of people that need to be present at a meeting for that meeting to proceed
<b>Registered charity CLG</b>	<b>Registered charity CLG</b> refers to a company limited by guarantee that is registered with the ACNC
<b>Resolution (or ordinary resolution)</b>	<b>Resolution (or ordinary resolution)</b> 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)
<b>Rules</b>	<b>Rules</b> is another word for the constitution of a company
<b>Simple majority</b>	<b>Simple majority</b> 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
<b>Small CLG</b>	<b>Small CLG</b> refers to a CLG that has less than \$250,000 in annual revenue
<b>Special general meeting</b>	<b>Special general meeting</b> refers to a type of general meeting (that is, a meeting of the members), which is usually convened for a particular reason or purpose
<b>Special purpose company</b>	<b>Special purpose company</b> 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
<b>Special resolution</b>	<b>Special resolution</b> 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
<b>Wind up or winding up</b>	<b>Wind up or winding up</b> 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



## Disclaimer

This guide provides information on running a company limited by guarantee that is registered with the ACNC. 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 that is registered with the ACNC, 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 that are registered with the ACNC (called '**registered charity CLGs**' throughout the guide).

The guide provides an overview of their legal obligations in running a registered charity CLG in Australia

### What is a company limited by guarantee?

A company limited by guarantee (**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 [Australian Charities and Not-for-profits Commission](#) (**ACNC**).

The ACNC regulates charitable CLGs under the [Australian Charities and Not-for-profits Commission Act 2012 \(Cth\)](#) (**ACNC Act**), the [Charities Act](#)



### What is a registered charity CLG's constitution?

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.

A registered charity CLG's constitution is the internal document setting out how the CLG is to be governed.

The constitution covers things like:

- the appointment and removal of directors
- how decisions should be made, and
- the organisation's charitable purpose

### What are the directors' roles?

The directors:

- are responsible for governing and overseeing the affairs of the organisation, and
- have various legal duties

Their duties are mostly set out in the ACNC Governance Standards, but also come from the Corporations Act and the common law.

### What are a registered charity CLG's legal obligations?

A registered charity CLG has legal obligations regarding record keeping and reporting.

A registered charity CLG:

- must keep two broad categories of records – operational and financial, and
- generally, only reports to the ACNC, although it must report to ASIC on a few specific matters

### How does a registered charity CLG make decisions?

Although a registered charity CLG will often have a process by which decisions can be made in writing without a meeting, decisions by directors or members will usually be made at:

- board meetings (meetings of directors), or
- general meetings (meetings of members)

The rules governing meetings, decisions and voting will primarily be found in the registered charity CLG's constitution.

## About this guide

This guide is designed for use by directors of registered charity CLGs. It provides an overview of directors' legal obligations in running a registered charity CLG in Australia.

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

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



This guide is made up of the following parts:

<b>Glossary</b>	•List of key words and abbreviations used in this guide
<b>Part 1</b>	•Overview of companies limited by guarantee registered with the ACNC
<b>Part 2</b>	•Appointing and removing a director or secretary
<b>Part 3</b>	•Directors' legal roles, powers and duties
<b>Part 4</b>	•Reporting, registers and records
<b>Part 5</b>	•General meetings
<b>Part 6</b>	•Board meetings
<b>Part 7</b>	•Ending a registered charity CLG



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

## What is a registered charity CLG?

A company limited by guarantee (**CLG**) is a public company incorporated under the Corporations Act. Its defining features are:

- as it is incorporated, it's a separate legal entity from the people involved in its running and has the legal capacity and powers of an individual (for example, it can own property and enter into contracts)
- it is formed on the principle that its members agree in writing to pay up to a certain amount (known as the 'guarantee') if the CLG can't pay its debts and is wound up. The members' liability to pay is limited to the guarantee (this explains the title 'limited by guarantee'). The guarantee is usually a nominal sum between \$10 and \$100
- it can't issue shares or pay dividends

A **registered charity CLG** is a CLG which is registered with the ACNC as a charity because it fulfils the legal requirements of 'charity' – in particular acting for a recognised charitable purpose.



So, the 'CLG' aspect refers to the organisation's legal **structure**, and the 'charitable' aspect refers to its legal **status** as a registered charity. A registered charity CLG is registered with both ASIC and the ACNC.



### Note

Not all charities are CLGs.

Charities use other legal structures, such as incorporated associations, trusts and cooperatives. Different laws and rules apply to these other structures – we have not covered these structures in this guide.

## When is the structure of a CLG suitable?

The legal structure of a CLG is likely to be suitable for a charity which:

- wants to operate in more than one state or territory
- is large or complex, even if it operates in only 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) – however, there are small registered charity CLGs too
- is a housing or aged care provider (these must be CLGs), or
- is a wholly-owned subsidiary organisation



### Note

A registered charity CLG's legal name (as registered with ASIC) will include 'Limited' at the end to reflect its 'limited by guarantee' structure.

However, a registered charity CLG doesn't have to include the word 'Limited' when using its name (for example, on its letterhead) if its constitution:

- doesn't allow the directors to be paid fees, and
- requires the board to approve all other payments the registered charity CLG makes to directors

In these circumstances, if a registered charity CLG wants to remove 'Limited' from its legal

## What is the 'constitution' of a registered charity CLG?

The constitution is a document which sets out the rules governing the internal affairs of the registered charity CLG, for example:

- how directors are appointed
- how meetings are to be arranged, and
- what the organisation's charitable purpose is



### Tips

- Be familiar with the contents of your registered charity CLG's constitution and check it for relevant rules if you want to carry out a particular process or make a formal decision – such as appointing a new director.

There are reminders to refer to your constitution throughout this guide.

- Make sure the constitution remains fit-for-purpose. A constitution may become out of date as the organisation evolves so review it regularly in case any changes are required.



### Note

The constitution can only be amended by a special resolution (ie. 75%) of the registered charity CLG's members present at the meeting and entitled to vote. See **part 5** of this guide for more detail on passing special resolutions.

### ACNC template constitution

The ACNC-developed model constitution for a registered charity CLG is under review. While the template constitution is under review, we have not referred to it in this guide.

The '[ACNC template constitution](#)' is a model constitution for a registered charity CLG published by the ACNC.

This template provides an example of good practice when preparing a company constitution for a registered charity CLG. You can download the template constitution from [the ACNC website](#).



### Note

The ACNC template constitution is only intended to be used as a template – it's designed to help a small, charitable, not-for-profit company limited by guarantee with straight-forward membership create a suitable governing document and will not suit every type of organisation.



## Special purpose companies

A special purpose company is a company that is created for a set reason, not just general business.

Companies that are 'special purpose companies' require a constitution.

A **registered charity CLG** will often meet the requirements of a 'charitable purposes only' category of a special purpose company.

The requirements are that the company has a constitution which:

- requires it to pursue charitable purposes only and to apply its income in promoting those purposes
- prohibits the company from making distributions to its members
- prohibits the company from paying fees to its directors, and
- requires its directors to approve all other payments the company makes to them

The constitution will usually set out if the company has displaced or modified the replaceable rules – for example, the ACNC template constitution for a registered charity CLG states 'The replaceable rules set out in the Corporations Act do not apply to the company' (clause 70.1).

If not displaced or modified in the constitution, the replaceable rules will apply to the registered charity CLG.

# How are registered charity CLGs regulated?

Because it's both a company and a registered charity, a registered charity CLG is subject to various legal obligations and falls under the auspices of **two regulators**:

## 1. The ACNC

As a charity, a registered charity CLG has legal obligations under the ACNC Act and ACNC Regulation (including the ACNC Governance Standards), and is regulated by the ACNC, the national regulator of charities.

## 2. ASIC

As a company, a registered charity CLG has company law obligations under the Corporations Act and is regulated by ASIC, Australia's corporate markets and financial services regulator.



### Note

Some obligations in the Corporations Act that apply to other companies are 'switched off' for registered charity CLGs, reflecting the fact that registered charity CLGs are separately regulated by the ACNC.

**The main regulator for a registered charity CLG is the ACNC.** For example, most of the directors' duties are set out in the ACNC legislation and a registered charity CLG will (for the most part) report to the ACNC rather than ASIC.





However, a registered charity CLG is still subject to the Corporations Act and to regulation by ASIC in various matters. For example, some decisions (such as amending the constitution) must comply with the process set out in the Corporations Act.



### Why the separate regimes?

The separate regulatory regime for registered charities, and the 'switching off' of some Corporations Act provisions, is intended to simplify regulatory compliance for charities.

The Corporations Act is a lengthy and complicated piece of legislation which goes into a lot of detail not only about what companies need to do, but how they must do things.

Many of the obligations imposed on charities are instead contained in the ACNC's Governance Standards, which are less complicated and prescriptive than the Corporations Act. For example, the Governance Standards require charities to be accountable to their members. Under that principle, charities can choose a much more flexible approach for general meetings than that outlined in the Corporations Act. In addition, financial reporting obligations are simpler under the ACNC Act. Charities can often meet the requirements set out in the ACNC's Governance Standards through different approaches, depending on what best suits the organisation.

It also benefits registered charities to have a dedicated regulator which is knowledgeable about charities and the issues they face.

## Directors and members

'Directors' and 'members' are company law terms for the people who make up the two layers of governance of a registered charity CLG.

### Broadly speaking:

#### Directors

- Directors (collectively known as the 'board') are responsible for governing and overseeing the affairs of the organisation and setting its strategic direction and goals.
- Directors have various legal duties and must act in the best interests of the organisation.

#### Members

- Members have certain powers under the Corporations Act – for example, they can vote to remove a director or amend the constitution. In this way they retain ultimate control over the registered charity CLG. However, they are not involved in the day-to-day running of the organisation, which is the responsibility of management.



### Note

In some organisations there is an overlap between directors and members (ie. the same group of people are both directors and members). And in some organisations the directors are required to also be members (this is the case in the ACNC template constitution).

If there is any overlap, it's important that the people concerned are clear at any point on the capacity in which they are acting. This is important in the context of directors' duties more generally – for more information on this, see **part 3** of this guide.



## Directors

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

Many registered charity CLGs will have a constitution that includes a cap on the number of directors, usually somewhere between eight and 12 depending on the size and nature of the organisation. A registered charity CLG must also have at least one secretary, (one of the secretaries must ordinarily reside in Australia). A secretary can also be a director.

Your registered charity CLG may use different names for its directors, for example – 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 company secretary, chair and treasurer.

The directors are responsible for governing and overseeing the affairs of the registered charity CLG and for setting its strategic direction. This is different to the role of the management of a registered charity CLG (that is, employees of the company such as any executive director or CEO and other management staff) who have responsibility for day-to-day decision-making and operations. However, in a small organisation the directors may also fulfil this management function.

There are various eligibility requirements under the Corporations Act and ACNC Governance Standards regarding who can be appointed a director or secretary, including requirements about age, place of residence and certain matters like bankruptcy which may disqualify a person from becoming a director.



See **part 2** of this guide for more information on the appointment of directors and secretaries and the eligibility requirements.



### Note

The ACNC uses the term '**responsible people**' to refer to those who govern the charity, (ie. the people on the board or committee such as the directors).

The responsible people of a registered charity CLG are usually known as directors, so we've used the word 'director' throughout this guide. (It is also the term used in the ACNC template constitution).

## Legal duties of directors

Directors have certain duties under common law, which are reflected in some of the ACNC duties listed below.

Under [ACNC Governance Standard 5](#), a charity must take reasonable steps to make sure that its directors are subject to, and comply with the following duties:

- Duty 1** to exercise powers and discharge duties with the degree of care and diligence that a reasonable person would exercise in that position
- Duty 2** to act in good faith in the best interests of the charity, to further its charitable purposes
- Duty 3** not to misuse the position (of director or officer)
- Duty 4** not to misuse information obtained in the performance of your duties as director or officer
- Duty 5** to disclose actual or perceived conflicts of interest



**Duty 6** to ensure that the financial affairs of the charity are managed responsibly

**Duty 7** to ensure the charity does not operate while insolvent



### Note

The provisions in the Corporations Act relating to directors' duties mostly don't apply to directors of registered charity CLGs, but a few remain relevant, and ASIC can impose a penalty if the duties are breached.

Directors might also be subject to obligations under other legislation, for example, occupational health and safety legislation, tax legislation and employee protection legislation.



The roles, powers and duties of directors are covered in **part 3** of this guide.

## Members

Members of a registered charity CLG have rights and obligations under the Corporations Act.

A registered charity CLG's constitution may also specify additional rights and obligations.

### Rights of members

Under the Corporations Act, members of a registered charity CLG have rights to:

- amend the constitution (by special resolution)
- elect how they want to receive meeting related documents
- remove a director (by a resolution of members), and
- access the register of members

Some other members' rights in the Corporations Act don't apply to registered charity CLGs (for example, the right to call a meeting of members or propose a members' resolution), but it's quite common for a registered charity CLG's constitution to include rights such as these (as is the case in the ACNC template constitution).

Indeed, without giving members the right to call a meeting of members or propose a members' resolution, a registered charity CLG may be in breach of [Governance Standard 2 – accountability to members](#).



See **part 5** of this guide for more information.

### Liability of members

When a person becomes a member of a registered charity CLG, they give a guarantee promising to contribute a specified amount if the registered charity CLG is wound up (ie. closed) and has insufficient funds to pay its debts.

If the CLG is wound up, each person who is a member or who was a member during the previous 12 months is liable to pay up to that amount but no more. The sum is usually between and \$10 and \$100 and should be specified in the constitution.



See **part 7** of this guide for information on winding up a registered charity CLG.

## Record keeping and reporting

Registered charity CLGs have various reporting and record keeping obligations. These are covered in **part 4** of this guide. An overview is below.

### Record keeping

#### Under its ACNC obligations, a registered charity CLG must keep:

- **operational records** (ie. documents about the registered charity CLG's activities such as its constitution, policies, meeting minutes, strategy documents and contracts). These must be sufficient to show the organisation's:
  - entitlement to charity registration
  - charitable purpose and registration category or sub-type
  - compliance with the ACNC Act, and
  - compliance with tax laws
- **financial records** (ie. documents that explain the registered charity CLG's transactions and its financial position, such as account books, cash books, bank statements, tax records, employee payments and details of grants). The records must:
  - correctly record and explain how the registered charity CLG spends or receives its money or other assets
  - correctly record and explain the registered charity CLG's financial position and performance, and
  - allow for true and fair financial statements to be prepared and audited or reviewed, if required

A registered charity CLG also has an obligation under the Corporations Act to keep a **members' register**.

Depending on the size and nature of the organisation, it can be good practice to have other registers too – for example, a documents register with details of certain documents and where they are kept, and an insurance register with details of insurance policies held by the organisation.

### Reporting

Registered charity CLGs must meet the reporting requirements set out in the ACNC Act and Regulations. They do not generally need to report to ASIC, although there are a few instances when they will need to do so (for example, if they want to change their legal name or change the address at which the register of members is kept).

The central reporting obligation for a registered charity CLG is to **submit an Annual Information Statement** to the ACNC **every year**. The Annual Information Statement asks for comprehensive information about the charity's activities over the year. It also asks for financial information, which will depend on the size of the charity.



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



# Making decisions

An important part of running a registered charity CLG is ensuring that the proper process is followed for decision-making. This is covered in **parts 5 and 6** of this guide, which explain the process for general meetings (meetings of members), board meetings (meetings of directors), and how decisions may be made without holding a meeting.

## General meetings

A general meeting is a meeting of the members of the registered charity CLG.

A general meeting held once a year is called an **annual general meeting** or '**AGM**'.

The purpose of an AGM is to give members the opportunity to discuss the position and business of the registered charity CLG and review the operations of the past year. Other general meetings may be held if particular decisions need to be made.

The obligation in the Corporations Act to call an AGM is 'switched off' for registered charity CLGs, so there is no legal requirement to hold an AGM.

However, a registered charity CLG must comply with [ACNC's Governance Standard 2](#), which requires it to:

- take reasonable steps to be accountable to its members, and
- allow its members adequate opportunities to raise concerns about how the charity is run

Although the organisation can decide how best to comply with this Standard in its own circumstances, holding an AGM is a common way to meet the standard and is recommended by the ACNC.

Most of the technical rules in the Corporations Act regarding general meetings, such as:

- the requirement to send notice (with a likely exception for special resolutions)
- how many people must be in attendance (called the 'quorum'), and
- how formal decisions (called 'resolutions') are voted on and made,

don't apply to registered charity CLGs – but the constitution may set out particular requirements.

Again, it's important to ensure that these rights are considered in light of Governance Standard 2 which requires charities to be accountable to their members.

In other words, although the Corporations Act no longer requires registered charity CLGs to hold a general meeting, if the registered charity CLG never held meetings, the ACNC might consider there to be a breach of Governance Standard 2.

The fact that the various requirements no longer apply to registered charity CLGs doesn't mean that they are not important. Rather, it is a recognition that registered charity CLGs should have the flexibility to alter the requirements in a way that suits its circumstances, while still providing proper accountability to members.



See **part 5** of this guide for information on members' meetings and voting.

## Board meetings

Board meetings (meetings of the directors) are usually less formal than general meetings. There are often fewer directors than members and they will probably meet more often.

There are very few legal requirements in the Corporations Act for board meetings, and the ACNC also doesn't impose specific requirements.

A registered charity CLG's constitution might contain more detail – for example, specifying whether the directors must meet a certain number of times per year. However, it's quite common for the constitution not to be prescriptive on the process for board meetings and the directors are usually given flexibility to decide



how to arrange their meetings. It can be important for the board to have this flexibility because board decisions sometimes need to be made urgently. And overly technical or detailed rules might make it difficult for directors to act quickly if they need to.



**Part 6** of this guide included recommended good practice and tips for board meetings, including the meeting agenda, minutes and chairing the meeting.

## Decisions without meetings

It's also common for a registered charity CLG to have a method by which directors or members can make decisions without holding a meeting, (usually called a **written** or **circular resolution**).

The Corporations Act sets out a process for circular resolutions by directors, which requires the agreement of all directors.

The provisions in the Corporations Act regarding members' circular resolutions don't apply to registered charity CLGs, but it's common and often useful for a registered charity CLG to provide for this in its constitution. The ACNC template constitution reflects the Corporations Act procedure, (which requires the agreement of all members for a circular resolution to pass).

It's generally regarded as good practice to use circular resolutions sparingly and only if necessary, as they don't allow for discussion on a decision as would be the case at a meeting. This is the rationale for a requirement (as above) that all directors or members must agree for a circular resolution to pass. This means that a minority view can't be outvoted without being heard, and if the matter is controversial, a meeting will have to be held. However, circular resolutions can be useful for routine or straightforward decisions which can't wait for the next meeting.



Circular resolutions of members and directors are covered in **parts 5 and 6** of this guide.



# 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 registered charity 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 people' as their preferred terminology and this is the term you will see used in ACNC resources.

Therefore, the obligations that apply to responsible people 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

<p><b>Who can be a director?</b></p>	<p>The Corporations Act and ACNC Governance Standards set out who can be director of a registered charity CLG.</p> <p>In addition, the constitution of a registered charity CLG may have particular eligibility requirements.</p>
<p><b>How is a director appointed?</b></p>	<p>A CLG must have at least three directors.</p> <p>When a company 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 registered charity CLG is registered as a company with ASIC.</p> <p>After this, directors can be appointed in various ways, depending on the constitution of the registered charity CLG.</p> <p>It is usual for directors to be appointed by the other directors or by the members in a general meeting. Directors must give their consent to be appointed.</p>
<p><b>What happens after a director is appointed?</b></p>	<p>A registered charity CLG must notify the ACNC about changes to <b>'responsible people'</b> within 28 days (medium and large charities) or 60 days (small charities) and does not need to notify ASIC of change in director.</p> <p>A registered charity CLG may have a CEO, company secretary or other office holders, but they will generally only be considered 'responsible people' by the ACNC if they are on the board and can vote in board</p>





### Who can be a secretary?

decisions. This is the ACNC's terminology for those who govern the charity (ie. the people on the board or committee, such as the directors). This guide uses the term 'director' to refer to responsible people as this is usually the title used in a registered charity CLG for those on the board.

