

### Background

Governance standards for charities registered with the Australian Charities and Not-for-profits Commission (ACNC) commenced operation on 1 July 2013 (Governance Standards). These Governance Standards set out a minimum standard of governance, which charities registered with the ACNC must comply with.

Registered charities must comply with the Governance Standards as far as is possible, without breaching its governing documents (such as its constitution or trust deed). If a charity's governing documents prevent it from complying with the Governance Standards, the charity will have until 1 July 2017 to make necessary changes to its governing documents to comply with the Governance Standards.

### What are the Governance Standards?

The Governance Standards apply to all registered charities, except for basic religious charities.

- **Standard 1: Purposes and not-for-profit nature of a registered entity**

Charities must be able to demonstrate and comply with its purposes and character as a not-for-profit entity, and provide information about their charitable purpose to the public.

- **Standard 2: Accountability to members**

Charities must take reasonable steps to be accountable to their members and allow their members adequate opportunity to raise concerns about how the charity is governed.

- **Standard 3: Compliance with Australian laws**

Charities must not act in a way that could be dealt with under Australian laws as an indictable offence or a civil penalty of 60 penalty units or more (which is currently AU\$10,200).

- **Standard 4: Suitability of responsible persons**

**Part 1:** Charities must take reasonable steps to ensure that their responsible persons 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.

**Part 2:** Charities must take reasonable steps to remove any responsible person who does not meet these requirements.

- **Standard 5: Duties of responsible persons**

Charities must take reasonable steps to ensure that their responsible persons are subject to, and comply with, the following duties:

- to act with reasonable care and diligence;
- to act honestly in the best interests of the charity and for its charitable purposes;
- not to misuse their position as a responsible person;
- not to misuse information they gain in their role as a responsible person;
- to disclose perceived or actual conflicts of interest;
- to ensure that the financial affairs of the charity are managed responsibly; and
- not to allow the charity to operate when it is insolvent.

An incorporated charity will be deemed to comply with this governance standard until 1 July 2017 if: (a) the legislation which the charity is incorporated under sets out duties of responsible persons; and (b) the charity and its responsible persons are complying with such duties.

## What Does this Mean for Charities?

Registered charities should, if not already, consider whether they are complying with the Governance Standards. Charities that intend to register with the ACNC should also consider whether they can comply with the Governance Standards.

The table below outlines some of the good practice measures that charities could implement to comply with each of the Governance Standards.

Governance Standards	Good Practice Measures
<b>Standard 1: Purposes and not-for-profit nature of a registered entity</b>	<ul style="list-style-type: none"> <li>Set out the charitable purpose and not-for-profit nature of the charity in governing documents.</li> <li>Provide governing documents to the ACNC to be uploaded on the ACNC register.</li> </ul>
<b>Standard 2: Accountability to members</b>	<ul style="list-style-type: none"> <li>Conduct meetings at least annually which allow members to ask questions and vote on resolutions.</li> <li>Develop and implement processes and procedures regarding provision of information to members about finances and activities</li> <li>Set out the process for appointing responsible persons in governing documents.</li> </ul>
<b>Standard 3: Compliance with Australian laws</b>	<p>Charities could undertake the following simple steps to reduce the risk of breaching this standard:</p> <ul style="list-style-type: none"> <li>Being familiar with the regulations and legislations applicable to the charity.</li> <li>Develop and implement reasonable processes and controls to ensure the charity meets its legal obligations (the extent and type of processes and controls that area reasonable for each charity will vary depending on the charity's size, activities etc).</li> </ul>
<b>Standard 4: Suitability of responsible persons</b>	<p><b>Part 1:</b> Ensuring that responsible persons are suitable</p> <ul style="list-style-type: none"> <li>Annually searching the ASIC Disqualified Persons Register and the ACNC Register of Disqualified Persons using current and former names of responsible persons.</li> <li>Require all responsible persons to sign a declaration relating to disqualifying offences.</li> </ul> <p><b>Part 2:</b> Removing unsuitable responsible persons</p> <ul style="list-style-type: none"> <li>Ask the unsuitable responsible person to resign.</li> <li>If the unsuitable person refuses to resign, follow the process in governing documents and under any relevant legislation to remove the responsible person.</li> </ul>
<b>Standard 5: Duties of responsible persons</b>	<ul style="list-style-type: none"> <li>Provide annual training for all responsible persons on their duties and responsibilities under the Governance Standards.</li> <li>Introduce a (board or committee) charter that sets out how responsible persons are expected to behave and what their duties are.</li> <li>Develop and implement processes to manage conflicts of interest and the responsible management of money.</li> <li>Take reasonable action if a responsible person is not carrying out their duties.</li> </ul>

For more information regarding the Governance Standards and possible implications on your charity, contact:

### Andrew Burnett

Partner  
T +61 8 9429 7414  
E [andrew.burnett@squiresanders.com](mailto:andrew.burnett@squiresanders.com)

### Alex Butterworth

Associate  
T +61 2 8248 7809  
E [alex.butterworth@squiresanders.com](mailto:alex.butterworth@squiresanders.com)

### Sarah Teh

Associate  
T +61 8 7429 7462  
E [sarah.teh@squiresanders.com](mailto:sarah.teh@squiresanders.com)

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

© Squire Sanders.