

Member rights and obligations for companies limited by guarantee

Legal information for companies limited by guarantee

This fact sheet covers:

- ▶ what is a company limited by guarantee?
- ▶ the liabilities of members
- ▶ meetings and voting rights
- ▶ access to company information
- ▶ appointment and removal of directors, and
- ▶ enforcement of member rights

As a member of a not-for-profit organisation which is incorporated as a company limited by guarantee, you have certain rights and obligations.



Disclaimer

This fact sheet provides information on member rights and obligations for companies 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.

The rights and obligations of members of a company limited by guarantee (**CLG**) are set out in:

- the [Corporations Act 2001 \(Cth\)](#) (**Corporations Act**)
- the [Corporations Regulations 2001 \(Cth\)](#) (**Corporations Regulations**), and
- your CLG's constitution

If you are a member of a CLG which is registered as a charity with the Australian Charities and Not-for-profits Commission (**ACNC**), your rights and obligations will also be set out in:

- the [Australian Charities and Not-for-profits Commission Act 2012 \(Cth\)](#) (**ACNC Act**), and
- the [Australian Charities and Not-for-profits Commission Regulations 2022 \(Cth\)](#) (**ACNC Regulations**)



What is a CLG?

A CLG is a type of incorporated legal structure that may be suitable for some not-for-profit organisations.

CLGs are set up under the Corporations Act. They are a type of public company and must comply with the applicable rules under the Corporations Act and Corporations Regulations.

If the company is registered as a charity with the ACNC, certain parts of the Corporations Act will no longer apply and certain parts of the ACNC Act and ACNC Regulations will apply instead (this is explained in more detail below).

CLGs often have a constitution – a document which sets out the rules governing the internal affairs of the company (previously called a Memorandum and Articles of Association). However, the Corporations Act also includes some provisions (known as 'replaceable rules') which can be used to govern a company that doesn't have a tailored constitution. These replaceable rules are not tailored for not-for-profit organisations and it's common for these organisations to adopt their own constitution.

How can you check if a not-for-profit organisation is a CLG?

To check whether a not-for-profit organisation is a CLG, search for its name in [the Australian Securities and Investment Commission \(ASIC\) register](#).

This register will set out, where applicable, that the organisation is an Australian Public Company, Limited by Guarantee (note the [Australian Business Register](#) will only show that the organisation, where applicable is an Australian Public Company).

Check how your not-for-profit organisation is established – it's possible that your organisation may have been established differently. For example, it may be incorporated as an association under the laws of Victoria or another state or territory. An incorporated association is a type of incorporated legal structure established under the relevant state-based laws (for example, [Victorian Associations Incorporation Reform Act 2012 \(Vic\)](#)). An incorporated association will be subject to different rules to a CLG.



For more information on incorporated associations and CLGs see [our webpage 'Which incorporated legal structure should you choose?', which explains the differences between these types of legal structures](#).

How can you check if a CLG is registered as a charity?

To check whether your CLG is a registered charity, search for its name on [the ACNC register](#).



Note

The rights and obligations of members of not-for-profit CLGs which are registered as charities under the ACNC Act (called 'registered charity CLGs' in this fact sheet) are different from those of members of not-for-profit CLGs which are not registered as charities with the ACNC (called 'non-charitable CLGs' in this fact sheet).

Where can you find your member rights and obligations?

Since CLGs are public companies incorporated under the Corporations Act, many members' rights and obligations are set out in the Corporations Act. Your CLG's constitution may specify additional rights and obligations.

You can request that your CLG provide you with a copy of the CLG's constitution.

If your CLG is a non-charitable CLG, it must provide you with a copy of its constitution within seven days.



If your CLG is a registered charity CLG, it's not required to send you a copy of its constitution, but you will be able to find a copy on the [ACNC register](#).



Note

Because the member rights and obligations are set out in the Corporations Act, anything in your CLG's constitution that conflicts with those rights and obligations will be invalid (excluding the replaceable rules).