The Corporations Act regulates who can be a secretary of a CLG and this applies to registered charity CLGs.

The registered charity CLG's constitution may also have particular eligibility requirements.

### How is the secretary appointed?

The directors of a CLG appoint the secretary.

A registered charity CLG must have a company secretary (who can be one of the directors but need not be).

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 usually responsible for record keeping and compliance.

### What happens after a secretary is appointed?

Registered charity CLGs must notify the ACNC about changes in responsible people.

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 or secretary of a registered charity CLG in various circumstances, including when:

- they resign by giving written notice to the company
- they are removed or disqualified from managing a corporation or charity
- they become bankrupt, or their term of appointment ends

## Appointing and removing directors

### Who can be a director?

The directors are responsible for managing the registered charity CLG's business and can generally exercise all the powers of the registered charity CLG, except a power that can only be exercised by the members in a general meeting.

Directors must also comply with various legal duties.



For information on directors' roles, powers and duties see **part 3** of this guide.

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

Effective directors should have a range of skills, including:

- enthusiasm for, and knowledge of, the registered charity CLG and its purpose



- an understanding of the legal requirements of managing a registered charity CLG
- adequate time for the task
- interest in board work
- good working relationships with other people involved, and
- reliability and good organisational skills

In choosing your director, also consider:

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



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 and ACNC requirements

Under the Corporations Act, a director of a CLG must:

- consent to being appointed, and
- be at least 18 years old (note that there is no upper age limit unless the constitution of the registered charity CLG says otherwise)

A person is 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 you were imprisoned, the date of release, was within the last five years
- is 'an undischarged bankrupt' or has executed a personal insolvency agreement, or
- is the subject of a court disqualification order



### Note – Director Identification Numbers

Directors of certain entities, including all CLGs, are 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](#).

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

In addition, under [ACNC Governance Standard 4](#), a director of a registered charity CLG must:

- 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.

A CLG must have at least three directors, and at least two of them must ordinarily reside in Australia. Unless your constitution says otherwise, a director may hold another position in the organisation (for example, secretary).

The above eligibility requirements are explained in more detail below.

**Tip**

To avoid appointing a director who is not allowed to hold the position – before someone is appointed as director, ask them to sign a declaration in which they:

- agree to act as a director
- confirm that they satisfy the Corporations Act and ACNC requirements for being a director of a registered charity CLG, and
- agree to notify the registered charity CLG if any of these matters change

You may want to use the [ACNC's template Responsible Person declaration](#).

It may be helpful to add a footnote or attach a separate document setting out the categories of disqualification so that these are clear to anyone signing the declaration. These are explained below (ie. conviction for certain criminal offences, undischarged bankrupt or insolvent under administration, or subject to a court disqualification order).

The ACNC has published information about [who may be disqualified from being a Responsible Person](#), which includes a series of questions for a person to work through called 'Am I disqualified from managing a corporation?'. It may be considered good practice to include this ACNC resource as an annexure to the declaration.

**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 does not 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 registered charity CLG is considering appointing a director who has a criminal conviction, seek legal advice before the appointment. This protects both the registered charity CLG 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.



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.



### Tip

Before signing the declaration, a director should go through the information published by the ACNC about who may be disqualified from being a Responsible Person.



### 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.

## Removal, suspension or disqualification by the ACNC

The ACNC has the power to suspend or remove the director of a registered charity CLG if the registered charity CLG is a **'federally regulated entity'**.



### What is a federally regulated entity?

A federally regulated entity is defined in the ACNC Act (with reference to the Corporations Act and the Constitution) as:

- a **'constitutional corporation'**, a trust whose trustees are all constitutional corporations, or a body corporate that is incorporated in a Territory, or
- an entity connected with a Territory (the ACT, the Northern Territory, Jervis Bay or an external Territory such as Norfolk Island and Christmas Island) because:
  - it's a body corporate that is taken to be registered in a Territory under section 119A of the Corporations Act
  - its main activities are carried out in or in a way connected with a Territory, or
  - it's a trust governed by the law of a Territory

A **constitutional corporation** is a foreign corporation, a 'trading or financial corporation' formed in Australia that carries out substantial trading or financial activities (trading or making a profit need not be the predominant purpose of the entity)

If you are unsure whether your registered charity CLG is a federally-regulated entity, seek legal advice. Once a director has been suspended or removed, the ACNC can disqualify them from being a director of any charity for 12 months.

The two stages are:

**1**

- suspension or removal, and

**2**

- disqualification

## Suspension or removal

The ACNC can suspend or remove a director if it reasonably believes that:

- the registered charity CLG has contravened or not complied with the ACNC Act, an ACNC Governance Standard or an external conduct standard (or it is more likely than not that a contravention will occur), and
- suspension or removal is necessary to address the contravention or non-compliance (or the likely contravention or non-compliance)

The general rule is that the ACNC must give the director written notice of the suspension or removal with reasons and must give the director the chance to respond within 28 days explaining why they should not be suspended or removed.

However, the ACNC may suspend or remove a director without first giving notice if it considers this appropriate (for example, it may be appropriate if there is a concern that the director is putting others at risk). In making this decision the ACNC must take various factors into account, including the seriousness of the contravention, what action could have been taken to address the contravention and the welfare of the charity's beneficiaries.

If the ACNC finalises its decision to suspend or remove the director, the effect is that the person can't be a director of the charity for a certain period (ie. suspension) or can no longer be a director of the charity at all (ie. removal). Continuing to act as a director after suspension or removal is an offence under the ACNC Act.



### Note

The 'external conduct standards' set out requirements for registered charities that send funds or engage in activities outside Australia.

For more information, see the [ACNC External Conduct Standards](#).

## Disqualification

The ACNC can disqualify a person who has previously been suspended or removed by the ACNC – this means they can't be the director of any charity for a period of 12 months and their name will appear on the ['disqualified persons' register](#).

The ACNC can only disqualify a person if they have given the person notice and there are good reasons to disqualify the person to protect public trust and confidence in the not-for-profit sector.



For more information, about the ACNC's powers go to **part 4** of this guide and the [ACNC website](#).



## Example

Lorraine Booth, a director of Dogs4Us Charity Ltd, a well-known charity which promotes canine welfare, has been using Dogs4Us funds to buy significant volumes of dog food from a company owned by her brother and to pay company advertising costs.

Payments have taken place over a year and range between \$1,500 and \$7,000, but it's difficult to track all the figures. Dogs4Us' auditor alerts the other directors, who were unaware of Lorraine's actions. Lorraine doesn't respond to the board's questions and fails to turn up at board meetings. The board is unsure what to do. They decide that the matter is serious enough to be reported to the ACNC.

The ACNC carries out preliminary investigations and considers it appropriate to take things further because there is strong evidence of wrongdoing and a serious risk to public trust and confidence in the not-for-profit sector. The ACNC writes to Lorraine stating that it intends to suspend her from being a director of Dogs4Us because, in her use of Dogs4Us's funds, it appears that she has breached the duties in ACNC Governance Standard 5 because she:

- failed to act in good faith in the best interests of Dogs4Us
- misused her position as a director of Dogs4Us, and
- failed to disclose a conflict of interest

The ACNC informs Lorraine that she has 28 days to respond and explain why she shouldn't be suspended. In response, she says that her brother's company provides the most nutritious dog food and 'helping them out' seemed like a good way to use Dogs4Us funds.

The ACNC is not satisfied with this explanation and suspends Lorraine for six months to carry out a thorough investigation. Lorraine must not act as director of Dogs4Us during that time and will be committing an offence if she does. The penalty (under the ACNC Act) is imprisonment for one year or a fine.

## The registered charity CLG's constitution and policies

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

For example, the ACNC template constitution requires directors to be a member of the registered charity CLG (or a representative of a member). Your constitution or policies may also require certain qualifications or experience for the role.



## Note

The registered charity 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.

## 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 registered charity CLG needs someone with particular expertise to fill the position, ask around.

New directors are often found by the existing directors (or others within 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 first directors are the people listed as directors at the time the registered charity CLG is registered as a company with ASIC.

The registered charity CLG will have some flexibility to decide how subsequent directors will be appointed. Methods of appointment should be set out in the constitution.

The usual methods of appointment, which are contained in the Corporations Act (and will apply to your registered charity CLG unless its constitution says otherwise) are:

- appointment by the directors, or
- appointment by resolution of members at a general meeting. **Note** – your registered charity CLG is not required to hold general meetings unless its constitution says that it must (see **part 5** of this guide), but if the members are to appoint a director, a general meeting must be held for the appointment to be made.

The ACNC template constitution provides for both methods of appointment. Your registered charity CLG's constitution or policies may set out other methods or processes for appointments, for example through a nominations committee.

All directors, however they are appointed, must first give their consent to taking up the position.

The usual methods of appointment are discussed in more detail below.

### Appointing directors at the time of registration of the company with ASIC

The first directors are the people named in the application to ASIC for registration as a company.

Before registering with ASIC, make sure the people are eligible to be directors and that they have provided their consent to be appointed. It's best practice to get a written statement that the person appointed as a director consents to that appointment as a director.

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

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

You will also have to provide directors' details to the ACNC when your organisation registers as a charity.

In addition to the above information, the ACNC will require details of any previous names as well as phone numbers and positions held (for example, whether the director is the chair of the board). Note that only





names and positions appear on the ACNC's public register. In some, very limited circumstances, the ACNC will allow a person's name to be withheld. Information on withholding information from the ACNC Register is available on [the ACNC's website](#).



### Tip

A registered charity CLG must have at least three directors, but there is no maximum number by law.

However, some registered charity CLGs provide for a maximum number of directors in their constitution so that the board doesn't become too large to function efficiently. The optimum size of the board will depend on the nature, size, and activities of the organisation.

## Appointment by directors at any time (after registration with ASIC and registration as a charity)

Directors can generally be appointed by other directors, but check your constitution for any particular requirements.

For example, there might be a maximum number of directors who can be appointed by directors, with the rest to be appointed by members or the person might have to be a member of the company – see below for the ACNC template constitution which requires the person to be a member or a representative of a member.

The Corporations Act provides for a situation where the number of directors falls below the required minimum for decision making ('quorum'). In such a case, the directors are given the power to appoint another director to make up a quorum (unless the constitution says otherwise – so make sure to check yours). It's sensible to have a set process to follow if the number of directors falls below the quorum to ensure that the board can continue to operate and so that there is no uncertainty about the validity of board decisions.



### Example – ACNC template constitution

The relevant clause is clause 37: **Election and appointment of directors**

37.5 Subject to clause 36, the directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:

- (a) is a member of the company, or a representative of a member of the company (appointed under clause 23)
- (b) is 18 years of age or older
- (c) gives the company their signed consent to act as a director of the company, and
- (d) is not ineligible to be a director under the Corporations Act or the ACNC Act.

37.6 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act but only:

- (a) in an emergency
- (b) for the purpose of increasing the number of directors to three (or higher if required for a quorum), or
- (c) to call a general meeting.



### Example

One of the directors of XYZ Charity Ltd, Jack Green, unexpectedly steps down. This leaves only two directors on the board, less than the minimum of three required by XYZ Charity Ltd's constitution. An experienced member of the organisation agrees to step into the role and the two directors meet to discuss the matter. They check the constitution of XYZ Charity Ltd and record the following in the meeting minutes:

*'Following the resignation of Mr Jack Green and the reduction of the number of directors to two, the directors appointed Ms Katherine Smith to be a director of XYZ Charity Ltd with immediate effect, thereby increasing the number of directors to the required quorum of three.'*

## Appointment by members

A director may be appointed by a resolution of members passed at a general meeting, unless the registered charity CLG's constitution says otherwise. This method of appointment is included in the ACNC template constitution and is a common method of appointment.

If the members are appointing more than one director, in general it will be simplest for them to pass a separate resolution for each appointment. This is because a resolution appointing two or more directors will only be valid if there is an earlier resolution that the appointments can be voted on together **and** no votes were cast against that resolution. There are exceptions to this rule, but to avoid any doubt in the validity of appointments, in general the most straightforward approach is to have a separate resolution for each appointment.



### Example – ACNC template constitution

The relevant clause is clause 37: **Election and appointment of directors**

37.1 The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the company.

37.2 The members may elect a director by a resolution passed in a general meeting.

37.3 Each of the directors must be appointed by a separate resolution, unless:

- (a) the members present have first passed a resolution that the appointments may be voted on together, and
- (b) no votes were cast against that resolution.



See **part 5** of this guide for more information on passing resolutions.

## Term of office

A director may be appointed for a particular length of time ('term of office').

This may be done by resolution when the director is appointed, or the constitution of the registered charity CLG may designate a period for directors to remain in office. Check your constitution to see if any term applies to directors.



There may also be a process in your constitution for retirement and re-election of directors by rotation, where a certain proportion of the directors must stand down at a particular time with the option to be re-elected.

For example, your constitution may provide that:

- a third of the directors (those who have been on the board longest) must retire each year and each director must do so at least once every three years, and
- directors can be re-elected when they retire but can't remain in post beyond nine years unless the members agree to the appointment by special resolution (ie. agreement of 75% of members – see **part 5** of this guide for more detail on resolutions)

Having a process for directors to stand down and make way for others helps to ensure that the board does not 'stagnate', while allowing directors to be re-elected allows for continuity and for experienced directors to stay on the board. It's a good idea to think about how to achieve this balance on the board of your registered charity CLG.

## Payment of directors

The constitution of your registered charity CLG may allow directors to be paid. This is permitted by the ACNC as long as payment is in furtherance of the charity's charitable purpose, is permissible under its rules (constitution), and is properly authorised (for example, approval by the members of the registered charity CLG if this is what its constitution requires).



### Note

Under the Corporations Act, if a registered charity CLG wants to omit the word 'limited' from its title, its constitution must prohibit payment to directors.



There are various considerations when deciding whether to pay directors of charities.

See our [fact sheet on payment of board members](#).

## What happens if there is a change in the directors?

Registered charity CLGs must notify the ACNC of changes in its directors as soon as they reasonably can but no later than after:

- 28 days (medium and large charities), or
- 60 days (small charities)



### Note – size of charity

The ACNC defines a charity's size by reference to its annual revenue.

**From the 2022 Annual Information Statement reporting period**, the charity size thresholds will be: **small charity** (less than \$500,000), **medium charity** (\$500,000 or more but less than \$3 million) and **large charity** (\$3 million or more).

You can report the changes through the [ACNC's charity portal](#). You will be asked to provide the director's name and any previous names, date of birth, address, phone number and position in the organisation.



Administrative penalties may apply for failing to notify the ACNC. Note that directors' details only need to be provided to ASIC at the time the charity is registered as a company. After that, changes to directors only need to be provided to the ACNC (and not ASIC).



### Note – notify ASIC too

It's not clear whether the obligation for a CLG to notify ASIC of a change of director is 'switched off' for a registered charity CLG. Until this uncertainty is clarified by a change to the law, it's best to take a cautious approach and notify ASIC of a registered charity CLG's change of director.

### Other notifications

Also consider whether there are other people, companies or agencies that should be notified of a change of director. Check your registered charity CLG's policies and important documents such as funding agreements and leases.

## When will the position of director become vacant?

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

- they resign by giving written notice (unless the constitution says otherwise)
- they are disqualified from managing corporations under the Corporations Act
- they are disqualified from being a responsible person (ie. a director) by the ACNC
- they are removed by a resolution of members
- if they were appointed for a specified term, when that term ends, or
- they die

The constitution may also specify other circumstances in which a director will stop being a director. For example, a constitution may provide that a director must retire when they reach a certain age.

The ACNC template constitution provides that a director will stop being a director if they are no longer a member of the registered charity CLG or if they are absent for a specified number of consecutive board meetings without the other directors' approval.



### Note

The other directors of a registered charity CLG can't remove a director. Only the members have this power.



### Example – ACNC template constitution

The relevant clause is clause 40: **When a director stops being a director**

40.1 A director stops being a director if they:

- (a) give written notice of resignation as a director to the company
- (b) die
- (c) are removed as a director by a resolution of the members
- (d) stop being a member of the company
- (e) are a representative of a member, and that member stops being a member
- (f) are a representative of a member, and the member notifies the company that the representative is no longer a representative
- (g) are absent for 3 consecutive directors' meetings without approval from the directors, or
- (h) become ineligible to be a director of the company under the Corporations Act or the ACNC Act.



### Caution

A registered charity CLG must have at least three directors at all times.

If a resignation or a disqualification means that the number falls below this, the remaining directors should take immediate steps to rectify the issue. The constitution of the registered charity CLG should set out a process for this.

## Removing a director

It may sometimes be appropriate for the members of a registered charity CLG to remove a director from office, for example, because the person is not carrying out their duties properly or because they are constantly causing disputes among the board. This is usually set out in the registered charity CLG's constitution.

An example of this is in the ACNC template constitution.



## Example – ACNC template constitution

The relevant clauses in the ACNC template constitution regarding the removal of a director are:

40.1(c), which says ‘A director stops being a director if they: are removed as a director by resolution of the members’

41.4, which says ‘The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members’ resolution at a general meeting’

29.3, which says ‘The company cannot pass resolutions for the below without holding a meeting:

- (a) for a resolution to remove an auditor or remove a director
- (b) for passing a special resolution, or
- (c) where the Corporations Act or this constitution requires a meeting to be held.’

20.4, which says ‘Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:

- (a) remove a director
- (b) appoint a director in order to replace a director who was removed, or
- (c) remove an auditor.’

Under the Corporations Act, a director may be removed by resolution of members regardless of anything in the constitution or any agreement between the registered charity CLG, or its members, and the director.

### A process for this is set out in the Corporations Act.

The process covers the notice required for a resolution to remove a director, and the director’s right to put their case to members in a written statement and at the meeting itself.

#### Notice of intention



A notice of intention to move a resolution for the removal of director must be given to the registered charity CLG at least two months before the members’ meeting (unless the meeting is called after the notice of intention is given, in which case the meeting may be held less than two months after the notice).

#### Copy of the notice



The registered charity CLG must give the director a copy of the notice as soon as practicable after it is received.

#### Written statement



The director is entitled to put their case to members by giving a written statement that is not defamatory and is no longer than 1,000 words.

#### Copy of the statement



A copy of the written statement, if one is provided, must be sent to everyone to whom the notice of the meeting is sent.

#### The meeting

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. The director must also be allowed to speak at the meeting. The members make the final decision once the director has been given the chance to be heard.



### Caution

Removing a director can be very hard on the people involved and the organisation.

Carefully consider whether there are other ways to resolve the problem. Given the complexity and sensitivity involved, you will probably want to get legal advice if you are considering taking this step.

There may be other legal consequences for removing a director. If members resolve to remove a director, your organisation should seek legal advice.

### What if the director is an employee?

If your registered charity CLG wants to remove a director who is being paid (meaning the person would no longer have a paid position), it will be particularly important to seek legal advice before taking any action to remove the director.

The company needs to ensure that it complies with relevant contractual and statutory requirements for ending a person's employment. Under the *Fair Work Act 2009* (Cth), it's illegal to dismiss an employee on a range of grounds.



Find information on ending employment lawfully on the [Fair Work Ombudsman website](#).

### Return of documents

Because of their role, a director will have access to documents about the registered charity CLG.

The registered charity CLG owns these documents, so the director should return these documents after they leave their position.

If the documents are not returned, the registered charity CLG may take court action to compel the person to return them.

It's good practice to ask the outgoing director to sign a statement confirming they have returned all relevant documents.

## Appointing and removing secretaries

### Who can be a secretary?

A registered charity CLG must have a company secretary (who can be one of the directors but need not be).

A company secretary must be at least 18 years old. The company secretary (or if there is more than one, at least one of them) must ordinarily reside in Australia.

A person who is disqualified from managing corporations (explained above) may not be a company secretary unless permission is granted by ASIC or by a Court.



### Example – ACNC template constitution

The relevant clause is clause 55: **Appointment and role of secretary**

55.1 The company must have at least one secretary, who may also be a director.

55.2 A secretary must be appointed by the directors (after giving the company their signed consent to act as secretary of the company) and may be removed by the directors.

55.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.

55.4 The secretary must ensure that the following are maintained:

(a) a register of the company's members, and

(b) the minutes and other records of general meetings (including notices of meetings), directors' meetings and resolutions.

