

Governance Standards transcript

Introduction to the ACNC Governance Standards

The Governance Standards are a set of core minimum standards that deal with how a charity is run, including its processes, activities and relationships – its governance. The standards require a charity to remain charitable, operate lawfully, and to be run in an accountable and responsible way.

They help maintain public trust in charities, and help charities continue to do their charitable work. Because the Governance Standards are a set of high-level principles instead of precise rules, each charity must decide how it will comply with them. A charity must be able to demonstrate that the steps it has taken to comply with the Governance Standards are appropriate, considering factors such as its size, purposes, beneficiaries and activities. For example, a large charity or one with vulnerable beneficiaries is likely to need to take extra steps to comply with the standards.

A charity must meet the ACNC Governance Standards to be registered and remain registered with the ACNC. The Governance Standards do not apply to a limited category of charities called Basic Religious Charities. A Basic Religious Charity (BRC) is a registered charity with the purpose of advancing religion, which meets six other criteria. Please note that Basic Religious Charities must take reasonable steps to join the National Redress Scheme to maintain BRC status, if the scheme requires them to do so. If a Basic Religious Charity fails to join the Redress Scheme, it cannot be a BRC. Charities that do not meet all the criteria for being a Basic Religious Charity must comply with all the Governance Standards.

How to meet Governance Standard 1: Purposes and not-for-profit nature

Governance Standard 1 requires a charity to demonstrate that it was set up as a not-for-profit with a charitable purpose, runs as a not-for-profit, and is working towards its charitable purposes. It also requires charities to demonstrate that they can provide information to the public about their charitable purpose. Charities can do this in various ways, including via their website, social media channels and annual reports. These requirements provide the public with reassurance that the charity has good reasons to be entitled to the tax concessions and other benefits it receives.

Let's unpack each of these requirements. Charities can meet this part of the standard by including certain clauses in their governing document. It should outline their charitable purpose, and a rule requiring them to operate as a not-for-profit. Most registered charities will already have a governing document that includes clauses or rules relating to charitable purpose and not-for-profit nature. The ACNC will check for this as part of the registration process. Once registered, this governing document will be published on the ACNC Register, unless a request to withhold information is approved.

Just a note – if your charity's governing document is not already published or it has changed, you can upload a copy of your governing document to the Register using the Charity Portal. We recommend you remove any personal information from the document before uploading it.

A charity must run as a not-for-profit and work towards the charitable purposes it was established to achieve in order to meet this part of the standard. A not-for-profit is an organisation that does not operate for the profit, personal gain or other benefit of particular people. This can include people such as its members, the people who run it, its Responsible Persons, or their friends or relatives. Charities must be a not-for-profit while they are operating and when they're in the process of winding up.

There are some practical steps you can take to help your charity meet this part of the standard. For example, set up processes that protect and control what happens to your charity's donations or any profits it makes so that these are only used for its charitable purposes. This includes having rules about who decides how money is used.

How to meet Governance Standard 2: Accountability to members

Common steps your charity can take to meet this standard are to:

- organise a meeting at least annually with your members, such as an annual general meeting, with opportunities for members to ask questions and vote on resolutions
- provide information to members on the charity's activities and finances, such as via an annual report or its website, and
- have clear processes for appointing Responsible Persons, for example, board or committee members. This can include setting out the process in your charity's governing document for the election of Responsible People, or charity policies outlining how complaints or disputes can be raised.

The above steps are examples only and are in addition to what your charity is required to report to the ACNC. For instance, small charities do not have to submit a financial statement to the ACNC, but to meet Governance Standard 2, their members need to be able to ask for some financial information and be provided with it.

A large charity with many members and a significant reach may need to do more to meet this standard. For example, if there are no specific clauses in your charity's governing document, it may be appropriate to have more formal rules and processes on things such as:

- providing formal written notice of meetings and set periods of notice prior to meetings being held
- how items can be added to meetings for discussion or voting on (possibly requiring notice to be given before the meeting)
- providing an annual report to members, explaining your charity's financial position, and

- nominating, appointing or electing Responsible Persons.

The steps that are reasonable depend on a charity's specific circumstances. If your charity is an Indigenous corporation, an incorporated association or a co-operative, and already meet its responsibilities to hold meetings and be accountable to its members under its incorporating legislation, then it will be taken to meet Governance Standard 2.

For companies registered under the Corporations Act (2001) that are also registered as charities under the ACNC Act (2012), some provisions of the Corporations Act do not apply – for example, relating to member meetings. Instead, they must comply with the Governance Standards.

How to meet Governance Standard 3: Compliance with Australian laws

Governance Standard 3 requires charities to not act in a way that, under Commonwealth, state or territory law, could be dealt with as:

- an indictable offence (being a serious crime that is generally tried by a judge and jury), or
- a breach of law that has a civil (not criminal) penalty of 60 penalty units or more.

Acting lawfully helps protect a charity's assets, reputation, and the people it works with. The standard allows the ACNC to investigate a charity that may have breached the law.

There are simple steps to take to reduce the risk of your charity breaching Governance Standard 3. In most cases, risks will be reduced by common sense and good practice, such as:

- being familiar with the main areas of regulation for your charity
- having processes to protect your charity's finances and assets, and
- having a legal process to ensure your charity meets its legal obligations.

