

New to a board or committee? An introduction to your role

Legal information for community organisations

This fact sheet covers:

- ▶ role of a board or committee member
- ▶ legal obligations of board or committee members
- ▶ personal liability of board or committee members
- ▶ what board or committee members should know about their organisation



As a new board or committee member, you should understand the role of the governing body you sit on and your role as a member of that body. Understanding your role as a board or committee member is fundamental to the good governance of your organisation and, ultimately, its success.



Disclaimer

This fact sheet provides general information about the role of a board or committee member. This information is 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 terms we use in this fact sheet

We use the terms ‘board’, ‘board member’ and ‘member’ in this fact sheet. These terms are used in a generic sense to refer to the decision-making body of an organisation, the people that form the decision-making body, and the group of stakeholders that the decision-making body serves.

The description of the decision-making body differs between organisations. The principles explained in this fact sheet apply to the decision-making body and the people on the decision-making body of your organisation no matter what it may be called.

In this fact sheet we use:	The equivalent name used by your organisation might be:
Board	Committee, Committee of Management, Council
Board member	Committee member, Director, Councillor
Constitution	Rules, rule book, governing document



People involved in the running of an organisation

There are many different roles and people involved in the management of an organisation. These people may be members, employees, volunteers, clients and customers.

As a board member, it's important that you understand your role and how that role differs from the roles of other people involved in your organisation. This is because, legally, you have different relationships and duties to other people involved with your organisation. If you don't understand your role in your organisation and the legal relationships that exist between yourself and others, it can be difficult for you to properly perform your role as a board member.

The role of a board

The board of an organisation has an important role to play. The board is made up of the board members and forms the leadership group of an organisation.

The board is primarily responsible for governing, overseeing the affairs of, and making strategic decisions for an organisation on behalf of its members, noting that the board is appointed by the members of the organisation.

The precise role and responsibilities of a board may vary depending on the context and circumstances of an organisation's objectives and operations. The extent and scope of a board's authority is set out in the organisation's constitution (the rules under which an organisation is governed).

Generally, a board will be responsible for governing and overseeing the affairs of the organisation. This includes:

- making decisions about planning, resources, strategic direction, goals and activities of the organisation
- monitoring the performance and activities of the organisation against its legal purposes and strategic plan
- overseeing risk management for the organisation
- recruiting, overseeing and supporting the management personnel of the organisation (for example, the Chief Executive Officer if the organisation has this role)
- monitoring the performance of management personnel
- ensuring the sustainability of the organisation by monitoring its financial viability and finances
- making decisions about whether to take disciplinary action against a member
- reporting to members and stakeholders, and
- ensuring the organisation operates within the law, including maintaining its charitable status if it is a charity

To properly oversee an organisation's affairs, a board should consist of diverse members that have a mix of different skill sets, knowledge and experiences. A skills matrix can be used to identify the skills, knowledge, experience, capabilities and diversity needed for a board to meet the current and future needs of the organisation.

The role of a board member

A board member has a defined role and responsibilities that they must perform. Generally, a board member is responsible for contributing to the collective decision making of the board. A board member is generally unable to make decisions for the organisation independently of other board members.

A board member is responsible for:

- understanding the business of the organisation and being aware of key developments
- attending and participating in board meetings
- being active in the organisation, such as by attending functions or events as a representative of an organisation
- attending the Annual General Meeting
- providing advice, opinions and independent judgment to inform board decisions
- declaring and monitoring actual or perceived conflicts of interest, and
- governing and overseeing an organisation's operations and performance

Boards will normally specify roles that each board member is to perform. These roles could include:

- **Chair, Chairperson or President** – runs meetings and usually represents the organisation at public events
- **Deputy chair, Vice-chair or Vice-president** – takes on the role of the Chair when that person is unavailable
- **Treasurer or Financial officer** – manages the financial affairs of the organisation
- **Secretary** – reports to the relevant regulators, organises meetings, deals with documents and maintains records

The people who take on these positions are sometimes called ‘officers’, ‘office bearers’ or ‘office holders’ of the organisation.

If you are required to perform a specific role on a board, you should familiarise yourself with the responsibilities of that role and make sure you have the appropriate skills to perform the role.