## How is the secretary appointed?

The secretary is appointed by the directors.

The secretary must consent to act as secretary before being appointed and the registered charity CLG must keep the consent given by the secretary.

It's best practice to get a written statement that the person appointed as secretary consents to that appointment as secretary. It's also advisable to ask the secretary to sign a declaration confirming that they satisfy the Corporations Act requirements for the role of secretary (similar to that signed by new directors).

The directors must decide the secretary's terms of appointment including any remuneration.

The first secretary of your registered charity CLG is the person who is listed as secretary at the time of incorporation with ASIC. Their name, date of birth, place of birth and residential address will need to be provided in the application to ASIC.



### Sample resolution of a board of a registered charity CLG to appoint a new secretary:

*'The board appoints Ms Lisa Taylor to be the secretary of XYZ Charity Ltd, effective from 1 January 2018.'*

*The board has received (and will keep for its records) a written statement by Ms Lisa Taylor confirming that she agrees to act as the secretary of XYZ Charity Ltd.'*

## Does a change to the secretary have to be reported?

There is no legal duty to notify the ACNC or ASIC of a change to the secretary of a registered charity CLG unless the secretary sits on the board as one of the people responsible for running the charity (ie. is a 'responsible person' for ACNC purposes, so a change would have to be reported to the ACNC).

However, you may want the company secretary to be the 'contact person' for the ACNC, in which case it will be important to make sure that the ACNC has the up-to-date details.

## What are the secretary's tasks?

The secretary will often sit in on board meetings and be responsible for board minutes. The secretary will also often be responsible for other compliance matters such as reporting.





### Note

Under the Corporations Act, the secretary is responsible for ensuring the registered office is open to the public for a certain number of hours every business day (civil penalties apply if this is contravened).

The constitution of your registered charity CLG might require the secretary to be on the board. If your constitution says nothing about this, it will be implied that the secretary is not on the board and cannot vote at board meetings.



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

## When will a secretary's position become vacant?

A person will stop being a secretary of a registered charity CLG if:

- they resign (usually by giving written notice)
- they are removed by the directors
- they are disqualified from managing corporations, unless permission is granted by ASIC or a Court (under the Corporations Act, the person will automatically stop being a secretary in this situation), or
- they die

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

If the secretary is a responsible person as defined by the ACNC (explained above), then the registered charity CLG must advise the ACNC of the change.



### 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 the ACNC, or ASIC where appropriate) 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 and 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 the directors of a registered charity CLG
- ▶ powers that can be exercised by the directors
- ▶ directors' duties, and
- ▶ consequences of breaching directors' duties

## Summary of key points in this part of the guide

### What are the main legal tasks of a director?

The main legal tasks of a director are to manage the affairs of the registered charity CLG and to provide direction and oversight of its work. A director must be completely up-to-date with what the registered charity CLG is doing.

Although a director can delegate functions or tasks to others in the organisation, the directors remain ultimately responsible for all the registered charity CLG's activities.

### What powers may directors exercise?

Directors may exercise all the powers of the registered charity CLG.

These powers exclude those which, under the Corporations Act or the constitution of the registered charity CLG, can only be exercised by the members in a general meeting (refer to **part 5** of this guide).

### Where are directors' legal duties set out?

The legal duties of a director of a registered charity CLG are mostly set out in [ACNC Governance Standard 5](#). These duties apply to all 'responsible people' (called 'responsible entities' in the ACNC Act and Regulation), who are the people who govern the charity, (for example, those on the board or committee such as the directors).

This guide uses the term 'director' to refer to responsible people.

Some of the directors' duties in the Corporations Act also apply to registered charity CLGs, and 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 directors' duties can have serious consequences under [ACNC Governance Standard 5](#) and the Corporations Act, including criminal penalties in some cases. There can also be common law consequences for breach.

However, most directors of registered charity CLGs carry out their activities without any issues, and legal actions against directors of charities are very rare.



**Can the law protect directors of a registered charity CLG from a breach of duty?**

The law protects directors of a registered charity CLG from a breach of duty in certain circumstances. This is – broadly – when they act reasonably and in good faith in the performance of their role.

**Are directors personally liable for the debts and liabilities of the registered charity CLG?**

Generally, directors are not personally liable for the debts and liabilities of the registered charity CLG.

There are some exceptions – for example, personal liability might arise if a director allows the registered charity CLG to operate while it is insolvent, or a registered charity CLG doesn't pay its employees their superannuation entitlements.

## The role of directors

### What are the main legal tasks of a director?

The directors are responsible for managing the affairs of the registered charity CLG. For this purpose, (except for any powers that can only be exercised by the members) the directors can exercise all the powers of the registered charity CLG.

For example, under the Corporations Act, the constitution can only be amended by the members. And the constitutions of some registered charity CLGs provide that only members can remove a director or auditor (this is the case in the ACNC template constitution).

However, powers reserved for members are generally quite limited, so the directors usually have wide discretion to manage the affairs of the registered charity CLG. So, for example, directors can generally make decisions to employ people, rent or buy property, and spend charitable funds on behalf of the registered charity CLG.

### Managing the registered charity CLG's affairs

The directors control the operations and finances of the registered charity CLG and are responsible for ensuring that it fulfils its charitable purpose.

The directors must be completely up-to-date on what the organisation is doing to properly manage its affairs.

This will involve, for example:

- finding out and assessing for yourself how any proposed action will affect the registered charity CLG's performance, especially if it involves a substantial amount of money
- getting outside professional advice if you need specialist input to make an informed decision
- questioning operational managers and staff about the activities of the registered charity CLG (if you are not running operations), and
- ensuring directors meet regularly (see **part 6** of this guide for further detail on directors' meetings)

### Record keeping

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

Under the ACNC Act, all registered charity CLGs must hold certain records that show that the charity is complying with the ACNC Act and tax law, and that it continues to be entitled to be registered as a charity, and as its particular subtype (for example, PBI).

The records that must be kept are:

- operational records (ie. documents about the registered charity CLG's activities such as its constitution, policies and procedures, meeting minutes, strategy documents, contracts and agreements), and
- financial records that explain the registered charity CLG's transactions and its financial position (such as account books, cash books, bank statements, tax records, employee payments and details of grants)

Even if day-to-day record keeping is the responsibility of another person in the organisation (often the secretary), the directors are ultimately responsible for ensuring that all of the necessary records are kept.



Making sure there are proper records also helps directors to show that they are complying with their legal duties (outlined below). See **part 4** of this guide for more information on record keeping.



The ACNC has published a '[record-keeping checklist](#)', which is a useful tool to help ensure you are holding all necessary records.

## Keeping regulators informed

The directors must ensure the registered charity CLG fulfils its reporting obligations. Registered charity CLGs are required to provide certain financial information to the ACNC when they register, and on an ongoing basis.

All registered charities must provide an Annual Information Statement (**AIS**) to the ACNC each year and must also provide certain financial information.

The required financial information depends on a charity's size, which is classified by the ACNC as follows:

ACNC classification	Annual revenue	Reporting obligations
<b>Small charities</b>	From the <b>2022 Annual Information Statement reporting period</b> , the small charity threshold will be less than \$500,000	Small charities are not required to provide annual financial reports to the ACNC but must answer some questions in the AIS about their income and assets.
<b>Medium charities</b>	From the <b>2022 Annual Information Statement reporting period</b> , the medium charity threshold will be \$500,000 or more but less than \$3 million	Medium charities must provide a <b>reviewed</b> annual financial report to the ACNC each financial year.
<b>Large charities</b>	From the <b>2022 Annual Information Statement reporting period</b> , the large charity threshold will be \$3 million or more	Large charities must provide an <b>audited</b> annual financial report to the ACNC each financial year.

There is also a special '**basic religious charity**' category for some charities, which do not have to report any financial information – but this will not be relevant to registered charity CLGs as this category excludes entities that are registered under the Corporations Act.

Registered charity CLGs are also required to report various changes to the ACNC including:

- changes to their legal name, address (for the delivery of documents), directors, constitution, and
- any error in the AIS or financial report

Small charities have 60 days, while medium and large charities have 28 days, to report these changes.

In general, registered charity CLGs don't have to report to ASIC but there are some exceptions (for example, ASIC must be notified if an auditor resigns or is removed).



For more information on reporting, see **part 4** of this guide and our [fact sheet on financial reporting for charities](#).

## Delegation

In some registered charity CLGs (particularly large ones), directors might delegate tasks to others in the organisation or to a specialist firm. For example, they might delegate responsibility for bookkeeping of financial transactions to an accountant or an accounting firm. Delegation will often be provided for in the constitution.

If you delegate any of your functions as a director, remember that you remain responsible for those functions being properly carried out.

It is strongly advisable to:

- record all delegated tasks in writing and
- have written policies that clearly:
  - set out what kind of tasks can be delegated (for example, up to a certain financial limit), and
  - specify how often the directors should get updates on the progress of delegated tasks



### Example – ACNC template constitution

The ACNC template constitution covers delegation of directors' powers in clause 42:

#### 42. Delegation of directors' powers

42.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the company (such as a chief executive officer) or any other person, as they consider appropriate.

42.2 The company must keep appropriate records of any delegations.

## Directors' duties

The law requires the directors of a registered charity CLG to meet certain standards of conduct. Under the common law (judge made law), directors are subject to various duties.

In addition, [ACNC Governance Standard 5](#) requires a registered charity CLG to take reasonable steps to ensure that its directors comply with certain duties, so the responsibility is on the organisation itself as well as the individual directors.

The duties set out in [Governance Standard 5](#) are:

- Duty 1** to exercise powers and discharge duties with the degree of care and diligence that a reasonable person would exercise in that position
- Duty 2** to act in good faith in the best interests of the charity, to further its charitable purposes
- Duty 3** not to misuse the position (of director or officer)
- Duty 4** not to misuse information obtained in the performance of your duties as director or officer
- Duty 5** to disclose actual or perceived conflicts of interest

**Duty 6** to ensure that the financial affairs of the charity are managed responsibly

**Duty 7** to ensure the charity does not operate while insolvent

Each of these duties is explained and illustrated with examples below.



### Caution

While there is significant overlap between these duties and the common law duties that apply to directors, it's recommended that a registered charity CLG specifically require a director to comply with the seven duties listed above.

The ACNC template constitution does this by setting out the duties and requiring directors to comply with them (see clause 46).



### Note

The provisions in the Corporations Act relating to directors' duties generally don't apply to directors of registered charity CLGs, but a few remain relevant (they are equivalent to some of the ACNC duties listed above).



We've summarised the legal sources of the various duties in a table at the end of this part of the guide.



### Remember

Directors might also be subject to obligations under other legislation, for example, occupational health and safety legislation, tax legislation and employee protection legislation.



See our detailed guide on the duties of directors and our resources about the role of directors on [our governance webpage](#).

# Duties of directors as set out in Governance Standard 5

## Duty 1 – to act with reasonable care and diligence

This standard requires a director to carry out their role with reasonable care and diligence. This is also a duty under the common law.

‘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 of the registered charity CLG says otherwise), but you do need to use whatever skills and experience you have for the benefit of the organisation and put reasonable effort into tasks you take on.

This will involve:

- keeping yourself informed about the activities of the registered charity 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’s 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. Just because a decision might turn out to be a bad one does not mean that the duty has been breached.

A decision will be considered to have been made with reasonable care if, after the directors informed themselves properly, they rationally believed the decision was in the registered charity CLG’s best interests (see later in this part of the guide for more detail on defences to possible breaches of duty).



### Example – the busy director

You were delighted when a local registered charity CLG supporting disadvantaged youth asked you to become a director. You eagerly attended your first few board meetings, but since then things have become busy in your work and personal life and you are finding it hard to attend regularly. You turn up when you can – usually every four to five months – but even then, you have rarely had time to look at the paperwork. You console yourself by thinking ‘Oh well, I’m just a volunteer’ and occasionally ‘They are lucky to even have someone with my business experience on the board’. You also feel that the chair is a smart woman so the decisions the board are making in your absence are probably fine.

**The legal duty:** If you accept the position of director, you have a legal duty to exercise reasonable care and skill in carrying out your role. Not being able to attend an occasional board meeting is OK, but repeated failure to attend, without approved leave of absence, and failure to pay attention to the ‘goings-on’ of the registered charity CLG, could be indicators of a breach of this duty. If anything goes wrong (for example, the organisation gets into financial trouble) you could be legally responsible. It will not be a defence to say, ‘I wasn’t at the meeting when they made that decision’ or ‘I’m just a volunteer’.

If you can no longer commit to giving reasonable time to your board responsibilities, you should carefully consider whether to remain on the board.

## Duty 2 – to act in good faith in the best interests of the registered charity CLG and for its charitable purposes

This standard requires a director to act in ‘good faith’ (honestly and fairly) in the best interests of the registered charity CLG and to further its charitable purposes (ie. what it was set up to do).





Decisions must be based on what is best for the organisation and for achieving its purposes and for no other reason such as personal preference. Although you will no doubt be aware of the organisation's charitable purposes, you should be familiar with the specific wording (this will be set out in the constitution).

Under the common law, directors must act in good faith and exercise their discretion in the interests of the company as a whole, and not for an improper or collateral purpose (such as obtaining a benefit for themselves).



### Note

The Corporations Act applies to directors of registered charity CLGs if there is a reckless or dishonest breach of this duty (see below for the consequences of breach, which can include fines and imprisonment).

Reckless or dishonest behaviour could include, for example, falsifying documents or making misleading statements.



### Example – the noisy members

You are a long-serving director of a volunteer conservation group which aims to engage local residents in the preservation of a local habitat. Recently a group of local schoolgirls became members and have started to regularly attend the organisation's weekend tree-planting activities. While many in the group have welcomed the girls, as young people have been under-represented in the organisation's membership, you and another director find them loud and annoying. You know that if you could convince the rest of the board to move the charity's activities to weekdays between 9am and 3pm (perhaps justifying it on the basis that it would be safer to plant trees at this time) then you wouldn't have to put up with the schoolgirls anymore.

**The legal duty:** As a director, your duty is to act in the best interests of the organisation and for its purposes (to engage local people in preservation activities), not for your own personal preferences or in a way that undermines its charitable purposes. Although it's necessary to consider the safety of your organisation's activities, trying to reschedule all activities for a 'sham' reason may be a breach of your duty to act in good faith in the best interests of the charity.

## Duty 3 – not to misuse position

This standard requires that directors don't misuse their position as a director of a registered charity CLG to gain an advantage for themselves or someone else, or to cause detriment to the registered charity CLG.

For example, if you are the director of an accommodation provider, 'pulling strings' to get a friend's son moved up the waiting list for accommodation would be a misuse of your position.

If you or someone else benefits personally from your position, this will often also constitute a conflict of interest (see **duty 4** below). However, even if you or someone else doesn't benefit, if improper use of your position causes detriment to the registered charity CLG, you will have breached this duty.



### Note

The Corporations Act will apply if there is a reckless or dishonest breach of this duty (see later in this part of the guide for the consequences of breach, which can include fines and imprisonment).



Although there is no specific common law duty not to misuse the position of director, a rule known as the 'profit rule' can apply where a director misuses their position for their own or a third party's advantage.

In addition, where a director misuses their position in a way that causes detriment to the registered charity CLG, this may constitute a breach of the common law duty to act in good faith in the best interests of the charity and for a proper purpose.



### Example – the boastful employee

You really don't like Geoff Brown. He beat you twice at golf in the last two months and has been a real show off about it. There is also a rumour going around that Geoff has been having an affair with a younger woman and is boasting to all about it, which also makes you angry. You happen to be a director of the registered charity CLG that Geoff works for. At the pub on the weekend, you hear him bragging. You are just sick of it! You tell him – at first jokingly but later more aggressively – that if he doesn't be quiet and 'pull his head in a bit' you will arrange to have him sacked. You mention how close you are to the manager of the charity and how influential you are on the board. When Geoff looks scared and suggests that you couldn't do that, you retaliate by threatening 'just one phone call and I can make sure you are out the door tomorrow'.

**The legal duty:** You must not use your position as a director for an improper purpose. In this situation, you are potentially in breach of this duty. You have used (or are going to use) your position as a director to intimidate an employee of the registered charity CLG for your own personal reasons rather than for the benefit of the organisation.

## Duty 4 – not to misuse information

As a director you will be privy to information about the registered charity CLG such as its operations, finances, beneficiaries and staff. This standard requires that you don't use any information obtained in your role as director for your own or someone else's benefit, or to harm the registered charity CLG. This is similar to the previous duty (the duty not to misuse your position as director), and some situations might fall into both.

An essential aspect of this duty is that directors don't reveal (outside the registered charity CLG) information which is discussed by directors. Although most board decisions can and should be conveyed to the members of the registered charity CLG, there are some discussions that might need to remain confidential and not be conveyed to the members, such as sensitive client information, commercially sensitive plans, employee or salary issues.

People who are appointed to a board of a registered charity CLG by another organisation must be particularly aware of this duty. They should not reveal information they obtain in their capacity as a director to the organisation that appointed them. Their primary obligation is to the registered charity CLG of which they are a director. Even if they think that their appointing organisation would benefit from certain information, they may only disclose it to the appointing organisation if they have the authorisation of the other directors of the registered charity CLG. It's recommended that this authorisation be obtained in writing.



### Note

The Corporations Act will apply if there is a reckless or dishonest breach of this duty (see later in this part of the guide for the consequences of breach, which can include fines and imprisonment).



### Example – the new service proposal

The registered charity CLG of which you are a director is planning to expand its welfare services and is looking for new premises. The local council is advertising a building for lease. Your board would like to secure the lease and, with some additional funding from the council, to open the new welfare service in the building. Your friend works for another local not-for-profit welfare service. She tells you that her organisation is thinking of expanding and asks whether you are aware of any suitable premises available for lease.

**The legal duty:** You have a duty not to misuse information gained from your position as a director. If the local council has publicly advertised the building for lease, this information is 'in the public domain' and therefore not confidential information, so it is probably OK to share this fact with your friend. However, you have a duty to keep discussions of board meetings confidential. You should not tell your friend about your board's plans to lease the building, how much they are offering the council, and their proposal for a new service. This is confidential information and disclosing it might cause a detriment to your registered charity CLG (for example, your friend's organisation might use the information to put forward a similar but cheaper proposal). To disclose these details would be a breach of the duty to not make improper use of information.



### Tip

To assist with compliance with the duties to not misuse information or position, consider asking directors to sign:

- a **code of conduct** setting out what is considered to be a proper use of position, and
- a **confidentiality agreement** regarding proper use of information

The code of conduct for directors is likely to be different to a code of conduct for members or employees, as directors have duties that others in the organisation (such as members, employees or volunteers) don't have.

## Duty 5 – to disclose conflicts of interest

This standard requires you as a director to disclose any 'perceived or actual material conflict of interest'.

A conflict of interest arises if you are presented with an opportunity to use your position as director for your own personal benefit or for the benefit of someone else (such as a relative or another organisation) in a way that conflicts with your duty to act in the interests of the organisation.

For example, if you are involved in appointing a manager for your registered charity CLG and your nephew applies for the position, your duty to act in the interests of the registered charity CLG by appointing the most suitable person might conflict with your personal interest in your nephew getting the role. The duty to avoid a conflict of interest also derives from the common law.

Conflicts of interest are not uncommon, and mismanagement of a conflict can be very damaging to the reputation of your registered charity CLG, so it's important that you know how to deal with such a situation.

Conflicts of interest are not prohibited – the duty is to disclose the conflict so that it can be managed appropriately.



### Note

Only 'material' conflicts need to be disclosed.

'Material' is not defined in the ACNC Governance Standard, but the **general rule** is that a conflict should be disclosed whenever an independent observer could doubt whether a director is acting in the best interests of the charity.

If you are in doubt about whether a particular situation gives rise to a conflict of interest, it is always best to be cautious and disclose it.



### 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

Particular care must be taken with '**related party transactions**', a type of conflict of interest under the Corporations Act and [ACNC Governance Standard 5](#).



### 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 enter into a related party transaction require the approval of a majority of disinterested (ie. unrelated) members, unless an exception applies.



