



North Coast
Allied Health Association

Information for North Coast Allied Health Association NSW

Directors and Officeholders

Table of contents

Executive summary	1
Establishing North Coast Allied Health Association NSW Ltd	1
1 Introduction	1
2 Background	2
3 Scope of North Coast Allied Health Association NSW Ltd	3
4 Board composition and membership	3
5 Current status	4
6 Next steps	4
Appointing the directors	5
7 Appointment as a director	5
8 General statement of directors' duties – statutory and common law duties	5
9 Important statutory provisions	7
10 Management systems	9
11 Audit committee	9
12 Insurance	10
13 Personal records	10
14 Asset protection	10
15 Board meetings	10
16 General meetings	11
17 Members	12
18 Execution of documents	12
19 Minutes of meeting	12
20 ASIC lodgements	12
21 The role of the Company secretary	13
22 The role of the public officer	14

North Coast Allied Health Association NSW – Information for directors and officeholders

North Coast Allied Health Association NSW Ltd

Executive summary

This document is designed to:

- (a) provide background information on the North Coast Allied Health Association NSW Ltd, including the key provisions of the constitution;
- (b) inform any prospective directors and officeholders on their potential obligations;
- (c) highlight the need to discourage improper and casual practices; and
- (d) encourage directors and officers to engage in what could be described as personal due diligence procedures.

This information document also sets key information for prospective directors that are relevant to a non-profit company limited by guarantee, including:

- (a) the constitution and general governance;
- (b) the law relating to directors' duties; and
- (c) some other matters of general relevance to company directors, company secretaries, and public officers.

Legal advice has been sought from lawyers, McCullough Robertson in the making of this document. If you wish to consent to become a director or officeholder and require further information, please contact Shay Ataii by email enquiries@ncaha.org.au or phone 6618 5429.

Establishing North Coast Allied Health Association NSW Ltd

1 Introduction

- 1.1 An association for allied health practitioners, known as the North Coast Allied Health Association (NCAHA) was formed with the support of North Coast Medicare Local (NCNSWML) and commenced operation 26 September 2014.
- 1.2 Until the formation of the NCAHA, the sector had no active, single voice or peak body to represent the views of allied health practitioners across the North Coast region. NCNSWML saw this as an important step in addressing a gap in the system and made a commitment to supporting the formation of NCAHA.
- 1.3 Creating this peak body for the various allied health craft groups aims to:

- (a) advocate for, and provide representation on behalf of, the allied health sector on local, regional and state matters of interest;
 - (b) provide a single point of contact with allied health clinicians, and give a single regional voice to the sector;
 - (c) open the door to the allied health sector to be represented in the NCNSWML governance structure;
 - (d) provide support for its members, including education and training, knowledge sharing/professional support;
 - (e) facilitate multidisciplinary networking;
 - (f) assist to build relationships with national craft-specific allied health peak bodies; and
 - (g) assist to foster and advance a health system where service delivery is integrated, complimentary and mutually supportive which is also one of the goals of NCNSWML.
- 1.4 NCNSWML has provided financial support and human resources to assist with the development of NCAHA.

2 Background

- 2.1 Allied health professionals were consulted in 2013 and introduced to the concept of creating a North Coast Allied Health Association in the form of a company limited by guarantee (Company).
- 2.2 The need for the Company in the context of the discussions was positively received and the establishment of the Company was progressed.
- 2.3 The North Coast Allied Health Association became a registered company as well as being registered with the Australian Charities and Not-for-Profit Commission on 26 September 2014.
- 2.4 Following a selection process, three directors were appointed.
- 2.5 A substantial number of actions have been achieved since establishment and include
- (a) developing and publishing the 2014-2017 NCAHA Strategic Plan and the 2014-2015 Operational Plan
 - (b) creating the NCAHA website
 - (c) providing networking events across the region to inform allied health professionals of NCAHA and to further understand their needs
 - (d) publishing a monthly newsletter (NCAHA News)
 - (e) provision of free on-line professional development learning opportunities.

