

Positions in a company limited by guarantee (CLG)

Legal information for community organisations

This fact sheet covers:

- what is a CLG?
- the board of directors, and
- an introduction to the legal duties of directors and officers of a CLG.

A company limited by guarantee (CLG) is one type of legal structure that a not-for-profit organisation can use.

There are particular roles in the CLG with different but related responsibilities. These roles are found in a CLG's constitution and in the legislation that governs CLGs, the *Corporations Act 2001* (Cth) (**Corporations Act**) and, if the CLG is also registered with the Australian Charities and Not-for-profits Commission (**ACNC**) as a charity, the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) together with the associated regulations (including the Governance Standards) (**ACNC Act**).

What is a CLG?

A CLG is a type of incorporated legal structure that allows a group to have its own legal identity. CLGs have members, a board, and are required to comply with legal obligations in the Corporations Act and, if the CLG is registered with the ACNC as a charity, with the ACNC Act.

CLGs must include the words 'Limited' or 'Ltd' after their name (unless they are eligible for an exemption from this requirement).

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: www.asic.gov.au.

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). However, the Corporations Act also includes some provisions (known as 'replaceable rules') which can be used to govern a company instead of a constitution.

Unfortunately, the Corporations Act is a complex piece of legislation and the provisions that apply to CLGs are scattered throughout the Act (and Regulations).

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 cannot pay all of its debts, each member may be

required to contribute an amount up to, but no more than, the stated guarantee amount. Please note, the guarantee amount is different from any membership joining fee or annual membership fee that the CLG may impose upon members.

There are other laws which apply to a CLG – for example, laws dealing with occupational health and safety, workplace relations or tax. The Not-for-profit Law Information Hub at www.nfplaw.org.au contains useful resources on a range of laws to help not-for-profit organisations.

The board of directors

The Corporations Act requires CLGs to set up with at least three directors, two of which must ordinarily reside in Australia, and at least one secretary, at least one of which must ordinarily reside in Australia. Many companies will have a constitution that includes a maximum cap on the number of directors, usually somewhere between 8 and 12. The group of directors in a company is commonly referred to as the 'board of directors' or the 'board'. Please note, the term 'board' is not used in the Corporations Act and has no strict legal definition.

The board of directors is responsible for governing and overseeing the affairs of a company. Generally it is 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 any Executive Director or 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 is therefore important that directors understand their obligations and responsibilities within 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).

If a company has not adopted a constitution, the 'replaceable rules' in the Corporations Act will apply. Note however, that as the replaceable rules have been drafted primarily with for-profit commercial companies in mind, it can sometimes be tricky to understand how they are to apply to a not-for-profit organisation.

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 anyway or with whose wishes or instruction the directors are accustomed to act.

FURTHER READING

For more information about the constitution of a CLG, see www.nfplaw.org.au/legalstructure.

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. Directors may also hold special positions on the board of directors, including the positions of:

- Company Secretary (does not necessarily need to be a director)
- Chair, and
- Treasurer.

The people who take on these positions are also sometimes called 'officers' or 'office bearers' of the company.

TIP

Even if your organisation has appointed a Treasurer, it is 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 legal duties, which are explained further below.

Can anyone become a director or secretary of a CLG?

No. The Corporations Act sets out eligibility requirements for people who want to be 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). 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 Governance Standards.

RELATED RESOURCES

Not-for-profit Law has an Introduction to Charities Law Guide which can be downloaded from the Information Hub at www.nfplaw.org.au/charity.

What are 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 of a not-for-profit company, you need to understand what your legal duties are.

It is 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' of a CLG as:

- a director or secretary of the corporation
- a person who makes or helps to make decisions that affect the whole or a substantial part of the organisation or who may significantly affect the company's financial standing, and
- any receiver, administrator, liquidator, or trustee of the company.

RELATED RESOURCES

The Not-for-profit Law Duties Guide sets out the main legal duties that apply to directors of public companies, such as a CLG. This guide can be found on the Information Hub at www.nfplaw.org.au/runningtheorg.



What are some of the other legal obligations directors and officers should be aware of?

In addition to the legal duties set out in the Duties Guide referenced above, there are a number of other legal obligations that directors and officers of a CLG should be aware of.

The Corporations Act include provisions relating to the holding of an Annual General Meeting, providing ASIC with financial information, and providing ASIC with updated details of the names and addresses of directors and the registered address of the company, among many others. 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 do not apply to CLGs that are registered charities with the ACNC. Different ACNC requirements apply.

Directors and officers of an incorporated body may also be found personally liable for breaches of work health and safety laws. These laws differ from state to state - for further information about work health and safety laws, see www.nfplaw.org.au/OHS.

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 health centre
- providing home care or health services, and
- running events.

Of course, criminal and other laws that apply to the public can apply to directors of CLGs.



TIP

If you are unsure about 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.

Resources

Related Not-for-profit Law Resources

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

▶ [Getting Started](#)

Not-for-profit Law's Getting Started page of the Information Hub has information on incorporating, choosing a legal structure.

▶ [Risk and insurance](#)

Not-for-profit Law's Risk and Insurance page of the Information Hub has information on background checks, occupational health and safety, negligence and incidents and accidents.

Legislation

▶ [Corporations Act 2001 \(Cth\)](#)

This is a link to the legislation that governs companies limited by guarantee in Australia. The main provisions in relation to directors and company secretaries are set out in Chapter 2D of the Act. |

Role of the Board

▶ [Governance Institute of Australia \(Governance Institute\) - Good Governance Guide](#)

The Governance Institute of Australia's good governance guides provide information about board structure and responsibilities.

▶ [Our Community - Boards](#)

This section of the Our Community website provides information about boards of community organisations.

Role and responsibilities of directors

▶ [ASIC - Directors duties](#)

This page on the ASIC website sets out some of the basis duties of directors of a company. It is not written specifically for not-for-profit companies but is useful as a general guide.

Role and responsibilities of company secretary

▶ [Governance Institute of Australia - Not-for-profit governance resources](#)

The Governance Institute's website has resources for company secretaries of not-for-profit organisations.

Australian Charities and Not-for-profits Commission (ACNC)

▶ [Manage my charity](#)

The 'Manage my charity' section of the ACNC website offers useful information on topics such as meeting governance standards, recording information, reporting, keeping charity status and ongoing obligations.

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

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