### Note

If your registered charity CLG doesn't have to use the word 'Limited' in its name, the related party transaction provisions in the Corporations Act will not apply to your registered charity CLG.

**But** – a related party transaction **is** a conflict of interest under [ACNC Governance Standard 5](#) so you will still need to comply with that standard.

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

- **Is it a related party?** Directors and their spouses, parents and children are deemed to be related parties. An organisation connected to the charity that has control or significant influence over it (for example, a parent-entity), an organisation that the charity has control or significant influence over (such as a subsidiary entity) or an organisation within the same group as the charity, is also a related party.
- **Is it a financial benefit?** 'Financial benefit' is interpreted broadly and does not have to involve money, for example it includes a financial advantage.
- **Does an exception apply?** Member approval will not be required in some situations, for example, if the financial benefit is for the reimbursement of expenses or payment of insurance premiums in respect of a transaction while acting as a director.

The rules regarding related party transactions can become quite technical so if you are not sure whether they apply to a particular situation, discuss the matter with the rest of the board and seek legal advice if necessary.



### Note

The ACNC Annual Information Statement now asks charities for information on any related party transactions, and also whether the charity has any documented policies or procedures which cover related party transactions. See [the ACNC's guidance](#) on this.



The ACNC has [published a template conflict of interest policy and template register of interests](#).



### Example – the tender

You are a director of Helping Our Kids, a charity which assists children with learning difficulties. Helping Our Kids is preparing a response to a government tender to develop resources for children with visual impairments. It has not undertaken this type of work before, and it is the first time it has applied for the tender.

You are also a director of Seeing Support, a much smaller charity which helps blind people. For the last five years, Seeing Support has been the successful recipient of the government tender that Helping Our Kids is applying for. You are concerned that if Helping Our Kids wins the tender, Seeing Support will lose most of its funding. You wonder how you can help Seeing Support win the tender.

**The legal duty:** In this situation, your access to the confidential information of both Helping Our Kids and Seeing Support means you have a conflict of interest. You should disclose your interest to both boards and will probably not be involved in the tender process at either charity.



### Tips

To comply with the duty to manage conflicts of interest, the ACNC advises charities to:

- Have a conflicts of interest policy which defines conflicts of interest and explains the process for disclosure and management of conflicts.
- Maintain a 'register of interests' (a document that records any interests of directors which may cause a conflict of interest and any steps taken to manage them). This may help to detect conflicts before they arise.
- Promote a culture of disclosure so that directors are not reluctant to disclose a potential conflict, for example by having open discussions about conflicts, organising training and providing guidance materials.

## Duty 6 – to ensure that the financial affairs of the charity are managed responsibly

The directors are responsible for the financial management of a registered charity CLG. You should have clear processes to manage money responsibly and prevent problems.

The appropriate systems and procedures will differ depending on the size and complexity of the organisation, but are likely to include:

- having a written financial procedure with financial controls that all staff and volunteers must observe (covering matters such as approving expenditure and signing cheques)
- knowing how much money your registered charity CLG receives and what it is spent on and planning ahead for expenditure
- monitoring the registered charity CLG's financial performance against its budget, asking for more information if there are variations, and seeking expert advice if necessary
- receiving financial information regularly, discussing it at board meetings and asking about anything you are not clear about (do not be embarrassed to ask questions even if they seem basic)
- establishing clear financial delegations (for example, limiting authority to approve purchases to a set value), and
- making sure accounts and account details (such as passwords) are kept secure

There is no specific common law duty regarding responsible financial management, but this could be regarded as an aspect of the common law duty to exercise reasonable skill, care and diligence.



### Example – the urgent repairs

You are a director of large registered charity CLG, a supported accommodation service. The board recently approved the yearly budget and \$150,000 was allocated for any necessary repairs to properties.

At the next board meeting, the manager of the service tells you and the other directors that three properties need substantial repairs before anyone can move in. The estimated cost of the repairs is \$165,000. The manager tells you that the repairs are urgent and asks the board to approve the signing of the repair contracts there and then, so that the works can begin the next day. You feel that if you asked any questions you would be holding up the process and would frustrate the manager, who looks stressed.

**The legal duty:** You have a duty to ensure the financial affairs of the organisation are managed responsibly and departing from budgeted figures without good reason and without satisfying yourself that the charity has sufficient funds might breach this duty. To comply with your duty, you should find out why the repairs cost what they do, whether this is a reasonable figure, and the organisation's current financial position. The manager may well be focused on the day to day running of the organisation and the immediate problem, but it is your place as a director to look at the bigger picture and avoid rash or costly decisions.



### Caution – fundraising

An important part of the financial management of a registered charity CLG is making sure there are appropriate and lawful processes in place for fundraising. Fundraising may be conducted in various ways, for example by seeking public donations or running fundraising events, and the directors must ensure that they understand their obligations for any method used to raise money.

Fundraising is regulated at state level rather than federally, which can make the rules difficult to navigate. Information is available on [the ACNC's website](#) and [our fundraising webpage](#).

## Duty 7 – to ensure the charity does not operate while insolvent

Directors must ensure that the registered charity CLG doesn't continue to operate while it is insolvent (ie. unable to pay its debts as and when they fall due).

Complying with this duty will require you to regularly review the financial position of your registered charity CLG and ensure there is enough money to pay for its activities. If you know or reasonably suspect that the registered charity CLG does not have sufficient funds to pay everything it owes, you must take all reasonable steps to prevent it incurring more debt (such as entering into new contracts).



### Note

Provisions in the Corporations Act prohibiting insolvent trading apply to the directors of registered charity CLGs (see later in this part of the guide for the consequences of a breach of the insolvent trading provision, which can include fines and imprisonment).

Although there is no specific common law duty to avoid insolvent trading, it could be regarded as an aspect of the duty to exercise reasonable skill, care and diligence.



### Example – the fundraiser

The registered charity CLG of which you are a director had some financial difficulties last year but managed a small surplus of \$8,000 by the end of the financial year in June. Four months later you attend a board meeting, and the fundraising manager puts forward a proposal for a big fundraising drive which will cost about \$11,000 in marketing and publicity (such as contracts with printers and other suppliers). She is confident that the drive will bring in significant funds.

**The legal duty:** You have a duty not to incur new debts if you know or suspect that the registered charity CLG will not be able to pay them. Based on the information you have, there is a risk that the registered charity CLG will not be able to pay the estimated marketing costs. You should ensure you have all the relevant information – don't rely on figures from four months ago and ask for an up-to-date picture of the finances. You should satisfy yourself that the registered charity CLG can afford the marketing costs before any contracts are signed with suppliers. You will also need to ensure that the fundraising drive complies with the relevant fundraising rules in your state.



### In summary

- The above duties define the conduct to which directors of registered charity CLGs are expected to adhere.
- Although the duties might appear onerous, remember that vast majority of directors of registered charity CLGs have no problems complying with their duties and legal actions against directors of charities are very rare.
- You are likely to regard the duties as general standards of common sense and ethics (and are probably already complying with them in the way you perform your role). Nevertheless, it's important to know what your legal duties are, to be aware where difficulties may arise, and to follow good practice to minimise risks.
- As noted above, many registered charity CLGs list the directors' duties in their constitution as a way of making sure their directors are subject to the specified duties. The common law duties will apply even if they do not appear in the constitution.





### Example – ACNC template constitution

The ACNC template constitution sets out the **directors' duties** in clause 46:

46.1 The directors must comply with their duties:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company
- (b) to act in good faith in the best interests of the company and to further the charitable purpose(s) of the company set out in clause 4
- (c) not to misuse their position as a director
- (d) not to misuse information they gain in their role as a director
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 47
- (f) to ensure that the financial affairs of the company are managed responsibly, and
- (g) not to allow the company to operate while it is insolvent.

## Protections for directors under Governance Standard 5

The law recognises that a director could find themselves in a situation of a possible breach of duty even though they acted in good faith and took all reasonable steps to comply with their duties.

There are therefore some protections under ACNC Governance Standard 5 which operate as **defences** to a possible breach of duty.

**You will be taken to have complied with the duties set out in the Governance Standards in the following situations:**

- You were given information or advice by an employee, professional adviser or expert who you reasonably believed to be competent in the subject matter, or by another director or a committee if the subject matter was within their authority or area of responsibility. You made an assessment of that information or advice (rather than just accepting it at face value) and then relied on it in good faith.
- In relation to the duty to act with reasonable care and diligence – You made a decision in good faith for a proper purpose, did not have a material personal interest in the matter, informed yourself about the subject matter of the decision to the extent you reasonably believed to be appropriate, and rationally believed that the decision was in the best interests of the registered charity CLG. (This is also referred to as the '**business judgement rule**').
- In relation to the duty not to operate whilst insolvent – At the time a debt was incurred you had reasonable grounds to expect (and did expect) that the registered charity CLG was solvent and would still be solvent at the time it had to pay that debt and any other debts.
- You could not take part in the management of the registered charity CLG because of illness or for another good reason.

The law therefore recognises that directors should not be held to unrealistic standards and that they operate in the real world. For example, it's inevitable that you will sometimes have to rely on information from others (you cannot investigate every detail yourself). What is important is your reasonable and responsible assessment of that information.

## Duties and obligations under other legislation

Directors of a registered charity CLG are also subject to duties and obligations under other legislation.

For example, for organisations in Victoria which employ people or manage or control a workplace, under the *Occupational Health and Safety Act 2004 (Vic)* there will be certain responsibilities with regard to maintaining a safe working environment and protecting people from risks. Organisations in other states are subject to equivalent health and safety laws.



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

If your organisation employs people, you 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.



See the [Fair Work Ombudsman's](#) website for more information.

There may also be specific legal obligations that apply to you and your registered charity CLG because of the type of work you do. 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 a director of a registered charity CLG is found not to have complied with (ie. has breached) their legal duties.

### Breach of duties under ACNC Governance Standard 5

The ACNC has various enforcement powers if legal duties are breached.

As noted above, the registered charity CLG has a responsibility to ensure that its directors comply with their duties under ACNC Governance Standard 5, so the ACNC can take action against the registered charity CLG itself for a breach of directors' duties.

In deciding what action to take the ACNC considers various matters including the nature and significance of the breach, the extent to which the breach may harm public trust and confidence in the not-for-profit sector and any harm to the charity's beneficiaries.

The ACNC may take the following action:

- suspend, remove or disqualify the director
- take enforcement action against the registered charity CLG
- Revoke charitable registration

### Suspension, removal or disqualification of the director

The ACNC may suspend, remove or disqualify the director if:

- the registered charity CLG is a 'federally regulated entity' (see **part 2** of this guide for a definition of a federally regulated entity), or
- there has been a breach of an external conduct standard (these are the standards that apply to charities sending funds or operating abroad)

There are two stages:

- The director could be **suspended or removed**, which means that they are prohibited from participating in the management of the registered charity CLG for a certain period (ie. suspension) or can no longer be a director of the registered charity CLG at all (ie. removal). Continuing to act as a director after suspension or removal is an offence under the ACNC Act and could give rise to 50 penalty points (1 penalty point being \$275 for offences committed on or after 1 January 2023) or one year imprisonment



- A director who has previously been suspended or removed can be disqualified by the ACNC, which means that they can't be a director of any charity for a period of 12 months. Their name will also appear on the 'disqualified persons register'.

See **part 2** of this guide for more detail on suspension, removal and disqualification of directors.

### Enforcement action against the registered charity CLG

The ACNC may take enforcement action against the registered charity CLG if:

- the registered charity CLG is a 'federally regulated entity', or
- there has been a breach of an external conduct standard

As the registered charity CLG must take reasonable steps to ensure that its directors comply with their duties, if a director breaches any of their duties, the ACNC could take enforcement action against the charity itself. This could involve the following:

- The registered charity CLG could receive warnings or directions by the ACNC Commissioner compelling it to comply with its duties.
- The registered charity CLG could be subject to ongoing oversight and regulation by the ACNC via an 'enforceable undertaking' (**EU**), which is an agreement entered into by the registered charity CLG specifying an action or series of actions that it has agreed to take (or refrain from taking) in order to comply with its obligations. An EU is enforceable in court, so if it is not complied with this may result in court orders to cover losses suffered by the registered charity CLG or to pay back any financial benefits gained as a result of the EU breach.

### Revoke charitable registration

The ACNC may revoke charitable registration in a very serious case of failure to comply with legal obligations.

### Breach of duties under the Corporations Act

Although most of the provisions in the Corporations Act relating to directors' duties don't apply to the directors of registered charity CLGs, a few do apply.



See the table summarising the legal sources of the various duties at the end of this part of the guide.

A breach could therefore incur penalties under the Corporations Act as follows:

- If a director breaches the duty to prevent insolvent trading they may be subject to civil penalties, compensation proceedings (for the amount lost by creditors) and, if dishonesty is a factor, criminal penalties.
- If a director is reckless or intentionally dishonest in breaching the duty to act in good faith, the duty not to misuse information or the duty not to misuse their position, they may be guilty of a criminal offence.
- A breach of the related party transaction rules could incur a civil penalty, and a serious breach could incur a criminal penalty.

Civil penalties can be up to \$200,000 and criminal penalties are a fine of up to \$220,000 or up to five years in prison or both. The above breaches can also be grounds for disqualification as a director. Note that there are defences for a breach of duty under the Corporations Act which are broadly equivalent to the protections (defences) under ACNC Governance Standard 5 (discussed above).



## Breach of duties under other legislation

The consequences of a failure to comply with duties under other legislation, for example the [\*Occupational Health and Safety Act 2004 \(Vic\)\*](#), will vary according to the duty. Check whether any of the other duties you or your registered charity CLG are subject to carries fines, criminal liability or other penalties.

## Breach of duties under the common law

Some of the duties set out above are also sourced in 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 or liabilities of the registered charity CLG?

Generally, directors are not personally liable (legally responsible) for the debts or liabilities of the registered charity CLG.

So, for example, if a contractor claims that the registered charity CLG owes them money, the directors themselves will not usually be personally responsible for paying any sum due. However, directors may become personally liable for debts incurred whilst the registered charity CLG is insolvent.

Personal liability can also arise for failure to comply with duties under other legislation. For example, paid directors can be personally liable for costs associated with breaches of the [\*Occupational Health and Safety Act 2004 \(Vic\)\*](#) if they failed to take reasonable care. Note, however, that volunteer directors will generally not be liable unless they have acted recklessly.

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 (see the [Fair Work Ombudsman's website](#) for more details).

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

While it's a requirement of the Corporations Act that a company appoint a secretary (for both registered charity and non-charitable CLGs) the specific responsibilities set out in the Corporations Act for a company secretary are 'switched -off' for registered charity CLGs, except for the requirement to maintain a registered office and keep it open to the public during certain hours. (See the discussion in **part 2** of this guide).

This means the particular provisions do not need to be complied with. Many registered charity CLGs may provide (in the constitution) the secretary with similar duties to those outlined above and also require the secretary to fulfil similar requirements as set out in the ACNC Act (for example, the requirements to notify the ACNC of changes to its name or its constitution).



## Summary table – legal sources of directors’ duties

The table below summarises the legal sources of the various duties of directors.

**Note** that the term ‘**registered entity**’ in the ACNC Regulation refers to a registered charity, including a registered charity CLG. The term ‘**responsible entity**’ refers to those responsible governing the charity such as the directors.

Duty	ACNC Regulation 2013 – 45.25, Governance Standard 5	Corporations Act	Common law
Duty to act in good faith and in the best interests of the company for a proper purpose	45.25(2)(b): ‘to act in good faith in the registered entity’s best interests, and to further the purposes of the registered entity.’	Criminal liability under s.184(1) for a reckless or intentionally dishonest breach of the duty.  Civil liability under s.181 is switched off for registered charity CLGs.	Fiduciary duties of good faith and proper purpose.
Duty to act with care and diligence	45.25(2)(a): ‘to exercise the responsible entity’s powers and discharge the responsible entity’s duties with the degree of care and diligence that a reasonable individual would exercise if they were a responsible entity of the registered entity.’	Duty under s.180(1) is switched off for registered charity CLGs.	Common law and equitable duties of reasonable care, skill and diligence.
Duty to ensure responsible management of financial affairs	45.25(2)(f): ‘to ensure that the registered entity’s financial affairs are managed in a responsible manner.’	Duty under s.180(1) is switched off for registered charity CLGs.	No specific common law duty but could be an aspect of common law and equitable duties of reasonable care, skill and diligence.
Duty to not misuse position	45.25(2)(c): ‘not to misuse the responsible entity’s position.’	Criminal liability under s.184(3) for a reckless or intentionally dishonest breach of the duty.  Civil liability under s.182 is switched off for registered charity CLGs.	No specific common law duty, but ‘profit rule’ applies where a director misuses their position for their own or a third party’s advantage.



Duty	ACNC Regulation 2013 – 45.25, Governance Standard 5	Corporations Act	Common law
Duty not to misuse information	45.25(2)(d): ‘not to misuse information obtained in the performance of the responsible entity’s duties as a responsible entity of the registered entity.’	<p>Criminal liability under s.184(3) for a reckless or intentionally dishonest breach of the duty.</p> <p>Civil liability under s.183 is switched off for registered charity CLGs.</p>	No specific common law duty.
Duty to disclose a conflict of interest	<p>45.25(2)(e): ‘to disclose perceived or actual material conflicts of interest of the responsible entity.’</p> <p>45.25(3): ‘For paragraph (2)(e), a perceived or actual material conflict of interest must be disclosed:</p> <ol style="list-style-type: none"> <li>if the responsible entity is a director of the registered entity—to the other directors (if any); or</li> <li>if the registered entity is a trust, and the responsible entity is a director of a trustee of the registered entity—to the other directors (if any); or</li> <li>if the registered entity is a company—to the members of the registered entity; or</li> <li>in any other case—unless the Commissioner provides otherwise, to the Commissioner, in the approved form.’</li> </ol>	Duty to disclose switched off for registered charity CLGs, but duty to be absent from discussion and voting applies (s.195(3)).	Fiduciary duty not to have a personal interest ‘conflict rule’ unless with consent of company.
Duty to avoid insolvent trading	45.25(2)(g): ‘not to allow the registered entity to operate while insolvent.’	Duty applies under s.588G.	No specific common law duty but could be an aspect of common law and equitable duties of reasonable care, skill and diligence.



# Part 4

## Reporting, records and registers



# Reporting, records and registers

## This part covers:

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

## Summary of key points in this part of the guide

### What are a registered charity CLG's reporting obligations?

A registered charity CLG has an obligation to report to the ACNC every year by submitting an Annual Information Statement. Registered charity CLGs which fall within the medium or large charity category must also submit an annual financial report.

### What are the ongoing obligations to report various changes?

A registered charity CLG also has an ongoing obligation to report various changes, such as changes to its directors or constitution. Changes must be reported to the ACNC as they arise.

### What are a registered charity CLG's record keeping requirements?

A registered charity CLG must keep certain records. These broadly fall into two categories – financial records and operational records. The general rule is that records must be kept for seven years.

### What registers must a registered charity CLG keep?

A registered charity CLG must have a members' register. It may choose to keep other registers too, (for example a 'relevant documents register') for good practice and ease of administration. We have provided sample registers in this part of the guide.

### What compliance powers does the ACNC have?

The ACNC has various powers to help ensure that charities comply with their legal obligations. These powers include information gathering, monitoring and enforcement powers. The ACNC can also revoke charitable registration and impose penalties.

### Can ASIC compel a registered charity CLG to provide information?

ASIC can compel a registered charity CLG to provide information in some circumstances. If there are concerns about a company's compliance with the law, ASIC may use its powers to inspect certain documents, like financial records, or request production of documents.





# What are a registered charity CLG's reporting obligations?

Registered charity CLGs must meet the reporting requirements set out in the ACNC Act and Regulations.

Registered charity CLGs don't generally need to report to ASIC, although there are a few instances when they will need to do so.

The central reporting obligation for a registered charity CLG is to submit an **Annual Information Statement** to the ACNC every year. Registered charity CLGs also have ongoing reporting obligations.

Medium and large charities must also submit a **financial report** with the Annual Information Statement.

The table below summarises the annual reporting obligations for different sizes of charity.