You may find information about the responsibilities of a specific role in an organisation’s constitution (which may also be referred to as ‘rules’) and related documents (such as board or committee charters or by-laws), external resources (such as legislation or guides published by governance bodies), and an organisation’s policies and procedures.

Typical board structure and roles



President or
Chairperson



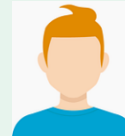
Vice-president
or Vice-chair



Treasurer



Secretary



General board
members

The difference between a board member's role and other roles

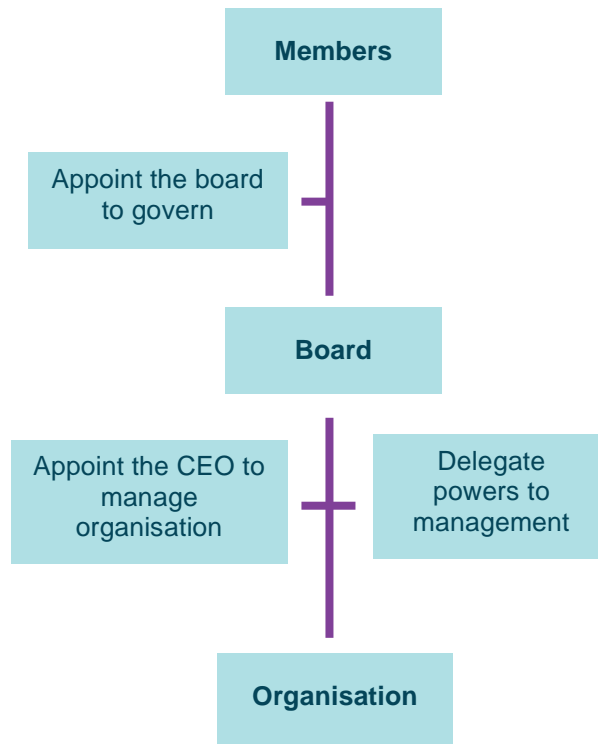
A board member’s role is a strategic position in an organisation and a board member is responsible for governing their organisation. This should not be confused with the management and operational aspects of an organisation (that is, the everyday running of the organisation).

In larger organisations, operational matters are likely to be performed by employees like an Executive Director or CEO, or other staff and volunteers. Unless you also hold an executive (managerial) role, it’s not your responsibility as a board member to perform or be involved in the day-to-day running of your organisation. In smaller organisations board members might be involved in day-to-day matters, but they must still be clear about their responsibility as directors to provide overall governance for the organisation.

The board may delegate certain powers to senior officers, such as the CEO or Chief Financial Officer, or committees of an organisation. Delegating certain decision-making powers and responsibilities allows routine operational matters to be dealt with by authorised individuals, on behalf of an organisation. It’s important to remember, however, that the board remains ultimately responsible for the organisation even if it has delegated certain matters.

‘Delegations of Authority’ (or documents with a similar name, such as a power of attorney) set out who in your organisation has been delegated powers and responsibilities by the board. This document needs to be formally agreed to by the board and should be reviewed and updated regularly to ensure that it is kept up to date.

The diagram below sets out the relationships between members, a board and an organisation.



Board member obligations

Sources of obligations

As a board member, you have legal obligations (or 'duties') that you must comply with and understand.

These duties arise from a fiduciary relationship (a relationship of trust and confidence) that you have with the organisation and are supported by a number of sources, including:

- legislation
- common law
- the organisation's constitution or rules, and
- the organisation's policies

Summary of obligations

There are four main legal duties that all board members must understand and comply with.

Four main legal duties of board members

1. Duty to act in good faith and for proper purposes

2. Duty to act with reasonable care, skill and diligence

3. Duty not to improperly use position or information

4. Duty to disclose and manage conflicts of interest

We have summarised the four main legal duties below, but be aware that there are other duties that all board members must comply with.



Board members who breach these duties may be held personally liable (legally responsible) for their breach (see below). It is therefore essential that you properly understand your duties and obligations as a board member.

1. Duty to act in good faith and for proper purposes

The duty to act in good faith requires board members to act honestly, fairly and loyally in furthering the best interests of the organisation to which they are appointed. This means you must put the interests of the organisation above your own when making board decisions.

Board members must also act only for proper purposes. This means when you make decisions, those decisions must be for the benefit of the organisation.

