



Companies limited by guarantee: Guide for Indigenous communities

This information sheet (INFO 234) explains:

- › what a company limited by guarantee is
- › key features of companies limited by guarantee
- › what obligations a company limited by guarantee has
- › the rights of directors and members of a company limited by guarantee
- › how to find out if a company limited by guarantee is also a registered charity.

What is a company limited by guarantee?

A company limited by guarantee is a type of public company that can be registered under the *Corporations Act 2001* (Corporations Act). This company structure is commonly used for not-for-profit and charitable organisations in Australia. Like all other companies, companies limited by guarantee have obligations under the Corporations Act.

Companies limited by guarantee usually have a constitution that sets out specific rules about how the company should be run. The Corporations Act also contains rules about this. Some of these rules (known as 'replaceable rules') will not apply if the constitution says so. For more information, see [Information Sheet 23 Constitution and replaceable rules](#) (INFO 23) at www.asic.gov.au/infosheets.

Key features of companies limited by guarantee

Some key features of companies limited by guarantee include:

- Members (or shareholders) have limited liability if the company is wound up owing money. The amount members have to pay to help with the costs of winding up the company is limited to the amount each has agreed to contribute.
- If the company is wound up and has surplus funds, these will be transferred to charities engaging in similar activities. Members are not entitled to the surplus funds.
- Each member of the company has a single vote.



'Winding up a company' is the process of shutting it down and selling its assets.

Additionally, companies limited by guarantee:

- cannot pay dividends
- cannot issue shares
- must reinvest any profit towards the organisation's purposes.

Obligations of companies limited by guarantee

Companies limited by guarantee must:

- make their books and records available for inspection by directors
- keep written records of members' meetings and resolutions
- ensure that no dividends are paid to members
- hold meetings as required by the Corporations Act
- comply with additional governance standards if the company is a registered charity.

A **resolution** is a formal way that a company records the decisions that are made at a company meeting.

Rights of directors and members

Directors of a company limited by guarantee generally have the same legal duties, responsibilities and liabilities as directors of other entities registered as public companies under the Corporations Act.

Books and records

A director of a company limited by guarantee has a right to access the financial records, and other books and records, of the company.

Members do not have all of the same rights as a director to inspect the company's books and records, but they do have the right to inspect the company's registers of members, options and debentures. A company's directors may give permission to a member to inspect other books and records. Any member looking to access books and records of a company in this way should contact the company directly.

Minutes of meetings

A company must keep a written record (known as 'minutes') of the members' resolutions and meetings.

More information?

For more details on the rights of members of companies limited by guarantee, see [Information Sheet 236 Companies limited by guarantee: Disputes about members' rights – Guide for Indigenous communities](#) (INFO 236) at www.asic.gov.au/infosheets.

For more details on accessing company information, see [Information Sheet 186 Disputes about access to company information](#) (INFO 186) at www.asic.gov.au/infosheets.

For more details on financial reporting obligations of companies limited by guarantee, see [Information Sheet 31 Lodgement of financial reports](#) (INFO 31) at www.asic.gov.au/infosheets.



Members are entitled to inspect, free of charge, the minute books of a company. Generally, the company will keep these at its registered office or principal place of business. If a member requests a copy of the minutes, the company may charge a fee for this service under Schedule 4 to the Corporations Regulations 2001.

Meetings and voting rights

Companies limited by guarantee will usually hold an annual general meeting. The process the company must follow when calling meetings, conducting meetings and voting at meetings is set out in the Corporations Act. A company's constitution may contain rules about meetings dealing with matters not covered by that Act.

For further information on the conduct of meetings and voting rights, see [Information Sheet 47 Company shareholders](#) (INFO 47) at www.asic.gov.au/infosheets.

Case study: Aunty Sue exercises her member rights

Aunty Sue is a member of her local Elders group, which is responsible for running community events. The Elders group is registered with ASIC as a company limited by guarantee as 'EldersGroupCorp Ltd' (EldersGroupCorp).

Aunty Sue and a number of other Elders are concerned that EldersGroupCorp has not followed a members' resolution to allocate \$20,000 to the development of an Elders meeting room. She wants to read the meeting minutes where the resolution was made, but EldersGroupCorp has refused to provide them to her.

Aunty Sue contacts her local community legal centre, which organises a meeting between Aunty Sue and the directors of EldersGroupCorp. The community legal centre is able to help the directors understand their obligations and Aunty Sue is given access to the minutes.

Companies limited by guarantee that are registered charities

The Australian Charities and Not-for-profits Commission (ACNC) is the independent national regulator of charities. Charities registered with the ACNC must meet the requirements of the *Australian Charities and Not-for-profits Commission Act 2012* and comply with the governance standards in the Australian Charities and Not-for-profits Commission Regulation 2013.

If a company limited by guarantee is a registered charity, it will affect your rights and obligations as a member. A number of provisions of the Corporations Act, which otherwise apply to companies limited by guarantee, do not apply to registered charities.

Visit the ACNC website (www.acnc.gov.au) to:

- search the ACNC register to find out whether your company is a registered charity
- learn more about your rights and obligations as a member of a registered charity
- raise concerns about registered charities with the ACNC.



Where can I get more information?

- For more information on ASIC's role, see www.asic.gov.au/our-role
- For more information on the laws we manage, see www.asic.gov.au/legislation
- For more information on the ACNC, see www.acnc.gov.au
- [INFO 23](#) *Constitution and replaceable rules* at www.asic.gov.au/infosheets
- [INFO 31](#) *Lodgement of financial reports* at www.asic.gov.au/infosheets
- [INFO 47](#) *Company shareholders* at www.asic.gov.au/infosheets
- [INFO 186](#) *Disputes about access to company information* at www.asic.gov.au/infosheets
- [INFO 235](#) *Companies limited by guarantee: Reporting obligations – Guide for Indigenous communities* at www.asic.gov.au/infosheets
- [INFO 236](#) *Companies limited by guarantee: Disputes about members' rights – Guide for Indigenous communities* at www.asic.gov.au/infosheets

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances may be taken into account when determining how the law applies to you.

This is **Information Sheet 234 (INFO 234)**, issued in **October 2018**. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

