



AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION (ACNC) ACT: DUTIES AND OBLIGATIONS

PURPOSE

Provides an overview of governance standards and obligations for directors and board members under the ACNC Act.

Each director falls within the definition of a 'responsible entity' under the Australian Charities and Not-for-Profits Commission Act 2012 (Cth) (ACNC Act), also called 'responsible person' by the Australian Charities and Not-for-Profits Commission (ACNC). This means that each director must:

- > Ensure that the Company, as a registered charity, complies with the requirements imposed on it by the ACNC Act
- > Comply with the governance standards imposed by the ACNC Act and regulations.

THE GOVERNANCE STANDARDS

The full governance standards are available [here](#). In summary, they are:

STANDARD 1: PURPOSES AND NOT-FOR-PROFIT NATURE OF A REGISTERED ENTITY

- > Charities must be not-for-profit and work towards their charitable purpose. They must be able to demonstrate this and provide information about their purpose to the public.

STANDARD 2: ACCOUNTABILITY TO MEMBERS

- > Charities that have members must take reasonable steps to be accountable to their members and provide their members adequate opportunity to raise concerns about how the charity is governed

STANDARD 3: COMPLIANCE WITH AUSTRALIAN LAWS

- > Charities must not commit a serious offence (such as fraud) under any Australian law or breach a law that may result in a penalty of 60 penalty units (currently \$12,600) or more

STANDARD 4: SUITABILITY OF RESPONSIBLE PERSONS

- > Charities must check that their responsible persons are not disqualified from managing a corporation under the Corporations Act or disqualified from being a responsible person of a registered charity by the ACNC Commissioner. 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 make sure that responsible persons understand and carry out the duties set out in this standard

The standards imposed on all 'responsible persons', namely directors, by virtue of Standard 5 are to:

- > Act with reasonable care and diligence
- > Ensure that financial affairs are managed responsibly
- > Act honestly in the best interests of the charity and for its purpose
- > Not misuse their position or information
- > Disclose any actual or perceived conflict of interest
- > Not allow a charity to operate while insolvent

Failure to comply with the governance standards may result in a charity being removed from the Charity Register, losing its tax concessions and, if an offence, can lead to prosecution. The ACNC may also remove a person from a board and place the person on a list of disqualified persons. Importantly, there are some provisions, which when breached could lead to the responsible person being personally liable for a civil penalty.

These governance standards are said to place less of an onus on directors than the duties and obligations imposed on directors by the Corporations Act. The Company expects that its directors will meet the higher standard imposed by the Corporations Act. The directors must ensure that they:

- > Understand their role and responsibilities as a director
- > Undertake their own enquiries and due diligence to satisfy themselves that they are able to fulfil their role and to meet their responsibilities as a director

SOURCE

- > Prepared with the assistance of McCullough Robertson Lawyers

REFERENCES

- > The ACNC's Guide to the ACNC Act may assist a responsible person to satisfy the ACNC Act, and the ACNC's requirements.
- > The Australian Institute of Company Directors has also released a publication called 'Good Governance Principles and Guidance for NFP Organisations'

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THE BOOK OF THE BOARD

[The Book of the Board](#) is Australia's standard reference book for board and committee members of non-profit organisations. Authored by Positive Solutions Director, David Fishel, and currently in its third edition, The Book of the Board provides clear guidance on the role of the non-profit board, formal and legal responsibilities, and the ways in which the board can maximise its effectiveness for the organisation.

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