An organisation's constitution sets out the scope of a board's decision-making powers. Under your organisation's constitution, the board may have the power to make decisions regarding certain matters, but not others. You should familiarise yourself with your organisation's constitution, to understand the power conferred on the board and ensure the board only makes decisions within the scope of this power.

2. Duty to act with reasonable care, skill and diligence

Board Members are required to exercise a reasonable degree of care, skill and diligence at all times in the discharging of their powers and duties. This will involve monitoring and making decisions about the strategic direction of the organisation and keeping on top of financial affairs. For example, board members must ensure the organisation is trading while solvent (that is, the organisation will be able to pay its debts as and when they become due and payable). See below for details about the financial aspects of the duty.

You must take your role seriously and give sufficient time, thought and energy to the tasks you perform, and the decisions you are required to make as a board member. For example, you must spend time properly preparing for board meetings and commit to attending those meetings regularly.

Board members may be appointed because they have specialised knowledge or skills. In these circumstances, the knowledge and skills a board member has should be used for the benefit of the organisation and applied when making decisions. Board members are not necessarily required to have any special expertise, however all board members should have a basic level of financial literacy so they can understand the financial operations of the organisation. For example, board members should be able to read and understand the organisation's financial statements or undergo training to develop this skill.

The duty to be diligent requires board members to be thorough in their decision-making process and demonstrate an active interest in the organisation's affairs. Diligence requires board members to keep up to date with developments in the organisation's business, to ask for more information if needed to make a decision or seek out skills or professional advice when necessary. While you are able to seek advice from experts (including multiple experts), as a board member, you must still make your own independent decisions.

As part of the duty to act with reasonable care, skill and diligence, board members should take particular care with regard to the finances of the organisation.

Board members must

- **Make sure the financial affairs of the organisation are managed responsibly**

Charitable organisations are held to a high standard and are required to have robust financial controls in place to ensure their resources are used effectively and appropriately in pursuit of their objects (as set out in the organisation's constitution). To meet this standard, it's recommended that board members:

- read and understand financial statements and make enquiries if they don't understand them or if something doesn't look right
- make sure the organisation has the resources required to carry out its work by regularly reviewing its financial position, ensure the processes for handling finances is secure and protected from financial crime and fraud
- understand and implement the organisation's requirements for proper tax treatment, fundraising and acquiring of government grants, and
- implement strong financial controls, having regard to the complexity and size of the organisation's resources (for example, requiring multiple signatures on payments, keeping a budget and tracking the organisation's performance against it, and, in larger organisations, establishing clear financial



delegations, which might mean requiring the CEO to seek approval for any expenditure over a certain amount)

- **Not allow the organisation to operate while insolvent**

This means that if a board member reasonably suspects that the organisation is not in a financial position to pay all its debts as and when they become due and payable, then that person should take all reasonable steps to prevent the organisation from incurring further debt and seek professional advice. Board members should be well placed to meet this duty if they are regularly reviewing and are constantly aware of their organisation's financial position.

3. Duty not to misuse position or information

Board members hold a position of power and trust in an organisation. As a board member you will have access to confidential and important information about your organisation. It's important that you don't use your position or information to gain an advantage for yourself. A board member is required to use their position, and all information they encounter because of their position, to benefit the organisation only. You must not use your position, or information gained from your position, to benefit yourself or to harm the organisation.

4. Duty to disclose and manage conflicts of interest

This legal duty requires a process for handling conflict-of-interest situations. Conflicts of interest are common and must be disclosed and managed properly.

A conflict of interest arises where a board member finds themselves in a position where their own interests, or someone else's interests (such as a friend or family member) clash with the interests of the organisation, or where the board member may improperly benefit from their position on the board. For example, if you made a decision as a board member to enter into a contract with a supplier to whom you are related, that could result in you personally benefitting from that decision. You would therefore be in breach of this duty unless you disclosed the nature and extent of the conflict to the board and the conflict is managed by the board appropriately.

If you realise that you have a conflict of interest you must disclose that interest to the board as soon as possible and avoid taking part in board decisions or discussions that relate to your conflict of interest. Importantly, you must record the conflict and the steps you will take to avoid the risks of the conflict of interest arising. You may be able to participate in a board decision where you have a conflict of interest if you have told all the other board members about the conflict and they have agreed that you can still participate, but the better course of action is to avoid the conflict of interest by not participating in such decisions.