Member rights and obligations

Liability of members (on winding up of the CLG)

When you first became a member of your CLG, you would have given a guarantee to the CLG promising to contribute a specified amount to cover the CLG's debts and liabilities if the CLG is wound up and has insufficient funds. This amount will be specified in the CLG's constitution.

If your CLG is wound up, you may be liable up to that specified amount which you agreed to contribute but will not be liable to contribute anything more.

Generally, the specified amount for not-for-profit CLGs is quite small (usually \$10 – \$100).

If you gave up your membership

- **at least one year** before the CLG began winding up, you will not need to contribute anything, or
- **less than one year** before the CLG began winding up, then you may be liable to contribute money (up to the specified amount under your guarantee) to help pay the CLG's debts or liabilities if those debts or liabilities arose when you were still a member

Meetings and voting rights

The meeting and voting rights given to members of CLGs vary depending on whether the CLG is registered as a charity under the ACNC Act.

In addition to the rights listed here, there may be specific rights set out in the CLG's constitution (so it's important to check the constitution).

Non-charitable CLG (if your not-for-profit CLG is not registered with ACNC)

As a member of a not-for-profit CLG, you have a right to attend and vote at general meetings.

The Corporations Act sets out rules about general meetings of members and voting rights for non-charitable CLGs. Your CLG's constitution may also have rules about these things.

As a member, your rights under the Corporations Act include the following:

- each member has a right to one vote, both on a show of hands and a poll (this is a replaceable rule which may be modified but not excluded by your company's constitution) unless the CLG has a membership class that, for instance, does not give you any voting rights. Similarly, while uncommon, you may be a member of a specific membership class that allows you to cast two or more votes
- each member may appoint a proxy to vote on their behalf at company meetings
- each member must receive notice of upcoming members' meetings 21 days or more before the meeting (subject to certain provisions of the Corporations Act that permits members' meeting to be called on short notice in certain circumstances). The notice must set out:
 - the time and location of the meeting
 - the business of the meeting, and
 - whether a special resolution will be proposed at the meeting
- the meeting must be held at a reasonable time and place. It can be held in two or more locations using technology, so long as the members as a whole still have a reasonable opportunity to participate. For instance, you may be able to attend a meeting by Zoom, Teams or telephone.



- members who together have at least 5% of the votes that may be cast on a resolution may collectively:
 - compel the directors of your CLG to call a meeting, which the company must pay for within reason
 - give notice to your CLG's directors of a resolution they propose to move at a general meeting, or
 - compel your CLG's directors to send out a statement to all members setting out a proposed resolution or any matter that may be properly considered at a general meeting (see note below)



Note

A CLG is not required to distribute a statement to members described above if it is more than 1,000 words in length or if it is defamatory. Further, if your CLG is not given enough time to send the statement with the notice of meeting, it's not required to distribute the statement unless the members pay the distribution costs.

Registered charity CLG (if your not-for-profit CLG is registered with the ACNC)

If your CLG is a registered charity under the ACNC Act, the rules regarding company meetings and voting (listed above) don't apply. Instead, you must comply with the requirements of the ACNC Act and Regulations, including the Governance Standards.

Under **Governance Standard 2**, your CLG must take reasonable steps to ensure it's accountable to members and that its members have an adequate opportunity to raise concerns about its governance. This is a flexible principle-based standard that allows CLGs which are registered as charities to consider how best to be accountable to their members in their own particular circumstances.

While there are no set rules for how to meet this Governance Standard 2, steps which your CLG may take to ensure that it complies with this standard would include:

- holding annual general meetings which include question and answer sessions and offer members opportunities to propose and vote on resolutions
- providing annual reports to members (including financial information and achievements towards its purpose), and
- allowing members to be involved in electing directors

If your registered charity CLG complies with the relevant Corporations Act provisions (as outlined above) this will be sufficient to meet the ACNC Governance Standard requirements on this matter.