3 Scope of North Coast Allied Health Association NSW Ltd

- 3.1 The objects of the Company are set out in the constitution, which are to improve patient care and health status in the North Coast Allied Health Association NSW Region by:
- (a) making health care delivery easier through assisting in reforming the system to work 'as one';
 - (b) contributing to health planning in the North Coast Allied Health Association NSW Region;
 - (c) leading the advancement of allied health practice for the benefit of North Coast NSW practitioners and communities;
 - (d) enhancing educational, professional development and networking opportunities for North Coast NSW allied health Practitioners;
 - (e) facilitating improved liaison between Allied Health Practitioners and other areas of the health care system;
 - (f) cooperating, collaborating and communicating with other regional organisations and associations with an interest or impact in allied health and/or primary health care; and
 - (g) undertaking any other objects which are, in the opinion of the directors, consistent with the above.
- 3.2 The North Coast Allied Health Association NSW Region comprises the local government areas of Ballina, Bellingen, Byron, Clarence Valley, Coffs Harbour, Kempsey, Kyogle, Lismore, Nambucca, Port Macquarie-Hastings, Richmond Valley, and Tweed. The geographic footprint of the Company will be identical to the footprint of NCNSWML.
- 3.3 The constitution defines an allied health practitioner as a health practitioner that is qualified or undergoing qualification in the following allied health professions. The directors will continue to assess applicable professions over time.
- | | |
|---|--|
| (a) Aboriginal and Torres Strait Islander Health Practitioner | (l) Orthoptist |
| (b) Audiologist | (m) Osteopath |
| (c) Chiropractor | (n) Pharmacist |
| (d) Dental Therapist/Hygienist | (o) Physiotherapist |
| (e) Diabetes Educator | (p) Podiatrist |
| (f) Diagnostic Radiographer | (q) Psychologist |
| (g) Dietitian | (r) Prosthetist/Orthotist |
| (h) Exercise Physiologist | (s) Radiation Therapist |
| (i) Mental Health Worker | (t) Social Worker |
| (j) Occupational Therapist | (u) Sonographer |
| (k) Optometrist | (v) Speech Pathologist |
| | (w) Such other profession as the directors may determine from time to time |

4 Board composition and membership

Board

- 4.1 The initial directors of the Company, appointed on the day the Company is registered will be the individuals named in the application to register the Company.

- 4.2 The number of directors on the Board must not be less than three and not more than seven.
- 4.3 At the first annual general meeting of the Company, no director will be required to retire from office. At the second annual general meeting of the Company, all but two of the initial directors of the Company must retire from office. Those to retire must be determined by lot unless the initial directors otherwise agree among themselves.
- 4.4 The position of NCAHA director is voluntary.

Ordinary Members

- 4.5 An Ordinary Member of the Company is an allied health practitioner, who:
- (a) resides in the North Coast Allied Health Association NSW Region; and
 - (b) is a currently qualified allied health practitioner; and
 - (c) is practicing within their profession at the time of application and after admission to membership of the Company.

Associate Members

- 4.6 An Associate Member of the Company is:
- (a) a resident in the North Coast Allied Health Association NSW Region who:
 - (i) holds relevant qualifications but is not practicing as an allied health practitioner at the time of application for Membership of the Company; or
 - (ii) is in the process of gaining qualifications to practice as an allied health practitioner at the time of application for Membership of the Company; or
 - (b) any person, body corporate or other association whom the directors in their discretion consider suitable for associate membership of the Company.
- 4.7 A small application and annual subscription fee may be payable by those who wish to join the Company.

5 Current status

- 5.1 The NCAHA Board currently consisting of three directors is seeking applications for additional directors with diverse professional backgrounds.
- 5.2 Recruitment of new members will continue and a second stage of networking and professional development is planned for allied health professionals and General Practitioners.
- 5.3 The 2015-2016 Operational Plan is being developed.

6 Next steps

- 6.1 The next steps for sustained growth of NCAHA are to develop a strong level of corporate governance, the appointment of additional directors to the Board and the continual recruitment of members to provide quality service including networking opportunities.

Appointing the directors

7 Appointment as a director

- 7.1 The following information details the role of a director within a company limited by guarantee.
- 7.2 This role of a director carries with it a range of significant responsibilities and this document provides a brief overview of these.

