

# Financial reporting obligations for a company limited by guarantee

Legal information for companies limited by guarantee

## This fact sheet covers:

- who is responsible for overseeing a CLG's finances
- what financial records a CLG has to keep, and
- what kind of financial information a CLG must provide at its AGM and to ASIC.

## This fact sheet sets out the financial reporting obligations of a company limited by guarantee.

A company limited by guarantee (**CLG**) is established under the *Corporations Act 2001* (Cth) (**Corporations Act**) and must report to the Australian Securities and Investments Commission (**ASIC**), unless it is registered with the Australian Charities and Not-for-profits Commission (**ACNC**) in which case it must report on its finances to 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 making a decision about what to do.

## Who is responsible for overseeing a CLG's finances?

The golden rule is that the directors (board) of a CLG are ultimately responsible for managing the finances of the company. There are a number of provisions in the Corporations Act that make this clear, as well as a lot of case law on this issue.

The Corporations Act provides that:

- the business of a company is to be managed by or under the direction of the directors, and
- the directors may exercise all the powers of the company except any powers that the Corporations Act or the company's constitution requires the company to exercise in general meeting. For example, under the Corporations Act the constitution can only be amended with the consent of members.

The Corporations Act also sets out legal duties that all directors of a board must comply with, including a duty:

- to exercise reasonable care and skill in exercising their powers and discharging their duties, including managing the affairs of the company (such as its financial affairs)
- to exercise powers in good faith, in the best interests of the company, and for a proper purpose
- not to use their position, or information they obtain by their position, for an improper purpose (i.e., to benefit themselves or someone else, or to cause detriment to the company)

### RELATED RESOURCES

For more information on the duties of directors as set out in the Corporations Act see Not-for-profit Law's Duties Guide at [www.nfplaw.org.au/governance](http://www.nfplaw.org.au/governance).

- to keep financial books and records (see explanation below), and
- to prevent insolvent trading by the company.

For more information about the duties of board members of a CLG, go to Not-for-profit Law's Governance resources at [www.nfplaw.org.au/governance](http://www.nfplaw.org.au/governance).

If your organisation is a CLG and registered with the ACNC the duties listed above do not apply as such. Instead, directors must follow the ACNC's Governance Standards. The duties of directors are outlined in Governance Standard 5. These are broadly the same as those in the Corporations Act albeit slightly different and may be summed up as follows.

- to act with reasonable care and diligence
- to act honestly and fairly in the best interests of the charity and for its charitable purposes
- not to misuse their position or information they gain as a responsible person (this includes the role of director)
- to disclose and manage any actual or perceived conflicts of interest, and
- to ensure that the financial affairs of the charity are managed responsibly.

#### FURTHER READING

The ACNC has produced a guide called "Governance for good - the ACNC's guide for charity board members" which explains these standards in more detail. You can access it at [www.acnc.gov.au](http://www.acnc.gov.au) Not-for-profit Law also has resources on its governance ([www.nfplaw.org.au/governance](http://www.nfplaw.org.au/governance)) and reporting pages ([www.nfplaw.org.au/charityreporting](http://www.nfplaw.org.au/charityreporting)).



## Can't we just leave all this financial stuff to the Treasurer?

No – each director of a company is responsible for overseeing the company's finances.

The treasurer (or financial officer – or whatever other name is given to the position) is generally delegated the task of ensuring that financial transactions are properly recorded and reported on. The treasurer presents financial reports at board meetings. It is important that these reports are easily understood by all board members because they are all responsible for keeping a check on the finances of the company.

For these reasons, it is important to ensure that good systems are in place to allow these tasks to be done efficiently and in a foolproof manner.

Other tasks of the treasurer may include:

- making sure finances are well planned by preparing an annual budget and then regularly monitoring this budget to see that the company is staying within it
- making sure that the books are up to date and in order – this means that there is a proper record of all payments and money received, and that accounts are reconciled at least once a month
- reasonable steps to make sure the company's finances are arranged so as to prevent funds from being stolen or misused, and

- ensuring the necessary information and account books are ready for a financial statement to be prepared (and if necessary reviewed or audited) as required.