The organisation will keep a register of declarations of conflicts of interest. As a board member you must ensure the register is up to date in order to properly manage any conflicts of interest that may arise.



For more information about the four main legal duties, see our [Duties Guide](#).

Personal liability of board members

Board members are typically not personally liable (that is, legally responsible) for the debts or consequences arising from an organisation's actions or decisions.

There are some circumstances where a board member can be held personally liable for their organisation's debts or may be subject to regulatory action (or both). For example, a board member may be subject to penalties as a result of their own actions, and they may also be held liable for the actions of the organisation they govern where that organisation has breached a law.



The following information highlights some areas where board members may be held personally liable for the debts or actions of their organisation. This is not a comprehensive list.

Area of law	Description	Potential penalties
Directors' duties	<p>As discussed above:</p> <ul style="list-style-type: none"> • duty to act in good faith and for proper purposes • duty to act with reasonable case, skill and diligence • duty not to dishonestly use position or information, and • duty to avoid conflicts of interest 	<p>Significant fines, liability for loss suffered by the company, disqualification from acting as a director of a company or (in extreme cases) a term of imprisonment.</p> <p>These penalties vary according to the offence and whether the person is a director of a company or incorporated association.</p>
Employment	<p>The <i>Fair Work Act 2009</i> (Cth) (Fair Work Act) covers the rights and responsibilities of employers and employees in the workplace.</p> <p>It covers unfair dismissal, the National Employment Standards, adverse action and redundancy.</p> <p>Board members can be held personally liable for breaches where they were 'involved' in that breach. A person is involved in a breach if they have aided, abetted, induced, were knowingly concerned in, or have conspired to give effect to the breach. Board members can also be personally liable for acts committed in breach of anti-discrimination legislation if they have caused, instructed, aided, permitted, authorised or assisted another person to contravene that legislation.</p>	<p>Significant fines for a breach of the Fair Work Act.</p> <p>Directors found personally liable may also be exposed to orders to pay compensation or damages.</p>
Tax	<p>Organisations are required to make pay as you go (PAYG) payments on employee income (for example, on salary and wages paid to employees). Where an organisation fails to pay PAYG, income tax instalments or superannuation guarantee payments, board members may be personally liable for these amounts. Where a director penalty notice is issued to a board member, they have 21 days in which to rectify the situation.</p>	<p>The PAYG withholding amounts owed by the organisation.</p>
	<p>An organisation may be required to make goods and services tax (GST) payments. The GST rate in Australia is 10% and is often charged by the organisation to consumers and paid to the ATO by the organisation. A director of an organisation should be aware of their requirements and obligations in respect of making GST payments. Failure to do this may result in the board member being personally liable for unpaid GST amounts. Where a director</p>	<p>The unpaid GST amount owed by the organisation.</p>



penalty notice is issued to a board member, they have 21 days in which to rectify the situation.

Where an organisation commits a tax offence, including failure to produce information or making false or misleading statements, board members of the company are deemed to have also committed that offence.

Board members may avoid liability by demonstrating they did not aid, abet, counsel or procure the act or omission of the organisation and were in no way involved. Board members should be able to demonstrate that an effective tax control framework that managed the tax risk was established.

Significant fines or a term of imprisonment.

Superannuation

Employers must pay a compulsory superannuation contribution for salary or wage payments for all eligible employees. The contribution must be paid on time, in full and to the employee's chosen account. Payments must be made at least four times a year, by the quarterly due dates.

Where superannuation payments are underpaid, late or paid to the wrong account, the ATO will impose the superannuation guarantee charge (**SGC**). This includes the amounts owing, interest and administration fees. Penalties may also apply. In certain circumstances board members can be personally liable for unpaid superannuation.

The SGC and financial penalties imposed by the ATO.

Insolvent trading

A company is insolvent when it is unable to pay its debts as and when they fall due.

When there are reasonable grounds for suspecting that the organisation is insolvent, or is likely to become insolvent as it is unable to or will be unable to pay its debts as and when they fall due, board members must prevent the organisation from incurring further debts and should seek legal advice about the company's financial position.

Payment of compensation, a pecuniary penalty order, disqualification from acting as a director of a company or a term of imprisonment.

