

Financial reporting obligations for a company limited by guarantee

Legal information for companies limited by guarantee



This fact sheet covers:

- ▶ the responsibility for overseeing a CLG's finances
- ▶ the financial records that a CLG must keep
- ▶ the financial information that a CLG must provide to members
- ▶ the financial information that a CLG must provide to ASIC or the ACNC

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**). Unless a CLG is registered with the Australian Charities and Not-for-profits Commission (**ACNC**), it must report to the Australian Securities and Investments Commission (**ASIC**). If the CLG is registered with the ACNC, 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 have 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 general rule is that the directors (together, the board) of a CLG are ultimately responsible for managing the company's finances. A number of provisions in the Corporations Act make this clear, as well as a lot of case law on this issue.

The Corporations Act provides that:

- the business of a company must 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 meetings – for example, under the Corporations Act the constitution can only be amended with the consent of members)

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

- to exercise reasonable care and skill in exercising their powers and discharging their duties – such as managing the affairs of the company (ie. financial affairs)

RELATED RESOURCES

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

- 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 (ie. to benefit themselves or someone else, or to cause detriment to the company)
- 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.

If your organisation is a CLG and registered with the ACNC, directors must follow the ACNC's Governance Standards. The duties of directors are outlined in Governance Standard 5. These are similar to the duties in the Corporations Act and include duties:

- to act with reasonable care and diligence
- to act honestly and fairly
- to act in the best interests of the charity and for its charitable purposes
- not to misuse their position or information they gain in their role
- to disclose and manage any actual or perceived conflicts of interest
- to ensure that the financial affairs of the charity are managed responsibly, and
- not to allow the charity to operate while it is insolvent

FURTHER READING

The ACNC has published a guide '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. Not-for-profit Law also has resources on the [governance](#) and [reporting](#) pages of our website.



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

No – the law is clear that each director of a company is responsible for overseeing the company's finances, not just the individual with the title of treasurer, financial officer or a similar title.

The treasurer is generally given the task of making sure that financial transactions are properly recorded and reported. This may include preparing and presenting financial reports at board meetings.

Other tasks of the treasurer may include:

- planning finances well by preparing an annual budget and regularly monitoring this budget to make sure the company is staying within it
- making sure that accounting records are up to date and accounts are reconciled at least once a month so that there is a proper record of all payments made and money received
- taking reasonable steps to prevent funds from being stolen or misused, and
- making sure necessary information and accounting records are easily accessible for the preparation of financial statements and reports (and if necessary reviewed or audited)

Although directors often delegate day-to-day financial responsibilities to the treasurer or other employees, each director remains ultimately responsible for overseeing the company's finances and meeting their duties as set out above.

When directors are presented with financial information or advice that has been prepared by others (including by employees, other directors, professionals and experts), they must be satisfied that there are reasonable grounds to believe that the other person is an expert in the area of this information or advice. Directors can only rely on this information or advice in good faith if they have this satisfaction. The director must therefore assess the information or advice, keeping in mind the level of knowledge and expertise of the expert, and consider whether it is accurate based on their understanding of the company's financial status. To do this, all 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 keep written financial records that:

- correctly record and explain its transactions, financial position and performance, and
- allow preparation and audit of true and fair financial statements

'Financial records' are defined in the Corporations Act to include invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers, documents of prime entry and working papers. This term also includes documents that explain how the financial statements were prepared and adjustments made in preparing financial statements. Financial records must be kept for seven years after the transaction dates listed in the records. You may keep these records electronically, but the records must be convertible into hard copy and available within a reasonable time to a person who is entitled to inspect the records.

TIP

The list above might seem like a lot. However, these are all the documents you normally use in managing the financial affairs of a CLG – just make sure you keep them!

For more information, see [ASIC Information Sheet 76: What books and records should my company keep?](#)

The *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**) requires charities to keep financial records which:

- correctly record and explain how the charity spends or receives its money or other assets
- correctly record and explain the charity's financial position and performance, and
- allow for true and fair financial statements to be prepared and audited or reviewed

The CLG must keep these records regardless of the charity's reporting obligations to the ACNC (discussed below). Examples of financial records include general account books (such as journals and ledgers), cash book records, banking records, creditors' records, debtors' records, details of any contracts, details of any grant payments and acquittals, tax invoices and other relevant tax records,


stock records, records of expenses, records of payments relating to employees, assets list or register, and emails, letters and other communications about finance.

What financial information must a CLG provide to members?

If a CLG is registered as a charity with the ACNC, it must meet the financial reporting requirements under the ACNC Act (and will generally be exempt from the requirements under the Corporations Act). Other CLGs must meet the financial reporting obligations under the Corporations Act.

The Corporations Act divides companies into three categories (tiers). A CLG’s reporting obligations under the Corporations Act depend on what category (or tier) it falls into. This is determined by the size of the company's annual (or consolidated) revenue and whether it is endorsed as a Deductible Gift Recipient (DGR) for tax purposes.

The table below sets out the Corporations Act categories and their minimum reporting obligations:

 **FURTHER READING**

For information on DGR status, go to nfplaw.org.au/DGR.