## Annual reporting obligations

Size of charity (ACNC classification)	Annual revenue	Reporting obligations
<b>Small</b>	From the <b>2022 Annual Information Statement reporting period</b> , the small charity threshold will be less than \$500,000	<ul style="list-style-type: none"> <li>• Must submit an Annual Information Statement.</li> <li>• Do not have to submit a financial report (but can if they want to. If they do, it does not need to be reviewed or audited).</li> <li>• Can choose whether to use cash or accrual accounting.</li> </ul>
<b>Medium</b>	From the <b>2022 Annual Information Statement reporting period</b> , the medium charity threshold will be \$500,000 or more but less than \$3 million	<ul style="list-style-type: none"> <li>• Must submit an Annual Information Statement.</li> <li>• Must submit a financial report that is either reviewed or audited.</li> </ul>
<b>Large</b>	From the <b>2022 Annual Information Statement reporting period</b> , the large charity threshold will be \$3 million or more	<ul style="list-style-type: none"> <li>• Must submit an Annual Information Statement.</li> <li>• Must submit an audited financial report.</li> </ul>



### Note – basic religious charity

If a charity is a **basic religious charity** (an unincorporated charity which advances religion and does not pursue other charitable purposes – for example, education or relief of poverty), it does not have to:

- answer financial information in its AIS
- submit annual financial reports (regardless of its size), or
- comply with the ACNC Governance Standards



# Annual Information Statement

The Annual Information Statement (AIS) includes mandatory and optional questions.



## Note

The format of the AIS and questions may change from year to year, so check the [ACNC's AIS guidance](#) when you are preparing to submit a AIS.

## Charity information section

This section asks for basic information about your registered charity CLG.

Many of the questions will be prefilled as part of the [ACNC Charity Portal](#) online process.

Questions include:

- the registered charity CLG's Australian Business Number (**ABN**) (you can find this on the [ABN Lookup website](#))
- the registered charity CLG's name as it appears on its legal or other official documents, and other names it is known by (such as a trading name)
- the address for service of documents and ACNC correspondence. Registered charity CLGs must provide a physical address, as this is your registered address under the Corporations Act (note that this will be on the ACNC register so give details you would be happy for the public to use to contact you)
- contact details for the primary contact person (note that their details will not appear on the ACNC register and will only be used by the ACNC to make contact), and
- the size of your registered charity CLG based on its annual revenue



## Tip

'Revenue' is part of the total income of the registered charity CLG.

Broadly, it comprises of income arising from the registered charity CLG's ordinary activities, which may include grants, donations, fees for services and income from investments.

It does not include income from transactions that are not part of the ordinary activities of the registered charity CLG (for example income from the sale of property). See the [ACNC website](#) for guidance.

The rules are quite technical, and you will need to follow the Australian Accounting Standards. You may want to seek accounting advice.

## Activities section

In this section you will be asked to provide information about the main activities of your registered charity CLG in that reporting period. This enables the ACNC to identify inactive charities. A charity is active and operating if it undertakes any activities.

Activities include operations and programs undertaken, as well as the provision of funds or other support.

You will be asked to select from a wide range of activities such as recreational, rehabilitation, medical, welfare, environmental, emergency, religious and advocacy activities. You can select 'other' if your activities don't fall into any of the listed categories, although the ACNC's guidance asks charities to avoid doing this and to try to group their activities under the options provided.



You will be asked to describe how the activities and outcomes of your registered charity CLG helped to achieve its charitable purpose, and who the main beneficiaries were in the reporting period. You will also need to state if you intend to change or introduce new activities in the next reporting period.

## Human resources section

This section asks for details about:

- The number of paid employees who worked for your registered charity CLG during the last pay period of the reporting period. This includes full-time, part-time and casual employees. The ACNC defines full-time employees as those who work 35 hours or more per week, part-time employees as those who work less than 35 hours per week, and casual employees as those who work any number of hours but don't get paid personal or holiday leave.
- The number of full-time equivalent staff who worked for your registered charity CLG during the last pay period of the reporting period. This means the number of full-time employees that the registered charity CLG would have if it combined the hours of full-time, part-time and casual employees (you can get this figure from your payroll system).
- The number of unpaid volunteers who worked for your registered charity CLG during the last pay period of the reporting period.

## Finance section

The information you have to provide in this section will vary depending on the size of your registered charity CLG, with more detailed information (and a financial report) required from medium and large registered charity CLGs. It is mandatory for all charities, except non-government schools and basic religious charities, to answer the questions in this section.

Non-government schools must submit a financial report to the Department of Education (**DET**). As long as this report is submitted to DET, the school does not need to complete the financial questions in this section of the Annual Information Statement as the questions cover similar content and DET will pass your information onto the ACNC for ACNC reporting purposes.

### Small registered charity CLGs

Registered charity CLGs which fall into the 'small charities' category will be asked to state whether they use cash or accrual accounting.

The main difference between the two is the timing of when revenue and expenses are recorded. Cash accounting records revenue when money is received and expenses when the money is paid out. Accrual accounting records revenue when it is earned (even if it has not yet been received) and expenses when they are incurred (even if they have not yet been paid).

Small charities can submit a financial report if they choose to, but this is not compulsory. A financial report generally includes financial statements with notes, a declaration from the directors about the statements (ie. stating that they are accurate), and a reviewer's or auditor's report.

From the 2023 AIS, small charities are required to disclose reportable related party transactions.



### Example

On 1 March, a donor promises to donate \$50 to a registered charity CLG. He transfers the funds on 10 April.

- Under the **cash accounting** method, the donation will be recorded when the funds are received on (or soon after) 10 April.
- Under the **accrual accounting** method, the donation is recorded on 1 March, even though it has not yet been received from the donor.

### Medium and large registered charity CLGs

If your registered charity CLG falls into the medium or large charity category, you will need to:

- submit a financial report (see the 'financial reports' section later in this part of the guide for more detail), and



- state whether your registered charity CLG:
  - completed any **related party transactions** in the reporting period, and
  - has any policies covering related party transactions or conflicts of interest

A **related party transaction** is a transfer of resources, services or obligations between a charity and a related party.

The following are 'related parties' in relation to a charity:

- a person connected to the charity, such as a director or a relative of that person
- an organisation connected to the charity that has control or significant influence over it (for example, a parent-entity), an organisation that the charity has control or significant influence over (such as a subsidiary entity) or an organisation within the same group as the charity
- a member of the key management personnel of the charity (for example, CEO) or a close relative

From the 2023 AIS, medium and large charities are required to disclose material related party transactions.



### Note – Related party reporting

From the 2023 AIS, all charities (except for basic religious charities) must report their related party transactions to the ACNC:

- small charities are required to disclose reportable related party transactions
- medium and large charities are required to disclose material related party transactions

For a small charity, a related party is a person or organisation that is connected to the charity and has significant influence over the charity.

For medium and large charities, a related party is defined in AASB 124 Related Party Disclosures.



See **part 3** of this guide for information on how to appropriately manage related party transactions and conflicts of interest in general.



### Note – Key management personnel remuneration reporting

From the 2022 AIS reporting period:

- medium charities that prepare GPFs and large charities (unless an exemption applies) must report key management personnel remuneration, and
- medium charities that prepare SPFs may choose to report key management personnel remuneration

Examples of key management personnel include Responsible People (such as board member, committee members, trustees) and senior staff (such as the CEO, chief financial officer, chief operating officer).



For more information and an example case study, see the [ACNC's webpage on key management personnel remuneration](#).

## All registered charity CLGs

All registered charity CLGs must complete the following documents in this section of the AIS:

- **an income statement**

This sets out the sources of revenue such as grants, donations and bequests, with expenses deducted (for example, salaries and administration costs).

For medium and large charities, the income statement includes a category called 'other comprehensive income', which covers income that has not yet been realised (for example, if land or a building owned by the charity has been revalued but not sold).

- **a balance sheet**

This sets out the assets of the registered charity CLG, such as cash in the bank, land and investments. Liabilities (ie. anything owed by the registered charity CLG such as mortgage repayments or overdrafts) are deducted from the assets.

Large charities must complete a more comprehensive balance sheet and divide their assets between 'current' and 'non-current' assets. Assets are generally current if they are expected to be realised, sold or consumed within 12 months of the end of the reporting period (for example, cash or short-term investments), and non-current assets are those which are not expected to be realised within that period (for example, fixed assets such as land or buildings).



The [ACNC's AIS guidance](#) provides a helpful explanation of each category on the income statement and balance sheet and how to carry out the necessary calculations.

## Annual report section

In this section you can upload or include a link to your registered charity CLG's annual report, if it has one. **This is not mandatory.**

If you do provide an annual report, it will be displayed on the ACNC Register and will be available to the public.

## Reporting to state and territory regulators section

To avoid charities having to report multiple times to different regulators, this section asks about any reporting obligations to state and territory regulators.

Because your registered charity CLG is incorporated under Commonwealth law (the Corporations Act) and not under state or territory law, this section will mostly not apply to you.

However, if your registered charity CLG fundraises or intends to fundraise in the next reporting period, you will have to provide information on where you fundraise and if you hold the necessary licences.

## Other obligations section

This section reminds you of your ongoing obligation to notify the ACNC of any change to your registered charity CLG's:

- directors (and any other responsible people)
- governing document (for example, constitution), with a copy of the new document, and
- charity subtype (for example, the category or categories the registered charity CLG's activities fall into, for example advancing health or advancing education).



These changes must be reported **within 28 days** for **medium** and **large** charities, or **within 60 days** for **small** charities, so you may already have done this if relevant. The AIS simply provides a reminder to report changes if you have not done so already.

See later in this part of the guide for more information on your ongoing reporting obligations.

## Ancillary funds section

This section of the AIS is only for ancillary funds and is therefore not relevant for registered charity CLGs.

## Declaration

Finally, the AIS asks for a declaration that the information provided, including any documents submitted with the AIS, is true and correct. The declaration can be signed by:

- a director or another responsible person
- an authorised person (ie. a person who holds a position in the registered charity CLG that gives them the authority to sign, such as a CEO)
- an agent who has been authorised to sign on behalf of the registered charity CLG (such as a lawyer or accountant), or
- if relevant, another registered charity that can legally change the governing rules of the registered charity CLG (this might be the case, for example, if the registered charity CLG is a local branch of a larger charity)



### When must the Annual Information Statement be submitted?

The AIS is due six months after the end of your registered charity CLG's reporting period. The usual reporting period is the financial year from 1 July to 30 June, so that the AIS will be due by 31 December.

If you want to use a reporting period that is not 1 July to 30 June, you will have to apply for a substituted accounting period through the online Charity Portal.



For further information about ACNC reporting dates and accounting periods go to the ACNC's webpage on [reporting – due dates](#).

## Penalties for failing to submit the AIS

There are penalties for late submission of the AIS. These depend on the size of the charity and increase with time.

Type of Company	Minimum penalty (less than 28 days overdue)	Maximum penalty (more than 112 days overdue)
<b>Small registered charity CLG</b>	\$275 (1 penalty unit)	\$1,375 (5 penalty units)
<b>Medium registered charity CLG</b>	\$550 (2 penalty units)	\$2,750 (10 penalty units)
<b>Large registered charity CLG</b>	\$1,375 (5 penalty units)	\$6,875 (25 penalty units)



### Note

The value of a penalty unit is determined under section 4AA of [the Crimes Act 1914 \(Cth\)](#).

One penalty unit is currently \$275 (for offences committed on or after 1 January 2023). The values in the table above have been calculated using this value. For updated penalty information see [the ATO website](#).

The ACNC may also publish a statement on the ACNC register that the AIS is overdue. This will appear on the charity's entry on the register if the AIS is more than **six months late**.

The ACNC has also in some cases revoked organisations' charitable status following a failure to submit an AIS for two years. See later in this part on the ACNC's enforcement powers, including its power to revoke charitable registration.



### Note

According to an ACNC policy statement, a substituted accounting period will be approved if there is a genuine need for it, for example if the charity reports to grant-making bodies for a particular period, has a history of reporting under a substituted accounting period, or is associated with other charities with a substituted reporting period.

You can read the policy statement on the [ACNC website](#).

## Financial reports

Medium and large registered charity CLGs must submit a financial report each year (Annual Financial Report or AFR) with their AIS (and small registered charity CLGs can do so if they choose).

According to the ACNC, a financial report provides the public with additional information and assurance about the operations and financial affairs of a charity over a reporting period, and from the charity's perspective it serves to meet legal requirements and shows good governance.



### What does the financial report consist of?

The financial report must include:

- financial statements as follows, with notes
  - statement of profit or loss and other comprehensive income
  - statement of financial position
  - statement of changes in equity
  - statement of cash flows
- a signed and dated responsible person declaration about the statements and notes, which confirms that they are a fair presentation of the financial position of the registered charity CLG
- for medium charitable CLGs, a signed and dated reviewer's or auditor's report, and
- for large registered charity CLGs, a signed and dated auditor's report



## Audit or review?

Large registered charity CLGs must have their financial statements audited.

Medium registered charity CLGs can choose to have their financial statements reviewed or audited, unless auditing is a requirement for other reasons – for example:

- under its constitution or a funding agreement, or
- if it has received a written notice from the ACNC requiring it to provide audited reports (this will only happen in rare cases, such as if there is a history of not meeting ACNC requirements)

The main differences between audits and reviews are:

- reviews are less detailed than audits so are less likely to identify financial reporting issues and therefore provide a lower level of assurance
- reviews are generally cheaper and quicker than audits, and
- audits must be carried out by a registered company auditor whereas reviews do not (it can be easier to find a reviewer than an auditor, especially in regional areas)



For information about audit and review requirements, see the ACNC's webpage on [audits and reviews](#).



## Tip

The Corporations Act sets out requirements for the appointment of an auditor.

Public companies such as registered charity CLGs must appoint an auditor within one month after the day the company is registered with ASIC, unless the members have appointed an auditor at a general meeting (under section 327A).

This does not apply to a 'small company limited by guarantee', (ie. which has a revenue for that financial year of less than \$250,000) and is not a deductible gift recipient (**DGR**).

There is also a required process under the Corporations Act for the removal of an auditor, explained on [ASIC's website](#).



## What kind of financial statements must your registered charity CLG submit?

If your registered charity CLG is a 'reporting entity' it must submit a **general purpose financial statement**.

Otherwise, it submits a **special purpose financial statement** (the difference is explained below).

You therefore need to identify whether your registered charity CLG falls into the 'reporting entity' category.





## What is a 'reporting entity'?

Under Australian Accounting Standard AASB 1053, the definition of 'reporting entity' is:

*'an entity in respect of which it is reasonable to expect the existence of users who rely on the entity's general purpose financial statements for information that will be useful to them for making and evaluating decisions about the allocation of resources. A reporting entity can be a single entity or a group comprising a parent and all of its subsidiaries'.*

Find more information on the [AASB website](#).



## Does your registered charity fall into the 'reporting entity' category

Generally, if people use and rely on your registered charity's financial statements to help them make decisions, (for example, decisions about how to spend money), your charity is most likely a reporting entity.

Whether your registered charity is a reporting entity depends on a number of factors. Your registered charity is more likely to be a reporting entity if:

- there is a high level of separation between management and the members of the registered charity or others with an interest in the finances of the registered charity
- the registered charity has a high level of influence, (that is – it can make a significant impact on other people or organisations, for example, if it has political importance or influence)
- the registered charity is large, has a high level of sales, assets, debt or funding from government or other parties, or has a high number of employees

**Remember** – these are all factors to take into account. Whether the registered charity is a reporting entity will depend on the circumstances.

You can speak to an auditor, reviewer or financial adviser if you are not sure whether your registered charity falls into the reporting entity category.

## Reporting entity – general purpose financial statement

If your registered charity CLG is a reporting entity, it must submit a general purpose financial statement that complies with all applicable Australian Accounting Standards.

Most reporting entity charities can choose to prepare:

- a full general purpose financial statement, or
- a general purpose financial statement under a simplified disclosure framework

## Not a reporting entity – special purpose financial statement

If your registered charity CLG is not a reporting entity, it can submit:

- a general purpose financial statement, or
- a special purpose financial statement that complies with, as a minimum, the following six accounting standards to the extent they are relevant:
  - AASB 101, Presentation of Financial Statements
  - AASB 107, Statement of Cash Flows
  - AASB 108, Accounting Policies, Changes in Accounting Estimates and Errors



- AASB 124, Related Party Disclosures
- AASB 1048, Interpretation of Standards
- AASB 1054, Australian Additional Disclosures



See the [ACNC webpage on annual financial reports](#) for further information on preparing general purpose financial statements and special purpose financial statements, including links to other helpful information.



See [our fact sheet on financial reporting for charities](#).

## Errors in the AIS or financial report

If you become aware of a material error in your AIS or financial report after you have submitted them, you must report this to the ACNC.

'Material error' is not defined, but it would be best to be cautious and report any error in the substantive information provided (ie. rather than a spelling or grammatical error).

The ACNC advises charities to contact them as soon as possible after becoming aware of an error to request that the AIS be reopened, which will mean that the correction can be made online, but no later than 28 days after becoming aware of the error (medium and large charities) or 60 days after becoming aware of the error (small charities).

There is also a form you can submit to report errors (form 5B, which can be found in the list of forms on the [ACNC website](#)), but it would be sensible to contact the ACNC in the first instance so that they can advise on the best process to follow in your situation.

Failure to report and correct errors could give rise to compliance action and penalties (see later in this part of the guide on the ACNC's enforcement powers).

## Ongoing ACNC reporting obligations

As well as your duty to report to the ACNC annually by way of the AIS (and financial report if relevant), you have an ongoing duty to report various matters as they arise. You must report any change to your registered charity CLG's:

- directors (and any other responsible people)
- governing document (for example, constitution), with a copy of the new document
- charity subtype, (ie. the category or categories your registered charity CLG's activities fall into, such as advancing health or advancing education)
- legal name, and
- address for the delivery of documents

These changes must be reported to the ACNC within 28 days for medium and large charities, or within 60 days for small charities. You can do this through the [online Charity Portal](#).

## ASIC reporting obligations

Although your registered charity CLG will mostly only report to the ACNC, there are a few matters on which it will need to report or make an application to ASIC under the Corporations Act. These are:

- application to change legal name



- notice of the address at which the members' register is kept if this is not the registered office or principal place of business, or if it is moved from one place to another (notice is not required if the register is moved between the registered office and principal place of business) – see further below on the requirement to keep a members' register
- notice of resignation or removal of auditor (ASIC has to provide its consent in some circumstances)
- notice of external administration (a company may be placed into administration if it is experiencing financial difficulties), and
- application to deregister as a company



### Note – notify ASIC about a change of director

It's not clear whether the obligation for a CLG to notify ASIC of a change of director is 'switched off' for a registered charity CLG. Until this uncertainty is clarified by a change to the law, it's best to take a cautious approach and notify ASIC of a registered charity CLG's change of director.

## What are a registered charity CLG's record keeping requirements?

Under the ACNC Act, registered charities must keep two broad categories of records – operational records and financial records. So registered charity CLGs have an obligation to keep these records.

It's also important to keep records to meet (and to be able to show that you are meeting) all the [ACNC Governance Standards](#).

### General requirements for record keeping

- Records can be kept in any format you choose (including in electronic format) if they are easy to find.
- Records must be kept for seven years.
- A charity can develop its own system or process for record keeping.
- Records must be in English or easily convertible to English.

There is no requirement to provide the records to the ACNC (other than the annual AIS and Annual Financial Report as outlined above) unless asked.



The ACNC has published a '[record-keeping checklist](#)'.

For more information on record keeping for charities, see our webpage on [charity reporting](#).

## Operational records

These are documents about the registered charity CLG's activities such as its constitution, policies, meeting minutes, strategy documents and contracts.

They must be sufficient to enable the ACNC (or others) to assess your registered charity CLG's:

- entitlement to charity registration
- charitable purpose and registration category or sub-type
- compliance with the ACNC Act, and
- compliance with tax laws, which is assessed by the ATO (registered charity CLGs have tax concessions which are set out in the Tax Act, some also have tax endorsements such as deductible gift recipient)



status, and they may have tax obligations relating to employees, such as superannuation and PAYG withholding)



For more information see our [tax webpage](#).

