



Constitutions & Church Governance

Please note that this guide has been developed for general use by Baptist Churches in NSW and ACT and may not necessarily be suitable for you and your church's situation. It is recommended that you consider whether the information is appropriate to your needs, and where appropriate, seek professional advice.

Preamble

Church as a Charity

Generally, a church is a not for profit organisation with the charitable purpose of advancing religion which benefits the public with spiritual guidance. For most churches this will mean being registered as a charity with the Australian Charities and Not for Profits Commission (ACNC) under the sub type of Advancing Religion.

Registration with the ACNC and meeting ongoing registration requirements will entitle your church to Commonwealth tax concessions.

Tax concessions that apply to churches include:

- GST Concessions e.g. non-commercial activities, fundraising exemptions
- FBT rebates
- Income tax exemptions

To register your church with the ACNC as a charity, an ABN, constitution and details on responsible persons are required. For further information on how to register a charity, refer to the *Step by Step – ACNC Registration Guide*.

Legal structures and ongoing registration requirements

There are three main legal structures for churches in NSW and ACT which have been summarised in the table below:

Entity type	Incorporated under this Act	Regulated by	Annual reporting obligations
Unincorporated entity (majority of churches in NSW and ACT are an unincorporated entity)	Not incorporated under any Act	• ACNC ¹	Annual information statement to the ACNC only if the church is a Basic Religious Charity (BRC) and also financial statements if it is not a BRC. Most churches in NSW are a BRC. ²
Incorporated Association	Associations Incorporation Act 2009 No 7 (NSW)	• ACNC ¹ • NSW Fair Trading	As above and Form A12-T1 or A12-T2 plus financial statements for reporting to the NSW Fair Trading

¹ All registered charities are regulated by the Australian Charities and Not for Profits Commission (ACNC)

² Refer to the following for further details on BRCs

http://www.acnc.gov.au/ACNC/Manage/ManageType/Basic_rel_ent/ACNC/Edu/Basic_rel_char.aspx

			depending on whether the church is a Type 1 or Type 2 entity. ³
Company Limited by Guarantee	Corporations Act 2001	<ul style="list-style-type: none"> • ACNC¹ • Australian Securities and Investments Commission (ASIC) 	Annual information statement to the ACNC plus financial statements depending on its size. ⁴

Governance in churches

Governance refers to the processes, activities and relationships of your church that make sure your church is effectively and properly run.

Good governance is essential as it ensures that the day-to-day work of a charity aligns with and contributes to achieving your church's purpose and staying true to the vision and mission.⁵

Governing group

The governing group of your church is a group of individuals who together are responsible for the oversight of operations and making sure it is working towards achieving its purpose in a way that also meets its ethical, legal and financial obligations.⁴

In your church, the governing group may be known as the diaconate, Elders, board, council, leadership, management committee, oversight team etc. Duties of the Governance Group are listed below.

Duties of the governance group

Members of the governance group must:

- act with care and diligence – members of the governance group should guide and monitor the management of the church
- act in good faith – members of the governance group have a duty to act in good faith and in the best interests of your church i.e. to act in accordance with the constitution's objectives and avoid conflicts of interest e.g. do not have a personal interest in the outcomes of decision making and inform themselves about the subject matter of a decision
- fulfil financial duties - members of the governance group must make sure the church manages its finances, including maintaining proper books and records. This means

³Refer to the following for further details on reporting obligations
http://www.fairtrading.nsw.gov.au/ftw/Cooperatives_and_associations/Running_an_association/Financial_reporting_requirements_page

⁴ Refer to the following for further details on reporting obligations for companies limited by guarantee
<http://acnc.gov.au/ACNC/Manage/Reporting/ACNC/Report/ReportInformation.aspx?hkey=1c68676b-8be6-4fe8-965f-0ba204bbc793>

⁵ Extract from the Governance for Good document available at
https://www.acnc.gov.au/acnc/manage/tools/acnc/edu/tools/GFG/GFG_Intro.aspx

that all members of the governance group must have a reasonable understanding of the financial position of the organisation