8 General statement of directors' duties – statutory and common law duties

- 8.1 As a director, the Company has a duty to act in good faith, for a proper purpose and in the best interests of the Company as a whole. The directors are required to act in the interests of all members and to avoid any potential conflict of interest. Breaches of these common law duties may expose the Company to potential liability in damages. The *Corporations Act 2001* (Cth) (Corporations Act) codifies these duties and imposes substantial fines, or disqualification from management, as a consequence of breach. The key duties are:
- (a) a duty to act in good faith in the best interests of the corporation and for a proper purpose (imposed on directors and officers);
 - (b) a duty to exercise a reasonable degree of care and diligence (imposed on directors and officers);
 - (c) a duty not to make improper use of information (imposed on directors, officers and employees); and
 - (d) a duty to not make improper use of position (imposed on directors, officers and employees).
- 8.2 The Corporations Act also obliges a director, in the exercise of his or her powers, and in the discharge of his or her duties, to exercise the degree of care and diligence that a reasonable person would exercise if:
- (a) they were a director of a corporation in the corporation's circumstances; and
 - (b) they occupied the office held by and had the same responsibilities within the corporation as the director or officer.
- 8.3 What constitutes the proper performance of duties by a director will be dependent upon:
- (a) the corporation's circumstances as a relatively small public entity; and
 - (b) the office occupied i.e. non-executive director or CEO.
- 8.4 Whether a breach of duty has actually occurred is not to be judged solely by an objective standard, but by reference to the particular circumstances of the officer concerned. Breaches of this duty do not give rise to criminal penalties.

Business judgment rule

- 8.5 An officer who comes within the 'business judgment rule' is taken to have met the statutory duty of care and diligence and their equivalent duties in common law and equity.
- 8.6 To come within the business judgment rule, an officer must:
- (a) exercise their business judgment in good faith for a proper purpose;
 - (b) not have a material personal interest in the subject matter of the decision;
 - (c) inform themselves about the subject matter of the decision to the extent they **reasonably** believe to be appropriate; and
 - (d) **rationaly** believe that the decision is in the best interests of the corporation.
- 8.7 The term 'rationally' indicates that the decision must be one that can be plausibly or reasonably explained in some way. The Corporations Act requires that the director's belief as to what is in the best interest of the corporation must be one that a reasonable person in the director's position would hold. Therefore, the term 'rationally' seems to have a similar meaning as 'reasonably'.
- 8.8 These qualifications give comfort to directors and provide a safe harbour for those directors (and other officers) who satisfy the above criteria. However, directors must obtain and maintain at least a general understanding of the business of the Company and how it is affected by external factors e.g. changing economic conditions. To properly perform their duties, directors must be aware of the Company's current circumstances and future prospects and must bring an informed and independent judgment to bear on the various matters that come to the board for decision.
- 8.9 The safe harbour offered by the business judgment rule only applies to potential breaches of the duty to act with due care and diligence. It does not operate to relieve directors of potential breaches of other common law or statutory duties.

Reliance on advice

- 8.10 Directors may rely on advice given to them in certain circumstances and not be in breach of their duties. The advice must be given or prepared by:
- (a) an employee whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (b) a professional adviser or expert in relation to matters that the director believes on reasonable grounds to be within the person's professional or expert competence;
 - (c) another director or officer in relation to matters within the director's or officer's authority; or
 - (d) a committee of directors (on which the director did not serve) in relation to matters within the committee's authority.
- 8.11 Unless the contrary is proved, a director's reliance on information or advice is taken to be reasonable if:
- (a) the director's reliance was made in good faith and after making an independent assessment of the information and advice, having regard to the director's knowledge of the Company and the complexity of the structure and operations of the Company; and

- (b) the reasonableness of the reliance arose in proceedings brought to determine whether the director performed his or her duties under the Corporations Act or the common law.

Delegation of powers

- 8.12 Directors may delegate their powers to a committee, another director, an employee or any other person, but directors remain liable for any powers delegated unless it can be shown that:
 - (a) the directors believed on reasonable grounds at all times that the delegate would exercise the power in conformity with the duties imposed on directors by the Corporations Act and the Company constitution; and
 - (b) the directors believed on reasonable grounds and in good faith after making proper inquiry if the circumstances indicated the need for inquiry, that the delegate was reliable and competent in relation to the power delegated.
- 8.13 Each director will need to consider:
 - (a) whether the person, to whom a power is delegated by the board or from whom advice is sought, is competent and qualified to perform the task delegated or give the advice sought, and do the directors honestly believe this to be the case; and
 - (b) whether there are any reasons to put the directors on notice that a delegation is inappropriate and impact on the question of whether the delegation or reliance is reasonable.

Sanctions

- 8.14 Contravention of any of the above duties constitutes a breach of the civil penalty provisions of the Corporations Act. Directors can be liable for substantial fines or disqualification from management.
- 8.15 Breaches of the duty to act in good faith and not to misuse their position or information also attract criminal penalties if the director or officer acted intentionally or recklessly.

