

# Positions in a company limited by guarantee (CLG)

## Legal information for community organisations

### This fact sheet covers:

- ▶ what is a company limited by guarantee?
- ▶ what is a small company limited by guarantee?
- ▶ the board of directors and secretary
- ▶ the requirements of becoming a director or a secretary of a CLG, and
- ▶ the legal duties of directors and officers of a company limited by guarantee

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**A company limited by guarantee is one type of legal structure that is often suitable for a not-for-profit organisation.**



### Disclaimer

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

Please refer to [the full disclaimer](#) that applies to this fact sheet.

There are particular roles in a company limited by guarantee (**CLG**) with different but related responsibilities.

A CLG comprises:

- members
- a board of directors
- a company secretary, and may also include:
- other officers (such as a treasurer or financial controller)

These roles are usually outlined in a CLG's constitution or other corporate governance policies.

These roles may have specific obligations under applicable laws, for example, directors have certain legal duties and may have personal liability if they don't comply with those duties.

## What is a company limited by guarantee?

A CLG is a type of incorporated legal structure that takes the form of a legal entity with its own legal identity as distinct from its members.



An advantage of a CLG is that the company acts under the company name rather than under the name of an individual member. A CLG can hold property, employ staff, enter into contracts, can sue and be sued, and enjoy perpetual succession. The registration of a CLG is recognised Australia wide and a CLG is entitled to operate throughout Australia.



### Note

**Perpetual succession** means a CLG will continue to exist and be recognised by government, the courts, businesses, and the public, even when membership of the group changes.

In a CLG, the members of the company have limited liability.

The members agree in writing (known as a 'guarantee') to pay a nominal amount (usually between \$10 and \$100) to the company. This means that if the company ends (is wound up) and it can't pay all of its debts, each member may be required to contribute an amount up to, but no more than, the stated guarantee amount. **The members have limited liability as the total amount of their liability is limited to the total guarantee amount.** The guarantee amount is different from any membership joining fee or annual membership fee that a CLG may impose on members.

CLGs are a type of public company and must comply with the *Corporations Act 2001* (Cth) (**Corporations Act**) (which applies to proprietary and public companies). The Corporations Act is a complex piece of legislation and the provisions that apply to CLGs are scattered throughout the Corporations Act (and the *Corporations Regulations 2001* (Cth)).

A CLG that is registered as a charity with the Australian Charities and Not-for-profits Commission (**ACNC**) must comply with the requirements of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**) and the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth) (**ACNC Regulations**). These requirements apply in substitution for certain requirements under the Corporations Act to reduce the regulatory burden on registered charities. For example, a CLG that is a registered charity will not be subject to financial reporting obligations under the Corporations Act and will not have the same notification obligations, as these are instead covered under the ACNC Act and the ACNC Regulations.



### Tip

If you are not sure whether your organisation is:

- a CLG, you can search the company register on the [Australian Securities and Investments Commission \(ASIC\) website](#)
- a registered charity, you can search the ACNC register on [the ACNC website](#)



Other laws apply to a CLG – for example, laws dealing with occupational health and safety, workplace relations and tax. Useful resources on a range of laws to help not-for-profit organisations are published on [our website](#).

CLGs often have a constitution (a document which sets out the rules governing the internal affairs of the organisation - previously called a Memorandum and Articles of Association). A constitution governs the relationship between a CLG, its members and its directors.



### Caution

While the Corporations Act includes some provisions (known as '**replaceable rules**') which can be used to govern a company instead of a constitution, the replaceable rules have been drafted primarily with for-profit commercial companies in mind. This means it can sometimes be tricky to understand how they are to apply to a not-for-profit organisation.

If your CLG wishes to register as a charity it will need certain provisions in its constitution (for example, about its not-for-profit nature and use of funds), so can't use the replaceable rules alone.



For more information, see our [webpage on registering as a charity](#).