These obligations are extended, so that where a payment is made to the ATO in respect of a PAYG or superannuation guarantee charge obligation and this payment is set aside due to these insolvent trading provisions, board members can be held personally liable.

Board members should keep adequate financial records so they can correctly record and explain transactions and the

The outstanding amounts in respect of the PAYG or superannuation guarantee charge.



organisation's financial position and performance. If a board member suspects the organisation is in financial difficulty, it is important they seek professional accounting or legal advice as early as possible.

Work or Occupational Health & Safety

An organisation must, so far as is reasonably practicable, eliminate or minimise the risk of harm to the health and safety of all workers while at work. Where this duty is breached by the organisation due to a board member failing to take reasonable care, the board member is guilty of an offence.

In some states and territories of Australia, directors must exercise due diligence to ensure the organisation is complying with its safety obligations.

Significant fines or a term of imprisonment.

Any person involved in the management or control of the organisation must ensure that the workplace is safe and without risks to health. This is limited to matters over which they have management or control.

Significant fines or a term of imprisonment.

Environment protection

The environmental protection laws of the Commonwealth and the states and territories vary significantly. Offences under Commonwealth and state laws include the emission of ozone depleting substances, leakage or spillage of harmful substances, disposal of waste without authority and actions significantly affecting listed species.

Board members can be personally liable where:

- they knew or were reckless or negligent to whether the contravention would occur
- they were in a position to influence the conduct of the organisation, and
- they failed to take reasonable steps to prevent the contravention

Significant fines or a term of imprisonment.

Cartel conduct

A cartel exists where multiple organisations agree to act together instead of acting in competition with one another. A cartel is made up of independent businesses and attempts to increase members' profits while maintaining the illusion of competition. There are four main types of cartel conduct:

- price fixing – where the organisations agree to fix a price for the product or service that they are offering

Significant fines, disqualification from acting as a director of a company or a term of imprisonment.



- allocating territory between competitors – where the organisations agree to divide market territory between themselves to reduce or eliminate competition between themselves in respective territories
- bid-rigging – where organisations agree what prices they should make their bids at to agree who will win a tender, and at what price, and
- restricting production output – where organisations agree to control the amount of output of the product or service they will provide

Board members can be personally liable if they have aided, abetted, induced, were knowingly concerned in, or have conspired to give effect to a breach of these provisions.

Australian Consumer Law

The Australian Consumer Law is a single, national law that governs consumer protection in Australia.

This has particular relevance to false or misleading representations and conduct, defective products and warranties and guarantees in trade or commerce.

Board members will be personally liable where they have attempted, have successfully carried out or have aided or abetted, a contravention of these provisions.

They will also be liable where they have induced another to commit a contravention or have conspired or been knowingly involved in such a contravention.

Significant fines, disqualification from acting as a director of a company, an action for damages or compensation orders.



Director & Officer Insurance

There are limits on an organisation's ability to protect board members against personal liability. An organisation may be able to indemnify (reimburse) directors for penalties or legal fees incurred while acting as board members, and incorporated associations in Victoria must do so. But certain liabilities can't be covered, for example liabilities under health and safety legislation. An organisation might also not have sufficient resources to cover all potential liabilities of board members.

It's therefore important that you consider Directors & Officers (**D&O**) insurance.

D&O insurance policies are designed to protect board members against personal liability for claims that may arise out of the decisions they make while on the board. D&O insurance policies provide varying levels of cover and can be tailored to suit your needs, so it's important that you carefully consider what policy is most appropriate for the organisation.



See our [insurance and risk management guide](#) for more information. Victorian incorporated organisations should also refer to the [indemnity for office holders of incorporated associations fact sheet](#).



Caution

D&O insurance will not cover board members under certain circumstances, including intentional breaches of the law, fraudulent or otherwise criminal activity, wilful breaches of duty, improper use of position or of information, or where the board member has obtained illegal remuneration or acted for personal profit.

Insured D&O's also have a legal obligation to disclose everything reasonably relevant to the insurer's decision to insure which will apply before entering into an insurance policy at the time of any renewal, variation, extension or reinstatement.

Understanding your organisation

A board member should understand the organisation they will be governing to properly discharge their duties. To understand the organisation, ask yourself the following questions:

What are the organisation's purposes?

It's important to understand the stated purposes of the organisation, as this will shape its short and long-term goals and the strategy for achieving them.