Objects of the Company

- 8.16 As a director of a company limited by guarantee, each director should ensure that the Company always operates within its objects as set out in the constitution. If the Company seeks to undertake activities that are outside of these purposes, and not merely incidental to its purposes, then consideration should be given to amending the constitution to reflect this.

9 Important statutory provisions

- 9.1 The key provisions of the Corporations Act relevant to companies limited by guarantee which involve personal consequences for directors include:

Section	Consequence
197	Directors of trustee companies are liable for debts incurred when the trust has no assets or insufficient assets to indemnify the trustee.
191	Disclosure of material personal interests of directors under the Corporations Act.
Part 2E.1	Director must not allow a company to provide a financial benefit to a 'related party' of the Company without requisite approval.

Section	Consequence
208 to 227	
344, 1317E(1)(d)	Directors contravene the civil penalty provisions if they fail to maintain proper financial records.
588G	Directors are personally responsible for a company debt when, at the time the debt was incurred, there were reasonable grounds to suspect the Company was insolvent and the director was aware that there were grounds for suspicion or it was reasonable that a director in a like position would have been so aware.
1041E	A person must not knowingly or recklessly disseminate false or misleading information which is likely to have the effect of inducing persons to deal in financial products.
1041F	A person must not induce another person to deal in financial products by publishing a false or misleading statement, promise or forecast, or by dishonestly concealing facts.
1041G, 1041H	A person must not engage in dishonest conduct or misleading or deceptive conduct in relation to financial products or financial services.
1043A	An insider who directly or through a third person subscribes, purchases or sells certain financial products of a company while in possession of price sensitive information about the Company can be personally liable for substantial fines and possibly imprisonment.
308(2)	A person must not authorise the lodging of a false or misleading company document or statement with the Australian Securities and Investments Commission (ASIC).

9.2 Other Commonwealth statutes which impose personal consequences and therefore liability include:

- (a) *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth);
- (b) *Trade Practices Act 1974* (Cth);
- (c) *Anti-Discrimination Act 1991* (Qld);
- (d) *Racial Discrimination Act 1975* (Cth);
- (e) *Sex Discrimination Act 1984* (Cth);
- (f) *Privacy Act 1988* (Cth);
- (g) *Crimes Act 1914* (Cth);
- (h) *Criminal Code Act 1995* (Cth).

9.3 State legislation dealing with matters such as occupational health and safety, environmental protection and workers' compensation also involve personal consequences for directors.

9.4 The Company and the directors may be liable under some legislation e.g. *Trade Practices Act 1974* (Cth) if they fail to establish a 'culture of compliance' and ensure that employees are educated about important legislative provisions which may impact on the performance of their functions.

- 9.5 The *Criminal Code Act 1995* (Cth) provides that a prevailing 'corporate culture' can be used as evidence of a body corporate's intention, knowledge or recklessness in regard to criminal responsibility for any particular act.
- 9.6 Some of these statutes provide for a 'due diligence' defence, exonerating a director who uses all due diligence to prevent a contravention of the statute. Generally speaking, this requires the directors to show that systems were in place to prevent a breach of the relevant legislation.

10 Management systems

- 10.1 The Company needs to ensure that systems are in place to maintain accurate financial records of the Company on a regular basis. Failure to do so contravenes the Corporations Act (invoking the civil penalty provisions). The Company's accountants and auditors will be able to help the Company in this regard. Ensure that an annual financial report is prepared.
- 10.2 Financial statements and notes contained in the report must give a true and fair view of the financial position of the Company or the group, if relevant.
- 10.3 The financial statements must be audited each year and a report by the directors prepared for inclusion in the annual financial report.
- 10.4 Systems to obtain key financial data are also essential, including systems to record:
- (a) cash flow;
 - (b) quality and aging of receivables;
 - (c) cash in hand;
 - (d) revenues;
 - (e) creditors; and
 - (f) repayment dates for bank facilities (if any).

11 Audit committee

- 11.1 All public companies should establish an audit committee to meet at least three times a year. The audit committee reviews the financial reporting requirements, the audit plan (including the scope of the audit), any limitations placed on the audit by management, the effectiveness of auditing and disclosure, the results, the adequacy of internal account controls, the proposed accounting treatment of unusual items and the evaluation of the performance of the financial affairs of the Company.
- 11.2 The board, through, or in addition to, the audit committee, should communicate regularly with the auditors and has a positive obligation to assist the auditor.
- 11.3 Other committees which should be considered include a remuneration committee and a risk management committee.

