Positions in a Company Limited by Guarantee (CLG)

Legal information for community organisations

This fact sheet covers:

- about CLGs
- key roles in a CLG
- directors, secretaries and other officers
- directors' and officers' duties

A company limited by guarantee (CLG) is a common legal structure for not-for-profit organisations.

Disclaimer

This fact sheet provides information on positions in a CLG. 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.

About CLGs

A CLG is a type of incorporated legal structure that is a separate legal entity from its members. This means it can hold property, employ staff, enter into contracts, and sue or be sued in its own name.

An advantage of a CLG is that the organisation operates under the company name rather than the name of individual members. A CLG also enjoys perpetual succession, meaning it continues to exist even if its membership changes over time.

In a CLG, members generally have limited liability. Each member agrees in writing (known as a guarantee) to contribute a specified amount if the company is wound up and unable to pay its debts. This amount is usually between $10 and $100 and is set out in the CLG's constitution. A member's liability is limited to the guarantee amount and is separate from any membership joining fee or annual membership fee.

CLGs are regulated under the *Corporations Act 2001* (Cth) (**Corporations Act**).

A CLG that is registered as a charity with the Australian Charities and Not-for-profits Commission (**ACNC**) must also comply with the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**) and the ACNC Governance Standards. Registered charities are subject to some different regulatory requirements from other CLGs.

Other laws may also apply to a CLG, including laws relating to work health and safety, employment, fundraising and taxation.

CLGs usually have a constitution that governs the relationship between the company, its members and its directors. The constitution may also contain rules about the appointment, removal and responsibilities of office holders.

Note – small CLGs

Some CLGs qualify as small CLGs under the Corporations Act.

Small CLGs generally have reduced financial reporting obligations and may not be required to prepare financial reports, directors' reports or audits unless requested by ASIC or a member. This classification affects reporting requirements rather than the duties of directors, secretaries and other officers.

For more information about CLGs as a legal structure, see our webpage on legal structure.

Key roles in a CLG

A CLG generally has:

- members
- directors (collectively known as the board of directors)
- a company secretary, and
- sometimes other officers, such as a treasurer or financial controller

These roles are usually described in the CLG's constitution and governance policies.

People holding these positions may have legal obligations under the CLG's constitution, the Corporations Act and, where applicable, the ACNC regulatory framework. Directors and other officers may be personally liable if they do not comply with their legal duties.

This fact sheet doesn’t cover members’ rights and obligations. For information about this, see our webpage on managing members.

Directors, secretaries and other officers

The Corporations Act requires a CLG to have at least:

- three directors, including at least two who ordinarily reside in Australia, and
- one company secretary who ordinarily resides in Australia

Many CLGs also have constitutional provisions setting a maximum number of directors.

Although the Corporations Act does not use the term ‘board’, the group of directors of a company is commonly referred to as the board of directors, or simply the board.

The board is responsible for governing and overseeing the affairs of the company. This generally includes:

- determining the organisation's strategic direction
- overseeing risk and financial management
- ensuring legal and regulatory compliance
- monitoring organisational performance, and

- appointing and overseeing senior management

This differs from the role of management, which is responsible for the day-to-day operation of the organisation.

Directors remain responsible for the governance of the company even where functions or powers are delegated to management, committees or individual officers.

In smaller organisations, directors may also be involved in operational activities, often on a voluntary basis. This can create confusion about which responsibilities arise from which role. Directors should therefore understand the obligations and responsibilities associated with each role they perform.

A company's constitution will often contain additional provisions about:

- board composition
- delegation of authority, including to committees and individuals
- directors' powers and responsibilities
- the election and removal of directors
- director remuneration (if any), and
- specific office-holder positions, such as chair or treasurer

Who is a director?

The Corporations Act defines a director broadly.

A director includes a person who:

- has been validly appointed as a director
- has been appointed as an alternate director and is acting in that capacity
- acts in the position of a director even if they have not been formally appointed (a *de facto* director), or
- is a person whose instructions or wishes the directors are accustomed to follow (a shadow director)

A person may therefore be treated as a director under the Corporations Act even if they have not been formally appointed. Such people may be subject to many of the same duties and liabilities as formally appointed directors.

Different organisations may use different titles for directors, such as managing director, executive director, non-executive director, alternate director or nominee director.

What about the company secretary?

Every CLG must have a company secretary.

A company secretary is generally responsible for corporate governance matters and supports the directors by managing the business of the board.

Depending on the size and nature of the organisation, a company secretary's responsibilities may include:

- maintaining corporate records
- organising board and member meetings
- preparing and maintaining minutes
- assisting with ASIC filings and notifications
- monitoring governance and compliance obligations, and
- supporting compliance with ACNC obligations for registered charities

The company secretary is also an officer of the company under the Corporations Act and may have personal legal obligations relating to governance and compliance matters.