As a board member you must govern the organisation in line with its purpose and always keep the reason for which the organisation exists in mind. To find information about the organisation's purposes, read the organisation's constitution and other strategic documents such as business plans, strategic goals or vision statements.

What is the organisation's legal structure?

Different legal structures are used within the not-for-profit sector – these include companies limited by guarantee, incorporated associations and trusts.

Generally, the obligations attached to your role as a board member are consistent across these structures. However, each of these structures brings different benefits and challenges – such as where the organisation may operate, the cost of these operations and information reporting requirements.



Tip

You may consider seeking professional advice on changing the structure of the organisation as the organisation develops – although this can be a costly exercise.

Is the organisation a charity?

If the organisation is registered as a charity with the Australian Charities and Not-For-Profits Commission (**ACNC**), it may:

- be eligible for certain Commonwealth grants and charity tax concessions from the Australian Taxation Office (**ATO**), and
- mostly report to the ACNC rather than the Australian Securities and Investments Commission (**ASIC**) (in the case of a company limited by guarantee) or a state or territory regulator (in the case of an incorporated association)



This means the organisation may have fewer reporting obligations to ASIC or a state or territory regulator, but it will have to report annually to the ACNC (subject to a few specific exceptions). It's important that the board members are familiar with their organisation's reporting requirements.

Can your organisation access tax concessions?

Once an organisation is registered with the ACNC (if applicable), it may be eligible for tax concessions such as income tax exemption, GST concessions and fringe benefits tax rebates or exemptions.

Some charities, if they meet legislative requirements, can also obtain deductible gift recipient (**DGR**) status, meaning that donors can claim their donations as an income tax deduction. To obtain DGR status, an entity must be endorsed by the ATO and may also need to get approval from other government departments. The process of obtaining DGR status is complex and professional advice and support may be required.



To learn more about these concessions including DGR status, visit the [ACNC website](#) and our [tax webpage](#).

Who are the organisation's members?

As a board member, you need to understand the demographics of the organisation's members.

This will help you determine:

- which member benefits and events are the most appropriate to offer, and
- which forms of communication are most appropriate for engaging with your members, including Annual General Meetings, newsletters, email updates and social media

What is the composition of the board?

To be effective, a board needs the right group of people with the right set of skills – for example, financial literacy, not-for-profit or philanthropic experience, industry or management experience and, of course, passion for the cause.

It will be important to understand where the board's strengths and weaknesses lie in these areas.

This skills matrix will be particularly important in larger and growing organisations which seek to share the workload among directors and streamline board functions through sub-committees.

Common sub-committees include:

- nomination or human resources committees
- audit and risk committee, and
- fundraising committee

Who are other important stakeholders?

Other key individuals and entities that may be concerned with the organisation include customers, volunteers, organisations with a similar purpose, funders and regulatory bodies such as the ACNC, ASIC and the ATO.

Stakeholders may have competing interests which need to be managed effectively by the board to ensure the organisation continues to run smoothly.

Where does funding come from?

Each organisation's sources of funding can vary significantly, depending on the size and purpose of the organisation.

Common sources of funding include:

- donations from the public
- bequests from a deceased estate
- fundraising from public activities



- membership fees
- corporate sponsorship
- government grants, and
- fees for services

Grants, bequests and sponsorships are often made for a specific purpose. You should familiarise yourself with all obligations or conditions which attach to these funding arrangements.

What are the key contracts?

As a board member, it's important that you are aware of the main risks and obligations attached to any ongoing contracts that are central to the organisation's activities.

Depending on the size of the organisation, board members may be required to sign high value or high risk contracts the organisation enters into. Whether this is required is something to be determined by the board.

The board should receive regular updates at its meetings regarding any changes to the key contracts of the organisation, as this may substantially affect its funding and its ability to engage in its ordinary activities.

What are the organisation's key risks?

As board members, you need to manage the risks to the organisation. It's critical that you put the correct risk management governance structures (such as a risk management framework and regular risk assessments) in place.

Larger organisations may also have a risk management sub-committee and designated risk management employees. This will all assist the board and the organisation to properly manage and mitigate any risks to the organisation.



To learn more about running an organisation, see our webpages on [who runs the organisation](#) and [how to run the organisation](#).