12 Insurance

The Company must take out appropriate insurance cover each year including but not limited to:

- (a) directors' and officers' insurance;
- (b) property and equipment insurance;
- (c) public liability insurance;
- (d) personal negligence or accidents;
- (e) workplace health and safety; and
- (f) personal workers' compensation if a director is also an employee of the Company.

13 Personal records

13.1 Each director shall ensure that the Company retains in the Company's personal records:

- (a) all information that may be relevant to an action against the Company if a decision goes wrong;
- (b) diary notes of important decisions and discussions;
- (c) review notes and any private research carried out; and
- (d) minutes of board meetings.

13.2 Remember that directors may have to show in several years time that their actions were reasonable. Each director may need to prove the foundation for a decision.

13.3 Section 198F permits present and past directors (for up to seven years) to access company records including financial records for the purposes of certain legal proceedings.

14 Asset protection

Personal exposure in acting as a director can be substantial. Court actions are often pursued under section 588G and part 2E.1 Corporations Act (both referred to in the table set out in paragraph 3.1) against persons who would generally be thought to be both cautious and competent. Whilst directors of these sorts of companies would be expected to have insurance protection, insurers are not noted for their generosity. Each director may wish to consider how the Company holds the Company's personal assets.

15 Board meetings

15.1 A company limited by guarantee is a public company and must have a statutory minimum of three directors. The Company's constitution requires a minimum of three and a maximum of seven.

- 15.2 Generally each director must first seek and obtain the consent of the board to the appointment and such consent is not to be unreasonably delayed or withheld. The appointment must be in writing and signed by the director and a copy provided to the Company.
- 15.3 The constitution of the Company provides that, at each AGM, all but two directors must retire but they are eligible for re-appointment. This does not generally apply to the managing director (if applicable). No other party may nominate for a position on the board unless they give notice to the Company, in the time frame set out in the constitution, before the meeting, unless they are recommended by the current board.
- 15.4 Directors' meetings are held upon giving each director reasonable notice. At a meeting of directors, the quorum requirement will be met where more than half of the total number of directors are present.
- 15.5 Directors' meetings may be held using any technology consented to by a majority of the directors.
- 15.6 Issues at meetings are decided by simple majority.
- 15.7 If it is not possible to hold a meeting, a circular resolution may be used. This is simply a resolution in writing of which reasonable notice has been given to all directors and which is signed by all of the directors. This takes the place of a meeting.
- 15.8 Each director should ensure that the board meets regularly, is properly informed and has time for consideration before major decisions are taken.
- 15.9 If decisions have to be made on the run (as commercial realities will sometimes dictate), ensure that the surrounding circumstances are properly recorded. Telephone meetings (and circular resolutions) have their place, but must be treated cautiously.

16 General meetings

- 16.1 The quorum for the general meeting is set out in the constitution which, is 5% of the Ordinary Members. The chairman does not have a casting vote on any resolution either on a poll or on a show of hands.
- 16.2 General meetings are called by the board of directors.
- 16.3 Members must be given at least 21 clear days notice in relation to meetings where resolutions are to be voted upon.
- 16.4 Most resolutions will be ordinary resolutions including, for instance, a resolution to appoint a director.
- 16.5 A special resolution is required, for example, to change the Company name, alter the constitution or vary members' rights.
- 16.6 A special resolution requires at least 75% support, and an ordinary resolution requires more than 50% support, of members present and voting either in person, by proxy, by company representative or attorney.
- 16.7 An annual general meeting (AGM) must be held within five months of the end of the Company's financial year (i.e. usually by 30 November each year). The AGM deals with the Company's annual financial report and other general business such as the election of directors and

appointment of an auditor. The first AGM must be held within 18 months of registration of the Company.

- 16.8 The Company will receive an annual statement from ASIC within two weeks of the anniversary of its incorporation date. ASIC must be notified of any incorrect company particulars contained in the statement within 28 days and pay the annual review fee within two months. This annual statement is also referred to as an extract of particulars.

17 Members

A company limited by guarantee may operate with only one member. If at any time a company has only one member, then decisions of that sole member are made by written resolution rather than by resolution at a general meeting.

