Fact sheet – First Nations startups

#2 Key positions within a private company

The rules which govern private companies are set out in the *Corporations Act 2001* (Cth) **(Corporations Act)** and the company's governing document, called a constitution. This fact sheet provides a high-level summary of the key roles in a private company to ensure First Nations startups are aware of their duties, responsibilities and potential liabilities. See **fact sheet #1 Getting started – legal structures & tax** for more detail about different legal structures.

	Directors	Company secretary	Public Officers	Shareholders
Qualifications/disqualifications	Private companies must have at least one director who ordinarily resides in Australia. Each director must consent in writing to their appointment. Directors must be at least 18 years old and hold a Director Identification Number (**DIN**). Criminal and civil penalties can apply if a director does not have a DIN. You can apply for a DIN here. You must have applied for a DIN prior to being appointed as a Director. You cannot become a director if you are currently bankrupt; subject to a personal insolvency agreement or composition under the *Bankruptcy Act 1966* (Cth); or have been disqualified from acting as a director because you have been convicted of offences like fraud.	Private companies are not required to have a company secretary. If a company does have a company secretary, they must be at least 18 years old; ordinarily reside in Australia; and consent to their appointment in writing.	Australian companies are required to appoint a public officer within three months of the company commencing to carry on business or derive an income in Australia. A public officer must be over 18 years of age; ordinarily resides in Australia; understand the nature of their appointment to the position; and consent to their appointment in writing.	While the company is managed by its directors, it is the shareholders (or members) who own the company. All companies must have at least one shareholder; private companies must have no more than 50 shareholders that are not employees of the company.

#2

	Directors	Company secretary	Public Officers	Shareholders
Duties, rights & responsibilities (under the Corporations Act and/or company constitution)	Directors are responsible for the governance of a company, and for ensuring its operations comply with law. Directors must act with care, skill and diligence; understand what their company is doing; act in good faith and in the best interests of the company; ensure that all personal interests and conflicts are fully disclosed; ensure their company keeps proper financial records; and ensure their company can pay its debts on time.	Like a director, a company secretary is responsible for ensuring a company's ongoing regulatory and administrative compliance. In particular, company secretaries are responsible for notifying ASIC of changes in company details; ensuring the company maintains a registered office and that the registered office is open to the public; and completing the annual review process (including paying the annual review fee and keeping the company details current).	The public officer of a company deals with the Australian Taxation Office in relation to the tax affairs of the company, including record keeping and company tax returns.	Ordinary shares are the most common type of share issued by companies and entitle a shareholder to vote and participate in dividends or distributions on the same terms as the other ordinary shareholders. A shareholders' rights generally include the right to appoint or remove directors; attend members meetings; receive annual reports and dividends declared by the company; and inspect the company minute books and registers. A company cannot undertake certain actions without the approval of its shareholders, such as amending its constitution; reducing the shares on issue; changing the company's name; or winding-up the company. A shareholders' agreement is a binding contract between the shareholders of a company which governs their relationship as shareholders, how the company will be run, and how shares in the company may be dealt with. These agreements are important and can significantly reduce the scope for future disagreement.

#2

	Directors	Company secretary	Public Officers	Shareholders
Liabilities	Directors face significant penalties for non-compliance with their duties, including civil penalties (i.e. fines) and criminal charges and penalties. Unlike the shareholders of a company, directors can in some circumstances be personally liable for debts and other obligations incurred by the company (e.g. if the company trades whilst insolvent, fails to pay certain taxes or superannuation, or fails to comply with workplace health and safety and environmental laws). You should only agree to become a director if you understand your responsibilities and are willing and able to perform them.	Secretaries can face civil penalties (i.e. fines) for non-compliance with their duties.	Public officers should seek specific advice from a registered tax agent or accountant in respect of their obligations.	As a shareholder, you are not liable for the company's debts. Your only financial obligation to the company is the amount required to be paid in exchange for the shares issued to you by the company. This concept (called "limited liability") is one of the main reasons that many Australian businesses are operated through companies.

Please see our other Fact Sheets for First Nations startups here.

For more information, please contact: probonoteam@hopgoodganim.com.au

Disclaimer

The content of this fact sheet is current at September 2026 and is intended to provide a general guide to the subject matter only. The fact sheet does not constitute legal advice. Obtaining specialist advice about your specific circumstances is strongly recommended.