The type and extent of processes and controls which are reasonable for a charity will vary, depending on its situation. The ACNC will not investigate every alleged breach of law by a charity. The ACNC will only investigate serious offences, for example fraud, money laundering, or terrorist financing, that are likely to affect public trust and confidence, or where this is necessary to protect the assets of a charity or the people it serves. The ACNC will not investigate alleged breaches of law, or issues that other regulators or the police are better placed to handle. The ACNC will work with those agencies where appropriate.

How to meet Governance Standard 4: Suitability of Responsible People

Your charity is likely to meet the first part of this standard if, for both existing and potential Responsible Persons, it:

- understands how a person becomes disqualified
- does a search of the ASIC Disqualified Persons Register for that person

- does a search of the ACNC Disqualified Persons Register for that person, and
- asking their Responsible Persons to sign a declaration confirming that they are not disqualified and agree to notify the charity if the person becomes disqualified in the future.

However, if your charity suspects that a Responsible Person is disqualified, it must take further steps to be satisfied that the person is not disqualified. This may include seeking information from the relevant government agency and/or the Responsible Person.

You may be disqualified from being a Responsible Person if you have been disqualified by the ACNC in the past 12 months, or are disqualified from managing a corporation within the meaning of the Corporations Act (2001). This may occur if you:

- have been convicted of certain offences, such as serious offences, dishonesty offences or other offences that can affect a corporation
- are an undischarged bankrupt or are subject to a 'personal insolvency agreement' you have not followed, or
- have been disqualified by the Australian Securities and Investments Commission, known as ASIC, the Office of the Registrar of Aboriginal and Torres Strait Islander Corporations, known as ORIC, or an Australian or New Zealand Court.

Most people will know straight away that these categories do not apply to them.

If any of your Responsible Persons are listed on either the ASIC or ACNC Disqualified Persons Register or refuses to sign a declaration, or your charity believes that they are disqualified, your charity must take reasonable steps to remove them. If the individual is disqualified or your charity reasonably believes they are disqualified, you should begin by asking the person to resign. If they refuse, follow the process in your governing document and under any legislation that applies to your charity to remove them as a Responsible Person.

Depending on your charity's rules, you may need to call a meeting of the board or committee and/or a general meeting of the members to remove them by a vote. If your charity cannot remove the person, for example, if the members of a company limited by guarantee refuse to remove a director, please write to the ACNC and explain your situation.

You may also consider whether it is necessary to involve another regulator. For example, the one that your charity was incorporated by. If there are good reasons to keep the person, please contact us, since the ACNC may give you permission to do so.

How to meet Governance Standard 5: Duties of Responsible People

Steps your charity can take to make Governance Standard 5 are to:

- bring these duties to the attention of Responsible Persons, such as providing them with a copy of this guidance or other resources, or outline their duties in a letter of appointment for Responsible Persons, or by setting them out in a board or committee charter
- regularly provide information or training to Responsible Persons on their duties to refresh their knowledge, such as by advising of ACNC webinars on relevant topics
- encourage Responsible Persons to prepare for, attend and participate in meetings
- have processes for the responsible management of money
- request Responsible Persons undertake relevant training about their duties
- have processes in place to manage conflicts of interest, and
- take action if your Responsible Persons are failing to meet their duties.

How to meet Governance Standard 6: Maintaining and enhancing public trust and confidence in the Australian not-for-profit sector

The National Redress Scheme (NRS) commenced on 1 July 2018 and will run for ten years. It was established in response to recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse. The Department of Social Services (DSS) administers the scheme. It was set up to provide redress to people who experienced institutional child sexual abuse. The redress offered includes access to counselling, a compensation payment and a direct personal response.

Governance Standard 6 requires a registered charity to take reasonable steps to participate in the National Redress Scheme, if the charity is or is likely to be identified as being involved in the abuse of a person.

Common steps a registered charity can take to meet Governance Standard 6 may include:

- becoming a participating non-government institution within six months of the relevant redress application relating to the charity being made, or within six months of the charity being identified in a response to a request for information under the Redress Act
- actively taking steps to join the Redress Scheme, and
- taking action to fulfill requests made by officers of the Redress Scheme relating to the charity's participation in the Scheme without delay.

Once a registered charity has become a participating non-government institution, it is subject to the Redress Scheme.

The ACNC investigates breaches of Governance Standard 6. We focus on registered charities that are or are likely to be identified as being involved in the abuse of a person and do not appear to be taking reasonable steps to participate in the National Redress Scheme. The National Redress

Scheme operator, that is the Secretary of the Department of Social Services, and others bring breaches of Governance Standard 6 to our attention.

Here's an example of how Governance Standard 6 works: Church G is a charity that provides church and educational services. An officer of the National Redress Scheme contacted Church G and notified the charity that it has been identified in a response to a request for information under the National Redress Scheme. Church G ignores the advice and chooses not to take reasonable steps to join the National Redress Scheme. The National Redress Scheme operator provides this information to the ACNC. The ACNC conducts an investigation into the charity and may decide to revoke Church G's registration.