## Financial records

These are records of your registered charity CLG's transactions and its financial position, such as account books, cash books, bank statements, tax records, employee payments and details of grants.

The records must:

- correctly record and explain how your registered charity CLG spends or receives its money or other assets
- correctly record and explain your registered charity CLG's financial position and performance, and
- allow for true and fair financial statements to be prepared and audited or reviewed, if required



### Caution

Failing to keep required records is an offence under the ACNC Act, which may result in the registered charity CLG being liable for a penalty.

## What registers must a registered charity CLG keep?

Your registered charity CLG must keep a members' register and depending on the size and nature of your organisation, it can be good practice and helpful for administration to have other registers too.

### 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 each person became a member, and
- if the company has more than 50 members, an up-to-date index of members' names, unless the register itself is in a form that operates as an index (the index must be convenient to use and allow a member's entry to be readily found)



### 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 registered charity CLG can inspect the members' register without charge.

Other people may inspect the register on payment of any fee required by the registered charity 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 registered charity CLG must give the 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. ASIC may allow a longer period to comply with the request.

An application must be in the prescribed form (ie. if the register is kept on a computer, the company or registered scheme must give the copy to the person 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 court to have the register corrected. If the court orders that the registered charity CLG corrects the register, it may also order that the party be compensated for any 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 registered charity CLG) to keep track of important matters and documents.

### Relevant documents register (optional)

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

In some registered charity CLGs, particularly small, recently incorporated ones, it may be sufficient to keep a simple register of all relevant documents, but larger registered charity 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 2016	Folder 1 in the office	ACN
	Constitution	Current version	Folder 2 in the office	See minutes of meeting of members on 1 November 2015 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 2015	Folder 1 in the office	



Document type	Document name	Description	Location	Comments (retention, renewal, review dates where applicable)
Charitable registration	Certificate of charitable registration	Certificate issued by ACNC dated 1 October 2016	Folder 1 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 registered charity CLGs may find it helpful to have 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 registered charity CLG's assets (for example, those worth more than a specific amount) is helpful when, for example:

- the registered charity CLG needs to calculate surplus assets (especially if the registered charity CLG is large)
- the registered charity CLG prepares financial reports
- the registered charity CLG prepares the Annual Information Statement for the ACNC, and
- an auditor wishes to check the financial records and assets of the registered charity CLG



### 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](#).



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](#).

## The ACNC's compliance powers

The ACNC has broad powers which enable it to ensure that registered charities comply with their legal obligations.

The main situations where the ACNC will consider taking compliance action are when :

- a charity doesn't meet its reporting or record-keeping obligations or minimum standards of governance under the ACNC Act, or
- an organisation is not, or is no longer eligible to be registered as, a charity



For more information, see the ACNC's:

- [Commissioner's Policy Statement on compliance and enforcement](#), and
- [regulatory approach statement](#).

which explain the ACNC's general approach to regulating charities, including the principles on which it carries out these functions (reflecting risk, proportionate regulation, consistency, and regulatory necessity).

## When can the ACNC use its powers?

Except for its enforcement powers, the ACNC can use its powers (listed below) in relation to any registered charity.

The ACNC can only use its enforcement powers in relation to a 'federally regulated entity'.



### What is a 'federally regulated entity'?

A 'federally regulated entity', defined in the ACNC Act (section 205-15 and section 205-20), is an entity that the Commonwealth has power to regulate under its corporation's power (under section 51(xx) of the Australian Constitution) or its Territories power (under section 122 of the Australian Constitution).

The corporation's power allows the Commonwealth to make laws with respect to constitutional corporations and the Territories power allows the Commonwealth to make laws for the government of any Territory.



### Note – 'constitutional corporation'

Your registered charity CLG may fall within the definition of 'federally regulated entity' if it meets the definition of a 'constitutional corporation'.

Constitutional corporations include a financial corporation, a trading corporation or a foreign corporation, and a body corporate that is incorporated in a Territory.

If you are unsure, you may wish to seek legal advice.

Federally regulated entities are also entities based in a Territory and relate to the Territories power, such as:

- a body corporate incorporated in a Territory
- a trust, all of the trustees of which are bodies corporate incorporated in a Territory, or
- an entity, the core or routine activities of which are carried out in or in connection with a Territory

Where the powers don't apply because the charity is not a federally regulated entity, the ACNC may work with the charity to bring about compliance, without resorting to revocation. The ACNC will also work with other government agencies, where appropriate, to address non-compliance with charities that do not meet the definition of 'federally regulated entities'.



For more information on constitutional corporations, see the [Fair Work Commission website](#).

## What are the ACNC's powers?

The ACNC's compliance powers fall into the following categories:

### Information gathering powers

These powers can be exercised in relation to **any registered charity CLG**.

The ACNC has the power to gather information necessary to monitor compliance with the ACNC Act, ACNC regulations and associated legislation including the *Crimes Act 1914* (Cth) and the *Criminal Code 1995* (Cth) if offences relate to the ACNC legislation.

It also has the power to gather information and documents to help determine if information given by a registered entity (to the ACNC voluntarily, or as part of its obligations under the ACNC Act) is correct and accurate.

The ACNC can use information gathering powers to request information and documents. The ACNC can make a request for voluntary production or use its powers to require the registered charity CLG to provide the documents.

Its powers are broad – for example, it can request information from banks and financial institutions that manage the funds of registered charity CLGs, or any other body that is affiliated with the registered charity CLGs.

The ACNC must do certain things when using its formal powers to request information (for example, it must give written notice and include in that notice information about what happens if the request is not complied with) and allow at least 14 days for a response to the request. It also has the power to make and keep copies of documents.

If a person refuses to comply with the ACNC's request to provide documents or information, they will be committing an offence under the ACNC Act which may attract penalties.

The penalty for not complying with a request is 20 penalty units (currently \$5,500 for offences committed after 1 January 2023).

### Monitoring powers

These powers can be exercised in relation to **any registered charity CLG**.

The ACNC has certain powers to enter premises (with consent or under a warrant). It may use these powers when investigating certain contraventions of non-compliance. Once on the premises the ACNC has powers to:

- search the premises and anything on the premises
- examine or observe activity on the premises
- inspect, examine, measure or test anything on the premises
- take photos or videos or other recordings of the premises or anything on the premises
- inspect, take extracts from, or copy, documents on the premises
- sample anything on the premises
- take onto the premises equipment and materials for the purpose of exercising these powers
- operate electronic equipment on the premises, including using associated storage devices on the premises and to produce documents, and
- secure evidence found on the premises for 24 hours (or, if authorised by a magistrate or Federal Circuit Court Judge, for a longer period)



	These powers are subject to certain conditions set out in the ACNC Act.
<b>Enforcement powers</b>	<p>The enforcement powers listed below can only be exercised against <b>federally regulated entities</b> (your registered charity CLG may not fall into this category).</p> <p>The ACNC has the power to:</p> <ul style="list-style-type: none"> <li>• issue warning notices – the ACNC may issue a formal warning where a charity is not complying with its obligations</li> <li>• issue directions – the ACNC can direct a charity to act, or stop acting, in a certain way to make sure it complies with the law. For example, the ACNC could direct a charity to amend a serious error in a financial report if it doesn't respond to informal advice from the ACNC to do so.</li> <li>• enter into enforceable undertaking – the ACNC can make agreements with charities for them to take or stop actions that would breach the ACNC Act or Regulations. If the charity were to then breach that agreement, a court could enforce the agreement. (See below for an example of action an agreement that was reached between the ACNC and a charity).</li> <li>• apply to courts for an injunction – the ACNC can ask a court to make an order that a person to do, or not do, something to make sure they comply with the ACNC Act or Regulations. A court can also make these orders by the consent of the ACNC and the person or charity.</li> <li>• suspend or remove responsible people and appoint acting responsible entities – the ACNC can (except in the case of 'basic religious charities' – see below) suspend or remove a member of a charity's governing body who has breached the ACNC Act or Regulations. For example, the ACNC could suspend or remove a person who has, in a serious and persistent way, misdirected funds.</li> </ul>



### Note – basic religious charity

A basic religious charity (**BRC**) is a type of charity that is registered only for the purpose of advancing religion, is not entitled to be registered as any other subtype and is not disqualified under other criteria set out in the ACNC legislation.

BRCs enjoy a number of exemptions over other charities – annual financial reporting requirements for medium and large entities and the governance standards don't apply to these types of charities (this means the ACNC can't suspend or remove a responsible person of a basic religious charity).

<b>Administrative penalties</b>	<p>The ACNC can issue an administrative penalty to <b>any registered charity CLG</b> in certain circumstances. These include where a registered charity has:</p> <ul style="list-style-type: none"> <li>• failed to lodge documents on time, or</li> <li>• made false or misleading statements</li> </ul> <p>Other penalties can also apply to registered charity CLGs where they fail to do certain things under the ACNC Act – for example, not keeping records as required by section 55 (the penalty is 20 units, currently \$5,500 for offences committed on or after 1 January 2023) and failing to give information requested by the Commissioner under section 70 and 75.</p> <p>There are also penalties for failing to comply with the ACNC in its information gathering activities.</p>
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## Revocation of registration

The ACNC can revoke registration of **any registered charity CLG** in certain circumstances set out in the ACNC Act. These are where the registered charity:

- is not entitled to be registered as a charity, or was not, at some point, entitled to be registered as a charity was never entitled to be registered as a charity
- provided information that was false or misleading in a material particular in connection with its application for registration
- has contravened, or is considered more likely than not to have contravened, a provision of the ACNC Act
- has not complied, or is considered is more likely than not to not comply, with a governance standard or an external conduct standard
- has a trustee in bankruptcy, a liquidator, or a person authorised to manage the affairs of the entity under an Australian law because it is unable to pay all its debts when they become due and payable (ie. it's insolvent), or
- has requested its registration as a type or subtype of entity be revoked

The ACNC will only exercise revocation in the most serious cases. It may also use this power in serious matters of non-compliance where it can't use its other compliance and enforcement powers because the entity is not a federally regulated entity.

The ACNC can't use any of its compliance powers (set out below) once a charity's registration is revoked.

The ACNC also has powers in relation to noncompliance with the 'external conduct standards' (however, to date no 'external conduct standards' have been prescribed in the ACNC Regulations).

## Objecting to an ACNC decision

The ACNC Act sets out a process for review and appeal of a decision by the ACNC.

An objection must be made in writing to the ACNC within 60 days of the decision, following which the ACNC must decide whether to allow the objection (wholly or in part) or to disallow it.

If disallowed, the matter can be taken to the Administrative Appeals Tribunal or to a designated court. The rules for this are quite technical under the ACNC Act, so if you need to consider this route it will be important to seek legal advice.



For further information on the ACNC's compliance powers, see the ACNC's [webpage on compliance](#).

## Examples of ACNC compliance action



### Example – compliance agreement

The Returned & Services League of Australia (SA Branch) Incorporated (**RSL**) had failed to meet several governance standards, including taking reasonable steps to ensure its responsible people:

- act with care and due diligence, and
- disclose perceived or actual material conflicts of interest

Rather than revoke the charitable status of the RSL, the ACNC entered into a compliance agreement with the RSL, which required the RSL to:

- report monthly to the ACNC
- complete all remediation actions within 12 months of the start of the compliance agreement, and
- make a public statement to RSL members informing them of the ACNC investigation



### Example – enforceable undertaking

The ACNC had a broad range of concerns regarding the conduct of the Australian Federation of Islamic Councils (**AFIC**) responsible people, including suspicions of misuse of position, non-disclosure of perceived or actual conflicts of interests, and failure to manage financial affairs in a responsible manner. The regulator was also concerned that AFIC may not have operated as a not-for-profit entity. In response to these concerns, the ACNC procured an enforceable undertaking from AFIC, which included:

- the selection of a Governance Expert to assist AFIC to implement governance recommendations, and
- taking steps to ensure each of its responsible people undertake a Certificate IV in Governance for Not-for-profits



### Example – warning

The ACNC issued a warning to the Islamic Society of Belconnen (**ISB**) for failing to comply with its reporting, governance, record keeping and duty to notify obligations. This followed persistent requests by the ACNC for information over a 12 month period which included an offer, refused by the ISB, to make an enforceable undertaking. Within four months the ISB had responded fully to the ACNC's warning and had provided all outstanding information, resulting in ACNC forming the view that the ISB had complied with its legislative requirements.



### Example – warning, direction and revocation

On 28 April 2014, the ACNC issued a warning to the New Connection Church Inc (**TNCC**) advising the organisation that it had breached the ACNC Act by failing to lodge its 2013 Annual Information Statement.

On 26 May 2014, the ACNC issued TNCC a direction to file relevant information in its 2013 Annual Information Statement.

TNCC failed to provide the information, so its charitable status was revoked on 5 September 2014.



## Tool 1 – Sample members' register (required)

This is a sample members' register for a registered charity 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 (for example different classes of members may have different voting rights). This will depend on your registered charity 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 registered charity 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 registered charity CLG.

Date purchased or acquired	Description of assets	Cost or valuation	Asset ID number	Disposed of...		
				... at (location)	... date/manner	... for (consideration received)







1/1/16	\$100,000	1/2/17	10%	1/6/16	8%	23564	Redeemed by authority of committee minute No 3/2016
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## 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	<i>AB</i>	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 registered charity CLG.

These include 'annual general meetings' (**AGMs**) 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 registered charity CLG have a legal duty to hold an AGM?

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 the starting point for any general meeting procedures?

The starting point for any procedures you must follow for general meetings is the constitution of your registered charity CLG.

Most of the procedures for general meetings in the Corporations Act do not apply to registered charity CLGs, but many of these are included in the ACNC template constitution and are seen as good practice.

Registered charity CLGs must comply with some procedures in the Corporations Act when holding general meetings. For example, a registered charity CLG:

- can only hold a fully virtual meeting if the constitution expressly allows for this to happen
- must provide meeting related documents in the format elected by the member (physical form, electronic form or not at all), and
- must ensure members are given a reasonable opportunity to participate in the general meeting



### What is a 'resolution'?

Where a special resolution is proposed, it's likely that a notice to members will be required (see below on 'special resolutions' for more information).

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 registered charity 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 registered charity CLG to keep meeting minutes?

It's important for a registered charity CLG to keep minutes of general meetings.

This is required to comply with obligations under the ACNC Act and for general good governance.

## What are 'general meetings' and 'AGMs'?

A general meeting is a meeting of the members of the registered charity 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**).

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

- discuss the position and business of the registered charity CLG
- review the operations of the past year, and
- make decisions about the registered charity 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 registered charity CLG may hold other general meetings throughout the year, usually 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.

## Does a registered charity CLG have to hold an AGM?

The obligation in the Corporations Act to call an AGM is 'switched off' for registered charity CLGs, so there is no legal requirement for a registered charity CLG to hold an AGM.

However, a registered charity CLG must take reasonable steps to comply with the [ACNC's Governance Standard 2](#), which requires a registered charity CLG to:

- take reasonable steps to be accountable to its members, and
- allow its members adequate opportunities to raise concerns about how the charity is run



The purpose of [Governance Standard 2](#) is to ensure that charities are open and accountable to their members, who are entitled to know how a charity is acting and using its resources and to raise any questions or concerns they may have about the way the charity is run. For example, members may want to know about the charity's financial position, or what a charity is focusing its future work on. This Governance Standard therefore provides an important level of accountability for those who operate the charity. Holding an AGM (and allowing for other general meetings) is a good way of providing this accountability.



### Note

Holding an AGM is just one of the ways to meet [Governance Standard 2](#) and is not necessarily sufficient by itself. The ACNC advises that other common steps to meet the standard include:

- providing information to members on the charity's activities and finances, and
- having clear processes for appointing directors

## What are reasonable steps to meet ACNC Governance Standard 2?

### Organising an AGM is one of the common ways to meet Governance Standard 2.

Because a registered charity CLG is not required under the Corporations Act to hold an AGM, many (but not all) of the procedures for holding an AGM as set out in the Corporations Act are switched off. This means there is some degree of flexibility when it comes to a registered charity CLG holding an AGM.

A registered charity CLG that holds an AGM should take the following steps to ensure the meeting is valid and runs smoothly, in accordance with the Corporations Act and Governance Standard 2:

Review the **constitution** of the registered charity CLG. This is likely to include rules requiring that meetings be held and setting out procedures for arranging and holding meetings



Give a **notice of a meeting** to all members. The constitution may specify how notice is to be given. If the constitution doesn't address this, notice should be given a reasonable period before the meeting (most laws about meetings require 21 days' notice). Members have the right to elect how they receive notice and it is important that this is followed



Appoint a **chair** to oversee the meeting



Prepare a **meeting agenda** or outline of the business to be addressed at the meeting (which should be prepared before the meeting and distributed to members with the notice of meeting).



Organise for **meeting minutes** to be kept so there is a record of what happened at a meeting and what was decided

These steps are examples of common requirements only. Larger charities with more members may need to do more to meet [Governance standard 2](#).



### Remember

Make sure that members have a reasonable opportunity to participate and exercise their rights at the meeting.

#### Other ways to meet Governance Standard 2 include:

- having clear accountability mechanisms in the constitution
- providing information to members on the charity's activities and finances
- having clear processes for appointing directors
- holding other general meetings as and when required

In determining what steps your registered charity CLG should take to comply with [Governance Standard 2](#), consider:

- the size of your CLG and the number of members
- the revenue and funds available to your CLG
- the nature of your CLG's work
- any requirements in the registered charity CLG's constitution, and
- any other factors that may be relevant



### Caution

This part of the guide refers to the [ACNC template constitution](#) as a model for holding general meetings. Where the ACNC template constitution is referred to in this part, the relevant clauses are given for ease of reference.

Note – some charities might require different meeting arrangements to better suit their circumstances. The information in this part of the guide should therefore be taken as general guidance for good practice.



### Remember

A registered charity CLG must follow any procedures set out in its constitution, which might include a requirement to hold an AGM.



The ACNC has published comprehensive information on [the Governance Standards](#) and how to comply with them.

# Calling general meetings

## Notice of 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.

Most of the Corporations Act requirements for notice don't apply to registered charity CLGs.

However, a registered charity CLG is required to follow member wishes about how they would like to receive notice, for example in a physical or electronic form (see 'How should notice be sent?' below). Your constitution might also set out particular requirements for notice, such as how far in advance of the meeting notice should be sent out and what it should contain.

Further, where a special resolution is to be proposed, it's likely that:

- notice is required, and
- the notice needs to set out an intention to propose a special resolution and state the resolution

### Who should receive notice?

Notice should be sent to all the members, and it is usual for notice to also be sent to all the directors and the auditor (if any).

This is required under the ACNC template constitution (clause 20.1).

It's important that you have an up-to-date register of members so you can be certain you are contacting all members – particularly if your registered charity CLG has a large number of members.

A register of members is also a legal requirement under the Corporations Act. See **part 4** of this guide for more information on registers.

If a registered charity CLG has an auditor, it's standard practice that they are invited to attend general meetings. The auditor's right to attend general meetings may be set out in your constitution.



### Example – ACNC template constitution

The ACNC template constitution sets out the auditor's right to attend general meetings in clause 22:

22.2 Any auditor and any director of the company is entitled to attend and address a general meeting.

22.3 The company must give the auditor (if any) any communications relating to the general meeting that a member of the company is entitled to receive.





## When should notice be sent and what should it contain?



### Note

Check to see if your registered charity CLG's constitution specifies how and when to give notice of an AGM. The ACNC template constitution, for example, requires that a notice of general meeting be provided at least 21 days' before the meeting (clause 20.2).



### 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.



### Example – ACNC template constitution

The relevant clause in the ACNC template constitution is clause 20: **Notice of general meetings**

20.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.

20.3 Subject to clause 20.4, notice of a meeting may be provided less than 21 days before the meeting if members with at least 95% of the votes that may be cast at the meeting agree beforehand.

20.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:

- (a) remove a director
- (b) appoint a director in order to replace a director who was removed, or
- (c) remove an auditor.