CLGs must include the words 'Limited' or 'Ltd' after their name (unless they have applied for and been granted an exemption from this requirement from Australian Securities and Investment Commission (**ASIC**)).

To be eligible for this exemption, a CLG must have a constitution that:

- prohibits the CLG from paying fees to its directors, and
- requires its directors to approve all payments made to a director

## What is a small CLG?

The Corporations Act distinguishes between a CLG and a small CLG.

A company is a small CLG in a particular financial year if:

- it is a CLG for the whole of the financial year
- it is not a deductible gift recipient at any time during the financial year
- its revenue (or consolidated revenue if that applies) for the financial year is less than \$250,000
- it is not a Commonwealth company or a subsidiary of a Commonwealth entity or company
- it has not been a transferring financial institution (such as a building society) of a state or territory, and
- it is not a company that is permitted to use the expression 'building society', 'credit society', or 'credit union' for any time during the financial year

Small CLGs have fewer reporting obligations than a CLG.

A small CLG doesn't have to do any of the following, unless they are asked to do so by a member of the CLG or by ASIC:

- prepare a financial report
- prepare a directors' report
- have financial report audited, or
- notify members of reports



## The board of directors and secretary

The Corporations Act requires CLGs to have at least:

- three directors, with two required to ordinarily reside in Australia, and
- one secretary who must ordinarily reside in Australia

Many companies will have a constitution that includes a maximum cap on the number of directors, usually somewhere between eight and 12.

Although the Corporations Act doesn't use the term 'board', the group of directors of a company is commonly referred to as the 'board of directors' or the 'board'.

The board of directors is responsible for governing and overseeing the affairs of a company. Generally, it's the board's responsibility to identify an organisation's strategic direction and goals. This is different to the role of the management of a company (that is, employees of the company like the CEO and other management staff) who have responsibility for the day-to-day decision-making and running of a company.

This can sometimes cause conflict, confusion and difficulties in a small organisation where the directors also operate the organisation (often on a voluntary basis). It's therefore important that directors understand the obligations and responsibilities of each of the roles they fill.

While the Corporations Act includes provisions about the directors of a company, a company's constitution will set out further details about its board, including:

- its composition
- the ability to delegate (including to committees and individuals)
- powers and duties of the directors
- how directors are to be elected, removed and remunerated, and
- sometimes, specific functions for particular board roles (such as Treasurer)



See our [webpage on legal structure](#) for more information

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

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

Your company may use different names for its directors. These may include a managing director, alternate director, nominee director, executive and non-executive director, and many others.



### Caution

A director can become personally liable if, as a result of them breaching their duties, they have caused the company to suffer loss.

A director can also be personally liable for debts incurred by the company if they allow the company to continue operating when it can't repay its debts. In some circumstances, directors may be penalised if they breach their statutory or judge-made duties, or where they contravene certain parts of the Corporations Act.

Penalty units are tied to an amount which usually increases every year. Refer to the [Crimes Act 1914 \(Cth\)](#) for the up-to-date valuation of a penalty unit.



In addition to the board, a CLG must have a company secretary, and may also have a chair and treasurer. These positions may be filled by people who are also directors, however, this is not a requirement (although the chair will usually be a director). The people who take on these positions are also sometimes called 'officers' or 'office bearers' of the company.

A company secretary is generally responsible for corporate governance matters and supports the directors by managing the business of the board. For a registered charity, this would include ongoing compliance with the ACNC's Governance Standards.



### Tip

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

**However** – remember that all directors are responsible for understanding and ensuring the organisation's financial health, irrespective of whether a Treasurer or 'finance committee' is appointed.

No matter what name is used, all directors and officers of a company must comply with their legal duties, which are explained further below.

## Can anyone become a director or secretary of a CLG?

No. The Corporations Act sets out certain eligibility requirements for people to be a director or a secretary.

