

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 (CLG)?
 - how to find out if a not-for-profit organisation is incorporated as a CLG and/or registered as a charity
 - the liabilities of members
 - meetings and voting rights
 - access to company information
 - appointment and removal of directors, and
 - enforcement of member rights.
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As a member of a not-for-profit organisation which is incorporated as a company limited by guarantee (CLG), you have certain rights and obligations.

Rights and obligations of members can be found 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 not-for-profit CLG which is registered as a charity with the Australian Charities and Not-for-profits Commission (**ACNC**), your rights and obligations will also be found in:

- 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**).

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

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 have to comply with the applicable rules under the Corporations Act and Corporations Regulations.

Where the company is a registered 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 in the absence of a tailored constitution. These replaceable rules are not tailored for not-for-profit organisations and it is common for such organisations to adopt a constitution.

How can I check if a not-for-profit organisation is established as a CLG?

To check whether or not a not-for-profit organisation is a CLG, you can search for its name in the Australian Securities and Investment Commission (**ASIC**) register, which is accessible online through the ASIC website at www.asic.gov.au. This register will set out, where applicable, that the organisation is an Australian Public Company, Limited by Guarantee (note the Australian Business Register at www.abr.gov.au will only show that the organisation, where applicable is an Australian Public Company).

You should check how your not-for-profit organisation is established. It is possible that your not-for-profit 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 eg. *Victorian Associations Incorporation Reform Act 2012* (Vic). An incorporated association will be subject to different rules to a CLG.

FURTHER READING

For more information on incorporated associations and CLGs see Not-for-profit Law's fact sheet, which explains the differences between these types of legal structures. You can access it at www.nfplaw.org.au/legalstructures.



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

To check whether or not your CLG is a registered charity, you can search for its name in the ACNC register, which is available on the ACNC website at www.acnc.gov.au.

It is important to check this, as the rights and obligations of members of not-for-profit CLGs which are registered as charities under the ACNC Act (which we call “registered charity CLGs” in this fact sheet) are a little different when compared to those of members of not-for-profit CLGs which are not registered as a charity with the ACNC (which we call “non-charitable CLGs” in this fact sheet).

Where can I find my member rights and obligations?

Since CLGs are public companies incorporated under the Corporations Act, many members' rights and obligations are from the Corporations Act.

Your CLG is also likely to have its own constitution, which may specify additional rights and obligations.

If you want to look at your CLG's constitution, you can request that your CLG provide you with a copy. If your CLG is a:

- **non-charitable CLG** it must provide you with a copy of its constitution within 7 days, or
- **registered charity CLG** then it is not required to send you a copy of its constitution, however, you will be able to find a copy on the [ACNC register](#).

NOTE

Because these member rights and obligations are set out in the Corporations Act, anything in your not-for-profit CLG's constitution that conflicts with those rights and obligations will be invalid (not including the replaceable rules).

Member rights and obligations

Liability of members (on winding up of the CLG)

If you are a member of a CLG that is wound up, you may be liable for the amount which you agreed to guarantee when you first became a member. This amount will be specified in the CLG's constitution.

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. 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 or not 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 is important you check the constitution).

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

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

The rules regarding general meetings of members and voting rights for non-charitable CLGs derive primarily from the Corporations Act (although your CLG's constitution may also have rules regarding these matters). 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 2 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 prior to 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 via Skype or telephone if this facility is offered by your CLG
- 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 given insufficient time to send the statement with the notice of meeting, it is 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 not-for-profit CLG is a registered charity under the ACNC Act, the rules regarding company meetings and voting (listed above) do not apply. Instead, you must comply with the requirements of the ACNC Act and Regulations, including the Governance Standards.

Governance Standard 2 means your CLG must take reasonable steps to ensure it is accountable to members and that its members have an adequate opportunity to raise concerns about its governance. This 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.

FURTHER READING

The ACNC information on Governance Standard 2 and practical ways in which a registered charity CLG can meet the required standard in order to achieve accountability and how it can provide opportunities for members to raise their concerns. You can access it [here](#). You can also read more about the standard in “Governance for Good”, which is the ACNC’s guide for governing a charity at www.acnc.gov.au.



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 you have the right to take the following actions:

- request a copy of your CLG’s constitution. Your CLG must provide you a copy within 7 days of your request, and cannot 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

! 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.

- 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 7 days of your request, and cannot charge you more than \$250 unless your CLG has more than 5000 members.

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 relation to their capacity as director or another capacity, if directed to do so by:

- members which have 5% of the total voting power in the CLG, or
- 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 or not you want to receive these reports.

Registered-charity CLG (if your not-for-profit CLG 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:

- 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).

Note that your organisation's constitution may also set out some 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 relation to 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 not-for-profit 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, you should first 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. We recommend you obtain formal legal advice before instituting court proceedings.

If your CLG is registered as a charity under the ACNC Act and you believe it is 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 at www.acnc.gov.au.

RELATED RESOURCES

For more information on grievance procedures, disciplinary procedures and internal disputes, go to Not-for-profit Law's page on internal disputes at www.nfplaw.org.au/internalconflict.



Resources

Related Not-for-profit Law resources

The Not-for-profit Law Information Hub (www.nfplaw.org.au) has information on the following related topics:

- For more information on constitutions and changing constitutions, go to www.nfplaw.org.au/constitution
- For more information on registering as a charity, go to www.nfplaw.org.au/charity
- For more information regarding disputes, go to www.nfplaw.org.au/disputes
- For more information on the different people involved in not-for-profits go to www.nfplaw.org.au/people

Legislation

- [Corporations Act 2001 \(Cth\)](#)
- [Corporations Regulations 2001 \(Cth\)](#)
- [Australian Charities and Not-for-profits Commission Act 2012 \(Cth\)](#)
- [Australian Charities and Not-for-profits Commission Regulations 2013 \(Cth\)](#)

Extra resources

- [ACNC register](#)
- ACNC Fact Sheet: [Companies limited by guarantee and the ACNC](#)
- ACNC resources on [Governance Standards](#):
- ASIC Fact Sheet: [Charities registered with the ACNC](#)
- [ASIC register](#)

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

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