20.5 Notice of a general meeting must include:

- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places or virtually, the virtual meeting platform that will be used to facilitate this)
- (b) a statement regarding the member's right to request documents be sent in electronic or physical form
- (c) the general nature of the meeting's business
- (d) if applicable, that a special resolution is to be proposed and the words of the proposed resolution, and
- (e) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:

- i. the proxy does not need to be a member of the company
- ii. the proxy form must be delivered to the company at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
- iii. the proxy form must be delivered to the company at least 48 hours before the meeting.

20.6 If a general meeting is adjourned for one month or more, the members must be given new notice of the resumed meeting.



### Note

There is a process under the Corporations Act that must be followed for removing a director or an auditor. For more information, see **part 2** (for removing a director) and **part 4** (for removing an auditor) of this guide.



### Example

Green Friends Charity, a registered charity CLG which helps to preserve local parks, has adopted the ACNC template constitution but needs to pass a special resolution to make amendments to the constitution. On 1 December 2018 the secretary sends out notice to all the 25 members for a general meeting on 22 December 2018 for the purpose of passing the special resolution. On receiving responses from some members to say that they will already be away for the summer on that date, the secretary contacts all the members again asking if they would agree to a shorter notice period of 14 days so that the general meeting can take place when more members are able to attend. All but one of the members (ie. over 95%) agree to this, so the general meeting is held on an earlier date in accordance with the constitution.

## 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)



### Example – ACNC template constitution

The relevant clause in the ACNC template constitution is clause 60: **Notice to members**

60.1 Written notice or any communication under this constitution may be given to a member:

- (a) in person
- (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices
- (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any)
- (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any), or
- (e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).

### How is the timing of notice calculated?

To avoid any uncertainty as to whether the required period of notice has been given, the constitution should set out a clear way of calculating timing.



### Example – ACNC template constitution

The relevant clause in the ACNC template constitution is clause 61: **When notice is taken to be given**

61.1 A notice:

- (a) delivered in person, or left at the recipient's address: is taken to be given on the day it is delivered
- (b) sent by post: is taken to be given on the third business day after it is posted to the address notified by the recipient and payment of postage costs
- (c) sent by email, fax or other electronic method: is taken to be given when it is sent, unless the sender receives an automated message that the notice has not been delivered, and
- (d) given under clause 60.1(e): is taken to be given on the business day after the notification that the notice is available is sent.

The constitution and policies of your registered charity CLG may not contain all the same requirements for notice as the above (make sure to check).

But whatever arrangements your registered charity CLG has, you should ensure that all members have a fair opportunity to attend general meetings and be involved in decisions. The way you achieve this may depend on the size and nature of your organisation.



### Tip

Rules for general meetings in the ACNC template constitution may appear quite technical at first, but keep in mind that the aim is to provide accountability to members and to allow members to raise any concerns ([ACNC Governance Standard 2](#)). The processes shouldn't be too onerous to follow and provide certainty and a fair process.

## Who can call a general meeting?

Apart from the AGM, general meetings may also be called at other times. Check your constitution to see if it sets out a process for this.



### Example – ACNC template constitution

The relevant clause in the ACNC template constitution is clause 18: **Calling a general meeting**

18.1 The directors may call a general meeting, including an annual general meeting.

18.2 If members with at least 5% of the votes that may be cast at a general meeting make a written request to the company for a general meeting to be held for a proper purpose, the directors must:

(a) within 21 days of the members' request, give all members notice of a general meeting, and

(b) hold the general meeting within 2 months of the members' request.

18.3 The percentage of votes that members have (in clause 18.2) is to be worked out as at midnight before the members request the meeting.

18.4 The members who make the request for a general meeting must:

(a) state in the request any resolution to be proposed at the meeting

(b) sign the request, and

(c) give the request to the company.

It can be important for members to have the right to call a general meeting in order to hold the board to account – for example, if they have concerns about the running of the registered charity CLG or if there is an urgent matter they would like to raise with the directors that can't wait until the AGM.

## Procedures at general meetings

Most of the procedures for general meetings in the Corporations Act (such as voting and the appointment of proxies) don't apply to registered charity CLGs.

The starting point for any procedures you need to follow is the constitution of your registered charity CLG, along with any policies it may have.

However, the ACNC advises that following the procedures set out in the Corporations Act, to the extent that they provide appropriate accountability mechanisms, would demonstrate compliance with [Governance Standard 2](#). Many registered charity CLGs therefore choose to follow the Corporations Act processes for general meetings and their constitution will reflect this.

The ACNC's template constitution is an example of this – it includes many of the Corporations Act requirements for general meetings.



Procedures for general meetings (for example how a chair is appointed and how voting is organised) can vary considerably depending on the type of organisation, who is attending the meeting and what is being discussed.

Generally, the larger the registered charity CLG and its membership, the more formal its general meetings will be to ensure that the business of the meeting is covered effectively and that members have appropriate involvement in order to comply with [ACNC Governance Standard 2](#).

We cover the following aspects of the general meeting procedure below:

- quorum
- the chair
- the meeting agenda
- resolutions
- voting



The ACNC website provides [relevant template documents](#), including templates for meeting minutes, notices and agendas. The templates are drafted for AGMs but can be adapted for use at any general meeting.

## Quorum

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

If a quorum is not present, the meeting (and any decisions taken) will not be valid. The constitution of your registered charity CLG should specify the quorum for general meetings.



### Example – ACNC template constitution

The relevant clause in the ACNC template constitution is clause 21: **Quorum at general meetings**

21.1 For a general meeting to be held, at least [2/other] members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).

While the ACNC template constitution gives the quorum as two members, it recognises that this will not be suitable for all organisations and gives the option to replace this with another number.

The quorum can also be a certain proportion of all the members (for example 30%) rather than a number.



### Tip

A suitable quorum for a registered charity CLG will depend on the size of its membership.

The quorum should not be so high that it will make it difficult to hold a valid meeting, but for good governance it should also not be too low because it is important that members participate.

## Who is counted in the quorum?

Your registered charity CLG's constitution should set out who is counted in the quorum.



### Example – ACNC template constitution

#### Clause 21: **Quorum at general meetings**

21.1 For a general meeting to be held, at least [2/other] members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).

#### Clause 23: **Representatives of members**

23.1 An incorporated member may appoint as a representative:

- (a) one individual to represent the member at meetings and to sign resolutions under clause 29, and
- (b) the same individual or another individual for the purpose of being appointed or elected as a director.

23.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.

#### Clause 34: **Appointment of proxy**

34.1 A member may appoint a proxy to attend and vote at a general meeting on their behalf.

34.2 A proxy does not need to be a member

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

- (a) speak at the meeting
- (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
- (c) join in to demand a vote in writing under clause 33.1



### Note

Not everyone who attends the general meeting will be counted in the quorum – only the members themselves (or their representatives or proxies) make up the quorum.

So, although an auditor will generally have the right to attend general meetings, they will not be counted as part of the quorum.



## Can members attend by phone or Zoom?

The Corporations Act has been amended to make it clear that CLGs (including registered charities) 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.

Your constitution may allow the registered charity CLG to hold a general meeting at one or more physical venues using virtual meeting technology. If your registered charity CLG would like to hold wholly virtual meetings, it should make this clear in the constitution.

Those attending through technology are taken to be present in person at the meeting (so will be counted in the quorum).

The ACNC template constitution allows registered charity CLGs to hold a general meeting at one or more physical venues using virtual meeting technology.



## Example – ACNC template constitution

### Clause 19: Using technology to hold meetings

19.1 The company may hold a general meeting at two or more venues using any virtual meeting platform or using a virtual meeting platform only, where the platform gives members a reasonable opportunity to participate, including to hear and be heard.

19.2 Anyone using this platform is taken to be present in person at the meeting

## What happens if there is no quorum?

Your registered charity CLG's constitution should set out what will happen if there is no quorum at a general meeting.



## Example – Corporations Act replaceable rule

The Corporations Act contains a replaceable rule that if a meeting of the company's members doesn't have a quorum present within 30 minutes after the meeting start time (set out in the notice of meeting), it's adjourned to the date, time and place the directors specify.

If the directors don't 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
- 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.



### Example – ACNC template constitution

#### Clause 21: Quorum at general meetings

21.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:

- (a) if the date is not specified – the same day in the next week
- (b) if the time is not specified – the same time, and
- (c) if the place is not specified – the same place.

21.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## The chair

It's usual practice to appoint a chair of the meeting to run proceedings, and your registered charity CLG's constitution might set out a process for making this appointment.



### Example – ACNC template constitution

#### Clause 24: Chairperson for general meetings

24.1 The chairperson is entitled to chair general meetings.

24.2 The members present and entitled to vote at a general meeting may choose a director or member to be the chairperson for that meeting if:

- (a) there is no chairperson, or
- (b) the chairperson is not present within 30 minutes after the starting time set for the meeting, or
- (c) the chairperson is present but says they do not wish to act as chairperson of the meeting.

#### Clause 25: Role of the chairperson

25.1 The chairperson is responsible for the conduct of the general meeting.

25.2 The chairperson must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).

25.3 The chairperson does not have a casting vote.





As well as making sure the business of the meeting is dealt with, the chair will also guide the meeting style. As long as any requirements of the constitution are met, the chair can run the meeting in a style as relaxed or formal as suits the situation and type of organisation.



### Tip

Chairing a meeting can take some skill, particularly if there are many people present or if contentious matters are being discussed. It's important to appoint a chair who will run proceedings well and keep control of the meeting. A good chair will:

- stick to the agenda
- keep to the time allocated for each item
- allow one speaker at a time
- ensure everyone has the chance to be heard
- politely bring an end to any discussions which aren't relevant to the business of the meeting
- request that any personal attacks, inappropriate remarks or potentially defamatory statements be withdrawn, and
- finish on time

The company secretary is also likely to play an important role in general meetings. The secretary is usually responsible for sending out notice of the meeting, preparing and distributing any documents, dealing with any correspondence in relation to the meeting, and taking minutes of the meeting.



### Example – ACNC template constitution

Clause 55: **Appointment and role of secretary**

55.4 The secretary must ensure that the following are maintained:

- (a) a register of the company's members, and
- (b) the minutes and other records of general meetings (including notices of meetings), directors' meetings and resolutions.

## The meeting agenda

The agenda should cover any relevant requirements set out in the constitution of your registered charity CLG. The contents of the agenda will also depend on the type of meeting and the matters to be discussed.

### AGM agenda

An AGM often covers:

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



### Note

Whether or not a registered charity CLG must have audited financial statements depends on its size:

- **Large charities** must have their financial statements audited.
- **Medium charities** can choose to have their financial statements audited.

See **part 4** of this guide for more detail.

Apart from any formal business that needs to be covered, you can include other items in the AGM agenda. For example, many registered charity CLGs use the AGM as an opportunity to celebrate the organisation's successes and to acknowledge the contribution of volunteers or particular people. Some charities invite a guest speaker or ask someone who works in the organisation to say a few words.

### Agenda for other general meetings

The agenda for other general meetings which may be called during the year will depend on the purpose of the meeting. A general meeting might be called to make a particular decision (such as to elect a director) or may be to provide a general update for members. However, the same principles will apply in terms of notice, voting and minutes.



### Tip

It's important to be well prepared at a general meeting in terms of documents.

For example:

- Even if this is not a requirement, it can be a good idea to circulate the most important documents (such as the financial report) before the meeting so that attendees have the relevant information in advance. This can save time at the meeting.
- It's advisable to have the constitution at hand at the meeting, along with any other relevant policies and procedures, in case you need to check anything. (This is often the secretary's responsibility).

## Resolutions

A resolution is a matter that has been voted on and passed, usually at a meeting (see below on passing resolutions without a meeting). A proposed resolution is sometimes referred to as a 'motion'.

There are two main types of resolution:

An **ordinary resolution** is passed when a simple majority (ie. over half) of the members present and voting are in favour of the resolution, unless your constitution says otherwise.

For example, the constitution may require the agreement of a majority of all voting members (rather than those present and voting at that particular meeting). This means – if the organisation has 50 members and 30 members turn up to the meeting – the organisation will need 26 votes in order to pass an ordinary resolution (that is, more than half of the 25 members eligible to vote even though they are not all at the meeting).

A **special resolution** is defined in the Corporations Act and is passed when at least 75% of the members who are entitled to vote, and who actually vote, are in favour of the resolution.

Some decisions can only be made by special resolution – generally important decisions where it is appropriate that a higher proportion of members are in favour.

For example, under the Corporations Act, a special resolution is required to change the name of a registered charity CLG (section 157) or to amend its constitution (section 136). Your constitution might also specify decisions that can only be made by special resolution.



Under the Corporations Act, it is a requirement to give notice of the intention to propose a special resolution and to set out the resolution.

Your constitution may require this to be included in the notice of meeting. If you don't provide adequate notice of a special resolution, the resolution may be invalid.

## Members' resolutions and statements

A 'members' resolution' (sometimes called a 'members' motion') is a proposed decision that certain members want to be put to all members at a general meeting for voting.

A 'members' statement' is a document that explains or supports a proposed resolution (including a proposed members' resolution), or that covers any other matter that can be considered at a general meeting.

These terms are used in the ACNC template constitution and is the same as the terminology in the Corporations Act.

Members' resolutions and statements allow members to have a say in decisions which affect the running of the registered charity CLG.

It's important that members are given an opportunity to be involved in decisions (for accountability and involvement of members in accordance with Governance Standard 2), so it's good practice to have a process by which members can propose a resolution or make a statement.



### Example – ACNC template constitution

#### Clause 27: **Members' resolutions and statements**

27.1 Members with at least 5% of the votes that may be cast on a resolution may give:

- (a) written notice to the company of a resolution they propose to move at a general meeting (members' resolution), and/or
- (b) a written request to the company that the company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (members' statement).

27.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.

27.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.

27.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.

27.5 The percentage of votes that members have (as described in clause 27.1) is to be worked out as at midnight before the request or notice is given to the company.

27.6 If the company has been given notice of a members' resolution under clause 27.1(a), the resolution must be considered at the next general meeting that occurs more than two months after the notice is given.

27.7 This clause does not limit any other right that a member has to propose a resolution at a general meeting.

#### Clause 28: **Company must give notice of proposed resolution**

28.1 If the company has been given written notice of a members' resolution or a written request under clause 27:

- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the company's cost, or
- (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the company in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a general meeting, the members may pass a resolution that the company will pay these expenses.



### Note

This process refers to giving notice to the charitable CLG. Your constitution may set out how this should be done. Generally, this would be done by delivering the notice to the registered office in person, or sending it by post, email or fax.

## Limits on members' resolutions and statements

There might be situations where members try to misuse the members' resolution or statement process – for example, if they try to use it as an opportunity to make a personal attack on a particular director that is not relevant to the running of the registered charity CLG. You might want to consider covering this in your constitution.



### Example – ACNC template constitution

#### Clause 28: Company must give notice of proposed resolution

28.2 The company does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:

- (a) it is more than 1 000 words long
- (b) the directors consider it may be defamatory
- (c) clause 28.1(b) applies, and the members who proposed the resolution or made the request have not paid the company enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members, or
- (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the members.

## Voting

The central part of any general meeting will be voting on the meeting's business – for example the election of a new director. The constitution of your registered charity CLG should set out how voting is organised.

The voting provisions can be quite lengthy and technical, particularly for large registered charity CLGs. However complex they are, it's important that voting procedures are clear so that there is no doubt about whether a resolution has validly passed.

The ACNC template constitution covers the following at clauses 30 - 33.

### Number of votes

To avoid doubt, the constitution should set out how many votes each member has. This is usually one (as is the case in the ACNC template constitution). While it might be assumed that each member has one vote unless the constitution says otherwise, it's better to specify this so there is no ambiguity.

A registered charity CLG could have different classes of members with different voting rights, in which case the constitution should set this out. However, it's more common for each member to have one vote.

The ACNC template constitution also allows the chair of a general meeting or another member to challenge a member's right to vote and provide that the decision of the chair is final.



## How voting is carried out

Because different situations or resolutions can call for different ways of voting, a CLG's constitution will normally provide for different methods of voting. Check your constitution for any relevant rules.

The common voting methods, as provided for in the ACNC template constitution, are:

- **Vote by show of hands**

The members raise their hands, and the chair decides on the result of the vote. The chair's decision is final. The result of the vote should be recorded in the minutes, but the exact number or proportion of votes recorded in favour or against the resolution does not need to be recorded. (See later in this part of the guide for more detail on meeting minutes.)

- **Vote in writing**

In contrast to a show of hands, where everyone can see how others are voting, a vote in writing (sometimes called a vote by poll) provides confidentiality so can be more suitable for controversial or sensitive matters.



### Example – ACNC template constitution

#### Clause 33: **When and how a vote in writing must be held**

33.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:

- (a) at least five members present who are entitled to vote on the relevant resolution,
- (b) Members present with at least 5% of the votes that may be passed on the relevant resolution (worked out as at the midnight before the vote in writing is demanded), or
- (c) The chairperson of the meeting.

33.2 A vote in writing must be taken when and how the chairperson directs, unless clause 33.3 applies.

33.3 A vote in writing must be held immediately if it is demanded under clause 33.1:

- (a) For the election of a chairperson under clause 24.2, or
- (b) To decide whether to adjourn the meeting.

33.4 A demand for a vote in writing may be withdrawn.



### Tip

If your registered charity 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).

Having a process by which members can vote confidentially is regarded as an aspect of complying with [Governance Standard 2](#), according to the ACNC's guidance. If your registered charity CLG's constitution doesn't contain this option you might want to consider including it.



## Example

Bark and Bone Charity, a registered charity CLG which runs a dog shelter, is due to hold its AGM.

An item on the AGM agenda is the appointment of Sally Wright as a director. Sally volunteers for the charity and has a long record of dedicated service at the dog shelter. While Sally is very popular and is generally considered to be an excellent choice for director, Bob Bluster (an outspoken and influential member) is against the appointment as he has a personal dislike of Sally. He has made his views clear to the other members.

Five of the twenty members present at the AGM demand that the vote be taken in writing as they are concerned about the influence Bob's views may have on the way the other members vote. Bob declares that 'most of us don't see any need for a written vote so it's unnecessary to do things that way'. The chair, referring to the constitution (which follows the ACNC template), explains that five members may demand a written vote. The chair directs a written vote to take place there and then, and the secretary hands out ballot papers. The resolution is passed by a large majority and Sally Wright is appointed as a director.

## Proxies



### What is proxy voting?

A 'proxy' is someone appointed by a member to attend and vote at a general meeting on their behalf.

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.

It's fairly common to have a process for appointing proxies so that members can have a say in decisions even if they are unable to attend a meeting. Your constitution may cover this.

The rules for appointment of and voting by proxies can be quite technical – for example, specifying a particular form for the appointment of proxies and a deadline by which the appointment must be made.

The ACNC template constitution deals with the for the appointment of proxy in clause 39 and voting by proxy in clause 34.



### Note

While the ACNC template constitution allows a member to appoint anyone they wish as their proxy, some organisations may prefer to specify that the proxy be a member (so that the member understands the registered charity CLG and its purposes).

### Who can be a proxy?

The ACNC template constitution allows a member to appoint anyone they choose to be a proxy to attend and vote at a general meeting on their behalf. The proxy doesn't need to be a member.

### How and when is a proxy appointed?

Appointment of a proxy must be by way of a 'proxy form' signed by the member and received by the registered charity CLG at least 48 hours before the meeting.

The proxy form must contain:

- the member's name and address
- the registered charity 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

A proxy appointment can be standing (ongoing) – ie. it can be valid for all general meetings rather than a specific meeting or meetings.

**Note** – unless the registered charity CLG receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:

- dies
- is mentally incapacitated
- revokes the proxy's appointment, or
- revokes the authority of a representative or agent who appointed the proxy

### What can a proxy do?

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

- speak at the meeting
- vote in a vote in writing, but only to the extent allowed by the appointment (the ACNC template constitution only allows a proxy to vote in a vote in a written vote, not a show of hands), and
- join in to demand a vote in writing

However, a proxy doesn't have the authority to speak and vote for a member at a meeting while the member is at the meeting. A proxy appointment may also specify the way the proxy must vote on a particular resolution. So, it's up to the member how much autonomy they wish to give to the proxy.



### Note

As mentioned earlier in this part of the guide, the ACNC template constitution (clause 20.5(a)) requires the notice of a general meeting to contain a statement that members have the right to appoint proxies.