- not misuse the position or information obtained
- disclose any perceived or actual conflicts of interest - a conflict should be disclosed to the other members of the governance group whenever an independent observer could doubt that a responsible person is acting in the best interests of the church
- ensure health and safety - members of the governance group are responsible for the safety of employees, contractors and volunteers and should keep up to date with new laws.
- ensure suitability of members of the governance group – churches must take reasonable steps to make sure that governance group members are not disqualified from managing a corporation under the *Corporations Act 2001 (Cth)* or disqualified from being a responsible person of a registered charity by the ACNC Commissioner, and remove anyone who does not meet these requirements.
- not allow the church to trade whilst insolvent – if the church cannot pay its debts when they become due, the governance group should take all reasonable steps to ensure more debt is not taken on. The governance group should regularly review the financial position and ensure there is enough money to pay for its activities. Criminal offences for insolvent trading will continue to apply for governance group members of churches who fall under the *Corporations Act 2011*.

Example – fulfilling financial duties

In the last diaconate meeting of ABC Baptist Church, the newest member of diaconate raises that he is having some difficulty understanding the financial statements presented as he is not strong in financial literacy. Two other members of the diaconate then speak up and also raise that they are having some difficulty. The diaconate realise the importance that every member of their diaconate should understand the financial information presented and arrange for a training session.

Example – ensuring suitability of members of the governance group

ABC Baptist Church identifies Jane Doe, for their diaconate who has been a member of the church for 10 years. As a part of their role, the Secretary of the church checks the ASIC banned and disqualified list⁸ and also the ACNC disqualified persons register⁹ and notes that Jane is not on either list. Also, the Secretary checks the constitution and notes that members of the diaconate must be a member of the church for at least 2 years. The Secretary documents these and communicates to the diaconate, Jane's eligibility as a nominee for their diaconate.

Example – disclosing conflicts of interest

ABC Baptist Church has 7 members in their diaconate. One of the members are related to the lead pastor. In tonight's diaconate meeting, one of the agenda items are to discuss the performance of the lead pastor. The member related to the lead

⁸ ASIC Banned and Disqualified list available at:

<http://asic.gov.au/online-services/search-asics-registers/banned-and-disqualified/>

⁹ ACNC Disqualified persons list

https://www.acnc.gov.au/ACNC/FindCharity/About_Register/Disqual_reg/ACNC/Reg/Disqual_personReg.aspx?hkey=b6e384ce-b4ab-4652-9be0-e3814e187c76

pastor should disclose their conflict of interest to the diaconate to ensure that the diaconate are able to address this conflict of interest.

Role of the Governance group

The Governance group's role includes:

- Setting the vision and mission – setting the churches purpose
- Strategy – setting the church's direction and activities and how it is going to achieve its objectives
- Risk management – overseeing risk management policies and procedures
- Accountability – making sure the church manages its finances and operates transparently. This means that all members of the governance group must have a reasonable understanding of the financial position of the organisation.
- Resourcing – securing funding and other resources to support the strategy and work of the church
- Monitoring – making sure your church is run as required under its Constitution and the law

Constitution

- A constitution is a document that sets out the agreement between members about the purpose of your church, its not for profit nature, how the governance group will be appointed, rules about meetings including purpose of meetings, voting and other items as required. Constitutions can only be changed by members. The Association has draft constitutions available to assist churches in forming or updating their governing documents.¹⁰

A constitution is a document that sets out (among other details) a church's:

- Governance
- Purposes
- Responsibility of members,
- Not-for-profit nature,
- How the governance group will be appointed
- Rules about meetings (including the purpose of meetings)
- Dissolution

A summary of the requirements for a constitution can be found in Appendix A of this document.

All churches that want to affiliate (and remain affiliated) with the Baptist Association must have a constitution. This is also an ACNC requirement. When a church amends

¹⁰ A link to Constitution resources will go here

their constitution, they are required to provide the amended version to both the Baptist Association and the ACNC (see requirements for further information).

Requirements

It is a requirement of both the ACNC and the Association that churches must notify and provide copies of governing documents when there are changes to:

- The legal name of the entity (ie church).
- The list of Responsible Persons. (people who are members of your church and elected to it's governing group including Pastors) – you need to let the Association and ACNC know if someone takes on or finishes the role of a Responsible Person.
- Constitution (Governing Documents).