It is important to understand that legal duties apply not only to directors, but also to officers.

Who is an officer?

An officer is a person who has significant influence over the management, governance or financial affairs of a company.

The Corporations Act defines an officer to include:

- a director or secretary
- a person who makes, or participates in making, decisions that affect the whole or a substantial part of the company's business
- a person who has the capacity to significantly affect the company's financial standing
- a receiver, administrator, liquidator or trustee of the company, and
- a person whose instructions or wishes the directors are accustomed to act in accordance with (except where advice is provided solely in a professional capacity or as part of a business relationship)

Other officers

In addition to directors and company secretaries, a CLG may have office holders such as:

- a chair
- a treasurer
- a chief executive officer
- a chief financial officer, or
- other senior managers

Whether a person is legally an officer depends on the nature of their role and influence within the organisation, rather than their job title.

Who can become a director or secretary?

Not everyone is eligible to become a director or company secretary.

The Corporations Act sets out eligibility requirements for people appointed as directors and secretaries.

Generally, a person may become a director or secretary if they:

- are at least 18 years old
- satisfy any applicable residence requirements
- if appointed as a director, hold or have applied for a Director Identification Number (**DIN**)
- are not disqualified from managing corporations, and
- satisfy any additional requirements contained in the company's constitution

A person may be disqualified from managing corporations for various reasons, including bankruptcy and certain criminal offences involving dishonesty.

Other laws may impose additional requirements. For example:

- tax law requirements may affect eligibility for certain tax concessions
- registered charities must comply with the ACNC Governance Standards

Note – Director Identification Numbers

Directors of companies registered under the Corporations Act must have a Director Identification Number (**DIN**). A DIN is a unique identifier issued to an individual director.

Directors must apply for their own DIN through the Australian Business Registry Service because they are required to verify their identity.

A person intending to become a director should apply for a DIN before appointment.

Penalties may apply if a person who is required to have a DIN does not obtain one.

For more information, see the Australian Business Registry Services webpage on 'who needs to apply for a DIN and when'.

Directors' and officers' duties

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 or officer of a CLG, it is important that you understand your legal obligations.

Directors and officers must comply not only with applicable legislation, but also with the organisation's constitution and any governance policies that apply to their role.

The Corporations Act imposes duties on directors and, in some circumstances, other officers.

These duties include:

- the duty to act in good faith in the best interests of the organisation and for a proper purpose (includes the duty to prevent insolvent trading)
- the duty to act with reasonable care and diligence
- the duty not to misuse their position or information obtained due to their position to gain an advantage for themself or someone else or to cause detriment to the company, and
- the duty to disclose and manage conflicts of interest

See our webpage 'Responsibilities of the board and committee members', where our Duties Guide is published for more detailed information about the legal duties that apply to directors of public companies, such as a CLG.

Charitable CLGs

If the CLG is a registered charity, its Responsible People (which include directors and officers) must comply with the ACNC Governance Standards.

The ACNC's Governance Standard 5 contains duties that closely align with the duties imposed on directors and officers under the Corporations Act.

The duties that make up Governance Standard 5 are:

- the duty to act with reasonable care and diligence
- the duty to act honestly in the best interests of the charity and for its charitable purposes
- the duty not to misuse their position or information they gain as a responsible person

- the duty to disclose actual or perceived conflicts of interest
- the duty to make sure the financial affairs of the charity are managed responsibly
- the duty not to allow the charity to operate while it's insolvent

Other legal obligations

In addition to the duties described above, directors and officers should be aware of other legal obligations that may apply to their organisation.

The Corporations Act contains requirements relating to matters such as:

- annual general meetings
- financial reporting
- regulatory notifications, and
- maintaining current information with ASIC about directors, secretaries and the company's registered office

Although some registered charities are exempt from certain Corporations Act requirements, their constitution may still require compliance with similar governance processes, such as holding an annual general meeting.

The company secretary may have responsibility for organising many compliance activities, but directors should also be aware of the company's legal obligations. Responsibility for governance and oversight ultimately remains with the board.

Many CLGs that are registered charities will report to the ACNC instead of ASIC for some matters. Different ACNC requirements may apply.

Directors and officers should also be aware that they may have obligations, and in some circumstances personal liability, under other laws including:

- work health and safety laws
- employment and workplace laws
- fundraising laws
- child safety and working with children requirements
- aged care legislation
- health services regulation, and
- other industry-specific laws

For more information, see our webpages on financial reporting to government, work health and safety laws, managing people, fundraising and holding events, and managing risk.

Tip

If you are unsure 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.