The notice must also state that, if a member appoints a proxy:

- the proxy does not need to be a member of the charitable CLG
- the proxy form must be delivered to the charitable CLG at its registered address, or the address (including an electronic address) specified in the notice of the meeting, and
- the proxy form must be delivered to the charitable CLG at least 48 hours before the meeting

## Voting by proxy



### Example – ACNC template constitution

The ACNC template constitution distinguishes between votes in writing and by show of hands.

#### Clause 35: **Voting by proxy**

35.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).

40.2 When a vote in writing is held, a proxy:

- (a) does not need to vote, unless the proxy appointment specifies the way they must vote
- (b) if the way they must vote is specified on the proxy form, must vote that way, and
- (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.



### Caution

Some charitable CLGs adopt the ACNC template constitution but adapt it in places to better suit their particular requirements.

If you do this, be careful to check that the constitution remains consistent throughout.

For example, as above, if the template is changed to allow proxies to vote by show of hands, other amendments will need to be made too.

If you are not sure about the effect of any changes you wish to make, seek legal advice.

## Passing resolutions without a meeting

It will not always be practical or necessary to hold a general meeting for members to pass a resolution. If the amendment isn't controversial and doesn't require discussion, there may be no need to hold a general meeting.

It's therefore advisable to have a process by which resolutions can be passed in writing without a general meeting – sometimes called a 'circular resolution'.



### Note

Because resolutions made without meetings require **all** members to agree (not just a percentage), they're only suitable for registered charity CLGs with a small number of members. It would be impractical to obtain approval from every member of a large group of members.

Some resolutions would not be appropriately made without a general meeting, for example if they require discussion or are of particular importance. The ACNC template constitution sets out examples of when resolutions **can't** be made without holding a meeting.





## Example – ACNC template constitution

### Clause 29: Resolutions without meetings

29.1 Subject to clause 29.3, the directors may put a resolution to the members to pass a resolution without a general meeting being held.

29.2 The directors must notify the auditor (if any) as soon as possible that a resolution has or will be put to members, and set out the wording of the resolution.

29.3 The company cannot pass resolutions for the below without holding a meeting:

- (a) for a resolution to remove an auditor or remove a director
- (b) for passing a special resolution, or
- (c) where the Corporations Act or this constitution requires a meeting to be held.

29.4 A resolution is passed if all the members entitled to vote on the resolution sign or agree to the resolution, in the manner set out in clause 29.5 or clause 30.6.

29.5 Members may sign:

- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
- (b) separate copies of that document, as long as the wording is the same in each copy.

29.6 The company may send a resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## Minutes of general meetings

It's important to make and keep minutes of general meetings, (ie. a formal written record of the matters discussed, and decisions made).

Although the requirement under the Corporations Act to keep minutes doesn't apply to registered charity CLGs, registered charity CLGs have a duty under the ACNC Act to keep 'operational records', (ie. documents about their activities). Decisions taken at general meetings would generally fall into this category.

It's also good governance to make and keep a record of decisions taken. Such record keeping is considered best practice for registered charity CLGs.

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

## Writing the minutes

The minutes are an official record of the general meeting, so these should include:

- the date, time and location of the meeting and the type of meeting (ie. AGM or other general meeting)
- the name and position of office holders (for example, the chair and secretary) as well as names of members and any other people present
- resolutions passed at the meeting – the exact wording should be recorded, and
- a summary of discussions at the meeting

The format and style of minutes varies considerably among registered charity CLGs. Some minutes are very brief and concise while others are more detailed. In exceptional circumstances, the minutes may include a transcript of everything that was said at meeting. Check if your registered charity CLG has any policies on minute taking. Looking at minutes of previous meetings can also be helpful.

General meetings can sometimes become heated, and the participants might 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's sufficient to record that 'a vigorous discussion ensued', or similar wording, rather than a blow-by-blow account in the minutes.

Meeting minutes may also have to deal with potentially defamatory matters. A chair should challenge any defamatory statements at the time they are made in a general meeting and have them withdrawn. The statements will then not be recorded in the minutes.



### 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 the minutes

It's good practice to make sure the accuracy of the minutes is confirmed at the next meeting.



### Example – ACNC template constitution

#### Clause 56: Minutes and records

56.4 The directors must ensure that minutes of a general meeting or a directors' meeting are signed within a reasonable time after the meeting by:

- (a) the chairperson of the meeting, or
- (b) the chairperson of the next meeting.

56.5 The directors must ensure that minutes of the passing of a resolution passed without a meeting (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

## Keeping the minutes

The ACNC template constitution follows the requirements in the Corporations Act for keeping minutes.



### Example – ACNC template constitution

#### Clause 56: Minutes and records

56.1 The company must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of general meetings
- (b) minutes of any other resolutions of members
- (c) a copy of a notice of each general meeting, and
- (d) a copy of a members' statement distributed to members under clause 28.

Whether your registered charity CLG's constitution includes requirements around keeping the minutes, it's important to keep proper records as a matter of good governance and to comply with legal duties under the ACNC Act.



# 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 governing body of the registered charity CLG (sometimes called a directors' meeting).

Board meetings are usually less formal than general meetings of members.

### What are the legal requirements for board meetings?

A registered charity CLG's constitution might contain particular requirements for board meetings.

To make it easier for the board to make urgent decisions when required, it's common for a registered charity CLG's constitution to give the directors flexibility to decide how to hold board meetings.

Despite any flexibility in the process of decision-making, it's important that the directors are careful to comply with their legal duties during board meetings and whenever they make decisions for the registered charity CLG.

### How is a board meeting called?

Unless the registered charity CLG's constitution says otherwise, a director may call a board meeting by giving reasonable notice to every other director.

What is 'reasonable' will depend on the circumstances.

A board meeting may be called using any technology (for example email) consented to by all the directors.

### What are the procedures for board meetings?

Some procedures for board meetings are set out in the Corporations Act.

These include quorum (the minimum number of directors that must be present) and passing resolutions (making formal decisions), but the registered charity CLG's constitution can include rules which differ from these.

### Can decisions be made in writing without a board meeting?

Decisions can be made in writing without a board meeting, (known as 'circular resolutions').



### What are 'minutes'?

A circular resolution enables the board to make decisions if a meeting is not possible, which can be useful if urgent matters arise.

The Corporations Act sets out a procedure for this, but the registered charity CLG can have different arrangements in its constitution.

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 board meetings and circular resolutions.

The minutes must be signed within a reasonable time by the chair of the meeting in question or of the next meeting.



### What is a board meeting?

A board meeting is a meeting of the company's governing body, sometimes called a 'directors' meeting' (this is the term used in the ACNC template constitution).

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 registered charity CLGs are held in a relaxed way around a kitchen table.

There are very few legal requirements in the Corporations Act for board meetings and the ACNC doesn't impose specific requirements.

A registered charity CLG's constitution may contain more detail – for example, specifying whether the directors must meet a certain number of times per year. However, it's quite common for the constitution not to contain much detail on the process of board meetings and it's usual for directors to be given flexibility to decide how to arrange their meetings.



### Example – ACNC template constitution

#### Clause 48: **When the directors meet**

The directors may decide how often, where and when they meet.

It's important for the board to have this flexibility, because board decisions sometimes need to be made urgently.

It would not be practical if the directors were hampered by overly formal and technical rules for meetings and decision-making. Nevertheless, despite this flexibility, it's important that the directors are careful to comply with their legal duties during board meetings and whenever they make decisions for the registered charity CLG.

See **part 3** of this guide for more detail on directors' duties.

## 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.

## Subcommittee meetings

Some registered charity CLGs, particularly large ones, establish subcommittees to consider and make recommendations to the board on particular areas of operation such as finance or audit.

These subcommittees (sometimes simply called 'committees') are usually created under the constitution, although they don't have to be.



### Example – ACNC template constitution

#### Clause 42: Delegation of directors' powers

42.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the company (such as a chief executive officer) or any other person, as they consider appropriate.

The ACNC template constitution leaves it up to the directors to organise the delegation, such as deciding on the subcommittee's 'terms of reference' (ie. the way it should operate) and who its members should be. It's common for the directors to be given this fairly wide power because this allows for different types of subcommittees to be established as the need arises.

Generally, subcommittee meetings are run more informally than board meetings. The registered charity CLG's constitution or policies may deal with how subcommittee meetings should run (for example, whether and how notice is to be given).

Regardless of the particular process, as a matter of good governance, the decision-making process for any subcommittee should be clear and transparent so that the board can see how the subcommittee's recommendations or decisions have been made. This is important because the board retains ultimate responsibility for any delegated matters.



### Note

The sections of the [Corporations Act 2001](#) relating to board meetings are contained in Part 2G.1 of the Act.

They are not 'switched off' for registered charity CLGs. However, most of the provisions are 'replaceable rules', which means that the registered charity CLG can decide whether to provide otherwise in its constitution.

Where Corporations Act provisions are referred to throughout this part, we will indicate whether the registered charity CLG:

- must comply with the provision, or
- may depart from it by setting out a different rule in its constitution

# 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 registered charity CLG's constitution might 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 do 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.



## Example – ACNC template constitution

### Clause 49: Calling directors' meetings

49.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.

49.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

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.

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 constitution of the registered charity CLG (although the constitution might include it for completeness, as is the case in the ACNC template constitution).

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 registered charity 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).



The relevant sections of the [Corporations Act](#) for calling board meetings are sections 248C and 248D.



### 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 the constitution of a registered charity CLG. 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 registered charity 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 registered charity 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.



#### Tip

In some registered charity CLGs, the dates of all board meetings for the year are set at the first meeting of the year as this helps people to plan their availability. If urgent matters arise, additional meetings can be arranged.

## 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 Corporations Act provides that, unless the directors determine otherwise or the constitution says otherwise, the quorum for a board meeting is two directors. The quorum must be present at all times during the meeting.



### Example – ACNC template constitution

#### Clause 51: Quorum at directors' meetings

51.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors.

51.2 A quorum must be present for the whole directors' meeting.

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.

Check your registered charity CLG's constitution for quorum requirements. Also check whether your charity needs to have a minimum quorum for particular reasons – for example, a state fundraising authority may impose conditions on a fundraising licence requiring a quorum of at least three directors.



The quorum for board meetings is set out in section 248F of the [Corporations Act](#).



### 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 constitution of the registered charity CLG, although the constitution might include it for completeness (as is the case in the ACNC template constitution).



### Example – ACNC template constitution

#### Clause 52: Using technology to hold directors' meetings

52.1 The directors may hold their meetings by using any virtual meeting platform that is agreed to by all of the directors.

52.2 The directors' agreement may be a standing (ongoing) one.

52.3 A director may only withdraw their consent within a reasonable period before the meeting.



Use of technology at board meetings is set out in section 248D of the [Corporations Act](#).

### What happens if there is no quorum?

The registered charity CLG's constitution or policies may set out what happens if a quorum is not present at a board meeting. The ACNC template constitution is silent on this, so it will be up to the directors to decide whether to reschedule the meeting or, perhaps, to make any decisions in writing without a meeting (see further below on making decisions without a meeting).

A registered charity CLG's constitution may be more prescriptive, for example by providing that if a quorum is not present within a certain time (such as half an hour) the meeting is adjourned and rescheduled within a certain period (such as 14 days).

## 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).

The wording of the ACNC template constitution differs slightly regarding the appointment of a chair.



### Example – ACNC template constitution

#### Clause 50: Chairperson for directors' meetings

50.1 The chairperson is entitled to chair directors' meetings.

50.2 The directors at a directors' meeting may choose a director to chair that meeting if the chairperson is:

- (a) not present within 30 minutes after the starting time set for the meeting, or
- (b) present but does not want to act as chairperson of the meeting.

Check your registered charity CLG's constitution and policies for any required processes for the appointment of a chair.

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. This will serve as a reminder that interests have to be disclosed and managed in order to comply with [ACNC Governance Standard 5](#).

See **part 3** of this guide for more detail on the duty to disclose and manage conflicts of interest.



The ACNC website provides useful template documents, including a template meeting agenda for a governing body (such as a board of directors). You can download the template agenda from [the ACNC website](#).

## Voting

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 the registered charity 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?

The registered charity 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 or to cast their vote by completing a voting form before the meeting.



#### Note

The ACNC template constitution does not provide for any such methods, rather stating (in clause 53) that a resolution is passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

### 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.

The ACNC template constitution also sets out this process but adds that the directors can also indicate their agreement by replying to an email which contains the resolution, stating that they agree to the resolution and including the text of the resolution in their reply.



### Example – ACNC template constitution

#### Clause 54: Resolutions of directors without a meeting

54.1 The directors may pass a resolution without a directors' meeting being held.

54.2 A resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 54.3 or clause 54.4.

54.3 Each director may sign:

- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
- (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.

54.4 The company may send a resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

54.5 The resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 54.3 or clause 54.4.

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 registered charity 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.



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.



The duties relating to board and committee minutes are set out in section 251A of the [Corporations Act](#).

In addition, a registered charity CLG has a duty under the ACNC Act to keep 'operational records'.

Operational records are documents about the registered charity CLG's activities that show it:

- complies with the ACNC Act and tax law, and
- continues to be a charity or continues to be entitled to be registered as a particular subtype of charity

Decisions taken at board meetings would often fall into this category. It's good governance to keep a record of decisions taken.

See **part 4** of this guide for more detail on record keeping.

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



The ACNC website provides relevant template documents, including template board or committee minutes. You can download the template minutes from [the ACNC website](#).

## 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 registered charity 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.



The Australian Institute of Company Directors has published [guidance on board 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 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.

## Recording conflicts of interest

It's important that the minutes record any conflicts of interest disclosed at the board meeting so that there's a record of compliance with the legal duty (under [ACNC Governance Standard 5](#)) to disclose and manage conflicts of interest.

The minutes should state:

- the name of the director declaring the interest
- the nature of the interest and the item on the agenda to which it relates, and
- the action taken to manage the conflict, for example that the director stepped out of the room for the part of the meeting during which the matter was discussed and voted on.

See **part 3** of this guide for more detail on this duty (and the directors' other legal duties).





## 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.

## Verifying the minutes

The Corporations Act requires board meeting and committee minutes to be signed by the chair, or the chair of the next meeting, within a reasonable time after the meeting.

Minutes of a circular resolution must be signed by a director within a reasonable time after it has been passed.

What is reasonable depends on the circumstances, but the usual practice is to ensure that minutes are signed before or at the next meeting.

The directors should agree a process for circulating draft minutes so that these can be checked and agreed. For example, if the secretary takes the minutes, they could liaise with the chair on the first draft and – once the chair is satisfied – then send the minutes to the other directors and incorporate any amendments they suggest. Once the directors agree that the final version of the minutes is accurate, the chair should sign them.



### Note

Under the Corporations Act, minutes that have been signed are evidence of the meeting and any resolutions taken, unless the contrary is proven. It's therefore important that the minutes are accurate.



## 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 registered charity CLGs now use electronic minute books.

As noted above, there is also a separate duty under the ACNC Act to keep operational records and board minutes will generally fall into this category. See **part 4** of this guide for more detail on record keeping.



### Tip

Your registered charity CLG can take the following steps to keep minutes secure:

- lock the minutes document from editing and add a password to the document
- 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



# Part 7

## Ending a registered charity CLG



# Ending a registered charity CLG

## This part covers:

- ▶ voluntary deregistration or winding up of a registered charity CLG
- ▶ compulsory winding up of a registered charity CLG, and
- ▶ deregistration by ASIC and the ACNC

## Summary of key points in this part of the guide

### How does a registered charity CLG end?

There are various ways to end a registered charity CLG. The method of closure will largely depend on whether the registered charity CLG is solvent (ie. able to pay its debts).

It may be ended **voluntarily**, (ie. with the agreement of a certain proportion of members) or **compulsorily**, if an application is made to the court (usually as a result of an unpaid debt).

### How does a registered charity CLG end voluntarily?

There are two methods to end a registered charity CLG voluntarily – **deregistration** or **winding up**.

Deregistration is the quicker and less costly option but is only available if the registered charity CLG is effectively inactive.

Its assets must be worth less than \$1,000, it must have paid all fees and penalties payable to ASIC under the Corporations Act, and it must have no outstanding debts and not be party to any legal proceedings.

### When can a registered charity CLG be voluntarily wound up?

If the criteria for voluntary deregistration are not satisfied, the registered charity CLG can follow the voluntary winding up procedure.

A liquidator will need to be appointed to manage any assets and legal advice will probably be necessary.

The process will be either a **members' voluntary winding up** (if the organisation is solvent) or a **creditors' voluntary winding up** (if it is insolvent) - although the process for both is very similar.

A liquidator takes control of the assets, pays the debts, and distributes any remaining funds in accordance with the registered charity CLG's constitution.

### When does compulsory winding up occur?

Compulsory winding up occurs when a person or company brings legal proceedings against the organisation and asks the court to order that it be wound up.

This usually happens where the organisation has failed to answer a formal demand for payment of a debt, where there is a breakdown in management, or where the organisation has become defunct or never started operating.



### What happens when the winding up process is complete?

### When must the ACNC be notified?

Although the process starts in court, it then proceeds in much the same way as a voluntary winding up, with control of the organisation passing to the liquidator.

When the winding up process is complete, the registered charity CLG will be deregistered by ASIC.

This means that it will no longer exist as a legal entity.

The ACNC must be notified when a liquidator is appointed. The ACNC Act considers that a liquidator is a 'responsible person', so the liquidator must be added to the CLG's list of 'responsible people'.

The ACNC must be notified of the registered charity CLG's closure and the CLG's charitable registration will be revoked.

An application to revoke the charity registration may be lodged through the [ACNC Charity Portal](#).



### Caution

This information is intended to provide only a general summary of the closure options open to a registered charity 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 registered charity CLG

There are various reasons why you may choose to end your registered charity CLG.

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 registered charity 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 registered charity 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 is 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.

**Registered charity CLGs** must notify the ACNC that the CLG has been deregistered by ASIC. An application should be made to the ACNC to revoke the organisation's charity registration. This is done by way of [Form 5A: Application to revoke charity registration](#), which can be found on the [ACNC Forms webpage](#). The registered charity CLG will remain on the ACNC Register, but will be identified as no longer registered with the ACNC.

**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.



### Note

The registered charity CLG will remain on the ACNC Register but will be identified as no longer registered with the ACNC.



See the [ACNC's policy statement on choosing to revoke charitable registration](#). This sets out the ACNC's position on when a charity can voluntarily revoke its registration as a charity.

If the organisation has closed, cancellation of the charity registration will be allowed. But if the organisation will continue operating but no longer wishes to be regulated by the ACNC, revocation might be a more complex question.



### Tip

Check your registered charity CLG's constitution to see whether there are additional requirements (to those in the Corporations Act) for closure or winding up as these may affect how you must undertake the process.

## Voluntary winding up

If the registered charity 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 registered charity 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

1	• Declare solvency (if the debts will be paid within 12 months)
2	• Appoint a liquidator
3	• Special resolution of members at a general meeting that the registered charity CLG be wound up voluntarily
4	• Notify ASIC and publication by ASIC
5	• Liquidator completes the winding up process
6	• Notify the ACNC

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.





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.



#### Example – ACNC template constitution

##### Clause 3: Liability of members limited to the guarantee

3.1 Each member must contribute an amount not more than \$[10] (the guarantee) to the property of the company if the company is wound up:

(a) while the member is a member, or within 12 months after they stop being a member, and

(b) at the time of winding up, the debts and liabilities of the company, including the costs of winding up, incurred before the member stopped being a member exceed the company's assets.

3.2 The liability of each member is limited to the amount of the guarantee.



## Example – ACNC template constitution

### Clause 67: **Surplus assets not to be distributed to members**

If the company is wound up, any surplus assets must not be distributed to a member or a former member of the company, unless that member or former member is a charity described in clause 68.1.

### Clause 68: **Distribution of surplus assets**

68.1 Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets that remain after the company is wound up must be distributed to one or more charities:

- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 4, and
- (b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the company.

68.2 The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the company may apply to the Supreme Court to make this decision.

## 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

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](#).



For more information, see our fact sheet on [compulsory winding up](#).