18 Execution of documents

- 18.1 Regardless of whether the Company has adopted a common seal, it may execute documents by having the following persons sign a document:
- (a) a director and secretary; or
 - (b) two directors.
- 18.2 The Company may also execute a document by having any of the following persons sign under seal:
- (a) a director and secretary;
 - (b) two directors; or
 - (c) a director and another person appointed by the board for that purpose.
- 18.3 However, each director should carefully check the provisions of the constitution for the Company.

19 Minutes of meeting

The Company must ensure that minutes of both directors' and members' meetings are kept. All minutes should be signed within a reasonable time after the relevant meeting and entered in the Company's minute books within one month of the relevant meeting.

20 ASIC lodgements

- 20.1 After the Company is established, each director must ensure that ASIC is notified if:
- (a) any director or secretary is removed or added;
 - (b) any director or secretary changes his or her residential address;
 - (c) the auditor is changed;

- (d) the registered office is changed; or
- (e) certain resolutions, such as amending the constitution, are passed.

20.2 This is not an exhaustive list and the Company should seek advice if the Company has any queries. Notice must be in the form prescribed by ASIC. Late penalties apply if the notice is not lodged within the prescribed period (usually either after only 14 or 28 days of the event occurring).

21 The role of the Company secretary

21.1 A company secretary's general duties are extensive and vary according to the type of company and the extent of its activities. Generally, the Company secretary is required to:

- (a) carry out the functions of the chief administrative officer of the Company which might include some or all of the roles of office manager, public officer, accountant, financial adviser, controller or public relations officer;
- (b) have a clear understanding of the Company's constitution and the provisions of the Corporations Act which affect the Company;
- (c) ensure that these registers required to be kept under the Corporations Act are established and properly maintained:
 - (i) a register of members;
 - (ii) a register of option holders;
 - (iii) a register of debenture holders; and
 - (iv) a register of charges,with the register being kept at the registered office, the principal place of business of the Company or some other place approved by ASIC;
- (d) ensure that all returns and notices required to be filed with ASIC are properly prepared and filed within time;
- (e) organise and attend meetings of the shareholders and of directors including sending out notices, preparing agendas, marshalling proxies and taking minutes;
- (f) be aware of the laws and procedures governing meetings, particularly the rules of the Company constitution on quorum requirements, voting procedure and proxies;
- (g) deal with all correspondence with members concerning their membership;
- (h) ensure that the Company's financial records are kept in accordance with the Corporations Act and that the annual financial reports are prepared in the form and at the time required by the Corporations Act;
- (i) supervise the preparation of tax returns and ensure compliance with the various taxing provisions (e.g. payroll, income, goods and services, withholding and land taxes);
- (j) attend to the Company's insurance requirements, to ensure the Company is adequately protected;

- (k) be conversant with relevant statutory requirements, ensuring compliance, and keeping abreast of new legislative developments; those requirements may range broadly embracing areas such as occupational health and safety, industrial awards, trade practices, consumer protection, anti-pollution, hire purchase and taxation;
 - (l) carry out the instructions of the directors and to convey those instructions to other concerned persons such as other company officers; and
 - (m) be responsible for the custody of the Company's common seal, if any.
- 21.2 The Company may wish to divide appropriate duties and responsibilities between the directors and other company officers, rather than leave all of the above responsibilities to the secretary. However, each director must remember that he or she is ultimately responsible for his or her reliance on advice and delegation of powers.

22 The role of the public officer

- 22.1 The public officer is a company's representative in dealings with government agencies such as the Australian Tax Office and the ASIC.
- 22.2 The public officer is responsible for the Company's obligations under section 252 of the *Income Tax Assessment Act 1936* (Cth). If the Company is in default of these obligations, then the public officer is liable to the same penalties as the Company.
- 22.3 The public officer must:
- (a) be at least 18 years of age;
 - (b) ordinarily reside in Australia; and
 - (c) be capable of understanding the nature of the person's appointment as the public officer of the Company.
- 22.4 A public officer does not need to be a director of the Company and is often the same person as the Company secretary but does not have to be.
- 22.5 A public officer, if not a director or company secretary, is not an officer of the Company under the Corporations Act.
- 22.6 In addition to the above roles, the Company secretary and the public officer might be an authorised person or agent for the Australian Business Register and the Australian Charities and Not-for-profits Commission.
- 22.7 Some organisations choose to outsource the Company secretary and public officer role/s to an independent person or business to avoid confusing their role with that of the chief executive officer.