Although directors commonly delegate these financial responsibilities to the treasurer or other employees, the directors ultimately remain responsible for overseeing the company's finances and complying with their duties as set out above.

Where directors are presented with financial information or advice that has been prepared by others (including by employees, other directors, professionals and experts), they can only rely on such information or advice if they are satisfied that there are reasonable grounds to believe that such matters are within that person's expertise or competence. They must make an independent assessment of such information or advice, having regard to that director's knowledge of the company and the complexity of the structure and operations of the company. The directors should approach the information or advice with an active and questioning mind and consider whether it is accurate based on their understanding of the company's financial status. In order to do this successfully, directors should understand the fundamentals of the company's affairs. This means that all board members need to have a working knowledge of the company's financial position.

## What financial records does a CLG have to keep?

The Corporations Act requires that a company must keep written financial records that:

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

'Financial records' are defined in the Corporations Act as including: invoices, receipts orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers documents of prime entry, working papers and other documents needed to explain the methods by which financial statements are made up and adjustments to be made in preparing financial statements. These must be kept for 7 years. These records may be kept electronically, but must be convertible into hard copy and available within a reasonable time to a person who is entitled to inspect the records.

### TIP

The above list might seem like a lot. However, it is all the documents you normally use – just make sure you keep them!

See [ASIC Information Sheet 76: What books and records should my company keep?](#)



## What kind of financial information do we need to provide at the Annual General Meeting (AGM)?

The Corporations Act contains a tiered approach to financial reporting. There are three categories or 'tiers', defined by reference to the size of the company's annual (or consolidated) revenue and whether it is endorsed as a Deductible Gift Recipient (DGR) for tax purposes. For information on DGR status, go to [www.nfplaw.org.au/DGR](http://www.nfplaw.org.au/DGR).

Below is a table which sets out the categories and their minimum reporting obligations.

	<b>Definition</b>	<b>Financial reporting requirements</b>
<b>Tier 1 (known as "small CLGs")</b>	Companies limited by guarantee with annual revenue less than \$250,000 without DGR status	<ul style="list-style-type: none"> <li>• Unless directed by ASIC or members with at least 5% of the votes that may be cast at the general meeting:               <ul style="list-style-type: none"> <li>○ No financial report required</li> <li>○ No Director's report required</li> <li>○ No audit*/review of accounts required</li> <li>○ No notification to members of annual reports</li> </ul> </li> </ul>
<b>Tier 2</b>	Companies limited by guarantee with annual revenue less than \$250,000 with DGR status <b>or</b> Companies with annual revenue over \$250,000 but less than \$1 million (with or without DGR status).	<ul style="list-style-type: none"> <li>• Required to prepare financial report</li> <li>• Required to prepare a 'streamlined' Director's report (less detailed than a full Director's report)</li> <li>• May elect to have financial report reviewed rather than audited* (unless company is a Commonwealth company, or a subsidiary of a Commonwealth company or Commonwealth authority)</li> <li>• Required to provide annual reports to any member who elects to receive them</li> </ul>
<b>Tier 3</b>	Companies limited by guarantee with annual revenue over \$1 million (with or without DGR status).	<ul style="list-style-type: none"> <li>• Required to produce an audited* financial report</li> <li>• Required to produce a 'streamlined' Director's report (less detailed than a full Director's report)</li> <li>• Required to give annual reports to any member who elects to receive them</li> </ul>

*\*An audit is a process carried out by a registered auditor that is intended to ensure that a financial report taken as a whole is free from material misstatement. A 'review' is less onerous than an audit, and can be conducted by an accountant with a practicing certificate issued by the Institute of Chartered Accountants in Australia, CPA Australia or the National Institute of Accountants - i.e. the person does not have to be a registered company auditor.*

Notes:

- If a company is part of a consolidated group, the "annual revenue" thresholds in the above table are based on the consolidated revenue of the consolidated group.
- A different reporting regime applies in respect of financial years ended prior to 30 June 2010.

Where a CLG is registered as a charity with the ACNC it is subject to a tiered approach to financial reporting ACNC Act and is generally exempt from the requirements under the Corporations Act set out in the above table.