The ACNC has published [information on Governance Standard 2](#) that includes practical ways in which a registered charity CLG can:

- meet the required standard, and
- provide opportunities for members to raise their concerns

You can also read more about the standard in the ACNC's guide for governing a charity '[Governance for Good](#)'.

Access to company information

Non-charitable CLG (if your not-for-profit CLG is not registered with the ACNC)

As a member of a not-for-profit CLG that is not a charity registered with the ACNC, you have a right to access company information and take the following actions:

- request a copy of your CLG's constitution. Your CLG must provide you a copy within seven days of your request, and can't charge you more than \$10 for it



- apply to a court for an order allowing you to inspect the books of your CLG (or alternatively, where this replaceable rule applies, the members of your CLG may collectively pass a resolution at a general meeting allowing you to inspect the books of the CLG)
- inspect your CLG's minutes of members meetings free of charge
- receive copies of your CLG's minutes of members' meetings. The CLG may not charge you more than \$0.50 per page or per 100 words
- inspect the register of members of your CLG free of charge, and
- request a copy of your CLG's register of members. Your CLG must provide you with it within seven days of your request and can't charge you more than \$250 unless your CLG has more than 5,000 members



Caution

Your company's constitution may provide members with additional rights in relation to access to information. These rights can be enforced by a court.

Members also have certain rights in relation to remuneration of the CLG's directors. A CLG must disclose all remuneration paid to a director, regardless of whether it is paid to the director in their capacity as director or another capacity, if directed to do so by:

- members which have at least 5% of the total voting power in the CLG, or
- at least 100 members of the CLG

Members also have certain rights in relation to reporting obligations of a CLG. These depend on whether the CLG meets the following thresholds:

- if its annual or consolidated revenue is **less than \$250,000** per year – members with more than 5% of the total voting power may direct the CLG to prepare and send a financial report and directors' report for a financial year that ended within the last 12 months, or
- if its annual or consolidated revenue is **equal to or greater than \$250,000 per year** – the CLG must prepare a financial report and a directors' report for each financial year. As a member, you may choose whether you want to receive these reports.

Registered charity CLG (if your not-for-profit is registered with the ACNC)

As a member of a not-for-profit CLG registered with the ACNC, some of the rules about accessing company information are different to non-registered CLGs (as outlined above). As a member you have the right to:

- inspect your CLG's minutes of members' meetings free of charge
- receive copies of your CLG's minutes of members' meetings. The CLG may not charge you more than \$0.50 per page or per 100 words, and
- access information in line with the Governance Standards, to a level that enables accountability to members (there are many ways that this requirement may be met)

Your organisation's constitution may also set out additional rights.

Members also have certain rights in relation to remuneration of the registered charity CLG's directors.

A CLG must disclose all remuneration paid to a director, regardless of whether it is paid to the director in their capacity as director or another capacity, if directed to do so by:

- members which have at least 5% of the votes that may be cast at the general meeting of the CLG, or
- at least 100 members of the CLG



Directors – appointment and removal

As a member of a CLG (and presuming that the class of membership to which you belong comes with voting rights), you may vote on a resolution at a general meeting to:

- appoint a director to the board, and
- remove a director from the board

This applies to both non-charitable and registered charity CLGs.

Enforcement of member rights

If you believe your member rights under the Corporations Act or your CLG's constitution are being infringed, raise your concerns in accordance with any dispute resolution procedure or consider raising them with the Chief Executive Officer or chair of the board.

You can apply to a court to seek action. You may also complain to ASIC. You should seek formal legal advice before starting court action.

If your CLG is registered as a charity under the ACNC Act and you believe it's failing to comply with its obligations under the ACNC Act, you can raise your concerns with the ACNC. Contact information is available on the [ACNC's website](#).



For more information on grievance procedures, disciplinary procedures and internal disputes, go to [our webpage on internal disputes](#)