In particular, an individual is eligible to become a director or secretary if:

- they are at least 18 years old
- they comply with place of residence requirements, and
- they are not disqualified by certain matters (such as bankruptcy or criminal offences involving dishonesty)

Also, a company's constitution may set out additional requirements.

Your organisation should be aware that there are requirements for directors of a not-for-profit company set out in other legislation. For example:

- taxation legislation may require directors of your organisation to be 'responsible people' (requiring certain qualifications) so that your organisation can be eligible for tax concessions, and
- the ACNC Act requires a CLG charity to comply with the [ACNC Governance Standards](#)



See our [webpage 'Should your group register as a charity?'](#) for more information.

## Director Identification Numbers

If you are a director of any of the following organisations, you must have a Director Identification Number (**DIN**).

- a company (for example, a company limited by guarantee registered under the Corporations Act)
- an Indigenous corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth)
- a corporate trustee (for example, of a self-managed super fund)
- a Registrable Australian Body (**RAB**) (for example, an incorporated association that is registered with the Australian Securities and Investments Commission as a RAB)



- a foreign company registered with ASIC that carries on business in Australia

A director must apply for their DIN themselves because they will need to verify their identity. This application is made through a new [Australian Business Registry Service](#).

All existing directors under the Corporations Act should already have a DIN. If you are already a director and don't have a DIN, you must apply now. If you plan to become a director, you must apply for a director ID before you are appointed.

If you plan to become a director under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), you must apply for a DIN before you are appointed as a director.

If you became a director on or before 31 October 2022 and do not have a DIN, you must apply for a DIN. Penalties apply if a director who is required to have a DIN does not have a DIN.



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

## The legal duties of the directors and officers of a CLG

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

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

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

The Corporations Act defines an 'officer' to include the following people:

- a director or secretary
- a person who makes or participates in making decisions that affect the whole or a substantial part of the business of the company or who has the capacity to significantly affect the company's financial standing
- any receiver, administrator, liquidator, or trustee of the company, and
- a person whose instructions or wishes the directors of the company are accustomed to act in accordance with (except where the person provides advice in a professional capacity or as part of a business relationship)

Under the Corporations Act, directors have the following duties:

- the duty to act in good faith in the best interests of the organisation and for a proper purpose
- the duty to act with reasonable care, skill and diligence
- the duty to not improperly use their position or information they've received due to their position to gain an advantage for themselves or someone else, or to cause harm to the company
- the duty to disclose and manage conflicts of interest, and
- the duty to stop the company from continuing to trade while it can't pay its debts



See our [Duties Guide](#) for a more detailed discussion of the legal duties that apply to directors of public companies, such as a CLG.

If the CLG is a registered charity, the CLG must instead ensure that its 'responsible people' (which include directors) comply with the [ACNC's Governance Standards](#). This includes [Governance Standard 5](#) which sets out the legal duties of 'responsible people' which include directors and officers. (The ACNC Act refers to 'responsible people' of a registered charity as 'responsible entities'.)



## Other legal obligations

In addition to the legal duties above, directors and officers of a CLG should be aware of other legal obligations.

The Corporations Act includes provisions relating to:

- holding an Annual General Meeting (not required for registered charities but is best practice)
- providing ASIC with financial information, and
- providing ASIC with updated details of the names and addresses of directors and secretaries, and the registered address of the company

Your company secretary may have responsibility for organising many of these matters but as a director you should be aware of these Corporations Act requirements.

Most of these provisions don't apply to CLGs that are registered charities with the ACNC, but different ACNC requirements apply.

Directors and officers of a CLG may also have personal liability for breaches of work health and safety laws. These laws differ from state to state.



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

There may also be specific legal obligations that apply to you and your organisation because of the type of work that you do. For example, legal obligations apply to many different types of work, including:

- working with children
- running a retirement village or aged care service
- providing home care or health services, and
- running events and fundraising



### Tip

If you are unsure what laws apply to your organisation's area of work, try contacting a relevant industry body or association. They may be able to point you in the right direction.