Registered charities are required to lodge an annual financial report with the ACNC as follows:

	<b>Financial reporting requirements</b>
<b>Annual revenue of less than \$250,000</b>	No requirement to lodge annual financial report
Annual revenue of between \$250,000 and \$1 million	Required to lodge annual reviewed financial report
Annual revenue of \$1 million or more	Required to lodge annual audited financial report

Note there is also a special “basic religious charity” category for unincorporated charities, which do not have to report any financial information, but this will be irrelevant to charitable CLGs as they are incorporated.

Remember, these are minimum financial reporting requirements for a CLG. Companies that fall into the lower categories can choose to report at a higher level than they are required to (e.g. 'tier 1' or 'tier 2' companies can continue to have their accounts audited). Even in the case of small CLGs, it is good governance to prepare (at least) a financial report and present it to members at the AGM.

There are various time provisions and deadlines which apply to the provision of the financial report to members, and tabling requirements. Your company should ensure it understands and complies with these timeframes to avoid penalties.

Also, it is important to keep track of your company's annual revenue so you can assess its reporting obligations from year to year. If your company makes more (or less) in a particular year, or obtains DGR status, it may fall into a different reporting tier.

## What financial information needs to be provided to ASIC or the ACNC?

The Corporations Act requires companies to report to ASIC by lodging their financial reports, Director's reports and auditor's reports, which have been reviewed or audited (if required) and pay an annual 'review fee' at the end of every financial year. A CLG may be eligible for a reduced annual review fee if it meets the criteria under the definition of 'special purpose company' in the *Corporations (Review Fees) Regulations 2003* (Cth). A registered charity is not required to pay an annual review fee.

A company is also required to review an annual statement of its company's details which will be sent to them by ASIC and to notify ASIC of any changes to the details. Timeframes for lodging these documents are strictly enforced and penalties apply for late filing. For more information about reporting to ASIC – see Resources below.

For registered charities, different requirements apply (they do not have to report to ASIC as outlined above and they will not be provided with an annual statement from ASIC. A registered charity CLG is required to provide the financial information (depending on their Tier as outlined above) when they lodge their Annual Information Statement with the ACNC. For more information about reporting to ACNC – see Resources below and Not-for-profit Law’s fact sheet on financial reporting for charities at [www.nfplaw.org.au/charityreporting](http://www.nfplaw.org.au/charityreporting).

# Resources

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## Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub ([www.nfplaw.org.au](http://www.nfplaw.org.au)) has further resources on the following topics:

- ✔ [Registering as a charity](#)
- ✔ [Charity reporting](#)
- ✔ [Governance](#)
- ✔ [Meetings](#)

## Legislation

- ✔ [Corporations Act 2001 \(Cth\)](#)

## Related Resources

- ✔ Australian Securities and Investment Commission (ASIC)

[ASIC - What books and records should my company keep?](#)

This ASIC guidance note is written primarily for directors of small proprietary companies but may be a useful guide to basic financial record-keeping requirements.

[ASIC - Annual statements](#)

This ASIC page provides basic information about the lodgement of annual statements. It is not specifically written for CLGs and your organisation may wish to seek specialist advice on reporting requirements.

[ASIC - Financial reports](#)

This page of the ASIC website has information about financial reporting (for all types of companies).

- ✔ [Institute of Chartered Accountants \(ICA\)](#) – enhancing not-for-profit annual and financial reporting
- ✔ [Governance Institute of Australia](#) - The Governance Institute has a series of good governance guides, which includes information on financial reporting. They also provide a pro bono program to assist with things like governance audits, board paper templates and annual report preparation. Contact the Governance Institute for their guidelines on when a group is eligible for this free assistance.
- ✔ [CPA Toolkit](#) – CPA has a toolkit with two guides relevant to not-for-profit management.

[QUT Approving Financial Statements](#) – The Australian Centre for Philanthropy and Nonprofit Studies at the Queensland University of Technology has a resource on nonprofit governance which includes a page on approving financial statements.

A Not-for-profit Law Information Hub resource. Access more resources at [www.nfplaw.org.au](http://www.nfplaw.org.au). Justice Connect Not-for-profit Law acknowledges the generous support of our funders and supporters. Find out more at [www.nfplaw.org.au](http://www.nfplaw.org.au)

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