	Definition	Financial reporting requirements
Tier 1 (known as 'small CLGs')	Companies limited by guarantee with annual revenue less than \$250,000 without DGR status	<ul style="list-style-type: none"> • No requirement to do any of the following 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"> ○ prepare an annual financial report ○ prepare a Directors’ report ○ audit the financial report ○ notify members of annual reports
Tier 2	Companies limited by guarantee with annual revenue less than \$250,000 with DGR status or Companies with annual revenue over \$250,000 but less than \$1 million (with or without DGR status)	<ul style="list-style-type: none"> • Required to prepare an annual financial report • Required to prepare a 'streamlined' Directors’ report (less detailed than a full Directors’ report) • May elect to have the financial report reviewed rather than audited subject to certain requirements • Required to provide annual reports to any member who chooses to receive them
Tier 3	Companies limited by guarantee with annual revenue over \$1 million (with or without DGR status)	<ul style="list-style-type: none"> • Required to produce an annual financial report, and have it audited • Required to prepare a 'streamlined' Directors’ report (less detailed than a full Directors’ report) • Required to give annual reports to any member who elects to receive them

More information about these reporting requirements

- A 'financial report' is made up of the CLG's financial statements for the year (prepared in accordance with accounting standards), the 'notes' to the financial statements (these are disclosures required by regulations or accounting standards, and any other information necessary to give a true and fair view of the financial statements), and a directors' declaration about the statements and notes.
- A 'Directors' report' must include a description of the short and long term objectives of the CLG, set out the CLG's strategy for achieving those objectives, state the CLG's principal activities during the year, state how those activities assisted in achieving the CLG's objectives, and state how the CLG measures its performance, including any key performance indicators. The report must also include details of who were directors during the financial year and their qualifications, experience, responsibilities and attendance at board meetings, and members' potential liability if the CLG is wound up.
- An 'audit' is a process carried out by a registered auditor to make sure 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. The person does not have to be a registered company auditor.
- 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 to financial years ended prior to 30 June 2010.

If a CLG is registered as a charity with the ACNC, it is generally exempt from the reporting requirements under the Corporations Act explained above. Instead, a CLG registered with the ACNC is subject to a tiered approach to financial reporting under the ACNC Act.

The table below sets out the ACNC Act categories and their reporting obligations:

	Definition	Financial reporting requirements
Tier 1 (small charity)	Annual revenue of less than \$250,000	<ul style="list-style-type: none"> • No requirement to lodge an annual financial report (although encouraged to do so) • Required to lodge an Annual Information Statement, including summary income statement and balance sheet extract
Tier 2 (medium charity)	Annual revenue of between \$250,000 and \$1 million	<ul style="list-style-type: none"> • Required to lodge an annual reviewed (or audited) financial report • Required to lodge an Annual Information Statement, including comprehensive income statement summary and balance sheet extract
Tier 3 (large charity)	Annual revenue of \$1 million or more	<ul style="list-style-type: none"> • Required to lodge an annual audited financial report • Required to lodge an Annual Information Statement, including comprehensive income statement summary and balance sheet extract

More information about these reporting requirements

- Some registered charities don't have to submit part or all of the Annual Information Statement. This includes charities regulated by the Office of the Registrar of Indigenous Corporations (**ORIC**), 'Basic Religious Charities' and non-government schools. For more information about these exemptions visit the [ACNC website](#).
- The Annual Information Statement can be completed and lodged online through the ACNC website. This website has information and guidance on completing the Statement. Information provided in the Annual Information Statement is generally published on the ACNC Register, which is freely and publicly accessible.
- At a minimum, a financial report must include a statement of profit or loss or other comprehensive income, a statement of financial position, a statement of changes in equity, a statement of cash flows, notes to the financial statements, a signed and dated declaration from a person responsible for running the charity (**Responsible Person**), and a signed and dated reviewer's report (for a medium charity) or a signed and dated auditor's report (for a large charity). For information about who your charity's Responsible Persons are, go to the [ACNC website](#). Financial statements and notes must be prepared in accordance with accounting standards.

The ACNC also requires charities to be accountable to their members (by taking reasonable actions) and to provide their members with adequate opportunities to raise concerns about how the charity is run (See Governance Standard 2). This usually includes organising AGMs and providing information to members on the charity's activities and finances. Whether a charity's actions are reasonable will depend on the charity's specific circumstances (for example, it may be appropriate for a larger charity to have more formal rules and processes, such as providing annual reports to members).

Remember – these are the **minimum** financial reporting requirements for a CLG. Companies that fall into lower categories can choose to report at a higher level than required to (eg. 'tier 1' or 'tier 2' companies can continue to audit their accounts). Even if a CLG is small, it's good governance to prepare (at least) a financial report and present it to members at the AGM.

Various deadlines apply to the provision of the financial report to members. Your company should ensure it understands and meets these deadlines to avoid penalties.

Also, it's 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 must a CLG provide to ASIC or the ACNC?

Under the Corporations Act, companies (that aren't registered charities) must report to ASIC by lodging their financial reports, Directors' reports and auditor's reports (if these are required to be prepared – see above), which have been reviewed or audited (if required) and pay an annual review fee at the end of each financial year. Note that a CLG may qualify for a reduced annual review fee if it is a 'special purpose company' (defined in the *Corporations (Review Fees) Regulations 2003* (Cth)).

A company must also review an annual statement of its details sent to it by ASIC and 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 the 'Resources' listed at the end of this fact sheet.

Different requirements apply to registered charities. Registered charities don't have to report to ASIC and ASIC will not send them an annual statement. A registered charity is not required to pay an annual review fee to ASIC.

A registered charity CLG must provide financial information (depending on its tier as outlined above) when they lodge their Annual Information Statement with the ACNC. For more information about reporting to ACNC, see the 'Resources' listed at the end of this fact sheet and Not-for-profit Law's fact sheet on financial reporting for charities at nfplaw.org.au/charityreporting.

Resources

Related Not-for-profit Law Resources

Not-for-profit Law (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 – Lodgement of 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 Non-profit Studies at the Queensland University of Technology has a resource on non-profit governance which includes a page on approving financial statements.

A Not-for-profit Law resource. Access more resources at 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

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