It is the responsibility of the leadership and/or governing group to keep the ACNC & Association informed of the above changes. The churches information can be updated via the portal.

https://charity.acnc.gov.au/ACNCPortal/Charity/Sign_In.aspx?WebsiteKey=15ae55d1-4f4a-4d80-9549-6ea9d089c234&returnurl=%2fACNCPortal%2fCharity%2fResponsible_person.aspx

Insurances

There are several types of insurance that churches should have or consider:

- Directors and officers insurance
- Public liability insurance
- Workers Compensation insurance
- Professional indemnity insurance
- Management indemnity insurance
- Accident insurance
- Motor vehicle insurance
- Property insurance
- Cyber security insurance

Contact icare for assistance with Workers Compensation insurance on 13 44 22. Please note that Workers Compensation Insurance is compulsory for all employers unless you pay \$7,500 or less in annual wages and you don't employ an apprentice or trainee.

Contact Tim Williams at twilliams@nswactbaptists.org.au for further assistance with all other insurances.

Members of your governance group

What are governance group members?

Members of your church's governance group are generally appointed or elected to be a member in line with the provisions in the constitution.

What are officers?

Some governance group members take on more responsibility. Some common officer roles include:

- Chair/ president – responsible for running meetings and providing leadership to the governance group
- Secretary – responsible for maintaining good records, administration and ensuring compliance with the Constitution
- Treasurer - responsible for reviewing the church's financial information in more detail

Note: It will be assumed that the church secretary will act as the Public Officer unless another person is intentionally appointed for this role.

Who can be a member of the governance group?

Eligibility for appointment to the governance group should be outlined in the church's constitution. If not, anyone is eligible for appointment unless they have been disqualified from managing a corporation under the *Corporations Act 2001 (Cth)* or disqualified from being a responsible person of a registered charity by the ACNC Commissioner.

What is a committee of the governance group?

Committees of the governance group can be set up because it can be hard to organise all board members to meet (at least with enough time to consider matters in detail), or perhaps because it wants to draw on the expertise of people not on the board for certain matters. Sometimes these are called sub-committees, standing committees or ad hoc committees. These types of committees can be either ongoing or project-specific.

Committees may make recommendations to the board, but they generally do not make decisions on behalf of the governance group.

Rules for the appointment of committees by the governance group maybe outlined in the church's constitution and should be followed.

Can members of the governance group be personally liable?

Members of the governance group may be personally liable for criminal or serious misconduct, or legal action taken against an unincorporated charity (which most Baptist Churches are).

However, in most cases they will not be personally liable if they are complying with their legal duties.¹¹

Example

The diaconate of ABC Baptist Church appoints a finance committee that is made up of 2 members of the diaconate and also includes an independent person with accounting experience to ensure the church's financial position is looked at more closely and regularly than they may be able to. In this way, the committee helps provide better information to help it make decisions, although the governance group retains overall responsibility.

Example

The diaconate of ABC Baptist Church appoints or recruits a committee to oversee a large building project for this financial year only, as the building project is expected to be completed before then. The committee **is not** the governing group. The elected governance group still retains overall responsibility.

¹¹ Extract from the Governance for Good document available at https://www.acnc.gov.au/acnc/manage/tools/acnc/edu/tools/GFG/GFG_Intro.aspx

Appendix A

Constitution Check List

- Defines the name of the church
- Adopts statement of belief affirmed at the 2003 Assembly¹²
- Governance structure that aligns with and demonstrates Congregational Governance and is Baptist in nature ensuring that decision-making process resides with the membership.
- Membership
 - defines the conditions for eligibility for being a member.
 - ensure potential members are Christian and hold to the statements of belief
 - Includes the maintenance of a membership roll.
 - Permits transfer of membership
 - Acceptably process for dispute resolution and removal of membership
- Defines the process to appoint and remove a Pastor or Pastors
- Defines the role of the church's Public Officer (ie Church Secretary) and their method of appointment.
- Defines the role of the church's Treasurer and their method of appointment
- Defines the role of the church's Governing Group (ie church diaconate) and their method of appointment
- Defines the name in which church property will be held
- Dissolution clauses
- Defines the process to amend the Constitution
- Is consistent with existing legislation (eg no age discrimination, inclusive language, must be in English etc).

¹² <https://nswactbaptists.org.au/beliefs/>